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## EXPLANATORY NOTE

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

These Regulations provide for the collection, transport and treatment of dry recyclable waste and food waste, and for related matters.

They transpose Articles 11(1) (re-use and recycling) and 22 (bio-waste) of Directive [2008/98/EC](#) on waste (OJ L 312, 22.11.2008, p.3) (“the Directive”), and generally make provision connected with the implementation of requirements under European Union waste management legislation.

Regulation 2 amends the Environmental Protection Act [1990 \(c.43\)](#) (“the 1990 Act”) to provide for the separate collection of dry recyclable waste and food waste, and for the treatment of such wastes and of controlled waste generally (see section 29 of the 1990 Act as amended by paragraph (2) of that regulation for a definition of “separate collection”, and section 75 of the 1990 Act as amended by paragraph (7) of that regulation for definitions of “controlled waste”, “dry recyclable waste”, and “food waste”).

Paragraph (3)(a) of that regulation amends section 34(1) of the 1990 Act to align the descriptions of waste activities in that subsection with the definitions of such activities in section 29(5A) of that Act (as inserted by [S.S.I. 2011/226](#)), to create a duty on persons carrying out waste activities to prevent a contravention by another person of a duty in section 34 (other than the new duty in section 34(2L)), and to amend the waste oil provisions in section 34(1)(b) as a consequence of the repeal of the definition of “separately collected” in section 34(4B) (for which see regulation 2(3) (d) of these Regulations).

Paragraphs (3)(b) of that regulation inserts new subsections (2E) to (2L) into section 34, with the effect of creating duties in the specified circumstances on—

- (a) persons who produce controlled waste (other than occupiers of domestic properties) to ensure the separate collection of dry recyclable waste from 1st January 2014 (see subsections (2E) and (2J));
- (b) persons who control or manage a food business to ensure the separate collection of food waste from 1st January 2016 (see subsections (2F) to (2H));
- (c) persons who collect and transport controlled wastes to keep separate all separately collected wastes (see subsections (2I) and (2J));
- (d) persons who produce food waste other than on domestic properties or in a rural area to ensure as from 1st January 2016 that the waste is not deposited in a drain or sewer (see subsection (2K)); and
- (e) on persons who produce or manage controlled waste to take reasonable steps to ensure that high quality waste is available for recycling, and to prevent any other person contravening that duty (see subsection (2L)).

Paragraph (3)(c) of that regulation provides for written descriptions of waste to be transmitted by electronic means.

Paragraph (3)(d) of that regulation provides for definitions of terms used in the duties so created.

Paragraph (3)(e) of that regulation amends section 34(5), which provides for requirements as respects the making, retention and furnishing of documents, so that requirements can be made in connection with the duties so created.

Paragraph (3)(f) of that regulation amends section 34(6), which provides for it to be an offence to fail to comply with a duty in that section, so that the offence as modified by that paragraph applies to the duties so created.

Paragraph (3)(g) of that regulation amends section 34(7), which provides for a code of practice for the purpose of providing practical guidance on how to discharge certain duties in that section, so that a code can give guidance in relation to the duties so created.

Paragraph (4) of that regulation amends section 45 of the 1990 Act so that a waste collection authority in Scotland may be required to collect dry recyclable waste from any premises, or food waste from non-rural premises, if requested to do so by the occupier of such premises. In Scotland, a waste collection authority is a local authority.

Paragraph (5) of that regulation inserts a new section 45C into the 1990 Act. The effect is to require a waste collection authority in Scotland to provide receptacles for the separate collection of dry recyclable waste (from 1st January 2014) and food waste (from 1st January 2016), in the specified circumstances. It also requires an authority to promote the separate collection and recycling of waste. Paragraph (6) makes a consequential amendment to section 46 of the 1990 Act, which enables an authority to make requirements in respect of the use of receptacles for waste.

Regulation 3 amends the Pollution Prevention and Control (Scotland) Regulations 2000 ([S.S.I. 2000/323](#)) (“the 2000 Regulations”).

Paragraph (4) of that regulation inserts regulations 9A and 9B into the 2000 Regulations (the regulations are inserted in the gap between regulations 9 and 9C). The effect is to create duties on the Scottish Environment Protection Agency (“SEPA”) to attach such conditions as it considers necessary to ensure that—

- (a) from 1st January 2014, separately collected wastes are neither mixed with other wastes or materials where doing so would hamper further recycling, or burnt if capable of being recycled (see regulation 9A); and
- (b) from 1st July 2012, where practicable waste including non-ferrous metals or hard plastics is not burnt (see regulation 9B).

Paragraphs (2), (3), and (5) to (10) of that regulation amend other provisions of the 2000 Regulations as a consequence of the insertion of the new regulations 9A and 9B.

The changes made by paragraphs (2), (3), and (6) to (9) also correct for an error in the Control of Volatile Organic Compounds (Petrol Vapour Recovery) (Scotland) Regulations 2011 ([S.S.I. 2011/418](#)), which inserted regulation 9G into the 2000 Regulations but did not make all the consequential amendments that were needed in that respect.

Paragraph (11)(a) of that regulation amends paragraph 1B of Schedule 4 to the 2000 Regulations so that the descriptions of measures required for the purposes of a permit application include descriptions related to the requirements of new regulations 9A and 9B.

Paragraph (11)(b) of that regulation amends paragraph 8 of Schedule 4 so as to disapply the requirement in paragraph 5 of that Schedule for applications for permits that relate to motor refuelling activities at new or existing service stations to be advertised in newspapers.

Regulation 4 amends the Landfill (Scotland) Regulations 2003 ([S.S.I. 2003/235](#)) (“the 2003 Regulations”) with the effect that the operator of a landfill shall not accept separately collected waste from 1st January 2014, or biodegradable municipal waste from 1st January 2021 (see regulations 2 and 11 of the 2003 Regulations as amended by regulation 4 for relevant definitions).

Regulation 5 amends the Waste Management Licensing (Scotland) Regulations 2011 ([S.S.I. 2011/228](#)) (“the 2011 Regulations”).

Paragraph (2) of that regulation inserts a new regulation 13A into the 2011 Regulations, with the effect that a waste management licence granted or varied by the waste regulation authority must include such conditions as the authority considers necessary to ensure that separately collected

wastes are not mixed with other wastes or materials where doing so would hamper further recycling. SEPA is the waste regulation authority (see regulation 2 of the 2011 Regulations).

Paragraph (3) of that regulation amends regulation 17 of the 2011 Regulations so that persons engaged in exempt activities for the purposes of those Regulations must ensure that separately collected wastes are not mixed with other wastes or materials where doing so would hamper further recycling.

Paragraphs (4) and (5) of that regulation make changes to the 2011 Regulations needed as a consequence of the repeal of the Animal By-Products (Scotland) Regulations 2003 ([S.S.I. 2003/411](#)).

Paragraph (6) of that regulation adds new section 45C of the 1990 Act to the list of local authority functions in Table 23 of Schedule 4 to the 2011 Regulations, with the effect that functions under that section must be discharged with the objectives set out in paragraph 6 of that Schedule. The objectives in paragraph 6 include objectives relevant to the implementation of the Directive.

A Business and Regulatory Impact Assessment has been prepared, and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Environmental Quality Division, Scottish Government, Victoria Quay, Edinburgh EH6 6QQ.