

*Draft Regulations laid before the Scottish Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2012 No.**

**ENVIRONMENTAL PROTECTION**

**The Waste (Scotland) Regulations 2012**

*Made* - - - -  
*Coming into force* - -

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1) and all other powers enabling them to do so. In accordance with paragraph 2(2) of Schedule 2 to that Act(2), a draft of these Regulations 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 (Scotland) Regulations 2012, and come into force on the day after the day on which they are made.
- (2) These Regulations extend to Scotland only.

**Amendment of the Environmental Protection Act 1990**

- 2.—(1) The Environmental Protection Act 1990(3) is amended as follows.
- (2) In section 29(5A) (preliminary)(4), after paragraph (b) insert—

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(1) 1972 c.68; section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46) (“the 1998 Act”) (and paragraph 15(3) was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), by section 27(1)(a) of the 2006 Act, and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). Paragraph 1(d) of Schedule 2 to the European Communities Act 1972 has been modified by section 47 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) so that the functions conferred under section 2(2) can be exercised to create an offence punishable on summary conviction by a fine of up to the statutory maximum. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(2) Schedule 2 has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(3) 1990 c.43; as relevantly amended by paragraph 167 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39), by section 33 of the Deregulation and Contracting Out Act 1994 (c.40), by paragraphs 64 to 66, 70, 72 to 74 and 76 of Schedule 22, and paragraph 1 of Schedule 24, to the Environment Act 1995 (c.25), by paragraph 20 of schedule 7 to the Water Industry (Scotland) Act 2002 (asp 3), by S.I. 1999/1820, and by S.S.I. 2000/323, 2005/22, 2009/247 and 2011/226.

(4) Subsection (5A) was inserted by S.S.I. 2011/226.

- “(ba) “separate collection” means that waste is presented for collection, and collected, in a manner that ensures that—
- (i) dry recyclable waste is kept separate from other waste;
  - (ii) waste from one dry waste stream is kept separate from waste in another such stream; and
  - (iii) food waste is kept separate from other waste;”.
- (3) In section 34(5) (duty of care etc. as respects waste)—
- (a) in subsection (1)—
    - (i) for “carries, keeps, treats or disposes of” substitute “keeps or manages”;
    - (ii) after paragraph (aa) insert—
      - “(ab) to prevent any contravention by any other person of subsection (2A), (2E), (2F), (2I) or (2K);”;
    - (iii) in paragraph (ba), for “this is separately collected” substitute “it is collected separately from other types of waste so as to facilitate a specific treatment;”;
  - (b) after subsection (2D) insert—
    - “(2E) It shall, from 1st January 2014, be the duty of any person who produces controlled waste (other than an occupier of domestic property as respects household waste produced on the property) to take all reasonable steps to ensure the separate collection of dry recyclable waste.
    - (2F) It shall, from 1st January 2014, be the duty of any person who controls or manages a food business that produces controlled waste to take all reasonable steps to ensure the separate collection of food waste produced by the business.
    - (2G) The duty in subsection (2F) does not apply to food waste—
      - (a) produced on premises in a rural area;
      - (b) produced in the period beginning on 1st January 2014 and ending on 31st December 2015—
        - (i) on premises in use as a hospital (as defined in section 108 of the National Health Service (Scotland) Act 1978(6)); or
        - (ii) by a business that produces less than 50 kilograms of food waste a week;
      - (c) produced, on or after 1st January 2016, by a business that produces less than 5 kilograms of food waste a week;
      - (d) that includes catering waste that originates from means of transport operating internationally.
    - (2H) The duty in subsection (2F) may be departed from where food waste is mixed with other biodegradable waste to the extent that the mixed waste is presented for collection in a manner that ensures that the amount of food waste collected is not significantly less than would be the case were the wastes not mixed.
    - (2I) It shall be the duty of any person who transports controlled waste to collect and transport separately from other waste any waste presented—
      - (a) for collection in accordance with subsection (2E) or (2F);
      - (b) for collection in a receptacle provided under an arrangement made in accordance with section 45C(2) or (5).

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(5) Section 34 has been relevantly amended by [S.S.I. 2011/226](#).

(6) [1978 c.29](#).

(2J) The duties in subsection (2E) or (2I) may be departed from where dry recyclable waste is managed in such a manner as will ensure that—

- (a) the amount of material recycled from the waste is not significantly less, and the quality of the material recycled is not significantly lower, than would be the case were there no departure from the duties; and
- (b) the waste is not mixed with other waste that cannot be recycled.

(2K) It shall, from 1st January 2016, be the duty of any person who produces food waste (other than an occupier of domestic property as respects household waste, or an occupier of property in a rural area as respects food waste, produced on such properties) to ensure that food waste is not deposited in a public drain or sewer, or in a drain or sewer that connects to a public drain or sewer.

(2L) It shall be the duty of any person who produces or manages controlled waste, or who as a broker or dealer has control of such waste, to take all reasonable steps to—

- (a) ensure that the waste meets any quality standard for the management of material included in the waste;
- (b) ensure that the waste is managed in a manner that promotes high quality recycling; and
- (c) prevent any contravention by another person of this subsection.”;

(c) after subsection (4A), insert—

“(4AB) In subsection (1)(c), a reference to a written description of the waste includes a description that is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.”;

(d) in subsection (4B), for the definition of “separately collected” substitute—

““business” includes the undertaking of a canteen, club, school, hospital or institution, whether carried on for profit or not, and any undertaking or activity carried on by a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(7) or any other public authority;

“drain”, “public drain”, “public sewer” and “sewer” have the same meanings as in section 59 of the Sewerage (Scotland) Act 1968(8);

“food business” means an undertaking, whether for profit or not, and whether public or private, carrying out any activity related to the processing, distribution, preparation or sale of food;

“rural area” means a remote small town, accessible rural area or remote rural area as described by reference to postcode units in table 2 of “Defining Rural Areas

(7) 1994 c.39; section 2 was amended by paragraph 232 of Schedule 22 to the Environment Act 1995 (c.25).

(8) 1968 c.47; section 59 was amended by Schedule 29 to the Local Government (Scotland) Act 1973 (c.65), by paragraph 64 of Schedule 9 to the Roads (Scotland) Act 1984 (c.54), by section 23 of and Schedule 6 to the Abolition of Domestic Rates etc. (Scotland) Act 1987 (c.47), by paragraph 103 of Schedule 8 to the New Roads and Street Works Act 1991 (c.22), by paragraph 14 of Schedule 1 and paragraph 75 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39), by paragraph 3 of schedule 3 to the Regulation of Care (Scotland) Act 2001 (asp 8), by paragraph 1 of Schedule 24 to the Environment Act 1995 (c.25), by paragraph 41 of schedule 5 to the Water Industry (Scotland) Act 2002 (asp 3), by section 33 of and paragraph 23 of schedule 3 to the Water Industry and Water Services (Scotland) Act 2003 (asp 3), and by S.S.I. 2011/211.

- and Non-Rural Areas to support Zero Waste Policies”(9), published by the Scottish Government on 13th March 2012;”;
- (e) in subsection (5), for “the duty imposed by subsection (1)” substitute “a duty imposed by subsection (1), (2E), (2F), (2I), (2K) or (2L)”;
- (f) in subsection (6)—
- (i) after “fails” insert “without reasonable excuse”; and
  - (ii) for “or (2A)” substitute “, (2A), (2E), (2F), (2I), (2K) or (2L)”;
- (g) in subsection (7), for “duty imposed on them by subsection (1) above” substitute “duty imposed on them by subsection (1), (2E), (2F), (2I), (2K) or (2L)”.
- (4) In section 45(10) (collection of controlled wastes)—
- (a) in subsection (1)—
    - (i) at the end of paragraph (a), omit “and”; and
    - (ii) after paragraph (b), insert—
 

“; and

      - (c) if requested by the occupier of premises in its area to collect from the premises dry recyclable waste or food waste presented for collection in accordance with section 34(2E) or (2F), to arrange for the collection of the waste.”;
  - (b) after subsection (1), insert—
 

“(1A) In subsection (1)(c), the reference to “dry recyclable waste or food waste” does not include—

    - (a) household waste; and
    - (b) food waste from premises in a rural area.”; and
  - (c) for subsection (12), substitute—
 

“(12) In this section—

“privy” means a latrine which has a moveable receptacle;

“cesspool” includes a settlement tank or other tank for the reception or disposal of foul matter from buildings; and

“rural area” has the same meaning as in section 34(4B).”.
- (5) After section 45B(11) insert—

**“45C Separate collection of dry recyclable waste and food waste: Scotland**

(1) This section applies to a waste collection authority whose area is in Scotland (an “authority”) when the authority is making an arrangement in accordance with section 45(1)(a).

(2) An authority must, from 1st January 2014, arrange for there to be provided to the occupier of every domestic property in its area such receptacles as will enable the separate collection of dry recyclable waste from the property.

(3) An authority need not arrange for a receptacle to be provided under subsection (2) if—

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(9) ISBN 978-1-78045-732-1. A postcode unit is an area in relation to which a single postcode is used to facilitate the identification of postal delivery points within the area. A copy of the publication can be obtained from: <http://www.scotland.gov.uk/Resource/0038/00389689.pdf>.

(10) Section 45 has been relevantly amended by paragraph 167 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39), and by paragraph 20 of schedule 7 to the Water Industry (Scotland) Act 2002 (asp 3).

(11) Section 45B was inserted in relation to Wales by section 2 of the Household Waste Recycling Act 2003 (c.29).

- (a) the property is in a rural area, and the authority considers that the separate collection of dry recyclable waste from the property would not be environmentally or economically practicable; or
  - (b) the authority considers that dry recyclable waste if not presented in a receptacle will be deposited at a bring site.
- (4) An authority, if satisfied that dry recyclable waste will not be mixed with other waste that cannot be recycled, need not comply with subsection (2) to the extent that it considers that the amount of material recycled from such waste in its area will not be significantly less, and the quality of the material recycled will not be significantly lower, than would be the case were the authority to comply.
- (5) An authority must, from 1st January 2016, arrange for there to be provided to the occupier of every domestic property in its area (apart from a property in a rural area)—
- (a) a receptacle which enables the separate collection of food waste from the property; or
  - (b) where an authority is satisfied that the amount of food waste that will be collected is not significantly less than would be collected in a receptacle provided under paragraph (a), a receptacle which enables the occupier to present food waste and other biodegradable waste for collection.
- (6) An authority must, from 1st January 2014, take such steps as the authority considers reasonable to—
- (a) promote separate collection (including the making of arrangements for the provision of a food waste receptacle); and
  - (b) promote recycling in any other manner.
- (7) In this section—
- “bring site” means any site (supervised or otherwise) where—
- (a) an occupier of domestic property can deposit dry recyclable waste produced on that property in receptacles for one or more dry waste streams; and
  - (b) waste so deposited is collected and transported separately by an authorised person (for which see section 34(3));
- “receptacle” has the same meaning as in section 46(10); and
- “rural area” has the same meaning as in section 34(4B).”.
- (6) In section 46(2) (receptacles for household waste), for “waste which is to be recycled and waste which is not” substitute “dry recyclable waste, any dry waste stream, food waste, or any other waste which is to be recycled”.
- (7) In section 75(12) (meaning of “waste”, etc.), after subsection (7) insert—
- “(7A) “Dry recyclable waste” means controlled waste that is—
- (a) glass;
  - (b) metals;
  - (c) plastics;
  - (d) paper; or
  - (e) card (including cardboard),
- and dry recyclable waste of the same type (such as glass) is referred to as a “dry waste stream”.

(7B) “Food waste” means controlled waste that was at any time food intended for human consumption (even if of no nutritional value), and includes biodegradable waste produced as consequence of the processing or preparation of food, but does not include drink.”.

### **Amendment of the Pollution Prevention and Control (Scotland) Regulations 2000**

**3.—(1)** The Pollution Prevention and Control (Scotland) Regulations 2000<sup>(13)</sup> are amended as follows.

(2) In regulation 2 (general interpretation)—

(a) insert as the first definition—

““the 1990 Act” means the Environmental Protection Act 1990;” and

(b) in the definition of “hybrid permit” for “9, 9C, 9D, 9E, 9F” substitute “9 to 9G”.

(3) In regulation 7(2)(a) (permits: general provisions), for “9, 9C, 9D, 9E, 9F or” substitute “9 to 9G,”.

(4) After regulation 9 (conditions of permits: specific requirements) insert—

#### **“Conditions of permits: separately collected waste**

**9A.—(1)** Subject to regulation (10), SEPA shall ensure that any permit granted or varied on or after 1st January 2014—

(a) in respect of any activity falling within Schedule 1 Part 1 Chapter 5, or within Section 6.8 of Chapter 6, contains such conditions as it considers necessary to ensure that no separately collected waste is mixed with any other waste or any material, to the extent that mixing would hamper further recycling;

(b) authorising the incineration or co-incineration of waste contains such conditions as it considers necessary to ensure that no separately collected waste capable of being recycled is incinerated or co-incinerated (as the case may be).

(2) In this regulation, and in regulations 9B and 9F where used—

“co-incineration” and “incineration” have the same meanings as in Schedule 1 Part 1 Section 5.1;

“dry recyclable waste” has the same meaning as in section 75 of the 1990 Act; and

“separately collected waste” means waste which has been collected and transported in accordance with section 34(2I) of the 1990 Act.

#### **Conditions of permits: incineration and co-incineration of metals and hard plastics**

**9B.** Subject to regulation (10), SEPA shall ensure that any permit granted or varied on or after 1st July 2012 authorising the incineration or co-incineration of municipal waste contains such conditions as it considers necessary to ensure where practicable that no waste including non-ferrous metals or hard plastics is incinerated or co-incinerated (as the case may be).”.

(5) In regulation 9F (conditions of permits: incineration or co-incineration with energy recovery), omit paragraph (2).

(6) In regulation 10(2) (standard rules), for “9, 9C, 9D, 9E, or 9F” substitute “9 to 9G”.

(7) In regulation 10A(1) (standard rules; conditions of permit), for “9, 9C, 9D, 9E, or 9F” substitute “9 to 9G”.

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<sup>(13)</sup> S.S.I. 2000/323; as amended by paragraph 7 of Part 2 of schedule 1 to the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), by S.I. 2007/2325, and by S.S.I. 2002/493, 2003/146, 170, 221 and 235, 2004/26, 110, 112 and 512, 2005/101, 340 and 510, 2006/127, 2008/410, 2009/247 and 336, 2010/236 and 2011/171, 226, 285 and 418.

- (8) In regulation 13(1) and (4) (variation of permits), for “9, 9C, 9D, 9E, 9F,” substitute “9 to 9G”.
- (9) In regulation 22(11) (appeals), for “9C, 9D, 9E, 9F,” substitute “9A to 9G”.
- (10) In Schedule 3 (prescribed dates and transitional arrangements), in paragraph 25 omit from “; and” to the end.
- (11) In Schedule 4 (grant of permits), Part 1 (applications for permits)—
- (a) in paragraph 1B—
    - (i) in sub-paragraph (1)—
      - (aa) at the end of head (d), omit “and”; and
      - (bb) after head (e) insert—
        - “(f) the plant will be equipped and operated in such a manner that no separately collected waste capable of being recycled is incinerated or co-incinerated (as the case may be); and
        - (g) the plant will be equipped and operated in such a manner as is practicable to ensure that no waste that includes non-ferrous metals or hard plastics is incinerated or co-incinerated (as the case may be).”;
    - (ii) for sub-paragraph (2) substitute—
      - “(2) Sub-paragraph (1)—
        - (a) shall not apply to an existing installation in respect of which an application for a permit was duly made before 28th December 2004;
        - (b) head (f), shall not apply to an application for an installation intended to be operated before 1st January 2014;
        - (c) head (g), shall not apply to an application for an installation intended to be operated before 1st July 2012.
      - (3) In this paragraph “separately collected waste” means waste which has been collected and transported separately in accordance with section 34(2I) of the 1990 Act.”;
  - (b) in paragraph 8, for head (b) substitute—
    - “(b) the carrying out of an activity falling within paragraphs (c)(ii), (d), (e) or (f) of Part B of Section 1.2 of Part 1 of Schedule 1 (unloading of petrol and motor vehicle refuelling activities at a service station);”.

### **Amendment of the Landfill (Scotland) Regulations 2003**

- 4.—(1) The Landfill (Scotland) Regulations 2003<sup>(14)</sup> are amended as follows.
- (2) In regulation 11 (prohibition of acceptance of certain wastes at landfills)—
- (a) in paragraph (1), after sub-paragraph (fa) insert—
    - “(fb) as from 1st January 2014, waste which has been collected and transported in accordance with section 34(2I) of the Environmental Protection Act 1990;
    - (fc) as from 1st January 2021, biodegradable municipal waste;”;
  - (b) in paragraph (3) before the definition of “corrosive” insert—
    - ““biodegradable municipal waste” if it consists of municipal waste that is also biodegradable waste, but does not include waste—

<sup>(14)</sup> S.S.I. 2003/235; as amended by paragraph 8 of schedule 2 to the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), and by S.S.I. 2003/343, 2009/247, 2010/60 and 2011/226.

- (i) that is treated, and either—
  - (aa) respiration activity after a static respiration test is less than 10 milligrams of oxygen for each gram of dry material; or
  - (bb) dynamic respiration over one hour is less than 1000 milligrams of oxygen for each kilogram of volatile solids;
- (ii) that is incinerated, and the total organic carbon content is less than 5%”; and
- (c) after paragraph (3) insert—
  - “(4) In this regulation, a reference to the total organic carbon content of waste is a reference to the total amount of carbon bound in organic compounds in the waste.”.

### **Amendment of the Waste Management Licensing (Scotland) Regulations 2011**

5.—(1) The Waste Management Licensing (Scotland) Regulations 2011<sup>(15)</sup> are amended as follows.

(2) After regulation 13 (conditions of site licences: incineration of waste industrial and automotive batteries), insert—

#### **“Conditions of waste management licences: separately collected wastes**

**13A.** A waste management licence that is granted or varied by the waste regulation authority on or after 1st January 2014 which authorises storage or treatment (or both) of waste must contain such conditions as the authority considers necessary to ensure that no waste collected and transported in accordance with section 34(2I) of the Environmental Protection Act 1990 is mixed with any other waste or any material, to the extent that mixing would hamper further recycling.”.

(3) In regulation 17 (exemptions from waste management licensing), after paragraph (4) insert—

“(4A) In the case of an exempt activity involving the storage, treatment, recovery or disposal of waste by a person at a site other than the place at which the waste was produced, paragraph (1) applies only if that person ensures that no waste collected and transported in accordance with section 34(2I) of the Environmental Protection Act 1990 is mixed with any other waste or any material to the extent that mixing would hamper further recycling.”.

(4) In regulation 19(2) (exempt activities: registration requirement), for “the authority responsible for granting an authorisation under regulation 27 of the Animal By-Products (Scotland) Regulations 2003<sup>(16)</sup>” substitute—

“the competent authority for the purposes of Article 18 of Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation)<sup>(17)</sup>”

(5) In Schedule 1 (activities exempt from waste management licensing)—

- (a) in paragraph 7(4), omit “the Animal By-Products (Scotland) Regulations 2003 and”;
- (b) in paragraph 12, in the last entry of table 7, for “regulation 15 of the Animal By-Products (Scotland) Regulations 2003” substitute “Article 10 of and Annex V of Commission Regulation (EU) 142/2011 implementing Regulation (EC) No 1069/2009 of the European

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<sup>(15)</sup> S.S.I. 2011/228.

<sup>(16)</sup> S.S.I. 2003/411, as amended by S.S.I. 2009/7.

<sup>(17)</sup> OJ L 300, 14.11.2009, p.1; as amended by Directive 2010/63/EU (O.J. L 276, 20.10.2010, page 33). The Scottish Ministers are the competent authority for the purposes of Commission Regulation (EU) 142/2011 by virtue of regulation 3 of the Animal By-Products (Enforcement)(Scotland) Regulations 2011 (S.S.I. 2011/171).



Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive [97/78/EC](#) as regards certain samples and items exempt from veterinary checks at the border under that Directive<sup>(18)</sup>”;

- (c) in paragraph 19(2), omit “the Animal By-Products (Scotland) Regulations 2003 and”; and
- (d) in paragraph 23—

- (i) in sub-paragraph (1), for “at a collection centre in accordance with an authorisation under regulation 27 of the Animal By-Products (Scotland) Regulations 2003 (in this paragraph, “the 2003 Regulations”)” substitute “authorised under regulation 8 of the Animal By-Products (Enforcement) (Scotland) Regulations 2011<sup>(19)</sup>”; and

- (ii) for sub-paragraph (3), substitute—

- “(3) In this paragraph—

- “animal by-products” has the same meaning as in Article 3 of Regulation [\(EC\) No 1069/2009](#) of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation [\(EC\) No 1774/2002](#) (Animal by-products Regulation);

- “collection centre” has the same meaning as in Annex 1 of Commission Regulation (EU) No 142/2011 implementing Regulation [\(EC\) No 1069/2009](#) of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive [97/78/EC](#) as regards certain samples and items exempt from veterinary checks at the border under that Directive.”.

- (6) In Schedule 4 (waste framework directive) in Table 23, ninth row, second column, after “45,” insert “45C,”.

St Andrew’s House,  
Edinburgh  
Date

A member of the Scottish Executive

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<sup>(18)</sup> OJ L 54, 26.2.2011, p.1; as amended by Commission Regulation (EU) No. 749/2011 (O.J. L 198, 30.7.2011, page 3).

<sup>(19)</sup> [S.S.I. 2011/171](#).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the collection, transport and treatment of dry recyclable waste and food waste, and for related matters.

They transpose Articles 11(1) (re-use and recycling) and 22 (bio-waste) of Directive [2008/98/EC](#) on waste (OJ L 312, 22.11.2008, p.3) (“the Directive”), and generally make provision connected with the implementation of requirements under European Union waste management legislation.

Regulation 2 amends the Environmental Protection Act [1990 \(c.43\)](#) (“the 1990 Act”) to provide for the separate collection of dry recyclable waste and food waste, and for the treatment of such wastes and of controlled waste generally (see section 29 of the 1990 Act as amended by paragraph (2) of that regulation for a definition of “separate collection”, and section 75 of the 1990 Act as amended by paragraph (7) of that regulation for definitions of “controlled waste”, “dry recyclable waste”, and “food waste”).

Paragraph (3)(a) of that regulation amends section 34(1) of the 1990 Act to align the descriptions of waste activities in that subsection with the definitions of such activities in section 29(5A) of that Act (as inserted by [S.S.I. 2011/226](#)), to create a duty on persons carrying out waste activities to prevent a contravention by another person of a duty in section 34 (other than the new duty in section 34(2L)), and to amend the waste oil provisions in section 34(1)(b) as a consequence of the repeal of the definition of “separately collected” in section 34(4B) (for which see regulation 2(3) (d) of these Regulations).

Paragraphs (3)(b) of that regulation inserts new subsections (2E) to (2L) into section 34, with the effect of creating duties in the specified circumstances on—

- (a) persons who produce controlled waste (other than occupiers of domestic properties) to ensure the separate collection of dry recyclable waste from 1st January 2014 (see subsections (2E) and (2J));
- (b) persons who control or manage a food business to ensure the separate collection of food waste from 1st January 2016 (see subsections (2F) to (2H));
- (c) persons who collect and transport controlled wastes to keep separate all separately collected wastes (see subsections (2I) and (2J));
- (d) persons who produce food waste other than on domestic properties or in a rural area to ensure as from 1st January 2016 that the waste is not deposited in a drain or sewer (see subsection (2K)); and
- (e) on persons who produce or manage controlled waste to take reasonable steps to ensure that high quality waste is available for recycling, and to prevent any other person contravening that duty (see subsection (2L)).

Paragraph (3)(c) of that regulation provides for written descriptions of waste to be transmitted by electronic means.

Paragraph (3)(d) of that regulation provides for definitions of terms used in the duties so created.

Paragraph (3)(e) of that regulation amends section 34(5), which provides for requirements as respects the making, retention and furnishing of documents, so that requirements can be made in connection with the duties so created.

Paragraph (3)(f) of that regulation amends section 34(6), which provides for it to be an offence to fail to comply with a duty in that section, so that the offence as modified by that paragraph applies to the duties so created.

Paragraph (3)(g) of that regulation amends section 34(7), which provides for a code of practice for the purpose of providing practical guidance on how to discharge certain duties in that section, so that a code can give guidance in relation to the duties so created.

Paragraph (4) of that regulation amends section 45 of the 1990 Act so that a waste collection authority in Scotland may be required to collect dry recyclable waste from any premises, or food waste from non-rural premises, if requested to do so by the occupier of such premises. In Scotland, a waste collection authority is a local authority.

Paragraph (5) of that regulation inserts a new section 45C into the 1990 Act. The effect is to require a waste collection authority in Scotland to provide receptacles for the separate collection of dry recyclable waste (from 1st January 2014) and food waste (from 1st January 2016), in the specified circumstances. It also requires an authority to promote the separate collection and recycling of waste. Paragraph (6) makes a consequential amendment to section 46 of the 1990 Act, which enables an authority to make requirements in respect of the use of receptacles for waste.

Regulation 3 amends the Pollution Prevention and Control (Scotland) Regulations 2000 ([S.S.I. 2000/323](#)) (“the 2000 Regulations”).

Paragraph (4) of that regulation inserts regulations 9A and 9B into the 2000 Regulations (the regulations are inserted in the gap between regulations 9 and 9C). The effect is to create duties on the Scottish Environment Protection Agency (“SEPA”) to attach such conditions as it considers necessary to ensure that—

- (a) from 1st January 2014, separately collected wastes are neither mixed with other wastes or materials where doing so would hamper further recycling, or burnt if capable of being recycled (see regulation 9A); and
- (b) from 1st July 2012, where practicable waste including non-ferrous metals or hard plastics is not burnt (see regulation 9B).

Paragraphs (2), (3), and (5) to (10) of that regulation amend other provisions of the 2000 Regulations as a consequence of the insertion of the new regulations 9A and 9B.

The changes made by paragraphs (2), (3), and (6) to (9) also correct for an error in the Control of Volatile Organic Compounds (Petrol Vapour Recovery) (Scotland) Regulations 2011 ([S.S.I. 2011/418](#)), which inserted regulation 9G into the 2000 Regulations but did not make all the consequential amendments that were needed in that respect.

Paragraph (11)(a) of that regulation amends paragraph 1B of Schedule 4 to the 2000 Regulations so that the descriptions of measures required for the purposes of a permit application include descriptions related to the requirements of new regulations 9A and 9B.

Paragraph (11)(b) of that regulation amends paragraph 8 of Schedule 4 so as to disapply the requirement in paragraph 5 of that Schedule for applications for permits that relate to motor refuelling activities at new or existing service stations to be advertised in newspapers.

Regulation 4 amends the Landfill (Scotland) Regulations 2003 ([S.S.I. 2003/235](#)) (“the 2003 Regulations”) with the effect that the operator of a landfill shall not accept separately collected waste from 1st January 2014, or biodegradable municipal waste from 1st January 2021 (see regulations 2 and 11 of the 2003 Regulations as amended by regulation 4 for relevant definitions).

Regulation 5 amends the Waste Management Licensing (Scotland) Regulations 2011 ([S.S.I. 2011/228](#)) (“the 2011 Regulations”).

Paragraph (2) of that regulation inserts a new regulation 13A into the 2011 Regulations, with the effect that a waste management licence granted or varied by the waste regulation authority must include such conditions as the authority considers necessary to ensure that separately collected

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Waste (Scotland) Regulations 2012 No. 148*

wastes are not mixed with other wastes or materials where doing so would hamper further recycling. SEPA is the waste regulation authority (see regulation 2 of the 2011 Regulations).

Paragraph (3) of that regulation amends regulation 17 of the 2011 Regulations so that persons engaged in exempt activities for the purposes of those Regulations must ensure that separately collected wastes are not mixed with other wastes or materials where doing so would hamper further recycling.

Paragraphs (4) and (5) of that regulation make changes to the 2011 Regulations needed as a consequence of the repeal of the Animal By-Products (Scotland) Regulations 2003 ([S.S.I. 2003/411](#)).

Paragraph (6) of that regulation adds new section 45C of the 1990 Act to the list of local authority functions in Table 23 of Schedule 4 to the 2011 Regulations, with the effect that functions under that section must be discharged with the objectives set out in paragraph 6 of that Schedule. The objectives in paragraph 6 include objectives relevant to the implementation of the Directive.

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