

EXECUTIVE NOTE

THE WASTE (SCOTLAND) REGULATIONS 2012

SSI/2012/148

1. The above Instrument is proposed to be made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The Instrument is subject to the affirmative procedure.

POLICY OBJECTIVES

2. The main policy drivers to this instrument are implementation of the revised Waste Framework Directive (2008/98/EC) (rWFD)¹ and Scotland's Zero Waste Plan². The Zero Waste Plan, launched in June 2010, set out actions to deliver important changes to how Scotland treats and manages waste. The Plan is an economic strategy and a resource strategy - not simply a waste strategy. It aims to maximise the value of all the material resources we use in our economy, helping to create new business opportunities as well as savings to existing businesses and local authorities in how they manage waste. To support this aim, the plan includes ambitious recycling targets, including a 70% recycling rate for household and all other waste streams by 2025. These Regulations set in place statutory measures to support delivery of the Zero Waste Plan.

3. The rWFD was transposed into Scots law through the Waste Management Licensing (Scotland) Regulations 2011 and the Waste (Scotland) Regulations 2011. The rWFD established new protocols and targets for waste management across Member States. These Regulations further transpose Article 11(1) and Article 22, and deal with the practical implementation of rWFD provisions such as the separate collection and management of waste and the promotion of the waste hierarchy.

EFFECT OF THE REGULATIONS

4. The waste management sector in Scotland is a service sector upon which all businesses and households in Scotland depend. The Regulations aim to ensure that the minimum level of service on offer is better than that of today. This will require increased competition in the waste management sector to ensure that businesses have access to choice and the sector passes on the opportunities and savings that come with moving to a resource-minded approach to waste management. To drive these changes, the regulatory measures in these Regulations are intended to:

- maximise the quantity and quality of materials available for recycling and minimise the need for residual waste treatment capacity;
- move residual waste management up the waste hierarchy (away from landfill) so as to extract resource value (energy and heat) from those materials we can't recycle;
- drive operational and cultural shifts in how waste is managed, including improved services to households and businesses; and

¹ Available at <http://ec.europa.eu/environment/waste/framework/index.htm>

² Available at <http://www.scotland.gov.uk/Topics/Environment/waste-and-pollution/Waste-1/wastestrategy>

- create the market certainty needed to support investment by businesses in the recycling, materials reprocessing and waste management sector.

5. The Regulations will also ensure the Scottish Government meets its requirements under the revised Waste Framework Directive. Meeting the requirements of the rWFD will require substantial changes to waste management in Scotland, including increasing recycling rates. The Zero Waste Plan is well aligned to the aims of the rWFD, and the Regulations are intended to bring about the changes required under the rWFD in a way that will maximise the economic opportunities afforded by a resource-centred approach to managing Scotland's waste.

6. Specific measures introduced by the Regulations include:

- a requirement to remove key recyclables (plastics and metals) from mixed waste prior to incineration (from 1 July 2012);
- a requirement for businesses to present dry recyclables (metals, plastics, paper, card and glass) and food waste of more than 50 kg/week for collection from end of 2013, with those producing less than 50kg/week exempt until end 2015;
- a requirement on local authorities to provide householders with a collection service for dry recyclables (end 2013) and food waste (end 2015);
- a ban on materials collected separately for recycling going to landfill or incineration (end 2013); and
- a ban on biodegradable municipal waste going to landfill, thus helping to substantially reduce harmful emissions of methane (end 2020).

7. Scotland has some of the most sparsely populated areas of the UK. This presents unique challenges to those responsible for collecting and managing waste. For instance, in rural areas, the significant distances and travel times involved in the collecting and transporting of waste and recyclable materials can increase financial costs and carbon costs from vehicle emissions. The regulations therefore include certain exemptions in “rural areas”, including an exemption for businesses presenting food waste for collection. Details of what constitutes a “rural area” can be found in “*Defining Rural and Non-Rural Areas to Support Zero Waste Policies*”³.

8. A phased approach to rolling out the key measures in the regulations has been adopted to ensure that there is sufficient time for businesses, particularly small businesses, to adopt new recycling services. Likewise, the phasing in of key measures ensures that there is sufficient time for engagement with the public and business prior to the roll out of new recycling services. Finally, bringing in the requirement to stimulate improved levels of recycling prior to banning material from landfill will help ensure that the need for residual waste treatment infrastructure capacity in Scotland is kept to a minimum.

9. The Regulations also introduce measures to ensure that those producing or managing waste take steps to promote high quality recyclable materials, thereby increasing the likelihood that materials will be recycled in Scotland, supporting the local economy and insulating industry from global fluctuations and unpredictable future quality demands.

10. The Regulations correct an error in the Control of Volatile Organic Compounds (Petrol Vapour Recovery) (Scotland) Regulations 2011 (SSI 2011/418), which inserted regulation 9G into the 2000 Regulations but did not make all the consequential amendments that were needed in

³ Available at <http://www.scotland.gov.uk/Publications/2012/03/5755>

that respect. They also remove a disproportionate requirement for newspaper advertising of applications relating to petrol vapour recovery installations.

CONSULTATION

11. An earlier version of the Regulations were subject to a 12 week consultation to which 100 responses from a broad range of stakeholders were received. The responses showed strong support for the principles underpinning the Regulations, although a number of technical and practical points were raised. To address these points, Scottish Government has engaged extensively with stakeholders, which included the establishment of working groups whose advice helped inform policy and technical changes in the Regulations as laid.

12. A draft of the BRIA was the subject of a public consultation with 10 responses received. The BRIA was also presented to the Regulatory Review Group and was well received. As part of the BRIA consultation process, interviews were held with seven businesses based in Scotland from a range of sectors. The feedback from these interviews is set out in the final BRIA.

13. A full Strategic Environmental Assessment (SEA) was produced as part of the development of the Zero Waste Plan of which these Regulations are a part. A Screening Report covering the environmental impact of these Regulations was prepared. This can be accessed here:

<http://www.scotland.gov.uk/Topics/Environment/environmental-assessment/sea/SEAG>.

EQUALITY ASSESSMENT

14. These Regulations will impact on all those who produce, store, transport or manage controlled waste in Scotland. It does not unduly target any specific sector. On this basis it was not deemed necessary to produce an Equality Assessment. A competition assessment is however included in the BRIA.

FINANCIAL IMPLICATIONS

15. The attached BRIA provides a detailed assessment of the financial implications. The measures introduced under the Regulations are designed to drive high levels of source segregation of recyclable materials both by local authorities and businesses that ultimately will help drive down the costs of waste management, reduce demand for finite virgin materials and create new economic opportunities for Scotland through the reprocessing of materials.

16. A key consideration in developing the Regulations has been creating a regulatory framework that minimises, as far as possible, short term financial impacts (e.g. investment in new equipment and processes) without hindering opportunities for longer term financial savings or economic opportunities.

ENFORCEMENT

17. The power to enforce section 34 of the Environmental Protection Act 1990 is shared by SEPA and local authorities, which allows for effective and proportionate enforcement of the key changes made by the Regulations.

18. The Scottish Government is developing and rolling out an extensive support and communications strategy to assist all affected by these new measures, including further 'Duty of Care' guidance under section 34. It is the view of Scottish Government that by supporting and

working closely with all sectors affected by the Regulations the need for future enforcement action will be greatly reduced.

Environmental Quality Division
Scottish Government
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