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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 438**

**ENVIRONMENTAL PROTECTION**

**The Waste (Meaning of Recovery) (Miscellaneous Amendments) (Scotland) Order 2015**

*Made* - - - - 16th December 2015  
*Laid before the Scottish Parliament* - - - - 18th December 2015  
*Coming into force* - - 1st July 2016

The Scottish Ministers make the following Order in exercise of the powers conferred by section 74 of the Marine and Coastal Access Act 2009(1) and section 2(2) of the European Communities Act 1972(2) and all other powers enabling them to do so.

In deciding to make this Order, the Scottish Ministers have had regard to the matters mentioned in section 74(4) of the Marine and Coastal Access Act 2009.

In accordance with section 74(5) of that Act, the Scottish Ministers have consulted such persons as they consider appropriate.

**Citation and commencement**

1. This Order may be cited as the Waste (Meaning of Recovery) (Miscellaneous Amendments) (Scotland) Order 2015 and comes into force on 1st July 2016.

**Amendment of the Special Waste Regulations 1996**

2. In regulation 1(4) of the Special Waste Regulations 1996(3) (citation, commencement, extent, application and interpretation), for the definition of “the Waste Directive” substitute—

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- (1) [2009 c.23](#) (“the 2009 Act”). The 2009 Act executively devolved various functions to the Scottish Ministers in relation to marine licensing in the Scottish Offshore Region (as defined in section 322(1) of that Act). Section 74 of that Act is relied on to make the amendment to [S.S.I. 2011/57](#). In accordance with section 113 of the 2009 Act, the Scottish Ministers are the “appropriate licensing authority” for the Scottish Offshore Region for the purposes of section 74.
- (2) [1972 c.68](#) (“the 1972 Act”). Section 2(2) was amended by the Scotland Act [1998 \(c.46\)](#) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act [2008 \(c.7\)](#), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), so far as they are exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. The power in section 2(2) of the 1972 Act is relied on for all the amendments made by this Order except for the amendment to [S.S.I. 2011/57](#).
- (3) [S.I. 1996/972](#), as relevantly amended by [S.S.I. 2011/226](#) and [S.S.I. 2015/188](#).

““the Waste Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste and repealing certain Directives(4), as last amended by Commission Directive (EU) 2015/1127 amending Annex II to [Directive 2008/98/EC](#)(5);”.

### **Amendment of the End-of-Life Vehicles (Storage and Treatment) (Scotland) Regulations 2003**

3. In regulation 2 of the End-of-Life Vehicles (Storage and Treatment) (Scotland) Regulations 2003(6) (interpretation), for the definition of “Waste Directive” substitute—

““Waste Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste and repealing certain Directives, as last amended by Commission Directive (EU) 2015/1127 amending Annex II to [Directive 2008/98/EC](#);”.

### **Amendment of the National Waste Management Plan for Scotland Regulations 2007**

4. In regulation 2A of the National Waste Management Plan for Scotland Regulations 2007(7) (interpretation: the Waste Directive), for paragraph (a) substitute—

“(a) “the Waste Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste and repealing certain Directives, as last amended by Commission Directive (EU) 2015/1127 amending Annex II to [Directive 2008/98/EC](#); and”.

### **Amendment of the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011**

5. In article 3(1) of the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011(8) (interpretation), for the definition of “the Waste Framework Directive” substitute—

““the Waste Framework Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste and repealing certain Directives, as last amended by Commission Directive (EU) 2015/1127 amending Annex II to [Directive 2008/98/EC](#).”.

### **Amendment of the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011**

6. In article 2(2) of the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011(9) (interpretation), for the definition of “the Waste Framework Directive” substitute—

““the Waste Framework Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste and repealing certain Directives, as last amended by Commission Directive (EU) 2015/1127 amending Annex II to [Directive 2008/98/EC](#).”.

### **Amendment of the Waste Management Licensing (Scotland) Regulations 2011**

7.—(1) The Waste Management Licensing (Scotland) Regulations 2011(10) are amended as follows.

(2) In regulation 2(1) (interpretation), for the definition of “the Directive” substitute—

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(4) OJ L 312, 22.11.2008, p.3.

(5) OJ L 184, 11.07.2015, p.13.

(6) [S.S.I. 2003/593](#), as relevantly amended by [S.S.I. 2011/226](#).

(7) [S.S.I. 2007/251](#). Regulation 2A was inserted by [S.S.I. 2011/226](#) and amended by [S.S.I. 2015/188](#).

(8) [S.S.I. 2011/57](#), as relevantly amended by [S.S.I. 2012/25](#).

(9) [S.S.I. 2011/204](#), as relevantly amended by [S.S.I. 2015/188](#).

(10) [S.S.I. 2011/228](#), as relevantly amended by [S.I. 2011/1043](#) and [S.S.I. 2015/188](#).

““the Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste and repealing certain Directives, as last amended by Commission Directive (EU) 2015/1127 amending Annex II to [Directive 2008/98/EC](#).”

(3) In the table in Part 3 of Schedule 4 (waste recovery operations), in the entry for operation code R1, for “the formula” substitute “the energy efficiency formula and climate correction factor”.

#### **Amendment of the Pollution Prevention and Control (Scotland) Regulations 2012**

**8.** In regulation 3(1) of the Pollution Prevention and Control (Scotland) Regulations 2012(**11**) (interpretation: enactments etc.), for the definition of “Waste Framework Directive” substitute—

““Waste Framework Directive” means [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste and repealing certain Directives, as last amended by Commission Directive (EU) 2015/1127 amending Annex II to [Directive 2008/98/EC](#).”

St Andrew’s House,  
Edinburgh  
16th December 2015

*RICHARD LOCHHEAD*  
A member of the Scottish Government

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(11) [S.S.I. 2012/360](#), as relevantly amended by [S.S.I. 2015/188](#).

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends various enactments to effect changes as a consequence of the amendment of Annex II to [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste and repealing certain Directives (“the Waste Framework Directive”) (OJ L 312, 22.11.2008, p.3) by Commission Directive (EU) 2015/1127 (“the 2015 Directive”) (OJ L 184, 11.07.2015, p.13).

Article 3(15) of the Waste Framework Directive provides a definition of “recovery” of waste and makes reference to Annex II, which sets out a non-exhaustive list of recovery operations. The 2015 Directive amends Annex II to the Waste Framework Directive. The amendment makes provision for a climate correction factor to be applied to the energy efficiency formula used to calculate whether an incineration facility dedicated to the processing of municipal solid waste meets the energy efficiency threshold for being considered a recovery operation (operation “R1” in Annex II).

No business and regulatory impact assessment has been prepared for this Order as no significant change is foreseen to the existing impacts upon business, charities or voluntary bodies.