

EXECUTIVE NOTE

DRAFT : THE WASTE INFORMATION (SCOTLAND) REGULATIONS 2010

1. The above Instrument is proposed to be made in exercise of the powers conferred by section 79 of the Climate Change (Scotland) Act 2009 and Schedule 2 paragraph 1A to the European Communities Act 1972. The Instrument is subject to affirmative resolution procedure.

POLICY OBJECTIVES

2. The Climate Change (Scotland) Act 2009 gives the Scottish Ministers powers, through regulations, to introduce new obligations for certain matters relating to waste. The purpose of taking these powers was to reduce the impact that waste management and misuse of resources have on climate change.

3. Section 79 of the Act enables the Scottish Ministers to introduce a statutory obligation on people who deal with waste, to provide waste data returns to the Scottish Environment Protection Agency (SEPA) .

4. This instrument introduces that statutory obligation on bodies which produce or manage waste, to provide SEPA with waste data that is requested by them during surveys.

5. It does not cover householders and the waste they produce.

CONSULTATION

6. The policy intention addressed by the draft instrument was included in the Climate Change Bill consultation paper. The proposed powers for mandatory waste returns were widely welcomed and the Parliamentary Rural Affairs and Environment Committee passed an amendment to the Bill requiring that a draft of the necessary regulations are laid before the Scottish Parliament within 12 months of the coming into force of section 79 (31 October 2009).

7. The proposed powers were also discussed within the consultation paper for Scotland's Zero Waste Plan. The consultation specifically asked consultees if they agreed with the proposal for mandatory waste returns. The majority of the respondents to the question were in favour of the proposal.

EFFECT OF THE REGULATIONS

8. The new Regulations will impose a statutory obligation on Scottish businesses and other undertakings which produce or manage waste to provide data requested by SEPA as part of any survey conducted for the purpose of assessing waste arisings in Scotland.

9. The new regulations will make it an offence not to provide waste data requested by SEPA and would make the offender liable to prosecution under summary procedure, with a maximum potential fine of £5000 (level 5 on the standard scale) being imposed.
10. The data collected will be used to:
- better inform investment decisions by the Scottish Government, local authorities and other bodies, businesses etc.
 - ensure policy is made on the basis of better information; and
 - ensure waste data returns to the European Commission are accurate.

FINANCIAL IMPLICATIONS

11. The new regulations will have no significant financial impact as there is already a statutory obligation on businesses and charitable or voluntary organisations to record much of the data that SEPA would request under these regulations.
12. There should, therefore, be very little if any additional cost to such bodies in sending the information to SEPA, either electronically or by mail.
13. SEPA does not currently conduct regular surveys although this may change in the future. It should be also be noted that only a small percentage of waste producers would receive a request for information during each survey.
14. Failure to comply with these regulations could make the offender liable to prosecution under summary proceedings, and a potential maximum penalty of £5000 being imposed.

Zero waste Delivery Team
Scottish Government
October 2010

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal

The Waste Information (Scotland) Regulations 2010

Purpose and intended effect

Objective

The Climate Change (Scotland) Act 2009 gave Scottish Ministers the power, through regulations, to introduce new obligations for certain waste provisions. The purpose of taking this power is to reduce the impact that waste management and misuse of resources have on climate change.

Section 79 of the Act enables Scottish Ministers to introduce a statutory obligation on Scottish businesses to provide waste data returns to the Scottish Environmental Protection Agency (SEPA), when requested.

This will ensure more effective planning and policy making on commercial and industrial waste

Background

Under the European Union Waste Statistics Regulation, EU Member States are required to send waste data returns to the European Commission. In any event, it is generally agreed that good and reliable waste data is fundamental, for two main reasons:

- To inform the private sector when it is seeking to invest in waste infrastructure as part of the move away from landfill; and
- To inform policy makers.

Local authorities already send data to SEPA on municipal waste. In addition, SEPA collect data from businesses by way of surveys. These surveys of businesses are voluntary and returns tend to be very low. (The 2004 survey achieved a return rate of 16.9%, representing coverage of 1.7% of all companies in Scotland, and the 2006 survey achieved a return rate of 10.8%, representing 2.3% of all businesses). As a consequence to this, there is a relatively low level of confidence in the results when scaled up to the Scotland level.

Section 79 of the Climate Change (Scotland) Act 2009 entitled “Information on Waste”, provides for a statutory obligation to be introduced, for Scottish businesses to provide, on request, information on the waste produced by or otherwise associated with their activities.

Section 79(5) of the Act, requires that a draft Statutory Instrument must be laid before the Scottish Parliament within 12 months of the coming into force of the Act, i.e. on or before 31 October 2010.

These are the draft regulations referred to in Section 79.

A draft partial Regulatory Impact Assessment (RIA) on all of the waste provisions contained within the Climate Change Bill, was issued with a public consultation paper on 28 July 2008 and included estimates of the impact of mandatory waste data returns.

This BRIA only covers the provision for waste data returns.

Rationale for Government intervention

Scottish Government has a duty to report waste arisings to the European Commission. In order to ensure that data is as accurate as possible. It is essential to ensure that this data is as accurate as possible.

It is properly a matter for Scottish Government to introduce new legislation which alters the legislative framework.

In terms of the National Performance Framework, the regulations will assist in achieving the strategic objective of *reducing the local and global environmental impact of our consumption and production*.

Consultation

Within Government

This proposal was part of 2 major consultations, on the Climate Change Bill and the Zero waste Plan, and preparatory work for the consultation papers involved discussions across a wide range of Scottish Government interests including:

Climate Change Divisions.
Zero Waste Delivery Team
Scottish Government Legal Directorate

Whilst not a government department, extensive discussion also took place with the Scottish Environment Protection Agency as it will be the enforcing authority for these regulations.

Public Consultation

This matter has been the subject of two extensive public consultation processes. The Climate Change Bill and the Zero Waste Plan.

The Climate Change Bill Consultation (Waste aspects of Bill) - 29 January 2008 to 23 April 2008

Stage 1 of the Climate Change Bill initially suggested introducing such Regulations. The lack of reliable and robust waste data was highlighted in the discussions and it

was generally acknowledged that gaps in information, particularly in respect of commercial waste, hindered effective waste management and waste reduction.

The proposed powers for mandatory waste returns were widely welcomed and the Parliamentary Rural Affairs and Environment Committee passed an amendment to the Bill ensuring that a draft of the necessary Regulations were laid before the Scottish Parliament within 12 months of the coming into force of the Act.

Zero Waste Plan Consultation – 20 August 2009 to 13 November 2009

The intention to publish the Waste Information Regulations is included in Scotland's Zero Waste Plan proposals on improving data.

The consultation on the Zero Waste Plan specifically asked consultees if they agreed with these proposals.

The majority of the respondents to this question were in favour of the proposals.

As part of the consultative process, workshops involving various sections of the waste business industry were held to discuss these proposals. Again, there was general support for the proposals.

Business

There is already a statutory obligation on businesses under the Environmental Protection (Duty of Care) Regulations 1991 and the Special Waste Regulations 1996, to record the type of data that would be requested under these Waste Information (Scotland) Regulations. Therefore much of the information which SEPA will be seeking to collect should be available already.

Individual businesses and representative bodies were involved in the workshops held as part of the Zero Waste Plan consultation, where views on waste data collection were discussed. Given that engagement, specific discussion with business relating to these regulations was not considered necessary.

Considering the number of waste producers in Scotland, and the coverage required by the SEPA surveys to provide statistically meaningful returns, it is still possible that many businesses may never be asked to provide data.

Options

Option 1 - implement the proposed Regulations.

Option 2 – not implement the proposed regulations (Do nothing).

Sectors and groups affected

Any business, charity or voluntary organisation, that produces waste in the course of their activities.

Option 1 is to implement the proposed Regulations.

To place a duty on any business that produces waste, including charitable and voluntary organisations but excluding householders, and who receive a request for waste information from SEPA to provide the requested data.

At present there is a duty to record waste information at transfer, but not to forward that information to SEPA.

Benefits

The data would be used to:

- better inform investment decisions by the Scottish Government, local authorities and other bodies, businesses etc;
- Ensure policy was made on the basis of better information;
- Ensure waste data returns to the European Commission are accurate.
- Assist Scottish Ministers in making well informed policy decisions in the future that will assist in delivering a Zero Waste Society.

Costs

The regulations would need to be enforced therefore there would be a modest administrative cost to be borne by the regulation authority, SEPA.

There is already a statutory obligation on businesses and charitable or voluntary organisations under the Environmental Protection (Duty of Care) Regulations 1991 and the Special Waste Regulations 1996, to record much of the type of data that would be requested under these regulations.

Therefore the cost to such bodies in sending the information to SEPA would be very minimal.

There is a potential cost in failing to comply with these regulations. A body failing to comply with these regulations could be subject to summary proceedings being taken against them and a potential maximum penalty of level 5 on the standard scale (£5000) being imposed.

Based on the fact that there are around 291,380 private sector businesses in Scotland: <http://www.scotland.gov.uk/Topics/Statistics/Browse/Business/TrendBusinesses>

If it costs each business £35 to prepare and submit the return, this would suggest a total cost to business of £10,198,300.

However it should be noted that only a small percentage of businesses would receive a request for information during each survey. The exact number of businesses

contacted for information in each survey would be decided by SEPA and would be based on the number deemed necessary at that time to provide accurate and robust data.

Option 2 is *not* to implement the proposed regulations.

Data collection arrangements would remain the same as present: The Environmental Protection (Duty of Care) Regulations 1991 and the Special Waste Regulations 1996 would continue to place data-recording obligations on those transferring waste, but without an mandatory obligation to forward it to SEPA.

Benefits

Any marginal additional costs to those transferring waste in forwarding the information to SEPA would be saved, as would the administrative costs associated with enforcing the obligation.

The potential saving to business could be estimated at £ £10,198,300 based on the estimate of £35 per business.

Costs

This option would result in the potential benefits to policy making and investment decisions of greatly improved information being foregone.

Waste data being forwarded to the European Commission would not be as accurate as it potentially could be.

The lack of robust and up to date information would have a detrimental effect on delivering Scotland's Zero waste Plan. Without the ability being in place for SEPA to require and obtain data, understanding of waste in Scotland could be compromised and could impede the ability for Ministers to make well informed policy decisions in the future that will help deliver a Zero Waste Society.

Scottish Firms Impact Test

Specific discussion with businesses relating to these regulations was not considered necessary given that detailed engagement had already been already undertaken through the workshops held as part of the Zero Waste Plan consultation, where views on waste data collection were discussed .

It is not considered that the introduction of these regulations will have any detrimental impact on Scottish firms. It is possible however that more robust data could better inform Scottish businesses on how to deal with their waste more economically.

Considering the number of waste producers in Scotland, and the coverage required by the SEPA surveys to provide statistically meaningful returns, it is still possible that many businesses may never be asked to provide data.

Competition Assessment

There will be no impact on the competitiveness of Scottish companies in any respect, as a result of implementing these regulations.

Any business, charitable or voluntary organisation in Scotland that produces waste will be required to provide the requested data, *if selected to do so*, during any survey being conducted by SEPA in accordance with the provisions of these regulations.

Any costs that may be incurred are difficult to quantify in this regard. Most of the data requested should already be recorded in line with the requirements of the Environmental Protection (Duty of Care) Regulations 1991 and the Special Waste Regulations 1996.

SEPA do not currently carry out regular waste data surveys though this may change in the future.

In any event, costs incurred for simply forwarding requested data to SEPA would be very minimal.

This assessment has been discussed with the Office of Fair Trading who have agreed with our views above.

Test Run of Business forms

SEPA are still in the process of developing their new waste data strategy. The form in which the data will be required has not yet been developed but SEPA will ensure the format of the data request is kept simple and easy to understand. SEPA will ensure a test-run of any forms devised for this purpose will be conducted with a sample of businesses who are likely to use it.

Legal Aid Impact Test

The Regulations are aimed at organisations, rather than individuals, which produce waste. The regulations do create a new offence but given the relatively low number of cases envisaged, and that only natural persons are eligible to receive legal aid in Scotland, it is very unlikely that these regulations will result in increased legal aid expenditure.

This assessment has been discussed with the Legal Aid Team who have agreed with our views above.

Enforcement, sanctions and monitoring

Enforcement of these regulations will be the responsibility of SEPA, Scotland's environmental regulator. SEPA is a non-departmental public body, accountable through Scottish Ministers to the Scottish Parliament.

Non-compliance could potentially make the offending business liable under summary proceedings to a fine at level 5 on the standard scale (£5000).

Monitoring the success of the policy will be measured by increased accuracy of data on waste arisings in Scotland.

Implementation and delivery plan

These regulations are required to ensure SEPA receives the data it requests from waste producers in Scotland.

Currently, SEPA does not undertake regular surveys, though it may do so in future.

There is no set timetable for when the next survey will take place. The position should be clearer once SEPA have completed their waste data survey.

Post-Implementation review

Scottish Government and SEPA will carry out a review of the effectiveness of the regulations within 10 years of the coming into force date.

Summary and Recommendation

Summary costs and benefits

Currently, SEPA does not undertake regular surveys, though it may do so in future. Much waste data is already available through other forms of waste returns. There are however, “gaps” in this information which prevents an accurate overall picture of waste arisings in Scotland being formed.

The intention of these regulations is to allow SEPA to fill in these “gaps” in order that robust and up to date information can be collected.

It is a statutory requirement for much of the data that would be requested by SEPA through these regulations, to be recorded by the organisation concerned. Therefore no significant additional costs should be incurred in that respect.

The format of the return process has yet to be finalised, however SEPA will ensure that this will be kept straightforward and simple.

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social -policy and administrative
Option 1: Implement the Waste Information (Scotland) Regulations 2010	Would provide for more accurate and robust statistics on waste production in Scotland. Would better inform	A small administrative cost would be borne by SEPA, the regulation authority, in enforcing the legislation. No additional cost to industry as there is already an statutory obligation on

	<p>investment decisions by the Scottish Government, local authorities and other bodies, businesses etc.</p> <p>Would ensure policy was made on the basis of better information.</p> <p>Would ensure waste data returns to the European Commission are accurate.</p>	<p>business/organisations etc to collect much of the data that SEPA would request under these Regulations.</p> <p>Cost to industry in forwarding the information to SEPA should be minimal.</p> <p>The potential cost in failing to comply with these regulations would be maximum fine of £5000 level 5 on the standard scale if prosecuted under summary proceedings.</p>
Option 2: Do nothing	<p>Data collection arrangements would remain the same as present.</p> <p>Risk of inaccurate data being used to inform policy decisions.</p> <p>Risk of investment in Scottish waste industry being affected without robust data.</p>	<p>None.</p>

Recommendation

Option 1 to implement the regulations is recommended.

Declaration

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed.....

Date.....

RICHARD LOCHHEAD MSP
CABINET SECRETARY FOR RURAL AFFAIRS AND THE ENVIRONMENT

Scottish Government
October 2010