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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 226**

**The Waste (Scotland) Regulations 2011**

**Amendment of the Environmental Protection Act 1990**

- 2.—(1) The Environmental Protection Act 1990<sup>M1</sup> is amended as follows.
- (2) In section 29 (preliminary)—
- (a) after subsection (5) insert—
- “(5A) In relation to controlled waste—
- (a) a reference to the management of such waste is a reference to the collection, transport, recovery and disposal of such waste and includes—
- (i) the supervision of such operations;
- (ii) the after-care of disposal sites; and
- (iii) actions taken as a broker or dealer;
- (b) “collection” means the gathering of such waste, including the preliminary sorting and preliminary storage of such waste for the purposes of transport to a waste treatment facility; and
- (c) “recovery” refers to any of the operations listed in Part III of Schedule 4 to the Waste Management Licensing (Scotland) Regulations 2011, and any other operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in a plant or in the wider economy,
- and cognate expressions shall be construed accordingly.”; and
- (b) in subsection (6), for “includes its disposal by way of deposit in or on land” substitute “has the meaning given by regulation 2(1) of the Waste Management Licensing (Scotland) Regulations 2011”.
- (3) In section 33(1)(c) (prohibition on unauthorised or harmful deposit etc. of waste), for “treat, keep or dispose of” substitute “keep or manage”.
- (4) In section 34 (duty of care etc.)—
- (a) in subsection (1)—
- (i) after “broker” insert “or dealer”; and
- (ii) omit the “and” immediately following paragraph (b) and after that paragraph insert—
- “(ba) on the transfer of any waste oil, to ensure that this is separately collected where technically feasible; and”;
- (b) after subsection (2) insert—
- “(2A) It shall be the duty of any person who produces, keeps or manages controlled waste, or as a broker or dealer has control of such waste, to take all such measures available to that person as are reasonable in the circumstances to apply the waste hierarchy set out in Article 4(1) of the Waste Directive.

- (2B) The duty in subsection (2A)—
- (a) may be departed from where this is justified having regard to the overall impacts of the generation and management of such waste; and
  - (b) does not apply to an occupier of domestic property as respects the household waste produced on the property.
- (2C) The Scottish Ministers may give guidance on the discharge of the duty in subsection (2A), including the circumstances in which that duty may be departed from under subsection (2B)(a).
- (2D) A person seeking to discharge the duty in subsection (2A) must, in doing so, have regard to any guidance given under subsection (2C).”;
- (c) after subsection (4A) insert—
- “(4B) In this section—
- “separately collected” means collected separately from other types of waste so as to facilitate a specific treatment;
- “waste oil” means any mineral or synthetic lubrication or industrial oil which has become unfit for the use for which it was originally intended, such as used combustion engine oil and gearbox oil, lubricating oil, oil for turbines and hydraulic oil.”; and
- (d) in subsection (6), for “duty imposed by subsection (1)” substitute “ duties imposed by subsections (1) or (2A) ”.
- (5) In section 35(3) (waste management licences: general) omit the “and” immediately following paragraph (a), and after paragraph (b) insert—
- “(c) to the location of the boundaries of the specified land;”.
- (6) In section 37 (variation of licences)—
- (a) in subsection (1), for “subsection (3)” substitute “ subsections (2A) and (3) ”; and
  - (b) after subsection (2) insert—
- “(2A) The conditions of a site licence may not be modified under subsection (1) so as to remove any of the specified land referred to in section 35(1) from the licence.”.
- (7) In section 38 (revocation and suspension of licences)—
- (a) after subsection (3) insert—
- “(3A) In the case of a site licence, a revocation under subsection (3) may extend to the whole of the land to which the licence extends or to any part of it.”;
- (b) in subsection (5), at the beginning insert “ Subject to subsection (3A), ”;
  - (c) after subsection (6) insert—
- “(6A) In the case of a site licence, the suspension may extend to the whole of the land to which the licence extends or to any part of it.”;
- (d) in subsection (8), at the beginning insert “ Subject to subsection (6A), ”; and
  - (e) after subsection (12) insert—
- “(12A) If, in the case of a partial revocation referred to in subsection (3A), the authority is of the opinion that it is necessary to modify the conditions of the licence to take account of the revocation, it shall specify the necessary modifications in the notice served under subsection (12) and the modifications specified in the notice shall take effect on the date specified in the notice.”.
- (8) In section 39 (surrender of licences)—

- (a) after subsection (2) insert—

“(2A) A surrender of a site licence may extend to the whole of the land to which the licence extends or to any part of it.”;
  - (b) in subsection (4)(a), for “licence” substitute “ application ”;
  - (c) in subsection (9), at the end insert “ or, in the case of a partial surrender referred to in subsection (2A), the licence shall cease to have effect in relation to the land to which the surrender extends ”; and
  - (d) after subsection (9) insert—

“(9A) If, in the case of a partial surrender referred to in subsection (2A), the authority is of the opinion that it is necessary to modify the conditions of the licence to take account of the surrender, it shall specify the necessary modifications in the notice of its determination issued under subsection (9) and the modifications specified in the notice shall take effect on the date specified in the notice.”.
- (9) In section 40 (transfer of licences)—
- (a) after subsection (1) insert—

“(1A) In the case of a site licence, a transfer under subsection (1) may extend to the whole of the land to which the licence extends or to any part of it, and in this Part “transfer” and cognate expressions used in relation to a site licence include such a partial transfer.”;
  - (b) in subsection (5), at the beginning insert “ Subject to subsections (5A) to (5C), ”; and
  - (c) after subsection (5) insert—

“(5A) The authority shall effect a partial transfer of a licence by—

    - (a) issuing a new licence to the transferee as respects the land to which the transfer relates; and
    - (b) returning the original licence to the holder endorsed to record that there has been a transfer, the particulars of the land transferred and the land to which the original licence now relates.

(5B) In the case of a partial transfer, the conditions included in the new licence and original licence after the transfer shall be the same as the conditions included in the original licence immediately before the transfer in so far as they are relevant to the sites covered by the new licence and the original licence respectively, but subject to such modifications as, in the opinion of the authority, are necessary to take account of the transfer.

(5C) A partial transfer shall take effect from such date as may be agreed with the applicants and specified in the endorsement and new licence.”.
- (10) After section 40 insert—
- “40A Consolidated Licences**
- (1) Subsection (2) applies where—
    - (a) a licence has been varied, or affected by a partial revocation, surrender or transfer;
    - (b) there is more than one site licence held by the same person and applying to the same site; or
    - (c) there is more than one mobile plant licence held by the same person.
  - (2) The authority may replace the licence or licences, as the case may be, with a consolidated licence.
  - (3) A consolidated licence must not contain any new conditions in respect of any land, mobile plant or activity.”.

- (11) In section 42 (supervision of licensed activities)—
- (a) after subsection (6) insert—
- “(6ZA) In the case of a site licence, a revocation under subsection (6)(a) or a suspension under subsection (6)(c) may relate to the whole of the land to which the licence relates or to any part of it.”; and
- (b) in subsection (7), for “subsections (5) and (12)” substitute “ subsections (3A), (5), (12) and (12A) ”.
- (12) In section 75 (meaning of “waste” etc.)
- (a) for subsection (2) substitute—
- “(2) “Waste” means—
- (a) anything that is waste within the meaning of Article 3(1) of the Waste Directive, as read with Articles 5 and 6, and which is not excluded from the scope of that Directive by Article 2(1), (2) or (3);
- (b) radioactive waste within the meaning of section 1A of the Radioactive Substances Act 1993 which is exempt from the requirement for authorisation under section 13 or 14 of that Act by virtue of an order made, or having effect as if made, under section 15(2) of that Act;
- (c) where land is undergoing on-site remediation of contamination, that land including unexcavated contaminated soil and any contaminated buildings permanently connected with that land.”;
- (b) after subsection (2) insert—
- “(2A) “Broker” means any undertaking arranging the recovery or disposal of waste on behalf of others, whether or not such arrangements involve the broker taking physical possession of the waste; and “dealer” means any undertaking which acts in the role of principal to purchase and subsequently sell waste, whether or not this involves the dealer taking physical possession of the waste.”;
- (c) subsection (10) is repealed; and
- (d) for subsections (11) and (12) substitute—
- “(12) In this Part, “the Waste Directive” means Directive [2008/98/EC](#) of the European Parliament and of the Council on waste.”.

### Marginal Citations

- M1** [1990 c.43](#), as relevantly amended by the [Deregulation and Contracting Out Act 1994 \(c.40\)](#) section 33; the [Environment Act 1995 \(c.25\)](#) Schedule 22 paragraphs 64, 65, 66(2), 70(1) and (3), 72(1) and (2), 73, 74 and 76 and Schedule 24 paragraph 1; by [S.I. 1999/1820](#) Schedule 2 paragraph 102(2)(b) and (c); and by [S.S.I. 2000/323](#) Schedule 10 paragraph 3(3) and (4); 2005/22 regulation 3(3) and 2009/247 regulation 3.

**Changes to legislation:**

There are currently no known outstanding effects for the The Waste (Scotland) Regulations 2011, Section 2.