

SCHEDULE 5

Regulation 30(6)

REGISTRATION OF BROKERS AND DEALERS

Interpretation

1.—(1) In this Schedule—

“the Carriers Regulations” means the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991;

“date of expiry”, in relation to a broker’s or dealer’s registration—

- (a) in a case to which sub-paragraph (2) or (3) of paragraph 7 applies, has the meaning given by that sub-paragraph, and
- (b) in any other case means the date on which the period of three years mentioned in paragraph 7(1) expires;

“notice” means notice in writing;

“registered as a carrier” means registered under regulation 6 of the Carriers Regulations, and cognate expressions shall be construed accordingly;

“relevant offence” means an offence under any of the enactments listed in regulation 3; and

“relevant period” means two months or, except in the case of an application by a person already registered for the renewal of that person’s registration, such longer period as may be agreed between the applicant and the waste regulation authority.

(2) Sub-paragraphs 3 and 4 apply where the waste regulation authority is determining for the purposes of paragraph 3(11) or 5(1) whether it is desirable for any individual to be or to continue to be authorised to arrange for the disposal or recovery of controlled waste on behalf of other persons, or to purchase and sell waste.

(3) In a case in which a person other than that individual has been convicted of a relevant offence, the waste regulation authority must have regard to whether that individual has been a party to the carrying on of a business in a manner involving the commission of relevant offences.

(4) In relation to any applicant for registration or registered broker or dealer, another relevant person must be treated for the purposes of paragraph 3(11) or 5(1) as having been convicted of a relevant offence if—

- (a) any person has been convicted of a relevant offence committed by that person in the course of that person’s employment by the applicant or registered broker or dealer or in the course of the carrying on of any business by a partnership one of the members of which was the applicant or registered broker or dealer;
- (b) a body corporate has been convicted of a relevant offence committed at a time when the applicant or registered broker or dealer was a director, manager, secretary or other similar officer of that body corporate; or
- (c) where the applicant or registered broker or dealer is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate—
 - (i) has been convicted of a relevant offence; or
 - (ii) was a director, manager, secretary or other similar officer of another body corporate at a time when a relevant offence for which that body corporate has been convicted was committed.

(5) For the purposes of this Schedule, an application for registration or for the renewal of a registration as a broker or dealer in controlled waste shall be treated as pending—

- (a) whilst it is being considered by the waste regulation authority; or

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- (b) if it has been refused or the relevant period from the making of the application has expired without the applicant having been registered, whilst either—
 - (i) the period for appealing in relation to that application has not expired; or
 - (ii) the application is the subject of an appeal which has not been disposed of.
- (6) For the purposes of this Schedule, an appeal is disposed of when any of the following occurs—
 - (a) the appeal is withdrawn;
 - (b) the appellant is notified by the Scottish Ministers or the waste regulation authority that the appeal has been dismissed; or
 - (c) the waste regulation authority complies with any direction of the Scottish Ministers to renew the appellant’s registration or to cancel the revocation.

Registers

- 2.—(1) It is the duty of the waste regulation authority to establish and maintain a register of brokers of and dealers in controlled waste and—
- (a) to secure that the register is open for inspection by members of the public free of charge at all reasonable hours; and
 - (b) to afford to members of the public reasonable facilities for obtaining copies of entries in the register on payment of reasonable charges.
- (2) A register under this paragraph may be kept in any form.

Applications for registration

- 3.—(1) An application for registration or for the renewal of a registration as a broker of or dealer in controlled waste must be made to the waste regulation authority.
- (2) A person may not make an application for registration or for the renewal of a registration whilst—
- (a) a previous application made by that person is pending; or
 - (b) that person is registered.
- (3) Sub-paragraph (2) does not prevent a person from applying for the renewal of a registration where that person’s application is made within the period of six months mentioned in paragraph 7(5).
- (4) An application for registration or for the renewal of a registration in respect of a business which is or is to be carried on by a partnership must be made by all of the partners or prospective partners.
- (5) A prospective partner in a business carried on by a partnership whose members are already registered may make an application for registration as a partner in that business to the waste regulation authority.
- (6) An application for registration or for the renewal of a registration must be made on a form provided for the purpose by the waste regulation authority, and must be accompanied by such information as may reasonably be required by that authority.
- (7) An applicant who wishes to apply to be registered or for the renewal of registration both as a carrier and as a broker of or dealer in controlled waste may, instead of making an application on the forms provided for by regulation 4(6) of the Carriers Regulations and by sub-paragraph (6), make a combined application on a form containing the information required by those forms.
- (8) The waste regulation authority must provide a copy of the appropriate application form free of charge to any person requesting one.

(9) The applicant must pay the charge prescribed for the purpose by a charging scheme under section 41 of the 1995 Act when making an application.

(10) The waste regulation authority must, on receipt of an application for registration or for the renewal of a registration, ensure that the register contains a copy of the application.

(11) The waste regulation authority may refuse an application for registration or for the renewal of registration if, and only if—

- (a) there has, in relation to that application, been a contravention of any of the requirements of the preceding provisions of this paragraph; or
- (b) the applicant or another relevant person has been convicted of a relevant offence and, in the opinion of the authority, it is undesirable for the applicant to be authorised to arrange for the disposal or recovery of controlled waste on behalf of other persons, or to purchase and sell controlled waste.

(12) Where the waste regulation authority decides to refuse an application for registration or for the renewal of a registration, the authority must give notice to the applicant informing the applicant that the application is refused and of the reasons for its decision.

(13) If an appeal is made under and in accordance with paragraph 6, the waste regulation authority must, as soon as reasonably practicable, make appropriate entries in its register indicating when the appeal was made and the result of the appeal.

(14) If no such appeal is made, the waste regulation authority must, as soon as reasonably practicable, make an appropriate entry in its register indicating that the application has not been accepted and that no appeal has been made.

(15) The waste regulation authority may remove from its register—

- (a) a copy of an application included under sub-paragraph (10); or
- (b) an entry made under sub-paragraph (13) or (14),

at any time more than six years after the application in question was made.

Registration as a broker or dealer and amendment of entries

4.—(1) On accepting a person's application for registration or on being directed under paragraph 6(9) to register a person following an appeal in respect of such an application, the waste regulation authority must make an entry in its register—

- (a) showing that person as a registered broker or dealer in controlled waste and allocating that person a registration number (which may include any letter);
- (b) specifying the date on which the registration takes effect and its date of expiry;
- (c) stating any business name of the applicant and the address of the applicant's principal place of business (together with any telephone, telex or fax number and email address of the applicant) and, in the case of an individual, the applicant's date of birth;
- (d) in the case of a body corporate, listing the names of each director, manager, secretary or other similar officer of that body and their respective dates of birth;
- (e) in the case of a company registered under the Companies Acts, specifying its registered number and, in the case of a company incorporated outside Great Britain, the country in which it was incorporated;
- (f) in a case where the person who is registered or another relevant person has been convicted of a relevant offence, giving the person's name, details of the offence, the date of conviction, the penalty imposed, the name of the Court and, in the case of an individual, the person's date of birth; and

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- (g) in a case where the person who is registered or any company in the same group of companies as that person is the holder of a waste management licence, stating the name of the holder of the licence and the name of the authority which granted it.
- (2) In the case of a business which is, or is to be, carried on by a partnership, all the partners must be registered under one entry and only one registration number may be allocated to the partnership.
- (3) On making an entry in its register under sub-paragraph (1) the waste regulation authority must provide the registered person or partnership free of charge with a copy of the entry in the register.
- (4) On accepting a person's application for the renewal of a registration or on being directed under paragraph 6(9) to register a person following an appeal in respect of such an application, the waste regulation authority must amend the relevant entry in the register—
 - (a) to show the date on which the renewal takes effect and the revised date of expiry of the registration;
 - (b) to record any other change disclosed as a result of the application; and
 - (c) to note in the register the date on which the amendments are made.
- (5) The waste regulation authority must at the same time as amending the register under sub-paragraph (4) provide the registered person or partnership free of charge with a copy of the amended entry in the register.
- (6) A person who is registered must notify the waste regulation authority which maintains the relevant register of any change of circumstances affecting information in the register relating to that person.
- (7) On—
 - (a) being notified of any change of circumstances in accordance with sub-paragraph (6);
 - (b) accepting a prospective partner's application for registration in relation to a business carried on by a partnership whose members are already registered; or
 - (c) being directed under paragraph 6(9) to register a prospective partner,the waste regulation authority must—
 - (i) amend the relevant entry to reflect the change of circumstances or the registration of the prospective partner;
 - (ii) note in the register the date on which the amendment is made;
 - (iii) provide the registered person or partnership free of charge with a copy of the amended entry in the register.
- (8) In this paragraph—
 - “the Companies Acts” has the meaning given by section 2 of the Companies Act 2006(1);
 - “group” has the meaning given by section 1261(1) of that Act.

Revocation of registration

- 5.—(1) The waste regulation authority may revoke a person's registration as a broker of or dealer in controlled waste if, and only if—
- (a) that person or another relevant person has been convicted of a relevant offence; and
 - (b) in the opinion of the authority, it is undesirable for the registered broker or dealer to continue to be authorised to arrange for the disposal or recovery of controlled waste on behalf of other persons, or to purchase and sell controlled waste.

(1) 2006 c.46, to which there are amendments not relevant to these Regulations.

(2) Where the waste regulation authority decides to revoke a person's registration as a broker of or dealer in controlled waste, it must give notice to the broker or dealer informing that person of the revocation and the reasons for its decision.

Appeals

6.—(1) Where a person has applied to the waste regulation authority to be registered as a broker of or dealer in controlled waste in accordance with paragraph 3, that person may appeal to the Scottish Ministers if—

- (a) the application is refused; or
- (b) the relevant period from the making of the application has expired without the applicant having been registered.

(2) A person whose registration as a broker of or dealer in controlled waste has been revoked may appeal against the revocation to the Scottish Ministers.

(3) Notice of an appeal to the Scottish Ministers under sub-paragraph (1) or (2) must be given by the appellant to the Scottish Ministers.

(4) The notice of appeal must be accompanied by the following—

- (a) a statement of the grounds of appeal;
- (b) in the case of an appeal under sub-paragraph (1), a copy of the relevant application;
- (c) in the case of an appeal under sub-paragraph (2), a copy of the appellant's entry in the register;
- (d) a copy of any relevant correspondence between the appellant and the waste regulation authority;
- (e) a copy of any notice given to the appellant under paragraph 3(12) or 5(2);
- (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be determined on the basis of written representations.

(5) The appellant must at the same time as giving notice of appeal to the Scottish Ministers serve on the waste regulation authority a copy of the notice and a copy of the documents referred to in sub-paragraph (4)(a) to (f).

(6) Notice of appeal is to be given before the expiry of the period of 28 days beginning with—

- (a) in the case of an appeal under sub-paragraph (1)(a), the date on which the appellant is given notice by the waste regulation authority that the application has been refused;
- (b) in the case of an appeal under sub-paragraph (1)(b), the date on which the relevant period from the making of the application expired without the applicant having been registered; or
- (c) in the case of an appeal under sub-paragraph (2), the date on which the appellant is given notice by the waste regulation authority that the appellant's registration as a broker of or dealer in controlled waste has been revoked,

or before such later date as the Scottish Ministers may at any time allow.

(7) If either party to an appeal requests a hearing or the Scottish Ministers so decide, the appeal must be or continue in the form of a hearing before a person appointed for the purpose by the Scottish Ministers.

(8) The person holding such a hearing must, after its conclusion, make a written report to the Scottish Ministers which must include that person's conclusions and recommendations or reasons for not making any recommendations.

(9) On an appeal under this paragraph the Scottish Ministers may, as they think fit, either dismiss the appeal or give the waste regulation authority a direction to register the appellant or, as the case may be, to cancel the revocation.

(10) The Scottish Ministers must—

(a) notify the appellant in writing of their determination of the appeal and of their reasons for it and, if a hearing is held, must also provide the appellant with a copy of the report of the person who conducted the hearing; and

(b) at the same time send a copy of those documents to the waste regulation authority.

(11) Where on an appeal made by virtue of sub-paragraph (1)(b) the Scottish Ministers dismiss an appeal, they must direct the waste regulation authority not to register the appellant.

(12) It is the duty of the waste regulation authority to comply with any direction under this paragraph.

(13) This paragraph is subject to section 114 of the 1995 Act (delegation or reference of appeals).

Duration of registration

7.—(1) A person's registration as a broker of or dealer in controlled waste ceases to have effect on the expiry of the period of three years beginning with the date of the registration or, if it has been renewed, beginning with the date on which it was renewed or, as the case may be, last renewed.

(2) Where—

(a) a registered carrier of controlled waste is registered as a broker of or dealer in controlled waste otherwise than by way of renewal of an existing registration as a broker or dealer; and

(b) that person's registration as a carrier will expire within three years of the date of the registration of that person as a broker or dealer,

the registration as a broker or dealer will expire on the same date as the registration as a carrier, if that person so requests at the time of making the application for registration as a broker or dealer.

(3) Where—

(a) a registered broker of or dealer in controlled waste is registered as a carrier of controlled waste otherwise than by way of renewal of an existing registration as a carrier; and

(b) that person's registration as a broker or dealer will expire within three years of the date of the registration of that person as a carrier,

the renewed registration as a broker or dealer will expire on the same date as the registration as a carrier, if that person so requests on the next application for renewal of registration as a broker or dealer which that person makes after having been registered as a carrier.

(4) Registration as a registered broker or dealer ceases to have effect if the registered broker or dealer gives notice requiring the removal of the registered broker's or dealer's name from the register.

(5) The waste regulation authority must, no later than six months before the date of expiry of a broker's or dealer's registration, serve on a registered broker or dealer—

(a) a notice informing that person of the date of expiry and of the effect of sub-paragraph (6); and

(b) an application form for the renewal of that person's registration and a copy of that person's current entry in the register.

(6) Where an application for the renewal of a registration is made within the last six months prior to its date of expiry, the registration will, notwithstanding the passing of the expiry date, continue in force—

- (a) until the application is withdrawn or accepted; or
- (b) if the waste regulation authority refuses the application or the relevant period from the making of the application has expired without the applicant having been registered, until—
 - (i) the expiry of the period for appealing; or
 - (ii) where the applicant indicates within that period that the applicant does not intend to make or continue with an appeal, the date on which such an indication is given.
- (7) Where the waste regulation authority revokes a broker's or dealer's registration, the registration will, notwithstanding the revocation, continue in force until—
 - (a) the expiry of the period for appealing against the revocation; or
 - (b) where that person indicates within that period that that person does not intend to make or continue with an appeal, the date on which such an indication is given.
- (8) Where an appeal is made under and in accordance with the provisions of paragraph 6—
 - (a) by a person whose appeal is in respect of such an application for the renewal of that person's registration as was made, in accordance with paragraph 3, at a time when that person was already registered; or
 - (b) by a person whose registration has been revoked,that registration continues in force after its date of expiry or, as the case may be, notwithstanding the revocation, until the appeal is disposed of.
- (9) A registration in respect of a business which is carried on by a partnership ceases to have effect if any of the partners ceases to be registered or if any person who is not registered becomes a partner.
- (10) The duration of a registration in respect of a business which is carried on by a partnership is not affected if a person ceases to be a partner or if a prospective partner is registered under paragraph 4(7) in relation to the partnership.
- (11) Where the waste regulation authority accepts an application for the renewal of a broker's or dealer's registration before the expiry date, the renewal takes effect, for the purposes of this Schedule, from the expiry date.

Cessation of registration

- 8.** Where a registration ceases to have effect by virtue of paragraph 6(11) or 7, the waste regulation authority—
- (a) must record this fact in the appropriate entry in its register and the date on which it occurred; and
 - (b) may remove the appropriate entry from its register at any time more than six years after the registration ceases to have effect.