

EXECUTIVE NOTE

THE WASTE MANAGEMENT LICENSING (WATER ENVIRONMENT) (SCOTLAND) REGULATIONS 2006 S.S.I. 2006/128

The above instrument is made 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 ('the 2003 Act'). The instrument is subject to negative resolution procedure.

Policy Objectives

1. The purpose of these Regulations is to make further amendments to align the Waste Management Licensing Regulations 1994 ('the 1994 Regulations') with the provisions of the 2003 Act and the regulatory regime which controls activities which impact on the water environment established in the Water Environment (Controlled Activities) (Scotland) Regulations 2005 ('the 2005 Regulations') made under section 20 of the 2003 Act.

Background

2. On 23 October 2000 the Water Framework Directive was adopted (Directive 2000/60/EC establishing a framework for Community action in the field of water policy). The Directive entered into force on 22 December 2000, and the Executive has had three years from that date to transpose its provisions into Scots Law.

3. The 2003 Act transposed the requirements of the Directive into Scots Law, establishing a framework to protect and improve the ecological status of Scotland's water environment, whilst also protecting the social and economic needs of those who depend upon it. Under section 20 of that Act, Scottish Ministers were given the power to introduce such measures as they consider necessary or expedient to regulate 'controlled activities' for the purposes of protection of the water environment.

4. The 2005 Regulations were made in June last year, and introduce flexible and risk-based controls to regulate 'controlled activities' – including point-source discharges, abstraction, impoundment and building, engineering and other works that impact on the physical quality of aquatic habitats. The Regulations will enter into full force on 1 April 2006.

5. These Regulations are part of a series of enactments, and make the following principal changes:

- Provision is made 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 so doesn't require a separate authorisation under those Regulations.

This change is intended to reduce the regulatory burden and ensure parity of treatment by adopting a similar approach to interaction between the 2005 Regulations and exempt activities under the 1994 Regulations to that already taken in respect of waste management licences granted under the 1994

Regulations (see Part 2 of Schedule 10 to the 2005 Regulations, which treats them as relevant authorisations which are deemed to have been authorised under the 2005 Regulations).

- A number of amendments are also made in consequence of the 2003 Act, to update references in the 1994 Regulations to other legislation which, as from 1 April 2005, will be superseded by the 2005 Regulations such as, for example, the Groundwater Regulations 1998 or Part II of the Control of Pollution Act 1974 (see, for example, regulation 16) or to insert reference where appropriate to the 2005 Regulations. For example, 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.

Consultation

6. In April 2004 we consulted widely on our proposals to introduce Regulations over 'controlled activities'. As part of that exercise we consulted formally on our general proposals for consequential amendments. In addition, we consulted on our general proposals to align the 1994 Regulations with the 2003 Act and 2005 Regulations as part of the consultation on 'proposals to codify Schedule 3 to the Waste Management Licensing Regulations 1994' in November 2005. More recently, we have been working collaboratively with key stakeholders such as SEPA in refining our detailed proposals for amendment.

Regulatory Impact Assessment

7. These amendments do not in themselves generate any costs. Accordingly, an RIA has not been prepared.

Associated Statutory Instruments

8. These Regulations make provision specifically to define how the Waste Management Licensing Regulations 1994 interact with the requirements of the 2003 Act and 2005 Regulations made thereunder. The following instruments make further provisions in respect of how the 2003 Act and 2005 Regulations interact with other existing legislation:

- The Water Environment (Consequential Provisions) (Scotland) Order 2006;
- The Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006;
- The Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006.

9. It is anticipated that amendments to further legislation will be made during the course of the coming year.

SCOTTISH EXECUTIVE
Environment and Rural Affairs Department

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