

2007 No. 251

ENVIRONMENTAL PROTECTION

**The National Waste Management Plan for Scotland
Regulations 2007**

Made - - - - - *22nd March 2007*

Coming into force in accordance with regulation 1(1)

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with paragraph 2(2) of Schedule 2 to that Act, been laid before and approved by resolution of the Scottish Parliament:

PART 1

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the National Waste Management Plan for Scotland Regulations 2007 and come into force on the day after the day on which they are made.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

“the 1990 Act” means the Environmental Protection Act 1990(b);

“hazardous waste” has the same meaning as in Article 1(4) of Council Directive 91/689/EEC on hazardous waste(c);

“the National Planning Framework” means the document “the National Planning Framework for Scotland” published by the Scottish Executive on 1 April 2003(d);

“National Planning Policy Guideline 10” means the document “National Planning Policy Guideline (NPPG) 10 – Planning and Waste Management” published by the Scottish Office in March 1996(e);

“national waste management plan” means the plan mentioned in regulation 3(1);

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) 1990 c.43.

(c) O.J. No. L 377, 13.12.1991, p.20; as amended by Council Directive 94/31/EC (O.J. No. L 168, 2.7.1994, p.28), Corrigendum to Directive 91/689/EC (O.J. No. L 23, 30.1.1998, p.39) and Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18th January 2006 (O.J. No. L 33, 04.02.2006, p.1).

(d) ISBN 0-7 559-4195-0.

(e) ISBN 0 7480 5153 8.

“the National Waste Plan” means the document “the National Waste Plan 2003” published by the Scottish Executive and SEPA in February 2003;

“the Packaging Waste Directive” means the European Parliament and Council Directive 94/62/EC of 20th December 1994 on packaging and packaging waste(a);

“Planning Advice Note 63” means the document “Planning Advice Note (PAN) 63 – Waste Management Planning” published by the Scottish Executive in February 2002(b);

“public consultees” means the persons to whose attention proposals for the national waste management plan are brought by the Scottish Ministers pursuant to regulation 6(1)(b);

“SEPA” means the Scottish Environment Protection Agency; and

“the Waste Data Digest” means any of the following documents published by SEPA–

- (a) Waste Data Digest 1 2001(c);
- (b) Waste Data Digest 2 2002(d);
- (c) Waste Data Digest 3 2003(e);
- (d) Waste Data Digest 4 2004(f);
- (e) Waste Data Digest 5 2005(g);
- (f) Waste Data Digest 6 2006(h).

PART 2

National waste management plan for Scotland

National waste management plan for Scotland

3.—(1) The Scottish Ministers must have a national waste management plan containing their policies in relation to the recovery and disposal of waste in Scotland.

(2) The national waste management plan or any modification of it must consist of–

- (a) a statement which relates to the whole of Scotland; or
- (b) two or more statements which together relate to the whole of Scotland.

(3) The national waste management plan or any modification of it must include–

- (a) a statement of the Scottish Ministers’ policies for attaining the objectives specified in the Schedule to these Regulations;
- (b) in pursuance of the objectives and measures referred to in the Packaging Waste Directive, a chapter on the management of packaging and packaging waste, including measures taken pursuant to Articles 4 and 5 of that Directive; and
- (c) provisions relating to the following–
 - (i) the type, quantity and origin of waste to be recovered or disposed of;
 - (ii) general technical requirements;
 - (iii) any special arrangements for particular wastes;
 - (iv) suitable disposal sites or installations;
 - (v) the management of hazardous waste.

(a) O.J. No. L 365, 31.12.1994, p.10; as amended by Regulation (EC) No. 1882/2003 of the European Parliament and of the Council (O.J. No. L 284, 31.10.2003, p.1), Directive 2004/12/EC of the European Parliament and of the Council (O.J. No. L 47, 18.2.2004, p.26) and Directive 2005/20/EC of the European Parliament and of the Council (O.J. No. L 70, 16.03.2005, p.17).

(b) ISBN 0 7559 3330 3.

(c) ISBN 1-901322-18-1.

(d) ISBN 1-901322-25-4.

(e) ISBN 1-901322-43-2.

(f) ISBN 1-901322-52-1.

(g) A complete copy of this document can be found at www.sepa.org.uk/pdf/publications/wds/wdd_5.pdf.

(h) ISBN 1-901322-66-1.

(4) The Scottish Ministers may from time to time modify the national waste management plan.

(5) In preparing the national waste management plan, or any modification of it, the Scottish Ministers must consult—

- (a) SEPA;
- (b) Scottish Natural Heritage;
- (c) such bodies or persons appearing to them to be representative of the interests of local government and industry respectively as they think fit; and
- (d) such other persons as they think fit.

(6) Until the Scottish Ministers have prepared a plan which is to constitute the national waste management plan, the national waste management plan is taken to be constituted by policies or other text which satisfy paragraphs (2) and (3) and which are set out in the following documents—

- (a) a statement under section 44B of the 1990 Act^(a);
- (b) the National Waste Plan;
- (c) National Planning Policy Guideline 10;
- (d) Planning Advice Note 63;
- (e) the Waste Data Digest;
- (f) the National Planning Framework.

Directions to SEPA

4.—(1) Without prejudice to any power to give directions conferred by section 40 of the Environment Act 1995^(b), the Scottish Ministers may give directions to SEPA requiring it—

- (a) to advise them on the policies which are to be included in the national waste management plan or any modification of it;
- (b) to carry out a survey or investigation into any other matter in connection with the Scottish Ministers' preparation of that plan or any modification of it and to report its findings to them;
- (c) to provide such other advice and assistance as Ministers consider appropriate as regards the promotion, development, implementation, monitoring and review of that plan or any modification of it.

(2) A direction under paragraph (1)(b)—

- (a) must specify or describe the matters or the areas which are to be the subject of the survey or investigation;
- (b) may specify bodies or persons to be consulted before carrying out the survey or investigation; and
- (c) may make provision in relation to the manner in which—
 - (i) the survey or investigation is to be carried out, or
 - (ii) the findings are to be reported or made available.

(3) Where a direction is given under paragraph (1)(b), SEPA may also consult any body or person that it considers appropriate but is not specified in the direction.

(4) SEPA must make its findings available to any bodies or persons it consults.

^(a) Section 44B was inserted into the 1990 Act by section 92(1) of the Environment Act 1995 (c.25).

^(b) 1995 c.25.

PART 3

Procedures for the preparation or modification of the national waste management plan

Application of this Part

5.—(1) This Part applies to the modification of the national waste management plan as it applies to the preparation of such a plan.

(2) This Part does not apply to—

- (a) a national waste management plan or any part of such a plan designed for the sole purpose of serving national defence or civil emergencies; or
- (b) a national waste management plan for which a public participation procedure is carried out under the Environmental Assessment (Scotland) Act 2005(a).

Public participation procedures

6.—(1) As soon as reasonably practicable after preparing proposals for the national waste management plan or its modification the Scottish Ministers must—

- (a) send a copy of the proposals to the persons or bodies mentioned in regulation 3(5);
- (b) take such steps as they consider appropriate to bring the proposals to the attention of the persons who in their opinion—
 - (i) are affected by,
 - (ii) are likely to be affected by; or
 - (iii) have an interest in,the plan;
- (c) inform the public consultees of the address (which may include a website)—
 - (i) at which a copy of the proposals may be viewed,
 - (ii) from which a copy of the proposals may be obtained;
- (d) invite the persons or bodies mentioned in regulation 3(5) and the public consultees to express their opinion on the proposals, specifying the address to which, and the period within which, opinions must be sent.

(2) The period referred to in paragraph (1)(d) must be of such length as will ensure that the persons or bodies mentioned in regulation 3(5) and the public consultees are given an early and effective opportunity to express their opinion on the proposals.

(3) During the period referred to in paragraph (1)(d), the Scottish Ministers must keep a copy of the proposals for inspection by the public at all reasonable times free of charge.

(4) Nothing in paragraph (1)(c) requires the Scottish Ministers to provide copies free of charge; but where a charge is made, it must be of a reasonable amount.

Procedures following public participation

7.—(1) Before decisions on the national waste management plan or its modification are made the Scottish Ministers must take account of any opinions expressed in accordance with regulation 6(1)(d).

(2) As soon as reasonably practicable after making decisions on the national waste management plan the Scottish Ministers must—

- (a) inform—
 - (i) the persons or bodies mentioned in regulation 3(5), and
 - (ii) the public consultees,

(a) asp 15.

- of the matters set out in paragraph (3);
 - (b) take such steps as they consider appropriate to bring the matters in paragraph (3) to the attention of the public;
 - (c) if they have adopted the national waste management plan, make a copy of the plan available for inspection by the public at all reasonable times and free of charge.
- (3) The matters are—
- (a) the decisions made by the Scottish Ministers on the national waste management plan;
 - (b) the reasons and considerations upon which those decisions are based; and
 - (c) information about the public participation procedures.

PART 4

Consequential repeals and amendments

Consequential repeals and amendments

8.—(1) In the 1990 Act—

- (a) section 44B of, and Schedule 2A to, that Act^(a) are repealed; and
- (b) in section 44ZA^(b)—
 - (i) in subsection (2)(a), for “the National Waste Strategy” substitute “national waste management plan”; and
 - (ii) in subsection (6), for the definition of “National Waste Strategy” there is substituted the following definition—

“national waste management plan” means the plan mentioned in regulation 3(1) of the National Waste Management Plan for Scotland Regulations 2007 (S.S.I. 2007/251), however constituted at the time and as modified from time to time.”

(2) In Part I of Schedule 4 to the Waste Management Licensing Regulations 1994^(c)(waste framework directive etc.)—

- (a) in paragraph 1, in the definition of “plan-making provisions”,
 - (i) omit “section 44B of that Act”, and
 - (ii) substitute “the National Waste Management Plan for Scotland Regulations 2007 (S.S.I. 2007/ 251)”;
- (b) in paragraph 3, in Table 5—
 - (i) in the first column of the second row of that table, at the end insert “or the Scottish Ministers”, and
 - (ii) in the second column of the second row of that table—
 - (aa) omit “or 44B”, and

^(a) 1990 c.43. Section 44B and Schedule 2A were inserted into the 1990 Act by section 92(1) of the Environment Act 1995 (c.25).

^(b) Section 44ZA was inserted into the 1990 Act by section 34(1) of the Local Government in Scotland Act 2003 (asp 1).

^(c) S.I. 1994/1056; the definition of “plan-making provisions” has been amended by paragraph 10(5)(a) of Schedule 2 to S.I. 1996/593.

- (bb) at the end insert “and preparing the national waste management plan, or any modification of it, in accordance with the National Waste Management Plan for Scotland Regulations 2007 (S.S.I. 2007/251)”.

St Andrew's House,
Edinburgh
22nd March 2007

ROSS FINNIE
A member of the Scottish Executive

SCHEDULE

Regulation 3(3)(a)

Objectives for the purposes of the national waste management plan

1. Ensuring that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and, in particular, without–

- (a) risk to water, air, soil, plants or animals;
- (b) causing nuisance through noise or odours;
- (c) adversely affecting the countryside or places of special interest.

2. Establishing an integrated and adequate network of waste disposal installations, taking account of the best available technology not involving excessive costs.

3. Ensuring that the network referred to in paragraph 2 enables–

- (a) the European Community as a whole to become self-sufficient in waste disposal, and the Member States individually to move towards that aim, taking into account geographical circumstances or the need for specialised installations for certain types of waste; and
- (b) waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.

4. Encouraging the prevention or reduction of waste production and its harmfulness, in particular by–

- (a) the development of clean technologies more sparing in their use of natural resources;
- (b) the technical development and marketing of products designed so as to make no contribution or to make the smallest possible contribution, by the nature of their manufacture, use or final disposal, to increasing the amount of harmfulness of waste and pollution hazards; and
- (c) the development of appropriate techniques for the final disposal of dangerous substances contained in waste destined for recovery.

5. Encouraging–

- (a) the recovery of waste by means of recycling, reuse or reclamation or any other process with a view to extracting secondary raw materials; and
- (b) the use of waste as a source of energy.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the purpose of implementing:

- Article 7 of Directive 2006/12/EC of the European Parliament and of the Council on waste (O.J. No. L 114, 27.04.2006, p.21);
- Article 6 of Council Directive 91/689/EEC on hazardous waste (O.J. No. L 377, 31.12.1991, p. 20) as amended by Council Directive 94/31/EC (O.J. No. L 168, 02.07.1994, p.28), Corrigendum to Directive 91/689/EC (O.J. No. L 23, 30.01.1998, p.39) and Regulation (EC) No. 166/2006 of the European Parliament and of the Council of 18 January 2006 (O.J. No. L 33, 04.02.2006, p.1);
- Article 14 of Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste (O.J. No. L 365, 31.12.1994, p.10) as amended by Regulation (EC) No. 1882/2003 of the European Parliament and of the Council (O.J. No. L 284, 31.10.2003, p.1), Directive 2004/12/EC of the European Parliament and of the Council (O.J. No. L 47, 18.02.2004, p. 26) and Directive 2005/20/EC of the European Parliament and of the Council (O.J. No. L 70, 16.03.2005, p.17); and
- Article 2 of Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment (O.J. No. L 156, 25.06.2003), in so far as it relates to waste planning.

Section 44B of the Environmental Protection Act 1990 (“the 1990 Act”) requires SEPA to produce a national waste strategy for Scotland. Schedule 2A to the 1990 Act sets out the objectives for the purposes of that strategy. These Regulations replace section 44B with a requirement for the Scottish Ministers to have a national waste management plan for Scotland.

Regulation 3(1) requires the Scottish Ministers to have a national waste management plan containing their policies in relation to the recovery and disposal of waste in Scotland and satisfying the requirements specified in regulation 3(2) and (3). Until Ministers prepare that plan, the documents specified in regulation 3(6) will constitute that plan, insofar as they contain policies and text that satisfy those requirements.

Regulation 4 enables the Scottish Ministers to give directions to SEPA requiring it to advise and assist them in relation to the national waste management plan.

Regulation 5 applies Part 3 of the Regulations to the preparation or modification of the national waste management plan, except where the plan or any part of it is designed for the sole purpose of serving national defence or civil emergencies or is subject to a public participation procedure under the Environmental Assessment (Scotland) Act 2005.

Regulation 6 sets out the public participation procedures to be followed when preparing or modifying the national waste management plan to which Part 3 applies.

Regulation 7 sets out the procedures to be followed after public participation has taken place.

Regulation 8 contains consequential repeals and amendments. These include the repeal of section 44B of, and Schedule 2A to, the 1990 Act.

The Schedule sets out the objectives for the purposes of the national waste management plan.

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