

EXECUTIVE NOTE

DRAFT : THE WASTE MANAGEMENT LICENSING (SCOTLAND) REGULATIONS 2011

1. The above Instrument is proposed to be made in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999 and paragraph 1A of Schedule 2 to the European Communities Act 1972. The Instrument is subject to affirmative resolution procedure.

POLICY OBJECTIVES

2. There are 4 main policy drivers to this instrument:
- a. To consolidate the Waste Management Licensing Regulations (WMLR);
 - b. To amend certain provisions of the WMLR to provide a more flexible and efficient licensing system, in line with the principles of Better Regulation;
 - c. To transpose the revised Waste Framework Directive (2008/98/EC) into Scots law. A copy of this Directive is attached to this note;
 - d. To amend legislation relating to waste carriers to take account of a clarification of Community law by the European Court of Justice (ECJ).

Consolidation of WMLR

3. Since the original WMLR were introduced in 1994, there have been many pieces of amending legislation and as a result they have become cumbersome. Regulators and operators have found it increasingly difficult to access up-to-date versions of the relevant law.
4. The consolidation exercise is aimed at allowing for more clarity and understanding of the requirements of the legislation.

Better Regulation

5. An agenda has been adopted by the Scottish Government with the principal aim of enhancing and growing Scotland's economic competitiveness by helping to improve the regulatory environment and ensuring that it is suitable and appropriate for Scotland.
6. Several amendments are contained in these draft regulations, which although relatively minor, will provide for a more flexible and efficient licensing system
7. The Regulations also include new activities eligible for exemption from full waste management licensing thus reducing costs for operators involved in those activities.

Transposition of the revised Waste Framework Directive (rWFD)

8. A revised version of the Waste Framework Directive (2008/98/EC) came into force on 12 December 2008. Whilst the essence of the rWFD remains the same with greater emphasis on waste prevention and the waste hierarchy, there are provisions which require transposition into Scots law.

9. While these regulations along with the associated draft Waste (Scotland) Regulations 2011 effectively transpose the rWFD into Scots law, the practical implementation of provisions such as the separate collection of individual waste materials, waste prevention and management plans and the promotion of the waste hierarchy will occur through Scotland's Zero Waste Plan.

Waste Carriers

10. In June 2005, the European Court of Justice (ECJ) (Case C-270/03) ruled in an infraction case against the Italian Government regarding their transposition of certain legislation relating to waste carriers.

11. The judgement ruled that waste producers must be registered if they wish to transport their own waste. These regulations make the appropriate amendment to reflect this judgement in Scots law.

CONSULTATION

12. The policy intentions addressed by the draft instrument were the subject of a 12 week consultation to which 39 responses were received.

13. The comments received contained no significant objections to the proposals.

14. While these regulations assist in transposing the rWFD into Scots law, the practical implementation of provisions such as separate collection of waste, waste prevention and waste management plans and the promotion of the waste hierarchy will occur through Scotland's Zero Waste Plan. It is these issues which will potentially have the most significant impact on stakeholders and further consultation is taking place.

EFFECT OF THE REGULATIONS

15. The new consolidated Regulations will allow for greater clarity and understanding for regulators and operators alike.

16. The new Regulations will introduce amendments which will provide for a more flexible and efficient licensing system which can be more easily applied by SEPA.

17. The new Regulations introduce further activities which will be eligible for exemption from full waste management licensing.

18. The Regulations will remove the statutory requirement for a Certificate of Technical Competence (CoTC) to be attained by anyone wishing to apply for a waste management licence.

19. The Regulations will assist in transposing the requirements of the rWFD into Scots law, which we are obliged to do by European Law.

20. The Regulations introduce into Scots law the necessary provisions relevant to waste carriers, which are required as a result of the ECJ judgement.

FINANCIAL IMPLICATIONS

21. It is difficult to quantify the overall potential financial effect these Regulations will have, however it is envisaged that any costs will be minimal. The consolidation of the Regulations does not alter the existing framework, therefore no significant financial impact is anticipated.

22. The amendments made as a result of the Better Waste Regulation exercise, are aimed at lessening regulatory burden, therefore potentially reducing operators' costs.

23. The provisions of the rWFD transposed through these Regulations should not in themselves, have any significant financial impact.

24. The amendments contained within these Regulations relevant to waste carriers may have a small impact financially on waste producers who carry their own waste and who now may have to register as a waste carrier, however these costs are likely to be absorbed by the operator or passed on to those who use the services provided.

25. A Business and Regulatory Impact Assessment is attached.

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