

2009 No. 247

ENVIRONMENTAL PROTECTION

The Waste Batteries (Scotland) Regulations 2009

Made - - - - *16th June 2009*

Coming into force - - *6th July 2009*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999(a) and all other powers enabling them to do so.

In accordance with section 2(4) of that Act, they have consulted the Scottish Environment Protection Agency, such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they consider appropriate and such other bodies or persons as they consider appropriate.

In accordance with section 2(8) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Waste Batteries (Scotland) Regulations 2009 and come into force on 6th July 2009.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

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

“the 1995 Act” means the Environment Act 1995(c);

“the 1994 Regulations” means the Waste Management Licensing Regulations 1994(d);

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- (a) 1999 c.24. The functions of the Secretary of State were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46), as read with section 5(3) of the said 1999 Act. Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (“the Batteries Directive”) (O.J. L 266, 26.9.2006, p.1) was designated for the purposes of paragraph 20(2)(c) of Schedule 1 to the 1999 Act by the Pollution Prevention and Control (Designation of Batteries Directive) (Scotland) Order 2008 (S.S.I. 2008/86).
- (b) 1990 c.43, as relevantly amended by the Environment Act 1995 (c.25) Schedule 22 paragraph 64.
- (c) 1995 c.25, as relevantly amended by the Pollution Prevention and Control Act 1999 (c.24), Schedule 2, paragraph 17; S.S.I. 2000/323, Schedule 10(1), paragraph 5(2); S.I. 2005/925, Schedule 6, paragraph 1(3); S.S.I. 2006/181, Schedule I(IV), paragraph 8(3); S.S.I. 2006/541, regulation 10(2); and S.I. 2006/3289, regulation 4(2).
- (d) S.I. 1994/1056, as relevantly amended by S.I. 1996/972, Schedule 3, paragraph 1; S.S.I. 2000/323, Schedule 10(2), paragraph 11(2); S.S.I. 2003/171, regulation 4; S.S.I. 2003/593, regulation 7(2); S.S.I. 2005/22, regulation 6(2); S.S.I. 2006/128, regulation 3; S.S.I. 2006/541, regulation 3 and Schedule 1, paragraph 1; and S.S.I. 2007/172, regulation 4.

“the 2000 Regulations” means the Pollution Prevention and Control (Scotland) Regulations 2000(a);

“the 2003 Regulations” means the Landfill (Scotland) Regulations 2003(b);

“automotive battery” means any battery used for automotive starter, lighting or ignition power;

“Batteries Directive” means Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators(c);

“battery” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or one or more secondary battery cells (rechargeable; an accumulator), but does not include any battery excluded from the scope of the Batteries Directive by Article 2(2) of that Directive;

“battery pack” means any set of batteries that are connected together or encapsulated within an outer casing so as to form a complete unit that the end-user is not intended to split up or open;

“industrial battery” means any battery or battery pack which is—

- (a) designed exclusively for industrial or professional uses;
- (b) used as a source of power for propulsion in an electric vehicle;
- (c) unsealed but is not an automotive battery; or
- (d) sealed but is not a portable battery;

“landfill” means a landfill to which the 2003 Regulations apply;

“landfill permit” has the same meaning as in regulation 2(1) of the 2003 Regulations;

“portable battery” means any battery or battery pack which—

- (a) is sealed;
- (b) can be hand-carried by an average natural person without difficulty; and
- (c) is neither an automotive nor an industrial battery;

“recycling” means the reprocessing in a production process of waste materials for their original purpose or for other purposes, but excluding energy recovery;

“site licence” has the same meaning as in Part II of the 1990 Act;

“treatment” means any activity carried out on waste batteries after they have been handed over to a facility for sorting, preparation for treatment or preparation for disposal; and

“waste battery” means any battery which is waste within the meaning of Article 1(1)(a) of Directive 2006/12/EC of the European Parliament and of the Council on waste(d).

Collection of waste portable batteries

3.—(1) Section 33 of the 1990 Act is amended as follows.

(2) In subsection (1), after “(2)” insert “, (2B)”.

(3) After subsection (2A) insert—

“(2B) Paragraphs (a) and (b) of subsection (1) above do not apply to the deposit or keeping of a waste portable battery or accumulator at a collection point set up to comply with Article 8(1)(a) of Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators (in this section, “the Batteries Directive”).

(2C) In subsection (2B) above, “portable battery or accumulator” has the meaning given by Article 3(3) of the Batteries Directive, but does not include any battery or accumulator excluded from the scope of that Directive by Article 2(2).”.

(a) S.S.I. 2000/323, as relevantly amended by S.S.I. 2002/493, regulation 3; S.S.I. 2003/146, regulation 3; S.S.I. 2003/170, regulation 6; S.S.I. 2003/235, Schedule 6, paragraph 3(2); S.S.I. 2004/26, regulation 10; S.S.I. 2004/112, regulation 3(2); and S.S.I. 2005/340, regulation 3.

(b) S.S.I. 2003/235, as relevantly amended by S.S.I. 2003/343, regulation 3.

(c) O.J. L 266, 26.9.2006, p.1

(d) O.J. L 114, 27.4.2006, p.9.

Amendment of the 1994 Regulations

4.—(1) The 1994 Regulations are amended as follows.

(2) In regulation 1(3) insert after the definition of “agricultural waste”—

““battery” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or one or more secondary battery cells (rechargeable; an accumulator), but does not include any battery excluded from the scope of the Batteries Directive by Article 2(2) of that Directive;

“Batteries Directive” means Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators;”.

(3) After regulation 1(3) insert—

“(3A) In these Regulations, in relation to batteries—

(a) “industrial battery” means any battery or battery pack which is—

- (i) designed exclusively for industrial or professional uses;
- (ii) used as a source of power for propulsion in an electric vehicle;
- (iii) unsealed but is not an automotive battery; or
- (iv) sealed but is not a portable battery;

(b) “portable battery” means any battery or battery pack which—

- (i) is sealed;
- (ii) can be hand-carried by an average natural person without difficulty; and
- (iii) is neither an automotive nor an industrial battery;

(c) “the treatment conditions” means the provisions of Article 12(2) and Annex III, Part A of the Batteries Directive; and

(d) other expressions defined in Article 3 of the Batteries Directive have the same meanings as in that Directive.”.

(4) After regulation 12B insert—

“Conditions of site licences: treatment and storage of batteries

12C. SEPA shall ensure that any site licence granted or varied on or after 6th July 2009 authorising the storage or treatment (or both) of batteries contains such conditions as it considers necessary to give effect to the treatment conditions.

Conditions of site licences: incineration of waste industrial and automotive batteries

12D.—(1) SEPA shall ensure that any site licence granted or varied on or after 1st January 2010 authorising the incineration of waste contains conditions prohibiting the incineration of waste industrial and automotive batteries.

(2) Such conditions shall not prohibit the incineration of residues of any batteries that have undergone both treatment and recycling, provided that the treatment and recycling—

- (a) used best available techniques, in terms of the protection of health and the environment; and
- (b) complied, as a minimum, with Community legislation, in particular as regards health and safety and waste management.”.

(5) After regulation 17(4) insert—

“(4A) Any exempt activity set out in Schedule 3 containing no specific reference to batteries does not apply to the storage or treatment of batteries collected in accordance with Article 8 of the Batteries Directive.”.

- (6) In Schedule 3 paragraph 17, insert after sub-paragraph (1)(b)—
“(ba) in the case of any waste batteries, storage takes place in accordance with the treatment conditions;”.
- (7) In Schedule 3 paragraph 18, insert after sub-paragraph (1)(d)—
“(da) in the case of any waste batteries, storage takes place in accordance with the treatment conditions;”.
- (8) In Schedule 3 paragraph 36(2)—
(a) in paragraph (a), omit “and”; and
(b) insert after paragraph (a)—
“(aa) in the case of any waste batteries, storage takes place in accordance with the treatment conditions; and”.
- (9) In Schedule 3 paragraph 39, insert after sub-paragraph (2)—
“(2A) In the case of any waste batteries, secure storage under sub-paragraph (1) or (2) must take place in accordance with the treatment conditions.”.
- (10) In Schedule 3 paragraph 45, insert after sub-paragraph (4)—
“(4A) In the case of any waste batteries, sub-paragraphs (1) and (2) apply only if any treatment or storage of such batteries takes place in accordance with the treatment conditions.”.

Amendment of the 1995 Act

5. In section 56(1) of the 1995 Act, in the definition of “environmental licence” in the application of Part 1 of that Act to SEPA, after paragraph (j) insert—

- “(ja) registration in respect of an activity falling within paragraph 17, 18, 36 or 39 of Schedule 3 to those Regulations, where the waste which is the subject of the activity consists of or includes waste batteries or accumulators to which Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators applies, and those batteries or accumulators have been collected in accordance with Article 8 of that Directive;”.

Amendment of the 2000 Regulations

6.—(1) The 2000 Regulations are amended as follows.

(2) In regulation 2(1)—

(a) after the definition of “the 2003 Regulations” insert—

““battery” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or one or more secondary battery cells (rechargeable; an accumulator), but does not include any battery excluded from the scope of the Batteries Directive by Article 2(2) of that Directive;

“Batteries Directive” means Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators;”;

(b) after the definition of “hazardous waste” insert—

““industrial battery” means any battery or battery pack which is—

- (a) designed exclusively for industrial or professional uses;
- (b) used as a source of power for propulsion in an electric vehicle;
- (c) unsealed but is not an automotive battery; or
- (d) sealed but is not a portable battery;”;

(c) after the definition of “pollutant” insert—

““portable battery” means any battery or battery pack which—

- (a) is sealed;
- (b) can be hand-carried by an average natural person without difficulty; and
- (c) is neither an automotive battery nor an industrial battery;”.

(3) In regulation 2(3), after “Directive” where first occurring insert “(other than the Batteries Directive)”.

(4) After regulation 2(3) insert—

“(3A) In relation to batteries and subject to regulation 2(1), expressions defined in Article 3 of the Batteries Directive have the same meanings in these Regulations as in that Directive.”.

(5) After regulation 9C insert—

“Conditions of permits: batteries

9D.—(1) SEPA shall ensure that any permit granted or varied on or after 1st January 2010 authorising the incineration of waste contains conditions prohibiting the incineration of waste industrial and automotive batteries.

(2) Such conditions shall not prohibit the incineration of residues of any batteries that have undergone both treatment and recycling, provided that the treatment and recycling—

- (a) used best available techniques, in terms of the protection of health and the environment; and
- (b) complied, as a minimum, with Community legislation, in particular as regards health and safety and waste management.”.

Amendment of the 2003 Regulations

7.—(1) The 2003 Regulations are amended as follows.

(2) In regulation 2(1)—

(a) after the definition of “the 2000 Regulations” insert—

““Batteries Directive” means Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators;

“battery” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or one or more secondary battery cells (rechargeable; an accumulator), but does not include any battery excluded from the scope of the Batteries Directive by Article 2(2) of that Directive;”;

(b) after the definition of “holder” insert—

““industrial battery” means any battery or battery pack which is—

- (a) designed exclusively for industrial or professional uses;
- (b) used as a source of power for propulsion in an electric vehicle;
- (c) unsealed but is not an automotive battery; or
- (d) sealed but is not a portable battery;”;

(c) after the definition of “operator” insert—

““portable battery” means any battery or battery pack which—

- (a) is sealed;
- (b) can be hand-carried by an average natural person without difficulty; and
- (c) is neither an automotive battery nor an industrial battery;”;

- (d) after “treatment” insert “, except in relation to waste batteries.”.
- (3) After regulation 2(1) insert—
 - “(1A) In relation to batteries and subject to regulation 2(1), expressions defined in Article 3 of the Batteries Directive have the same meanings in these Regulations as in that Directive.”.
- (4) In regulation 11—
 - (a) insert after sub-paragraph (1)(f)—
 - “(fa) as from 1st January 2010, waste industrial or automotive batteries;”;
 - and
 - (b) insert after paragraph (2)—
 - “(2A) Sub-paragraph (1)(fa) does not prohibit the acceptance of residues of any batteries that have undergone both treatment and recycling, provided that the treatment and recycling—
 - (a) used best available techniques, in terms of the protection of health and the environment; and
 - (b) complied, as a minimum, with Community legislation, in particular as regards health and safety and waste management.”.

Transitional provisions: storage and treatment

8.—(1) Any site licence which is in force on 6th July 2009 and which authorises the storage or treatment or both of waste batteries is modified so as to include, as a new condition of the licence, the following condition—

“The treatment of any waste batteries shall include, as a minimum, the removal of all fluids and acids. Such treatment and any storage, including temporary storage, of batteries shall take place in sites with impermeable surfaces and suitable weatherproof covering or in suitable containers.”.

(2) In the event of any inconsistency between the condition set out in paragraph (1) and any other condition in the licence, that other condition shall be superseded by the condition set out in paragraph (1) to the extent of such inconsistency.

Transitional provisions: incineration

9.—(1) Any site licence or permit under the 2000 Regulations which is in force on 1st January 2010 and which authorises the incineration of waste is modified so as to include, as a new condition of the licence or permit, the following condition—

“The incineration of waste industrial and automotive batteries is prohibited.

This prohibition does not apply to the residues of any batteries that have undergone both treatment and recycling, provided that the treatment and recycling—

- (a) used best available techniques, in terms of the protection of health and the environment; and
- (b) complied, as a minimum, with Community legislation, in particular as regards health and safety and waste management.”.

(2) In the event of any inconsistency between the condition set out in paragraph (1) and any other condition in the licence or permit, that other condition shall be superseded by the condition set out in paragraph (1) to the extent of such inconsistency.

Transitional provisions: landfill

10.—(1) Any landfill permit which is in force on 1st January 2010 is modified so as to include, as a new condition of the permit, the following condition—

“The landfill of waste industrial and automotive batteries is prohibited.

This prohibition does not apply to the residues of any batteries that have undergone both treatment and recycling, provided that the treatment and recycling—

- (a) used best available techniques, in terms of the protection of health and the environment; and
- (b) complied, as a minimum, with Community legislation, in particular as regards health and safety and waste management.”.

(2) In the event of any inconsistency between the condition set out in paragraph (1) and any other condition in the permit, that other condition shall be superseded by the condition set out in paragraph (1) to the extent of such inconsistency.

St Andrew’s House,
Edinburgh
16th June 2009

RICHARD LOCHHEAD
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose Articles 8(1) (tailpiece), 12(2) and 14 and Annex III Part A of Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators (“the Directive”).

Regulation 3 amends section 33 of the Environmental Protection Act 1990 to remove collection points for waste portable batteries established under Article 8(1)(a) of the Directive from the scope of the criminal offences created by section 33(1)(a) and (b) (depositing, treating, keeping or disposing of controlled waste other than in accordance with a waste management licence).

Regulation 4 amends the Waste Management Licensing Regulations 1994 to require compliance with the conditions for the storage and treatment of waste batteries contained in Article 12(2) and Annex III Part A of the Directive, and to implement the ban on incineration of waste industrial and automotive batteries contained in Article 14 of the Directive through the waste management licensing regime.

Regulation 5 amends the definition of “environmental licence” contained in section 56 of the Environment Act 1995 to include registrations of particular activities involving waste batteries collected in accordance with the Directive. This enables the Scottish Environment Protection Agency (SEPA) to charge for such registrations through charging schemes made under section 41 of the 1995 Act.

Regulation 6 amends the Pollution Prevention and Control (Scotland) Regulations 2000 to implement the ban on incineration of waste industrial and automotive batteries under Article 14 of the Directive through the permitting regime established by those Regulations.

Regulation 7 amends the Landfill (Scotland) Regulations 2003 to add waste industrial and automotive batteries to the list of wastes which must not be accepted at landfills.

Regulations 8 to 10 set out the transitional arrangements for holders of existing licences and permits.

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

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