

POLICY NOTE

THE WASTE (MEANING OF RECOVERY) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) ORDER 2015

SSI 2015/438

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 74 of the Marine and Coastal Access Act 2009.

The instrument is subject to negative procedure.

POLICY OBJECTIVES

The European Commission has introduced an amendment to the Waste Framework Directive 2008/98/EC (WFD). The amendment contained within Commission Directive 2015/1127 (the new Directive) amends Annex II of the WFD and the definition of “recovery” which is defined in part by reference to that Annex.

The effect of the amendment is to seek to redress an imbalance that mainly affects energy from waste through incineration operations in Southern European countries which have warmer climates and will have minimal impact if any, on equivalent operations in Scotland.

The new Directive requires amendments to the following Scottish Regulations and Orders.

- The Special Waste Regulations 1996
- The End-of-Life Vehicles (Storage and Treatment) (Scotland) Regulations 2003
- The National Waste Management Plan for Scotland Regulations 2007
- The Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011
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- The Waste Management Licensing (Scotland) Regulations 2011
- The Pollution Prevention and Control Regulations 2012

This Order, entitled “*The Waste (Meaning of Recovery) (Miscellaneous Amendments) (Scotland) Order 2015*”, amends the relevant definitions and references.

This instrument only partly transposes the requirements of the new Directive. Certain UK-wide legislation requires amending and this will be done by the UK Government to ensure full transposition.

The Order will have no or minimal impact on existing waste management procedures in Scotland. The other UK Administrations are making similar amendments to their own legislation.

CONSULTATION

The Order is being made under section 74 of the Marine and Coastal Access Act 2009 in respect of the amendment to the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011, and section 2(2) of the European Communities Act 1972 (ECA) for the

rest of the amendments. The 2011 Order was made under an executive devolved power and so could not be amended using section 2(2) of the 1972 Act.

The Marine and Coastal Access Act 2009 requires consultation to take place with such persons as the Scottish Ministers consider appropriate, therefore the Scottish Government Marine Division has written to stakeholders seeking their views on the amendments.

The Scottish Government has not consulted more widely since the changes are unlikely to have any impact on waste incineration operations in Scotland. The use of section 2(2) of the European Communities Act 1972 rather than domestic powers under the Pollution Prevention and Control Act 1999 or the Marine (Scotland) Act 2010 allows this instrument to be made without further statutory consultation, under the negative procedure, and without the need for a designation order to be made under the Pollution Prevention and Control Act 1999 in respect of the amended Waste Framework Directive. In light of the technical nature of the amendments and the minimal impact this Order will have on energy waste operations, this is considered the most appropriate use of resources in the circumstances.

IMPACT ASSESSMENTS

The amendments are to be made to ensure compliance with terminology used by the European Commission and will have little or no effect on the waste management industry in Scotland.

Therefore no impact assessments were considered necessary.

FINANCIAL EFFECTS

Richard Lochhead MSP, Cabinet Secretary for Rural affairs, Food and the Environment confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Environment and Forestry
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