
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 541

**The Waste Management Licensing
Amendment (Scotland) Regulations 2006**

Citation, commencement, interpretation and extent

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

(2) Any word or expression used both in these Regulations and the Waste Management Licensing Regulations 1994(1) (“the 1994 Regulations”) has the same meaning for the purposes of these Regulations as it has for the purposes of the 1994 Regulations.

(3) These Regulations extend to Scotland only.

Amendment of the Waste Management Licensing Regulations 1994

2. The 1994 Regulations are amended as follows.

3. In regulation 1(3) (citation, commencement, interpretation and extent)—

(a) after the definition of “agricultural waste” insert—

““co-incineration” means the use of wastes as a regular or additional fuel in a co-incineration plant or the thermal treatment of waste for the purposes of disposal in a co-incineration plant;

“co-incineration plant” means any stationary or mobile plant whose main purpose is the generation of energy or production of material products and—

— which uses wastes as a regular or additional fuel, or

— in which waste is thermally treated for the purpose of disposal,

if co-incineration takes place in such a way that the main purpose of the plant is not the generation of energy or production of material products but rather the thermal treatment of waste, the plant shall be regarded as an incineration plant; this definition covers the site and the entire plant including all co-incineration lines, waste reception, storage, on site pre treatment facilities, waste-, fuel- and air supply systems, boiler, facilities for the treatment of exhaust gases, on site facilities for treatment or storage of residues and waste water, stack devices and systems for controlling incineration operations, recording and monitoring incineration conditions;”;

(b) for the definition of “the Directive” substitute—

““the Directive” means Directive 2006/12/EC of the European Parliament and of the Council of 5th April 2006 on waste(2);”

(1) S.I.1994/1056; amended by S.I. 1994/1137; 1995/288 and 1950; 1996/593, 634, 916, 972, 973 and 1279; 1997/2203; 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; S.S.I. 2006/128.

(2) O.J. No. L 114, 27.04.2006, p.21. This Directive codifies Council Directive 75/442/EEC (O.J. No. L 194, 25.07.1965, p.39) as amended by Council Directive 91/156/EEC (O.J. No. L 78, 26.03.1991, p.32), Council Directive 91/156/EEC (O.J. No. L 377, 31.12.1991, p.48), Commission Decision 96/350/EC (O.J. No. L 135, 06.06.1996, p.32) and Regulation (EC) No. 1882/2003 of the European Parliament and of the Council (O.J. No. L 284, 31.10.2003, p.1).

- (c) in the definition of “European Waste Catalogue”, for “the Directive” substitute “Directive [75/442/EEC](#) on waste”;
- (d) after the definition of “exempt activity” insert–
- ““incineration” means the thermal treatment of wastes with or without recovery of the combustion heat generated;
- “incineration plant” means any stationary or mobile technical unit and equipment dedicated to the thermal treatment of wastes with or without recovery of the combustion heat generated. This includes the incineration by oxidation of waste as well as other thermal treatment processes such as pyrolysis, gasification or plasma processes in so far as the substances resulting from the treatment are subsequently incinerated. This definition covers the site and the entire incineration plant including all incineration lines, waste reception, storage, on site pre treatment facilities, waste-, fuel- and air-supply systems, boiler, facilities for the treatment of exhaust gases, on site facilities for treatment or storage of residues and waste water, stack devices and systems for controlling incineration operations recording and monitoring incineration conditions;”;
- (e) after the definition of “the water environment”(3) insert–
- ““WEEE” means electrical or electronic equipment which is waste including all components, subassemblies and consumables which are part of the product at the time of discarding;
- “the WEEE Directive” means Directive [2002/96/EC](#) of the European Parliament and of the Council of 27th January 2003 on waste electrical and electronic equipment (WEEE)(4) as amended by Directive [2003/108/EC](#)(5);”.
4. For regulation 17 (exemptions from waste management licensing) substitute–

“Exemptions from waste management licensing

17.—(1) Subject to the following provisions of this regulation and to any conditions or limitations in Schedule 3, section 33(1)(a) and (b) of the 1990 Act shall not apply in relation to the carrying on of any exempt activity set out in that Schedule.

(2) Paragraph (1) applies to the carrying on of an exempt activity insofar as it involves special waste–

- (a) only to the extent indicated in Schedule 3; and
- (b) provided that the activity does not involve the carrying out, by an establishment or undertaking, of their own disposal of such waste at the place of production.

(3) In the case of an exempt activity carried out by an establishment or undertaking on any land not within its ownership or control the establishment or undertaking shall obtain all consents necessary to enable the activity to be carried out.

(4) Unless otherwise indicated in Schedule 3, paragraph (1) does not apply to the carrying out of an activity in so far as it involves the storage or treatment of WEEE.

(5) In the case of an exempt activity involving the carrying out by an establishment or undertaking of the disposal or recovery of waste, paragraph (1) applies only if–

- (a) the type and quantity of waste; and
- (b) the method of disposal or recovery,

(3) The definition of “the water environment” was inserted by [S.I. 2006/128](#), regulation 3.

(4) O.J. No. L 37, 13.02.2003, p.24.

(5) O.J. No. L 345, 31.12.2003, p.106.

are consistent with ensuring the attainment of the objectives mentioned in paragraph 4(1) (a) of Part I of Schedule 4.

(6) In the case of a person carrying on an exempt activity which is a controlled activity, paragraph (1) applies only if that person—

- (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)**.

(7) For the purposes of Schedule 3, a container, lagoon or place is secure in relation to waste kept in it if all reasonable precautions are taken to ensure that the waste cannot escape from it and members of the public are unable to gain access to the waste, and any reference to secure storage means storage in a secure container, lagoon or place.

(8) For the purposes of Schedule 3, “benefit to agriculture or ecological improvement” shall be construed in accordance with Part 2 of Schedule 3A and any guidance issued under paragraph (9) of this regulation.

(9) A waste regulation authority shall have regard to any guidance issued to it by the Scottish Ministers with respect to the discharge of its functions in relation to an exempt activity.”.

5. In regulation 17A—

- (a) for “regulation 17(4A)” substitute “regulation 17(6)”, and
- (b) at the end, insert—

“(2) Paragraph (1) does not apply to any activity specified in section 20(3)(c) or (d) of the Water Environment and Water Services (Scotland) Act 2003**(8)** (“the 2003 Act”) or to any activity connected with such an activity and to which section 20(3)(e) of the 2003 Act applies.”.

6. For regulation 18 substitute—

“Registration in connection with exempt activities

18.—(1) Subject to paragraph (2), it shall be an offence for an establishment or undertaking to carry on an exempt activity involving the recovery or disposal of waste without being registered with the appropriate registration authority.

(2) Paragraph (1) shall not apply in the case of an exempt activity to which a resolution under section 54 of the 1990 Act relates and which is carried on in accordance with the conditions, specified in the resolution, which relate to it.

(3) It shall be the duty of each appropriate registration authority to establish and maintain a register for the purposes of paragraph (1) of establishments and undertakings carrying on exempt activities involving the recovery or disposal of waste in respect of which it is the appropriate registration authority.

(6) O.J. No. L 20, 26.1.1980, p.43; amended by Council Directive [91/692/EEC](#) standardizing and rationalizing reports on the implementation of certain Directives relating to the environment (O.J. No. L 377, 31.12.1991, p.48).

(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) [2003 asp 3](#). Section 20 was amended by [S.S.I. 2005/348](#), regulation 3.

(4) Subject to paragraph (5), the register shall contain the following particulars in relation to each such establishment or undertaking—

- (a) the name and address of the establishment or undertaking;
- (b) the activity which constitutes the exempt activity; and
- (c) the place where the activity is carried on.

(5) Subject to paragraphs (6) to (9), the appropriate registration authority shall enter the relevant particulars in the register in relation to an establishment or undertaking if it receives notice of them in writing or otherwise becomes aware of those particulars.

(6) Paragraph (5) shall not apply in the case of an exempt activity falling within paragraph 45(1) or (2) of Schedule 3 and, in such a case, the appropriate registration authority shall enter the relevant particulars in the register in relation to an establishment or undertaking only if—

- (a) it receives notice of them in writing;
- (b) that notice is provided to it by that establishment or undertaking;
- (c) that notice is accompanied by a plan of each place at which any such exempt activity is carried on showing—
 - (i) the boundaries of that place;
 - (ii) the locations within that place at which the exempt activity is to be carried on;
 - (iii) the location and specifications of any such impermeable pavements, drainage systems or hardstandings as are mentioned in paragraph 45(1)(c) or (2)(f) or (g) of Schedule 3; and
 - (iv) the location of any such secure containers as are mentioned in paragraph 45(2)(e) of Schedule 3;
- (d) in the case of waste motor vehicles, it has first verified, further to its inspection of each such place—
 - (i) the type of waste to be treated;
 - (ii) the quantities of waste to be treated;
 - (iii) the general technical requirements to be complied with; and
 - (iv) the safety precautions that are to be taken,

in order to achieve the objectives referred to in Article 4 of the Directive, and a registration further to such verification shall continue subject to the requirement that verification upon inspection be made annually in respect of it; and

- (e) that notice is also accompanied by payment of the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995⁽⁹⁾ in respect of each place where any such exempt activity is carried on.

(7) Where any fee payable under paragraph 45(3)(d) of Schedule 3 is not received by the appropriate registration authority within 2 months of the due date for its payment as ascertained in accordance with paragraph 45(4) of Schedule 3—

- (a) in a case where the establishment or undertaking is registered for exempt activities falling within paragraph 45(1) or (2) in respect of only one place, or where it is so registered in respect of more than one place and the fee in respect of each such place is then unpaid, the registration of the establishment or undertaking shall be

(9) 1995 c. 25.

cancelled and the authority shall remove from its register the relevant entry in respect of the establishment or undertaking;

- (b) in any other case, the registration of the establishment or undertaking in respect of those activities shall be cancelled insofar as it relates to any place in respect of which the fee is then unpaid and the authority shall amend the relevant entry in its register accordingly,

and where the authority removes or amends an entry from or in its register by virtue of this paragraph it shall notify the establishment or undertaking in writing of the removal or amendment.

- (a) (8) Paragraph (5) does not apply in the case of an exempt activity falling within paragraphs 7, 8(2), 9, 10, 12, 19, 42, 46 or 47 of Schedule 3 and the provisions of this paragraph shall instead apply to such an activity.
- (b) An establishment or undertaking which intends to carry out an exempt activity to which this paragraph applies shall provide to the appropriate registration authority a written notice given on a form provided for the purpose by the appropriate registration authority (“the notice”) together with—
 - (i) a plan and the documents specified in Part 1 of Schedule 3A and such other information as the appropriate registration authority reasonably requires, and
 - (ii) payment of the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995.
- (c) Subject to sub paragraphs (d) and (e), unless the appropriate registration authority has within the period of 21 days from the date on which it received the notice, either—
 - (i) entered the relevant particulars in the register in relation to the establishment or undertaking which submitted the notice, or
 - (ii) served on it a notice of refusal stating that registration is refused and giving reasons for that decision,

those particulars shall be deemed to be entered in the register at the end of that 21 day period.

- (d) In the case of a notice in relation to an exempt activity falling within paragraph 46 of Schedule 3, the relevant particulars shall be deemed to be entered in the register on the date which is requested in the notice, provided that—
 - (i) the notice was submitted to the appropriate registration authority as soon as was practicable before the requested date; and
 - (ii) the appropriate registration authority has not within the period prior to the requested date either entered the relevant particulars in the register or served a notice of refusal on the establishment or undertaking.
- (e) Particulars entered or deemed to be entered into the register under this paragraph shall be deemed to be removed from the register on the expiry of 12 months from the date on which they were entered or deemed to be entered (“the removal date”), unless the establishment or undertaking has no later than 21 days before the removal date provided to the appropriate registration authority—
 - (i) a notice containing a request that registration of an exempt activity registered under this paragraph be renewed (“the renewal notice”) and either confirmation that the particulars submitted in the notice and the plan and documentation which accompanied it remain accurate or a revision of such

of the particulars of the notice and plan and documentation as are no longer accurate, and

- (ii) the renewal notice is accompanied by payment of the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995.
- (a) (9) Subject to sub paragraphs (b) and (c), the appropriate registration authority may remove from the register the particulars which have been entered in relation to an exempt activity where it is satisfied that—
- (i) the establishment or undertaking to which the relevant entry relates no longer exists or is no longer carrying out that activity;
 - (ii) the activity is no longer being carried out in compliance with the conditions or limitations of the relevant paragraph of Schedule 3 or with the relevant provisions of regulation 17(3), (4) (5) or (6); or
 - (iii) there has been a breach of any of the registration obligations in regulation 18A which apply in relation to an activity.
- (b) Before removing the relevant entry from the register, the appropriate registration authority shall serve on the establishment or undertaking to which the relevant entry relates a notice (“notice of removal”) stating that the registration is cancelled on a date specified in the notice which shall be at least 28 days after the date on which the notice is served and giving reasons for the cancellation.
- (c) A notice of removal served in accordance with sub paragraph (b) can be withdrawn by the appropriate registration authority at any time and the relevant entry reinstated in the register with or without amendment of the particulars relating to that entry.
- (10) For the purposes of paragraph (5), the appropriate registration authority shall be taken to be aware of the relevant particulars in relation to—
- (a) an exempt activity carried out under an authorisation granted under Part I of the 1990 Act, or storage related to such an activity;
 - (b) an exempt activity carried out under a permit granted under the 2000 Regulations, or storage related to such an activity;
 - (c) an exempt activity falling within paragraph 23 of Schedule 3.
- (11) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding—
- (a) in the case of an exempt activity falling within paragraph 7, 8(2), 9, 10, 12, 19, 42, 46 or 47 of Schedule 3, level 3 on the standard scale; and
 - (b) in any other case, level 2 on the standard scale.
- (12) Each appropriate registration authority shall secure that any register maintained by it under this regulation is open to inspection by members of the public free of charge at all reasonable hours and shall afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register.
- (13) Registers under this regulation may be kept in any form.
- (14) For the purposes of this regulation and regulation 18A, the appropriate registration authority is—
- (a) in the case of an exempt activity falling within paragraph 23 of Schedule 3, the authority responsible for granting an authorisation under regulation 27 of the

Animal By-Products (Scotland) Regulations 2003(10) under which the exempt activity is carried on; and

(b) in any other case, the waste regulation authority.”.

7. For regulation 18A substitute—

“Registration obligations

18A.—(1) The obligations described in paragraph (2) (“the registration obligations”) shall apply to establishments or undertakings whose particulars are entered into the register in relation to an exempt activity falling within paragraphs 7, 8(2), 9, 10, 12, 19, 42, 46 and 47 of Schedule 3, to the extent specified in paragraph (2).

(a) (2) Except in the case of an exempt activity falling within paragraph 46 of Schedule 3, at least 21 days' written notice of the date on which the exempt activity is first to be carried on shall be given to the appropriate registration authority unless this information was provided in the notice or renewal notice given under regulation 18.

(b) Records shall be kept of the quantity, nature, origin, destination and method of recovery or disposal of all waste used in reliance upon an exempt activity falling within the following descriptions—

(i) paragraphs 7, 8(2), 10 and 46;

(ii) paragraphs 9 and 19 where the volume of waste used exceeds 2,500 cubic metres;

(iii) paragraph 12 where the volume of waste used exceeds 10 tonnes per annum.

(c) Records kept under sub paragraph (b) of this regulation shall be kept for a period of at least 2 years and shall be submitted to or made available to the appropriate registration authority on request.

(3) A person who carries on an exempt activity—

(a) in breach of the registration obligations;

(b) in breach of any of the conditions or limitations stipulated in the paragraph of Schedule 3 in respect of which the activity has been registered; or

(c) in breach of the requirements of regulation 17(3), (4), (5) or (6),

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

8. For Schedule 3 (activities exempt from waste management licensing), substitute Schedule 1 to these Regulations.

9. For Schedule 3A (plans and documents etc. required for registration) substitute Schedule 2 to these Regulations.

Amendment of the Environment Act 1995

10.—(1) The Environment Act 1995(11) is amended in accordance with this regulation.

(2) In section 56(1) (interpretation of Part I), in the definition of “environmental licence” in the application of Part I of that Act to SEPA, for paragraph (j) substitute—

(10) S.S.I. 2003/411; amended by S.S.I. 2006/3, Schedule 7, paragraph 44.

(11) 1995 c. 25. Section 56(1) was amended by the Pollution Prevention and Control Act 1999 (c. 24), Schedule 2, paragraph 17 and Schedule 3; by S.S.I. 2000/323, Schedule 10, paragraph 5(2); S.S.I. 2003/171, regulation 2(2); S.S.I. 2004/275, regulation 2(2); and S.S.I. 2006/181, regulation 2 and Schedule 1 (Part IV), paragraph 8(3).

- “(j) registration in respect of an activity falling within paragraph 7, 8(2), 9, 10, 12, 19, 42, 45(1) or (2), 46 or 47 of Schedule 3 to those Regulations, except where the waste which is the subject of the activity consists of agricultural waste within the meaning of those Regulations.”.

Transitional provisions

11. Any exempt activity carried on immediately before 1st December 2006 under Schedule 3 to the 1994 Regulations, may continue to be carried on—

- (a) where the establishment or undertaking carrying on the activity applies to the waste regulation authority for a waste management licence or a permit under regulation 7 of the Pollution Prevention and Control (Scotland) Regulations 2000⁽¹²⁾ in relation to the activity in question before 1st December 2006, until the date on which the licence or permit applied for is granted, or if the application is (or is deemed to be) rejected, until the date on which—
- (i) the period for appealing expires without an appeal having been made; or
 - (ii) any appeal is withdrawn or finally determined;
- (b) where the establishment or undertaking is carrying on an activity to which regulation 18(4C) of the 1994 Regulations applies, until the earlier of—
- (i) the date upon which that activity is deemed to have been removed from the register in accordance with regulation 18(4C)(d) of the 1994 Regulations; or
 - (ii) 1st December 2007; and
- (c) in any other case, until 1st December 2007.

12. Where the appropriate registration authority receives notice under regulation 18(4) or regulation 18(4C)(b) of the 1994 Regulations but the relevant particulars are not yet entered or deemed to be entered into the register before 1st December 2006, that notification shall be treated as if it had been submitted on 1st December 2006.

St Andrew’s House,
Edinburgh
8th November 2006

ROSS FINNIE
A member of the Scottish Executive

⁽¹²⁾ S.S.I. 2000/323 as amended by 2004 asp 8, Schedule 2, paragraph 7; by S.S.I. 2002/493; by S.S.I. 2003/146, 170, 221, 234 and 411; by S.S.I. 2004/26, 110, 112 and 512; by S.S.I. 2005/101 and 340.