SCOTTISH STATUTORY INSTRUMENTS

2006 No. 128

ENVIRONMENTAL PROTECTION

The Waste Management Licensing (Water Environment) (Scotland) Regulations 2006

Made - - - -	*8th March 2006*
Laid before the Scottish Parliament - - - -	*9th March 2006*
Coming into force - -	*1st April 2006*

The Scottish Ministers, in exercise of the powers conferred by sections 20, 36(2) and (3) of, and Schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003(**1**) and of all powers enabling them in that behalf, and after consulting the persons specified in section 21(1) of that Act, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Waste Management Licensing (Water Environment) (Scotland) Regulations 2006 and shall come into force on 1st April 2006.

(2) These Regulations extend to Scotland only.

Amendment of the Waste Management Licensing Regulations 1994

2. The Waste Management Licensing Regulations 1994(**2**) shall be amended in accordance with regulations 3 to 16 below.

3. In regulation 1(3) (interpretation etc.)–

(a) after the definition of "agricultural waste"(**3**) insert–

> ""coastal water" has the same meaning as in section 3(8) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3);";

(b) after the definition of "construction work" insert–

(**1**) 2003 asp 3; amended by section 66 of, and paragraph 6 of Schedule 2 to, the Anti Social Behaviour etc. (Scotland) Act 2004 (asp 8) and S.S.I. 2005/348, regulation 3.

(**2**) S.I.1994/1056; amended by S.I. 1994/1137; 1995/288 and 1950; 1998/593, 634, 916, 973 and 1279; 1997/351 and 2203; 1998/606 and 2746; S.S.I. 2000/323; S.S.I. 2003/170, 171 and 593; S.S.I. 2004/275; S.S.I. 2005/22.

(**3**) The definition of "agricultural waste" was inserted by regulation 4 of S.S.I. 2003/171.

""controlled activity" has the same meaning as in the Water Environment (Controlled Activities) (Scotland) Regulations 2005(**4**);";

(c) in the definition of "inland waters", for paragraph (b) substitute–

"(b) in Scotland, means an inland water as defined in section 3(6) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3) excluding groundwater;";

(d) after the definition of "special waste" insert–

""surface water" has the same meaning as in section 3(3) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3);"; and

(e) after the definition of "waste regulation authority" insert–

""the water environment" has the same meaning as in section 3 of the Water Environment and Water Services (Scotland) Act 2003 (asp 3);".

4. In regulation 3 (relevant offences), after paragraph (p) insert–

"(q) regulation 40(1) of the Water Environment (Controlled Activities) (Scotland) Regulations 2005.".

5. In regulation 12 (mobile plant)–

(a) in paragraph (1)(h), for "controlled waters" substitute "the water environment"; and

(b) omit paragraph (3).

6. In regulation 16(1) (exclusion of activities under other control regimes from waste management licensing)–

(a) for sub-paragraph (c) substitute–

"(c) the disposal of liquid waste under an authorisation granted or deemed to have been granted under the Water Environment (Controlled Activities) (Scotland) Regulations 2005;"; and

(b) for sub paragraph (e)(**5**) substitute–

"(e) the disposal of agricultural waste under an authorisation granted or deemed to have been granted under the Water Environment (Controlled Activities) (Scotland) Regulations 2005.".

7. After regulation 17(4) (exemptions from waste management licensing), insert–

"(4A) Paragraph (1) above only applies where the person carrying on an exempt activity which is a controlled activity–

(a) takes all reasonable steps to secure efficient and sustainable water use; and

(b) complies with the requirements of–

(i) Council Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances(**6**); and

(ii) Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(**7**).".

(**4**) S.S.I. 2005/348.
(**5**) Sub paragraph (e) was inserted by S.S.I. 2005/22, regulation 6(4)(b).
(**6**) O.J. No. L 20, 26.1.1980, p.43.
(**7**) O.J. No. L 327, 22.12.2000, p.1; amended by Decision 2455/2001/EC of the European Parliament and of the Council of 20th November 2001 establishing the list of priority substances in the field of water policy and amending Directive 2000/60/EC (O.J. No. L 331, 15.12.2001, p.1).

8. After regulation 17 (exemptions from waste management licensing), insert–

"**Exemptions from waste management licensing: controlled activities**

17A.—(1) Where a person carries out an exempt activity, which is a controlled activity, in accordance with regulation 17(4A), that person shall, for the purposes of regulation 5 of the Water Environment (Controlled Activities) (Scotland) Regulations 2005, be deemed to be authorised under those Regulations.".

9. In regulation 18(4D)(a)(ii) (registration in connection with exempt activities), for "regulation 17(2) or (4)" substitute "regulation 17(2), (4) or (4A)".

10. In regulation 18A(3)(iii) (registration obligations), for "regulation 17(2) or (4)" substitute "regulation 17(2), (4) or (4A)".

11. In regulation 20(2)(a) (registration of brokers), for "or under Part II of the Control of Pollution Act 1974" substitute ", an authorisation granted or deemed to have been granted under the Water Environment (Controlled Activities) (Scotland) Regulations 2005".

12. In Schedule 1 (information and evidence required in relation to an application for the surrender of a site licence), in paragraph 5(c) for "surface water or groundwater" substitute "the water environment".

13. In Schedule 1A (certificates of technical competence)(**8**), paragraph 2, in sub paragraph (c) of the definition of "inert waste", for "any surface water or groundwater" substitute "the water environment".

14. In Schedule 3 (activities exempt from waste management licensing)–

(a) in paragraph 7 (treatment of land), sub paragraph (6)(a) is omitted;

(b) in paragraph 19 (storage of building waste) for sub paragraph (4)(b) substitute–

"(b) for engineering works relating to or adjacent to any part of the water environment;"; and

(c) in paragraph 38(a) (deposit or storage of waste samples) for "or the Water Resources Act 1991" substitute "the Water Resources Act 1991 or the Water Environment (Controlled Activities) (Scotland) Regulations 2005".

15. In Part 1 of Schedule 3A(**9**), (plans and documents required for registration), in the second column of the table, in paragraph 1(g) of the entry corresponding to paragraph 7 of Schedule 3, for "controlled waters" substitute "part of the water environment".

16. In Schedule 4 (Waste Framework Directive etc.)–

(a) in paragraph 1 (interpretation), in the definition of "permit", for "Part II of the Control of Pollution Act 1974" substitute "an authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2005";

(b) in paragraph 3 (meaning of "competent authority" etc.), in Table 5, for the entry relating to the Scottish Environment Protection Agency or the Secretary of State, substitute–

"The Scottish Environment Protection Agency or the Scottish Ministers	Their respective functions under the Water Environment (Controlled Activities) (Scotland) Regulations 2005"; and

(**8**) Schedule 1A was inserted by regulation 9 of S.S.I. 2003/171, as amended by regulation 9(a) of S.S.I. 2004/275.

(**9**) Schedule 3A was inserted by regulation 11 of S.S.I. 2003/171, as amended by regulation 19(a) of S.S.I. 2004/275.

(c) in paragraph 11 (references to "waste" in planning and water legislation), omit "Part II of the Control of Pollution Act 1974".

St Andrew's House,
Edinburgh
8th March 2006

RHONA BRANKIN
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under sections 20 and 36(2) and (3) of, and Schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003 (asp 3) ("the 2003 Act").

Regulations 3 to 16 of these regulations amend the Waste Management Licensing Regulations 1994 ("the 1994 Regulations") to make provision for the interaction between the waste management licensing regime under those Regulations and the regime under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (S.S.I. 2005/348) ("the 2005 Regulations"). The 2005 Regulations were made under the 2003 Act and provide the mechanism by which activities which impact on the water environment are authorised and regulated in Scotland.

In particular–

(a) Regulation 4 amends regulation 3 of the 1994 Regulations to add regulation 40(1) of the 2005 Regulations to the list of offences which may render a person unfit to hold a waste management licence;

(b) Regulation 6 amends regulation 16 of the 1994 Regulations to provide that where a person is authorised under the 2005 Regulations in respect of certain waste management activities, the offence under section 33 of the Environmental Protection Act 1990 for failing to have a waste management licence will not apply;

(c) Regulations 7 to 10 make provision to ensure that an exempt activity under the 1994 Regulations, which is a controlled activity within the meaning of the 2005 Regulations, is carried out in compliance with requirements similar to those which apply under the 2005 Regulations. Where that is the case, the person will be deemed to have been authorised under the 2005 Regulations; and

(d) Regulations 3 and 11 to 16 make further amendments to the 1994 regulations in consequence of the 2003 Act and the 2005 Regulations.