
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous changes to waste management legislation by amending the Environmental Protection Act 1990 (c. 24) (“the 1990 Act”); the Controlled Waste (Registration of carriers and seizure of vehicles) Regulations 1991 (“the 1991 Regulations”); the Controlled Waste Regulations 1992 (“the 1992 Regulations”); the Waste Management Licensing Regulations 1994 (“the 1994 Regulations”) and the Groundwater Regulations 1998 (“the 1998 Regulations”).

Regulation 3 amends sections 33, 34 and 75 of the 1990 Act. Regulation 3(2) replaces section 33(2) of the 1990 Act such that the offence in section 33(1)(c) (prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste) of that Act will apply to occupiers of domestic property who treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health but will not otherwise apply to household waste treated, kept or disposed of within the curtilage of the dwelling by them. A person who commits an offence under section 33(1)(c) above in relation to household waste from a domestic property within the curtilage of the dwelling shall be liable to the penalties set out in the new subsection (10) of section 33 inserted by regulation 3(2)(d).

Regulation 3(3) replaces section 34(2) (duty of care etc. as respects waste) of the 1990 Act such that an occupier of domestic property shall take reasonable steps to ensure that any household waste produced on the property is transferred to an authorised person but shall not otherwise, be subject to the duty of care imposed by section 34(1) of that Act.

Regulation 3(4) amends section 75 (meaning of waste and related expressions) of the 1990 Act—

- (a) to distinguish waste from any mine or quarry (which is now categorised as “industrial waste”) from waste from premises used for agriculture (which is now categorised as “commercial waste”);
- (b) to categorise waste from mines, quarries and agricultural premises within the controlled waste regime;
- (c) to delete the wording in section 75(8) of the 1990 Act which prevents the making of regulations with regard to such waste in the future; and
- (d) to amend section 75(12) in order to refer to all of the relevant amendments to Directive [75/442/EEC](#) (“the Waste Framework Directive”). Section 75 of the 1990 Act, as amended by paragraph 88 of Schedule 22 to the Environment Act 1995 (as commenced by the Environment Act 1995 (Commencement No. 22) (Scotland) Order 2002 (S.S.I. 2004/) provides that “waste” in the definition of “controlled waste” bears the same meaning as it has for the purposes of the Waste Framework Directive.

Regulation 4 amends regulation 2 of the 1991 Regulations which exempts certain persons from registration as carriers of controlled waste in certain circumstances. Regulation 4(2) replaces regulation 2(1)(i) of the 1991 Regulations to exempt a person who transports only waste which comprises animal by-products collected or transported in accordance with certain provisions of the Animal By Products Regulations 2003 ([S.S.I. 2003/411](#)). Regulation 4(3) inserts a new provision within this category of exemptions for a person who transports only waste from a mine or quarry or waste from premises used for agriculture.

Regulation 5 amends the 1992 Regulations, which define circumstances in which controlled waste is categorised as household, industrial or commercial waste for the purposes of the 1990 Act.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Regulation 6 amends the 1994 Regulations for various purposes, including–

- (a) to insert a definition of mines and quarries waste (regulation 6(2));
- (b) to revoke regulation 15, which made provision for the authorisation of waste management licensing activities impacting on groundwater (regulation 6(3));
- (c) to insert a new paragraph 23 into Schedule 3, to provide for an exemption from waste management licensing for certain activities involving animal by products (regulation 6(7)(c)).

Regulation 7 is in light of regulation 6(3) of these Regulations. Regulation 7(2) amends the definition of “authorisation” in regulation 1(3) of the 1998 Regulations to include a waste management licence as defined. This is to ensure that any waste management licensing activities which may impact on groundwater should be subject to an assessment and authorisation by SEPA under the 1998 Regulations.

Regulation 8 is a transitional provision to allow–

- (a) those involved in the deposit, disposal or recovery of mines or quarry waste or agricultural waste to apply for a waste management licence or a pollution prevention and control permit in respect of the carrying out of these activities; and
- (b) allow regulation 15 of the 1994 Regulations to continue to apply to those who have been granted an authorisation under that regulation.

Section 2(2) of the European Communities Act 1972 (c. 68) is relied upon for the enabling powers for regulations 3 and 7 of these Regulations. Section 2 of the Pollution Prevention and Control Act 1999 (“the 1999 Act”) is relied upon for the enabling powers for the remaining provisions of these Regulations.

Regulatory Impact Assessments in relation to these Regulations have been placed in the library of the Scottish Parliament and copies can be obtained from the SEPA Sponsorship and Waste Division, Scottish Executive Environment and Rural Affairs Department (SEERAD), Victoria Quay, Leith, EH6 6QQ.