

## POLICY NOTE

### The Environmental Protection Act 1990 Amendment (Scotland) Regulations 2019

SSI 2019/332

The above instrument was made in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999. The instrument is subject to affirmative procedure.

#### **Purpose of the instrument.**

The instrument would extend existing powers to require holders of waste management licences to accept, keep or dispose of waste to apply to waste operators holding other types of environmental permit.

#### **Policy Objectives**

The current power enables Ministers to ensure that waste is appropriately treated or disposed of in circumstances where the normal regulatory powers fall short or have been exhausted. However, it extends only to holders of waste management licences. There are waste holders which rely on exemptions from the waste management licensing regime to carry out their operations, and waste incinerators, landfills and larger waste treatment facilities are regulated under the pollution prevention and control regime.

Ministers consider it appropriate and necessary to extend the current power to all operators which accept, keep or dispose of waste. In reaching that conclusion, they are mindful of the obligation in Article 13 of the Waste Framework Directive to ensure that waste management is carried out without endangering human health or harming the environment, and consider that this requirement should be made explicit in the provision.

The current power provides for operators to recover their reasonable costs. Ministers consider it appropriate for that to apply to the provision as extended.

#### **Consultation**

As required by section 2(4) of the Pollution Prevention and Control Act 1999, Ministers have consulted the Scottish Environment Protection Agency (SEPA), The Scottish Environmental Services Association, the Scottish Resources Management Association and the Chartered Institute of Waste Managers in Scotland. The consultation paper was published on the Scottish Government website and was available to other organisations and members of the public. **Ten** sets of comments were received of which **five** fully supported the amendment.

**Four** of the remaining respondents were generally supportive of the amendment but made comments on the format of the regulations. Three of those **four** respondents commented on the lack of an appeal. The current power of direction is not subject to a right of appeal. Ministers do not consider it appropriate to introduce a right of appeal. A condition has been introduced that the power can only be used for the purpose of preventing harm to human

health or the environment. If the power were required to be used, it is likely that immediate action would be required. A right of appeal would potentially delay action, thereby defeating the purpose of the provision.

Three of the **four** respondents asked for the extended power to apply to permits issued under the Environmental Authorisations (Scotland) Regulations 2018 (the integrated authorisation framework) which Ministers intend to use for permitting waste management activities in the future. The amendments are already drafted with those regulations in mind, and the four types of authorisation available under the integrated authorisation framework are included in the definition of “authorisation” in the new section 57(8)(a).

Two of the **four** respondents suggested that Ministers should consult with operators and SEPA before issuing a direction regarding (1) permit compliance (2) financial provision and (3) site suitability. Ministers would expect such conversations to take place, but given the potential need for immediate action do not wish to include a statutory obligation to consult prior to exercising the power.

**One** respondent questioned the point of this exercise. As noted above, Ministers consider it appropriate and necessary to extend the current power of direction to all operators which accept, keep or dispose of waste.

## **Impact Assessments**

The current power has not been used since devolution. It is intended for use only when all other options have been exhausted, and when there is a threat of harm to the environment or human health. As there is provision for recovery of reasonable costs, exercise of the power is not likely to result in costs to businesses, charities or voluntary bodies, or to have significant equalities impacts.

## **Financial Effects**

The Cabinet Secretary for the Environment, Climate Change and Land Reform confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

**Scottish Government  
Environment and Forestry Directorate**

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