

The Chartered Institution of Wastes Management (CIWM) is the professional body which represents around 6,300 waste management professionals, predominantly in the UK but also overseas. The CIWM sets the professional standards for individuals working in the waste management industry and has various grades of membership determined by education, qualification and experience.

Part I: A Consultation on proposals to enhance enforcement powers at regulated facilities

Part II: A call for evidence on other measures to tackle waste crime and entrenched poor performance in the waste management industry

CIWM welcomes the opportunity of this consultation and sought comments from members and via biological treatment; regulation and collection, recycling and environmental cleansing special interest groups. Their feedback has helped form this response.

General Comments

The sustainable waste and resources management industry is highly regulated. It is worth an estimated £10 to 15 billion per year (depending on how its boundaries are defined) and offers at least 50,000 net jobs growth and £3 billion contribution for its customers 'bottom line' performance through delivering improved resource efficiency. This will involve significant investment in new infrastructure and services by the industry over the next few years. At the same time, the cost of responsible waste management has risen steeply in response to a move away from landfill up the waste management hierarchy. This cost coupled with low level awareness and enforcement of waste law – including the waste Duty of Care – has made waste crime increasingly attractive along with historically low penalties awarded by courts. As a result the compliant industry finds itself at a serious disadvantage compared to those prepared to operate either illegally or at a persistently poor standard. This unfair competition tarnishes the image of the whole industry and threatens its ability to deliver economic, social and environmental benefits through improved waste and resources, including investment in new services and facilities. CIWM members note and value the response by governments and regulators to this growing problem and support the objectives of this consultation and call for evidence. The Institution anticipates further work to come from this exercise and CIWM will be happy to offer input and support to governments, regulators and other partners in building and delivering a robust response to waste crime in all its forms.

CIWM also recognises that improvements to the operation and enforcement of the existing technical competence scheme operated in partnership with WAMITAB can be made in addition to improvements discussed in questions 11 to 21 below. This includes improved access for regulators to data regarding technically competent managers in the CIWM/WAMITAB scheme and routine updates to the syllabus and questions in awards and continuing competence test. This work continues but enhancements to the legislation and guidance as covered below is still needed.

Part I

Q.1 Do you agree with the proposals, A to F? Please provide any additional comments to support your answer against each proposal and, if possible outline any additional measures needed to underpin them?

Yes, in general the proposed enhanced powers for regulators will allow for streamlined action where it is needed. In exercising these powers CIWM members ask that appropriate resources should be available to the regulators; that their staff are trained and supported in their use. In addition rights of appeal and the status of the proposed action pending appeal resolution are made clear.

CIWM notes that appeals for environmental permitting are performed by the Planning Inspectorate. The Inspectorate are ideally placed to deal with complex planning law and associated matters but with environmental permits and the related legislation either steps will be needed to ensure the Inspectorate has appropriate skills and resources or an alternative body should be consider the appeals. CIWM understands there is an Environmental Tribunal established under the civil sanctions legislation, which could be a better route for permitting appeals to be determined.

Proposal A – suspending permits where an operator has failed to meet the conditions of an enforcement notice.

CIWM agrees regulators' powers of suspension should be extended to situations where an enforcement notice issued under regulation 36 has not been complied with, irrespective of the risk of serious pollution, provided that clear actions against a reasonable timetable have been agreed. CIWM agrees that such a power must be exercised proportionately and suggests that guidance is made available and that regulatory staff are fully trained in its use. Timescales should be agreed and appropriate for any actions required. Regulations must also make clear appeal rights and whether any regulator liability could arise where the power is exercised.

Proposal B – enable the regulators to issue notices that include steps an operator must take to prevent the breach of a permit getting worse – for

example, in the waste industry, key actions to stop more waste coming onto poorly managed sites.

CIWM agrees it would be good to give this clarity. CIWM supports the proposal to ensure that the powers relating to service of an enforcement notice are broad enough to allow the regulator to require steps to ensure that a likely contravention does not occur or to stop an existing contravention becoming worse. As with extended powers of permit suspension (above), either regulations or guidance must make clear what liability the regulator takes on if further or additional environmental or health impacts arise either through their own actions or actions imposed by them on the operator.

Proposal C – enable the regulators to take physical steps to prevent an operator from committing further breaches of the permit.

CIWM supports the proposal to make it clear that the regulator may arrange for steps to secure the facility, except where this applied to a private dwelling. CIWM agrees with the regulator being required to notify the operator of such steps. The Institution also asks for consideration being given to this power being available to regulators at non-permitted waste sites.

Proposal D – enable the regulators to take steps to remove a risk of serious pollution, whether or not a facility is under a permit.

CIWM supports the change to legislation to broaden the scope of the powers for regulators to prevent or remedy pollution even where an environmental permit is not in place; where the operator is operating without a permit; where a permit has been fully revoked; or where a permit is revoked during or subsequent to any remedial action under regulation 57.

Proposal E – enforcement by the High Court

CIWM agrees with the proposal to amend legislation to provide that a regulator may take proceedings in the High Court to secure compliance, whether or not the regulator has taken other enforcement steps. CIWM agrees such a proposal is subject to a Justice Impact test.

Proposal F – power to serve notice to remove waste

CIWM supports this amendment to cover not only notices to remove illegal deposits (current position) but also cater for the situation where the initial deposit was lawful but the continued presence or storage of that waste can be demonstrated to subsequently have become unlawful.

Q.2 Do you have any views on whether there are unforeseen costs or benefits to legitimate operators, the regulators or any other organisation that may result from any of the proposals A-F?

The Institution does not anticipate unacceptable costs to legitimate operators. However, under the proposals the regulator could in effect be taking over at least some of the responsibility for the management of the facility from the permit holder/operator. Either the regulations or guidance must make clear what these regulator responsibilities are. Regulator staff must be fully trained and supported in the use of these powers.

The advantages to legitimate operators should be through regulator action or streamlined response to illegal or persistently non-compliant operators to create fairer competition in the sector.

Part II

Fixed penalty notices for fly-tipping

Q.1 Would the introduction of fixed penalty notices for the offence of fly-tipping help tackle the problem?

Yes in general, access to fixed-penalty notices (FPNs) will help local authority action and deterrence of fly-tipping.

There has been much discussion amongst a number of different groups about the use of fixed penalty notices for those caught fly-tipping. Many local authorities through the LGA and National Fly-Tipping Prevention Group (NFTPG) have indicated that a fixed penalty notice would be another tool in taking prompt, proportionate and low cost action against fly-tipping and indicating that fly-tipping is a serious environmental offence.

Many local authorities have in the past shied away from prosecution of fly-tipping offences through the courts, mainly due to the likelihood of the court fine and the award of costs being lower than the total cost to the authority of taking the prosecution. CIWM anticipates an improved situation in court decisions following the 2014 Sentencing Council new Sentencing Guidelines for magistrates.

Q.2 What are the advantages of the use of fixed penalty notices for fly-tipping?

A fixed penalty notice can be issued quickly and efficiently without having to gather an immediate full case file of evidence, as required for a court case. There is also the issue of being able to obtain a witness statement – which would carry weight for the FPN whereas such witnesses may not agree to appear in court.

Fixed penalty notices will also highlight the issue to the public that fly-tipping is not an acceptable practice, providing the authority publicises both the availability of the FPN (and fines associated with them) alongside the use of the FPN.

FPNs also offer a degree of flexibility for the local authority including their use for deliberate contamination (hoover left at glass recycling bank and meat deposited in a textile bank).

Q.3 What are the disadvantages of the use of fixed penalty notices for fly-tipping?

Many could perceive reliance on issuing of fixed penalty notices by local authorities as a simpler but lower impact response to fly-tipping.

Guidance will be needed to make clear where a fixed penalty notice would be an appropriate response and where prosecution through the courts is the correct response – entailing much greater penalties including possible custodial sentences. CIWM does not believe that a FPN would be an appropriate response to fly-tipping of hazardous waste, for example. An early payment period (as for parking offences) would help show that FPNs are intended to be a quick and effective response to fly-tipping rather than a revenue-raising exercise. Full training of staff who would be issuing these fixed penalty notices must be undertaken.

Q.4 If a proposal was made to introduce fixed penalty notices for fly-tipping, how much should the fixed penalty be set at to act as a sufficient deterrent?

The level for a fixed penalty has to be such that it:

- Covers the local authority cost of waste clearance including the full disposal cost with landfill tax
- Takes account of the waste type as well as the amount and the location; accessibility by children or availability of HWRC sites
- Is not so low that the cost of the fixed penalty notice is seen as an acceptable risk to take by those who carry out fly-tipping
- Is not so low that the authority is unlikely to bear the cost of chasing non-payment
- Penalty includes a deterrent element beyond the cost of notice issue and waste clearance – in line with fixed penalty notices for litter, for example.

Taking these together and assuming that typically local authority led enforcement involves up to one tonne of fly-tipped waste, CIWM proposes a fixed penalty notice value of between £300 and £500. The upper limit should be linked to guidance on cases where prosecution would be the preferred response.

Q.5 Do you have any views on the possible cost or benefits of issuing fixed penalty notices?

Government might like to consider the option of a formal caution issued with conditions i.e. cost of clearance and investigation.

Monies from fixed penalty notices should be returned back to the service – to prevent or manage further fly-tipping. This could also benefit local authority contracts and contractors that bear the cost of fly-tipping clearance.

Such notices might be an efficient and effective way of deterring first time offenders from committing further fly-tipping actions and press/media coverage for FPNs issued should act as a general deterrent – reducing clean-up costs plus maintaining the cleanliness of the area and all the benefits that flow from it.

Actions to improve landowner awareness of potential liabilities for waste

Q.6 Please provide evidence including examples of the extent to which waste is being abandoned and landowners are being left to tackle waste or pollution caused by current or former tenants.

CIWM is aware of a specific example, where a warehouse was supplied by a landowner for the storage of waste. They have subsequently found that the warehouse holds about 10,000 waste mattresses that have been collected in exchange for new ones. The owner of the warehouse has been left to tackle the problem. They have tried to track down the person who left these mattresses to no avail.

Between April 2009 and October 2013 over 4,400 fly-tipping incidents through 9 private landowners were recorded on Flycapture. This information is not routinely recorded by landowners but the data caught by Flycapture illustrates the likely magnitude of fly-tipping on private land and importance of proper monitoring. More should be done to encourage landowners to be aware of fly-tipping data recording via the National Fly-Tipping Prevention Group (NFTPG) and to record fly-tipping on their land and liaise with their local authority.

Q.7 Do you have any proposals on the best way to educate and increase awareness amongst landowners of their potential liabilities?

CIWM is part of the National Fly-Tipping Prevention Group (NFTPG) and there are sources of information on the website www.tacklingflytipping.com including a landowners fly-tipping prevention guide. CIWM is aware more needs to be made of this resource, including the available links for reporting fly-tipping information via mobile apps. The Institution will continue to work with NFTPG and its partners to raise awareness generally and of the website in particular.

Q.8 What more can be done through the lease arrangements with tenants to prevent or mitigate the potential liability of landowners?

In the rented housing market there is a bond between the tenant and the landlord, this type of arrangement should be considered for landowners making their land available for related activities. Introduction of a standard clause in lease documents then allows for action to be taken through the legal process.

Q.9 Would you like to see operators provide evidence to the regulators of their landowner's awareness and consent to the proposed waste activity as part of the permit application process?

Yes, CIWM supports evidence being provided of the landowner's consent and awareness at the permit application or exemption registration stage. This will reduce the landowners saying "I was not aware of what they were doing". The Institution sees little or no extra cost to any of the parties involved through requiring this confirmation.

Q.10 Do you have any views on the ability of liquidators to disclaim environmental permits as 'onerous property' in England and Wales?

Full legal advice should be sought but CIWM cannot see a reason why English law cannot follow in the footsteps of Scottish law which does not allow the disclaim of a company's sites and environmental permits by liquidators.

Operator competence

Q.11 What are your views on amending legislation to formally require operators of regulated waste management facilities to be competent in respect of: (a) technical competence (b) financial provision and (c) operator performance?

CIWM would support the reintroduction of fit and proper person check, (originally under Waste Management Licensing regulations). However, the Institution suggests this is renamed to fit and proper operator, in order to avoid confusion and to ensure its applicability to large companies and single person operators and widened to include an element of operator performance, (i.e. where this did not result in conviction e.g. enforcement notice or civil sanctions).

CIWM supports the amendment of legislation to require operators of regulated waste management facilities to be able to demonstrate that they have provided technically competent management through an approved scheme. The people identified as technically competent persons will have day to day decision making responsibility for the safe and compliant operation of the site.

CIWM seeks clarification on the meaning of financial provision at permitted waste facilities and this is covered in more detail below. However, in general CIWM supports the concept of amending legislation so that operators of

regulated waste management facilities make adequate financial provision to cover the costs of environmental and safety responsibilities associated with their facility.

CIWM seeks clarification on the meaning of operator performance, in this call for evidence. There is an opportunity to expand the meaning of the relevant convictions element of the fit and proper person test to include non-prosecution measures, including notices and enforcement undertakings. The Institution also suggests linking existing technical competence requirements (i.e. tests, qualifications) with site performance. This would allow the regulator to take a view on an individual technical competent person's bearing on compliance at a site. CIWM also believes this links in with question 27. This would enable a link between technical competence and operator performance with the effect that technical competence 'status' could be suspended or removed for poor operator performance, where it is clear that the individual technically competent person is at fault. CIWM would be pleased to discuss how this could be implemented through a revision of the CIWM/WAMITAB competence scheme and regulator guidance.

A number of options could be considered for suspending or revoking a technically competent person certificates or their right to perform that role, as well as options to reinstate their technically competent status (see table below). The competence award itself cannot be taken away from a technically competent person but if this is accompanied by a practicing certificate under the CIWM/WAMITAB scheme, then that could be suspended or revoked, including notification of that status on the scheme database, which is fully accessible to the regulator. Please note that these are preliminary proposals which CIWM would be pleased to discuss with governments and regulators.

| | TCM prosecution (subject to a range of severity) | Civil Sanctions for incident when TCM on site. (dependant on details) | CCS score / enforcement notice | 2 yrs. of E/F performance (OPRA scheme) |
|---|--|---|--------------------------------|---|
| Awareness workshop/ course | | | X | X |
| Reproof (re do CC or initial qualification) | X | X | X | X |
| Ability to act as TCM withdrawn | X | X | | |

CIWM believes that the formal compliance scheme in the waste industry has been a major force in improving and maintaining standards – and that with

improvements suggested in this call for evidence and already being developed with government and the Environment Agency, it will be an even more effective tool in fighting waste crime and persistent poor performance. CIWM believes this could be an advantage in other regulated industries.

Q.12 If a proposal were put forward to enshrine the components of the test in legislation, should the legislation apply to just waste management activities or some or all other types of regulated facility?

CIWM assumes “test” means the full competent operator check covering financial provision, relevant convictions and operator performance (operator competence – technically competent person), etc. CIWM/WAMITAB would be happy to support broadening this concept to cover other regulated activities but not at the expense of early strengthening and improvement of the scheme for permitted waste sites. Neither CIWM nor WAMITAB have expertise in other sectors regulated through the Environment Agency/National Resources Wales or through government-led policy and legislation. However, CIWM/WAMITAB do have considerable expertise in the design and operation of a major competence scheme, training courses and continuing competence. This experience could be useful if governments, regulators and sector representatives wish to introduce a formal competence scheme in their industry.

For example CIWM is aware of AD technology being used for non-waste feedstocks where there is no requirement for technical competence. This causes concern due to the potential for environmental damage and health and safety issues. CIWM suggests there is an argument for applying technical competence to such facilities.

Currently in the Environmental Permitting Regulations (para 13 of schedule 5) the requirement is that on application the regulator can refuse to grant an application if the operator will not operate the regulated facility in accordance with the environmental permit. This is only for initial applications or transfer applications – and doesn’t allow for assessment at any other time, nor does it qualify how this is to be judged and this needs to be supported through change to the relevant regulations. However, core guidance states that operator competence can be determined at any time during the life of the site. Support through regulations will significantly help to reinforce and ensure it happens.

Q.13 Would it be appropriate for operator competence to be re-assessed if a company changed its directors, company secretary or similar managers?

Yes. If the concept of fit and proper person (including relevant convictions) is to be reinstated, in some way, then CIWM agrees that a change in Director, Company Secretary or other similar relevant person should trigger a full re-assessment of operator competence.

CIWM assumes that this is a full operator competence reassessment, including all four points, i.e. including operator performance (currently relevant convictions and financial provision) as well as technically competent person.

If the personnel change affects technically competent management arrangements the operator will need to inform the regulator and future technically competent provision can be checked against the CIWM/WAMITAB scheme. Other elements of the check – especially for operator performance/relevant convictions will fall to the regulator and operator.

Q.14 If proposals to assess operator competence on a change to directors etc. were put forward, would it be appropriate to apply that requirement to all companies?

Yes. The operator competence scheme only covers permitted waste operations but all companies in that position should be subject to this recheck. A change of senior management is likely to have a bigger impact on small companies and therefore a greater risk of environmental impact and/ or non-compliance.

Q.15 If an operator competence test were to be enshrined in legislation, in what way might that be done? Examples might include the inclusion of an operator competence requirement in permit conditions, the creation of a specific new offence for failure to maintain operator competence or the extension of existing suspension and revocation powers to breach of the operator competence test.

CIWM believes Governments should consider all 3 options.

- Inclusion in permit conditions: Some standard rules permits already include a requirement to comply with an approved operator competence scheme (technical competence). Amendment to the standard rules to reflect any changes made following this call for evidence (e.g. full 4 point operator competence test) should be relatively straight forward. For bespoke or older permits a carefully planned project will be needed to make the amendments both quickly and in a standard way to ensure a fair and effective implementation. The resources needed to complete this task will be a material consideration in choosing this option. However the option of the enforcement tools for permit noncompliance e.g. enforcement notice and enforcement undertakings adds greater flexibility to the regulator.
- A change to legislation to introduce a specific offence for failure to maintain operator competence would be helpful, especially if there are difficulties in amending a large catalogue of existing permits.

- Linking operator competence to regulator revocation / suspension powers should also be helpful especially in light of proposed changes in Part 1 of this Call for Evidence.

Q.16 What are the arguments for applying technical competence to all types of permitted waste management facility, through one of the two currently approved schemes?

CIWM believes that the two approved schemes have shown themselves to be adequate, robust and affordable – especially through the widespread use of the CIWM/WAMITAB scheme right across the industry. The Institution believes that the operator competence and specifically technical competence requirements should be required for a broader range of waste activities currently exempted from permitting.

This range of exempted activities is greater in the UK than elsewhere in the EU and CIWM would be happy to work with governments, regulators and industry to re-assess the 'boundary' between activities requiring a permit and those exempted. Some exempted activities would still benefit from proof of technically competent management. CIWM/WAMITAB would be happy to discuss development and delivery of appropriate competences for these activities including arrangements to check continuing competence.

CIWM is also aware that neither technical competence nor the full operator competence requirements apply to large energy from waste operations. If the proposal is to include these in any extended scheme the Institution would be happy to discuss appropriate award(s) and tests.

Q.17 What are the arguments against applying technical competence to all types of permitted waste management facility, through one of the two currently approved schemes?

None that out-weigh the benefits in terms of performance, compliance and legal operation across the industry. CIWM/WAMITAB have a readily accessible and affordable scheme of competence awards and continuing competence tests for all permitted waste activities (for those currently obligated) and data links to regulators to support enforcement of the scheme.

Q18 If this were proposed, would it pose a difficulty for any particular part of the waste industry?

No. If the idea is to include exempt sites then activities such as community composting and the small scale composting sector may find costs and administration an issue. This could be mitigated by adapting the Environment Permit Operator's Certificate (EPOC). In addition, if exempt sites are included

there would need to be a transition period, just as there was when new standard rules were introduced.

Q.19 Please provide views on the ways in which the regulators are made certain of the name(s) of the technically competent manager(s) at permitted sites.

CIWM suggests that operators should provide and maintain a **list** of all names and proof of competence of technically competent persons needed to cover their portfolio of permits and that this should be made available via the public register. In order to update and maintain this list, to reflect any changes in personnel, CIWM suggests a minor modification to the notification condition of the permit to require the operator to update the **list** of technically competent persons available to the organisation. This will enable the regulator to check proof of competence prior to visiting the site through the CIWM/WAMITAB database.

The regulator can then check when they arrive on site who is the actual technically competent person and should be able to ask for ID and will only need to check with the scheme provider if they are not listed for that site. This ensures no one is making fraudulent claims. If the technically competent person is not available as required, the regulator should have the power to require on site operations to cease.

CIWM believes this allows flexibility for organisations to deploy technically competent persons as necessary to meet business needs, whilst maintaining “time on site” requirements.

CIWM suggests that site information requirements should be extended to include a board that has the technically competent person’s picture, name and contact details displayed whilst they are on site. This shows all visitors who is the technically competent person at that time. A record should be kept in case of regulator investigation. If details are not displayed the regulator can assume the technically competent person is not on-site and not available. If there is no technically competent person for the site the regulator should have the power to require on-site operations to cease.

Under the ESA/EU Skills scheme CIWM suggests there should be a named person as point-of-contact displayed.

Q.20 Please provide views on how those providing technically competent management at a site should be held to account for the standards of performance.

CIWM suggests the technically competent person(s) is (are) added to the list of relevant persons, as indicated in the Environmental Permitting Core Guidance (or in legislation if amended following this call of evidence) just like the company secretary and chief executive, etc.

CIWM believes the regulator already has the power in legislation to hold the technically competent person accountable for any incident of non-compliance or offence, by virtue of Section 33 of EPA which allows enforcement against anyone who causes, knowingly causes or permits non-compliance under an environmental permit.

CIWM believes to reinforce the role of the technically competent person and make them more accountable for standards of performance at site the regulator should have the power to suspend the status of the technically competence person subject to guidelines. (For point of clarity this is not removing their initial qualifications but more in line with suspending their overall authority to act as a technically competent person). See Q11.

Q.21 Please provide views on the amount of time those responsible for managing the site should be present and what factors should determine that period.

CIWM/WAMITAB proposes a formalised, percentage of operating hours, time-on-site system linked to the regulators' compliance banding for the site in the previous year or triggered by significant non-compliance or incident(s) in-year.

| Compliance band | Percentage of daily operating hours on site |
|------------------------|--|
| BAND A | 30% |
| BAND B | 50% |
| BAND C | 75% |
| BAND D, E or F | 100% |

Poor performance leads to reduced operational flexibility for operators/technically competent persons. For example, 50% attendance makes it unlikely that a technically competent person will cover more than one site in a day but does allow operators considerable flexibility, re. time off-site. Poor performance also increases the number of proven competent persons a site will need to cover its operation.

CIWM believes that some operators, especially for storage-only facilities will need different considerations allowing for waste transfer and for periodic checks at the site at other times.

CIWM believes that the above approach can be accommodated by a revision to the CIWM/WAMITAB operator competence scheme and current regulator guidance. CIWM feels this would not require a legislative change.

Linking time on site to compliance assessment in this way will make training support and review mechanisms within the regulators even more important and this suggested approach could only operate with a properly resourced and trained regulator(s).

CIWM suggests that time on site requirements under the ESA/EU Skills scheme, to reflect the above proposal should be explored between the regulators and operators using the scheme.

Q.22 Should financial provision for some or all permitted waste operations be reintroduced on a site-specific basis linked to the type of activity and the type of wastes received?

CIWM fully supports this reintroduction and suggests it should not have been removed when the Environmental Permitting Regulations were introduced.

CIWM agrees it should be introduced for all permitted waste operations on a site specific and risk based approach, taking account of the activity and the types and quantities of waste on the site. Some members of CIWM expressed support for the risk based approach only.

CIWM does ask if this is for newly permitted facilities from a given date or all existing facilities as well. If it is for all there will be an impact on the regulator which will have to be resourced.

Q.23 If so, should the amount of the financial provision be linked not only to returning the land to a satisfactory state to meet permit surrender requirements but also to foreseeable clear-up costs resulting from a breach of a permit or after an environmental accident?

Yes.

Q.24 For landfill sites, should the scope of financial provision be extended to cover operational costs that are incurred during the period when waste is accepted for disposal and/or after waste disposal has ceased?

Yes for breach of permit or environmental incident. Landfill sites are totally different to other waste management operations and so is the long-term liability. The infrastructure and cost model would have been defined a long time prior to operation or closure. Closure before the void is filled would not have been accounted for. NB this would be for the regulator to draw on in case the operator failed to comply with the permit or was absent. A number of CIWM members expressed concern about extending financial provision for landfill; this may need some thought and consideration.

Q.25 What is the best mechanism or combination of mechanisms for waste operators to make and maintain financial provision for their sites so that they are secure and available to fulfil permit obligations and deal with the consequences of breaches of the permit or environmental accidents?

Financial provision has been in place for landfill for a number of years and so Government is aware of some of the options available.

The main methods by which financial provisions can be provided are as follows:

1. Parent company guarantees
2. Bank guarantees
3. Overdrafts
4. Escrows
5. Bonds – on demand, without cause
6. Bonds – with cause
7. Mutual funds

1. **Parent Company Guarantees** are notoriously difficult. With a public company parent there is always a reluctance to provide a guarantee to the child subsidiary that finds its way through to the parent company. Their shareholders do not like to see the risks of the child being taken on by the parent, with the obvious risk to share price and dividend.

Parent company guarantees with private companies are awkward because whilst many private companies are of substance, the difficulty is making the guarantee in a water tight form that the guaranteed party requires and the regulator can access. Inevitably, they seek some further comfort and that will be treated as a balance sheet liability, as will almost certainly the prime guarantee in itself.

2. **Bank Guarantees** are most unlikely as they will be a charge against the financial resources of the business and will be a balance sheet liability. They are almost impossible to obtain because of the difficulty in giving any bank the security they require.
3. **Overdrafts** – the same problem exists as with bank guarantees and it will come down to a reduction in the borrowing capacity of the business and thus difficulty in funding working capital and capex and again the provision of security.
4. **Escrow accounts** are in effect a dead money savings account and really only work where they are built up over time on the basis of a tonnage charge. Any other form limits a company's working capital and capex. There is also the difficulty of the calling mechanism and control of unreasonable/unwarranted demands.
5. **On demand bonds** without cause are extremely difficult to obtain and the bondsman requires to be backed with a bank guarantee or such similar provision that guarantees without any doubt that if the bond is called he will be repaid. They are a total charge on the financial resources of the business. The same issues exist as above in respect of unreasonable/unwarranted demands.

6. **With cause bonds** are more normal but are usually against time limited events such as the delivery of capital plant, performance of a construction project, etc. A bond of great longevity is virtually unheard of and has all the difficulties of several of the financial mechanisms detailed above and gives rise to a heavy charge upon the financial resources of the business.
7. **Mutual funds** as discovered with the work done previously, are backed by an insurance policy and are the best mechanism of providing financial provisions. An industry backed scheme paid into by, for example, tonnage charges and backed by a reputable insurance policy gives confidence that if for any reason a liability arises it can be met. It is also possible to shape a mutual fund to cover large, medium and small enterprises. The previous Newco scheme was viable and would have achieved insurance company backing from a worldwide highly reputable insurance company. The real key is to get the industry to recognise that the mutuality of a scheme reduces the individual risk but creates substantial long-term value and is capable of meeting almost any risk. There would, of course, be qualification requirements for any company to become part of the scheme and that is where you sort out the reputable companies from the less reputable. This was seen as an important aspect of the Newco scheme and would equally be so now.

In making these comments CIWM assumes that financial provisions including any possible mutual fund are not intended to cover closed landfill such as those monitored by local authorities. For those 'legacy' sites a separate mechanism treating the sites as contaminated land could be used. CIWM recommends that an element of the landfill tax – which has been generated over many years as a direct tax on landfilling wastes – should be used for these sites rather than any reliance on any scheme for permitted sites.

Q.26 If required to make financial provision, what would be the likely costs of making financial provision and the impact on waste operators of different sizes?

CIWM suggests financial provision would be difficult for small businesses but it has to be seen in the context of environmental breaches and who pays for them – regulator, government, and tax-payer. New entry companies with no financial history may find this more difficult. Financial provisions applies the polluter pays principle.

Q.27 If you support amending legislation to require operators of waste management facilities to demonstrate operator competence, are changes needed to the particular aspects of past performance, including spent convictions, that should be taken into consideration in determining an application for a permit?

Proposals in this call for evidence relate to the full operator competence assessment, taking in an extended concept of operator performance which is wider than the previous relevant convictions test.

The change in Rehabilitation of Offenders Act 1974 reduced spent convictions periods from 5 years to 12 months. CIWM believes government should reassess the appropriate rehabilitation period as adequate protection to health and environment is needed, but the Institution does not believe it would be reasonable to include otherwise spent convictions. CIWM also expects the broader operator competence test to include other compliance measures, e.g. notices, enforcement undertakings and persistent poor performance for which there is no spent conviction period guidance.

In addition careful consideration must be given to cases of site and/or business acquisition and the poor performance/convictions record that would pass across to the new operator and the impact of that on the new operator's performance record.

Q.28 Should the requirement for operators' site management plans be embodied in legislation or are they and their content best left to the regulators to determine?

CIWM does not support the embodiment of operator's management plans into legislation, there is already a permit requirement which means it is enforceable if an operator's management plan is not produced and adhered to. The issue is more about the plans not being submitted complete and the regulator not having sufficient resources to check for completeness and detail at application stage and during the life of the permit (and checking that site staff are aware of the requirements and implementing the correct procedures).

Abandoned or orphaned sites

Q.29 Does the Government need to make a scheme to cover the full costs of clearing and remediating abandoned or orphaned sites mandatory so that they do not rely on the public purse or would a voluntary approach work?

CIWM agrees with the principle but this could be an incentive for more abandonment. There is no substitute for fundamental regulator inspection, enforcement and regulation of such operators.

There are a number of issues to consider: how is it operated/managed? Who holds the fund? When is the fund to be used, what are the criteria for drawing on the fund? Would a banding scale work, large companies pay in more than small companies – should there be differentiation between size of company by number of employees.

Monies from landfill tax could be considered to finance the fund. Compliant operators are paying for non-compliant operators. If this is paid for through the permit application fee/ subsistence fee, it will not be contributed to by exempt, illegal operators or non-waste sites. This means the polluter pays principle is not fulfilled, see CIWM suggestion in Q 31.

Further work is needed to develop these proposals including assessment of the need for/size of any fund to cover closed landfills. CIWM is aware of work being undertaken in this area and would be happy to make an appropriate introduction if that would help.

Any such scheme would also need clear guidelines regarding what costs/liabilities could be covered and who would have access to any monies and under what circumstances.

Q.30 Should joining such a scheme be an alternative to, or additional to site-specific financial provision?

CIWM feels there cannot be an alternative – financial provision is about more than just abandoned/orphaned sites. Financial provision covers for pollution by the site/facility and adheres to the polluter pays principle. If a fund (Q 29) is in addition to financial provision there will be the case that those that are compliant are paying into the fund to fund other operator's non compliance i.e. the polluters are not paying.

Q.31 If you think such a scheme is desirable, please provide your views on how it should be funded and administered, including how decisions on the need to draw from it would be made?

CIWM suggests enforcement fines could be redirected to such a 'super' fund in which case those polluting or not complying are contributing. There could be an additional fine or percentage of the enforcement fine to contribute to this 'super' fund.

The fund should be administered by Government and the regulator should apply to draw on the fund. Criteria need to be set for when the regulator can apply to the fund.

Q.32 Do you have any evidence or views on what level of funding would be required for such a scheme so as to be proportionate to the risk?

CIWM does not have actual evidence currently but anecdotally considers the fund would need to be substantial (see response to Q29 above).

Q.33 Do you have any evidence or views of the costs and impacts incurred by the public sector, businesses or landowners in cleaning up and remediating land or premises which have been used for waste management operations and then abandoned?

CIWM is not aware of such evidence. Anecdotally there are a number of incidents known – burning of waste in Sheffield, fly-tipping in Wellingborough. The mattresses (noted in Q 6) would have avoided over £800,000 in landfill tax,

say £200,000 in gate fees, this does not include any transport costs or vehicle hire costs – all costs potentially to the taxpayer.

If research work is needed to explore this and similar fund-related issues, this could be work funded through an appropriate body through enforcement undertakings payments, especially where infringements do not directly relate to actual environmental impairment, e.g. through administrative errors.

Powers to recharge for pollution works

Q.34 Do you have evidence of pollution caused by the deposit of waste on land by waste operations or abandoned waste that might merit powers to remediate?

CIWM has been contacted in the last month (at time of writing) about a warehouse that is estimated to contain 10,000 mattresses. The mattresses were collected under the correct waste regulation paperwork but did not reach their intended destination.

Q.35 What are your views on widening the scope of the regulators powers to recover the costs of investigations and remedial works undertaken to prevent or remedy pollution caused by the deposit of waste on land?

CIWM agrees in principle to the recharge of remediation and investigation in a similar way to that utilised under the Water Resources Act for pollution of controlled waters, to help the victim and pursue the criminal. However, there is concern in relation to landowners and fly-tipping; they are already victims of crime (in the main) and CIWM suggests that an exclusion is allowed for those landowners that are victims of fly-tipping who go to the regulator and actively engage and seek assistance.

If this is linked to Q 9, landowners who do not have a facility on their land and do not give permission for a deposit, should be considered for an exclusion, if they take action, as noted above.

Exemptions from environmental permitting

Q.36 Do you have any evidence of the extent of waste crime and poor performance from those operating under registered exemptions from environmental permitting?

CIWM does not have any evidence currently.

Q.37 Is there a need to tighten up the process for the registration of exempt waste operations? If so, what steps would you wish to see introduced into the registration process?

CIWM believes there is a need to tighten the exemptions registration. There are a large number of exempt sites and the regulator cannot visit them all and is not resourced to do so. This lack of monitoring exacerbates the lack of available evidence noted under Q 36. It is quite possible that long term damage arises and continues un-regulated at some exempt facilities. The balance has to be right and low risk/small scale exemptions should be separated from those operating at the upper limit of the exemption and on a commercial basis.

CIWM suggests a small registration fee (on a par with carrier registration) should be paid by the operator. The fee payable should be above carrier registration fees but below the permit application level for this upper limit. This nominal fee CIWM feels could allow for a quick annual check for exempt sites.

CIWM suggests that for these exempt fee paying activities, there should be an element of a requirement for technical competence and data reporting. CIWM offers the idea of Exemption Registered Operator Competence (EROCC) test to show that exempt facilities/operators at least understand the basics for operating compliantly.

Alternatively CIWM believes the exempt fee paying activities, as identified above, could be incorporated as a regulated activity, therefore requiring a permit as defined by the Environmental Permitting Regulations.

In addition CIWM suggests a change to legislation to allow regulators to consider refusal for exemption registration based on previous history of compliance i.e. breach of exemption or related environmental offence/other relevant conviction, e.g. fraud. If the registrant has a non-complaint history the only option should be for the site to be covered by a permit, triggering the requirement for an operator competence check and ongoing controls.

Q.38 Would you wish to limit the scope of the activities that are exempt from the need for an environmental permit? If so, which exemptions would you want to see further restricted and why?

CIWM has had a brief look over the exemptions list and suggests there are a number that need to be assessed.

T6 wood treatment has potential for fire risk and should have the requirement for fire prevention plans included.

T8 has limits above the standard rule, this is something that CIWM does not understand.

T17 suggests this should be drafted more on the lines of mobile plant. In addition it is handling hazardous waste and CIWM believes this should be a permit.

T19 has limits of 5,000 litres and the standard rule SR 2009 No.3 has 2,000 tonnes (which is around 2,100 litres).

T11 CIWM suggests this exemption should only be for non-CFC waste types and CFC waste types should be a permit.

T13, T23, T24 and T25 CIWM feels should be subject to some form of competence/performance assessment. All have the potential to create pollution if not managed correctly.

These are examples where CIWM believes that an environmental permit would be more appropriate than an exemption. Given the range of these activities and the importance of balancing appropriate control with encouraging efficient management of resources CIWM suggests exemptions are reviewed overall and have a consultation in their own right.