
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 3

The Scottish Landfill Tax (Administration) Regulations 2015

PART 7

Credit: bodies concerned with the environment

Bodies eligible for approval

- 29.**—(1) A body is eligible to be approved by the regulatory body if—
- (a) it is—
 - (i) a body corporate; or
 - (ii) a trust, partnership or other unincorporated body;
 - (b) its objects are or include any of the objects within paragraph (5) below (approved objects);
 - (c) it is precluded from distributing and does not distribute any profit it makes or other income it receives;
 - (d) it applies any profit or other income to the furtherance of its objects (whether or not approved objects);
 - (e) it is precluded from applying any of its funds for the benefit of any of the persons—
 - (i) who have made qualifying contributions to it; or
 - (ii) who were a contributing third party in relation to such contributions, except that such persons may benefit where they belong to a class of persons that benefits generally;
 - (f) it is not controlled by one or more of the persons and bodies listed in paragraphs (2) and (3) below; and
 - (g) none of the persons or bodies listed in paragraph (3) below is concerned in its management.
- (2) The persons and bodies mentioned in paragraph (1)(f) above are—
- (a) a local authority;
 - (b) a body corporate controlled by one or more local authorities;
 - (c) a registered person;
 - (d) a person connected with any of the persons or bodies mentioned in sub-paragraphs (a) to (c) above.
- (3) The persons and bodies mentioned in paragraph (1)(f) and (g) above are—
- (a) a person who controlled or was concerned in the management of a body the approval of which was revoked otherwise than under regulation 31(1)(d);
 - (b) a person who has been convicted of an indictable offence;

- (c) a person who is disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005⁽¹⁾ (or any analogous disqualification provision);
- (d) a person connected with any of the persons or bodies mentioned in sub-paragraphs (a) to (c) above;
- (e) a person who is incapable by reason of mental disorder.

(4) For the purpose of paragraph (3)(e) above, a person shall be treated as incapable by reason of mental disorder where—

- (a) in Scotland, the person is incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000⁽²⁾;
- (b) in England and Wales, the person lacks capacity within the meaning of the Mental Capacity Act 2005⁽³⁾ to administer and manage his property and affairs; or
- (c) in Northern Ireland, the court has exercised any of its powers under Part VIII of the Mental Health (Northern Ireland) Order 1986 (whether or not by virtue of Article 97(2) of that Order),

but shall cease to be so treated where the judge or court concerned has made a finding that the person is not or is no longer incapable of managing and administering his or her property and affairs.

(5) Subject to paragraph (15) below, the objects of a body are approved objects insofar as they are any of the following objects—

- (a) in relation to any land in Scotland the use of which for any economic, social or environmental purpose has been prevented or restricted because of the carrying on of an activity on the land which has ceased—
 - (i) reclamation, remediation or restoration; or
 - (ii) any other operation intended to facilitate economic, social or environmental use;
 but this is subject to paragraph (7) below;
- (b) where it is for the protection of the environment, any community based recycling, re-use and waste prevention projects, but this is subject to paragraph (8) below;
- (c) where it is for the protection of the environment, the provision, maintenance or improvement of—
 - (i) a public park in Scotland; or
 - (ii) another public amenity in Scotland,
 in the vicinity of a landfill site or transfer station, provided the conditions in paragraph (10) below are satisfied;
- (d) where it is for the protection of the environment, and subject to paragraph (8) below, the conservation or promotion of biological diversity through—
 - (i) the provision, conservation, restoration or enhancement of a natural habitat in Scotland; or
 - (ii) the maintenance or recovery of a species in its natural habitat in Scotland, on land or in water situated in the vicinity of a landfill site or transfer station;
- (e) where it is for the protection of the environment, the maintenance, repair or restoration of a building or other structure or a site of archaeological interest (including their landscape context) in Scotland which—
 - (i) is a place of religious worship or of historic, archaeological or architectural interest;

(1) 2005 asp 10.

(2) 2000 asp 4.

(3) 2005 c.9.

- (ii) is open to the public; and
- (iii) is situated in the vicinity of a landfill site or transfer station, provided the conditions in paragraph (10) below are satisfied;
- (f) the provision of financial, administration and other similar services to bodies which are enrolled with an approved body which is registered with the regulatory body.
- (6) In paragraph (5)(d) above “biological diversity” has the same meaning as in the United Nations Environmental Programme Convention on Biological Diversity of 1992.
- (7) An object shall not be, or shall no longer be, regarded as falling within paragraph (5)(a) above if the reclamation, remediation, restoration or other operation—
 - (a) is such that any benefit from it will accrue to any person who has carried out or knowingly permitted the activity which has ceased;
 - (b) involves works which are required to be carried out by a notice or order within paragraph (9) below; or
 - (c) is wholly or partly required to be carried out by a relevant condition.
- (8) An object shall not be, or shall no longer be, regarded as falling within paragraph (5)(b) or (d) above if it involves works or activities which—
 - (a) are required to be carried out by a notice, requirement or order within paragraph (9) below;
 - (b) are required to be carried out in accordance with an agreement made under section 16 of the National Parks and Access to the Countryside Act 1949(4);
 - (c) are required to be carried out in accordance with an agreement made under section 15 of the Countryside Act 1968(5);
 - (d) give effect to any provision of a management scheme under section 28J of the Wildlife and Countryside Act 1981(6) or are required to be carried out by a notice served under section 28K of that Act;
 - (e) are wholly or partly required to be carried out by a relevant condition; or
 - (f) are carried out with a view to profit.
- (9) The notices, requirements and orders mentioned in paragraphs (7) and (8) above are—
 - (a) a remediation notice served under section 78E of the Environmental Protection Act 1990(7);
 - (b) a requirement imposed by virtue of section 38(9) of that Act;
 - (c) an enforcement notice served under section 42 of that Act;
 - (d) any order granted following proceedings brought under section 42(6A)(8) of that Act for the purpose of securing compliance;
 - (e) a notice served under section 59 of that Act;
 - (f) a notice of surrender issued under regulation 28 of the Water Environment (Controlled Activities) (Scotland) Regulations 2011(9);
 - (g) an enforcement notice served under regulation 32(2) of those Regulations;
 - (h) an order under regulation 49 of those Regulations;

(4) 1949 c.97.

(5) 1968 c.41.

(6) 1981 c.69. Sections 28 to 28R were substituted by the Countryside and Rights of Way Act 2000 (c.37), Schedule 9 paragraph 1.

(7) 1990 c.43. Section 78E was inserted by the Environment Act 1995 (c.25), section 57.

(8) Section 42(6A) was inserted by the Environment Act 1995, Schedule 22, paragraph 76(7).

(9) S.S.I. 2011/209.

- (i) an enforcement notice served under regulation 55 of the Pollution Prevention and Control (Scotland) Regulations 2012⁽¹⁰⁾;
 - (j) a revocation notice served under regulation 50 of those Regulations;
 - (k) a suspension notice given under regulation 56 of those Regulations;
 - (l) an order under regulation 70 of those Regulations;
 - (m) a notice under sections 21 and 22 of the Radioactive Substances Act 1993⁽¹¹⁾;
 - (n) any other notice, requirement or order by or under statute (whether by a court or other authority or otherwise) requiring the carrying out of measures or refraining from carrying out measures for the conservation or promotion of biological diversity as specified in paragraph (5)(d); or
 - (o) any remedial action required to be carried out under the Environmental Liability (Scotland) Regulations 2009⁽¹²⁾.
- (10) The conditions mentioned in sub-paragraphs (c) and (e) of paragraph (5) above are—
- (a) in a case falling within sub-paragraph (c), that the provision of the park or amenity is not required by a relevant condition; and
 - (b) in a case falling within either of those sub-paragraphs, that the park, amenity, site, building or structure (as the case may be) is not to be operated with a view to profit.
- (11) Where the objects of a body are or include any of the objects set out in paragraph (5) above, the following shall also be regarded as objects within that paragraph—
- (a) the use of qualifying contributions in paying the running costs of the body, but this is subject to paragraph (12) below;
 - (b) the use of qualifying contributions in paying a contribution to the running costs of the regulatory body.
- (12) The use of qualifying contributions in paying the running costs of the body shall only be regarded as an approved object if the running costs of the body attributable to funds applied by the body to the object do not exceed ten per cent of the funds so applied.
- (13) For the purposes of paragraph (1) above a body or person (in either case, for the purposes of this paragraph, “the person”) shall be taken to control a body where—
- (a) in the case of a body which is a body corporate, the person is empowered by statute to control that body’s activities or if the person is that body’s holding company within the meaning of section 1159 of and Schedule 6 to the Companies Act 2006, and an individual shall be taken to control a body corporate if the individual, were the individual a company, would be that body’s holding company within the meaning of that Act;
 - (b) in the case of a body which is a trust or a partnership, where—
 - (i) the person, taken together with any nominee of the person, or
 - (ii) any nominee of the person, taken together with any nominee of that nominee or any other nominee of the person,
 forms a majority of the total number of trustees or partners, as the case may be;
 - (c) in the case of any other body, where the person, whether directly or through any nominee, has the power—
 - (i) to appoint or remove any officer of the body;
 - (ii) to determine the objects of the body; or

⁽¹⁰⁾ S.S.I. 2012/360.

⁽¹¹⁾ 1993 c.12.

⁽¹²⁾ S.S.I. 2009/266.

(iii) to determine how any of the body's funds may be applied.

(14) For the purposes of paragraphs (7), (8) and (10) above a condition is relevant if it is—

- (a) a condition of any planning permission or other statutory consent or approval granted on the application of any person making a qualifying contribution to the body; or
- (b) a term of an agreement made under section 75 of the Town and Country Planning (Scotland) Act 1997⁽¹³⁾,

to which such a person is a party.

(15) The objects of a body referred to in paragraph (5) are approved subject to the condition that an approved body must not discriminate in selecting a project on the grounds of geographic location of a project (other than in respect of vicinity rules) or the objective of a project.

⁽¹³⁾ 1997.c.8.