SCOTTISH STATUTORY INSTRUMENTS

2005 No.22

ENVIRONMENTAL PROTECTION

The Waste (Scotland) Regulations 2005

Made - - - - 20th January 2005

Coming into force in accordance with regulation 1(1)

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and section 2 of the Pollution Prevention and Control Act 1999 ("the 1999 Act")(**2**), having, in accordance with section 2(4) of the 1999 Act consulted the Scottish Environment Protection Agency, such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively, and such other bodies and persons as they consider appropriate; and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 2(8) of the 1999 Act, been laid before, and approved by a resolution of, the Scottish Parliament:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Waste (Scotland) Regulations 2005 and shall come into force on the day after the day on which they are made (hereinafter referred to as "the relevant date").

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations–

"permit" shall have the same meaning as it has for the purposes of regulation 7 of the Pollution Prevention and Control (Scotland) Regulations 2000(**3**);

"waste management licence" shall have the same meaning as it has for the purposes of section 35(1) of the Environmental Protection Act 1990(**4**); and

(**1**) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8 paragraph 15(3). The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(**2**) 1999 c. 24; the functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 5(3) of that Act and section 53 of the Scotland Act 1998.

(**3**) S.S.I. 2000/323; relevant amendments were made by S.S.I. 2002/493, S.S.I. 2003/146, 170 and 235 and S.S.I. 2004/110.

(**4**) 1990 c. 43.

"the 1994 Regulations" means the Waste Management Licensing Regulations 1994(**5**).

Amendment of the Environmental Protection Act 1990

3.—(1) The Environmental Protection Act 1990 is amended as follows.

(2) Section 33 (prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste) is amended as follows–

(a) for subsection (2) there is substituted–

"(2) Subject to subsection (2A) below, paragraphs (a) and (b) of subsection (1) above do not apply in relation to household waste from a domestic property which is treated, kept or disposed of within the curtilage of the dwelling.

(2A) Subsection (2) above does not extend to the treatment, keeping or disposal of household waste by an establishment or undertaking.";

(b) in subsection (8) after "subsection (9)", there is inserted "or (10)";

(c) in subsection (9) after "waste", there is inserted "(other than household waste of the description specified in subsection (10) below)"; and

(d) after subsection (9) there is added–

"(10) A person who commits an offence under subsection (1)(c) above in relation to household waste from a domestic property within the curtilage of the dwelling shall be liable–

(a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.".

(3) For subsection (2) of section 34 (duty of care etc. as respects waste) there is substituted–

"(2) An occupier of domestic property–

(a) shall, as respects the household waste produced on the property, take reasonable steps to secure that any transfer of waste is only to an authorised person or to a person for authorised transport purposes; and

(b) shall not otherwise be subject to the duty imposed by subsection (1) above.".

(4) Section 75 (meaning of "waste" and related expressions)(**6**) is amended as follows–

(a) the word "or" immediately after subsection (6)(c) is omitted; and

(b) at the end of that subsection there is added–

"; or

(e) any mine or quarry";

(c) in subsection (7) after "premises" where it first occurs, there is inserted "(including premises used for agriculture within the meaning of the Agriculture (Scotland) Act 1948)";

(d) at the end of subsection (7)(b) "and" is added;

(e) subsection (7)(c) is repealed;

(f) in subsection (8) omit "but no regulations shall be made in respect of such waste as is mentioned in subsection (7)(c) above";

(**5**) S.I.1994/1056; relevant amendments were made by S.I. 1995/288, 1996/593, 634 and 972, 1998/606 and S.S.I. 2000/323, 2003/171 and 2004/112.

(**6**) Relevant amendments were made by paragraph 88 of Schedule 22 to the Environment Act 1995 as commenced by the Environment Act 1995 (Commencement No. 22) (Scotland) Order 2004, S.S.I. 2004/541 (C.40).

(g) at the end of subsection (12)(a) "and" is omitted;

(h) at the end of subsection (12)(b) there is added–

"; and

(c) the decision of the European Commission, dated 24th May 1996, adapting Annexes IIA and IIB to Directive 75/442/EEC on waste(**7**)

Amendment of regulation 2 of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991

4.—(1) Regulation 2 of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991(**8**) (exemption from registration) is amended as follows.

(2) For sub paragraph (i) of paragraph (1), there is substituted–

"(i) a person who transports only waste which comprises animal by-products collected and transported in accordance with Article 7(1) or 7(2) of the Community Regulation;".

(3) After paragraph (1)(i) there is added–

"(j) a person who transports only waste from a mine or quarry or waste from premises used for agriculture.".

(4) In paragraph (2) the following definitions are inserted at the appropriate places–

""agriculture" has the same meaning as in the Agriculture (Scotland) Act 1948(**9**); and

"the Community Regulation" has the same meaning as in regulation 2(1) of the Animal By Products (Scotland) Regulations 2003(**10**)

Amendment of the Controlled Waste Regulations 1992

5.—(1) The Controlled Waste Regulations 1992(**11**) are amended as follows.

(2) Regulation 1(4)(a) is revoked.

(3) In regulation 7, for paragraphs (3) and (4), there is substituted–

"(3) Waste which comprises animal by-products collected and transported in accordance with Article 7(1) or 7(2) of the Community Regulation shall not be treated as industrial waste or commercial waste for the purposes of section 34 (duty of care as respects waste).

(4) In this regulation, "Community Regulation" has the same meaning as in regulation 2(1) of the Animal By-Products (Scotland) Regulations 2003 and "animal by-products" has the same meaning as in the Community Regulation.".

(4) In Schedule 3 (waste to be treated as industrial waste)–

(a) paragraph 14 is omitted;

(b) at the end the following shall be added–

"**19.** Any other waste which is Directive Waste, with the exception of any waste which is expressed by any other provision of these Regulations or section 75(5) or (7) of the Environmental Protection Act 1990 to be household waste or commercial waste.".

(5) In Schedule 4 (waste to be treated as commercial waste) at the end the following shall be added–

(**7**) (Commission Decision 96/350/EC (O.J. L 135, 6.6.1996, p.32).
(**8**) S.I. 1991/1624; relevant amendments were made by regulation 10 of S.I. 1992/588 and regulation 23 of S.I. 1994/1056.
(**9**) 1948 c. 45; "agriculture" is defined in section 86(3).
(**10**) S.S.I. 2003/411.
(**11**) S.I. 1992/588; relevant amendments were made by regulation 24 of S.I. 1994/1056.

"**10.** Waste from premises used for the purposes of breeding, boarding, stabling or exhibiting animals.".

Amendment of the Waste Management Licensing Regulations 1994

6.—(1) The 1994 Regulations are amended as follows.

(2) In regulation 1(3) (interpretation), the following definition is inserted at the appropriate place–

""mines or quarries waste" means waste from a mine or quarry;".

(3) Subject to regulation 8(4) of these Regulations regulation 15 (groundwater) is revoked.

(4) In regulation 16 (exclusion of activities under other control regimes from waste management licensing)–

(a) in paragraph (1)(c) "and" is omitted;

(b) at the end of paragraph (1)(d) there is inserted–

"; and

(e) the disposal of agricultural waste under an authorisation granted under regulation 18 of the Groundwater Regulations 1998(**12**).".

(5) In regulation 18 (registration in connection with exempt activities)–

(a) in paragraph (1) the words ", after 31st December 1994," are omitted; and

(b) for paragraph (1A), there is substituted–

"(1A) Paragraph (1) above shall not apply in the case of an exempt activity falling within regulation 8 of the Waste (Scotland) Regulations 200[4].".

(c) for paragraph (10)(c), there is substituted–

"in the case of an exempt activity falling within paragraph 23 of Schedule 3, the authority responsible for granting an authorisation under regulation 27 of the Animal By Products (Scotland) Regulations 2003(**13**) under which the exempt activity is carried on.".

(6) In regulation 20 (registration of brokers)–

(a) in paragraph (1) the words "after 31st December 1994" are omitted; and

(b) in paragraph (4)–

(i) in sub paragraph (c) the word "or" where it secondly occurs, is deleted; and

(ii) at the end there is inserted–

";

(e) arranges on behalf of another person (as dealer or broker) for the disposal or recovery of agricultural waste or mines or quarries waste only; or

(f) arranges on behalf of another person (as dealer or broker) for the disposal or recovery of waste comprising animal by-products only.".

(7)

(1) In Schedule 3 (activities exempt from waste management licensing)–

(a) in paragraph 12(**14**), for Table 3C, substitute–

(**12**) S.I. 1998/2746.
(**13**) S.S.I. 2003/411.
(**14**) A new paragraph 12 was inserted by regulation 14 of S.S.I. 2004/275.

TABLE 3C

Code and type of waste (as referred to in Table 3B)[*]	*Composting activity*	*Maximum total quantity (including storage and treatment)*
Plant tissue waste 02 01 03 *Wastes from forestry 02 01 07* *Waste bark and cork 03 01 01* *Biodegradable waste from gardens and park wastes (including cemetery waste 20 02 01)*	Open air windrow composting without containment[**] and without any impermeable pavement or sealed drainage	400 Tonnes
All above wastes namely 02 01 03, 02 01 07, 03 01 01, 20 02 01 plus 15 01 01, 02 01 06, 15 01 09, 20 01 10 and 20 01 11	Open air windrow composting without containment[**] on an impermeable pavement with sealed drainage	400 Tonnes
Any type of waste referred to in Table 3B	Composting with containment[**] of waste	400 Tonnes

* Codes referred to in the European Waste Catalogue.

** Containment in this context means composting in a vessel, in a sealed building or by some other process equally effective to produce a wholly contained and controlled environment.

(b) paragraph 16 is omitted;

(c) for paragraph 23, there is substituted–

"**23.**—(1) The recovery of waste consisting of animal by-products at a collection centre in accordance with an authorisation under regulation 27 of the Animal By Products (Scotland) Regulations 2003 if the total quantity of waste being recovered at that collection centre at any time does not exceed 10 tonnes.

(2) The storage of the waste intended to be submitted to such treatment if–

(a) storage takes place in a secure place; and

(b) no waste is stored for more than twelve months.

(3) In this paragraph, "animal by-products" and "collection centre" have the same meaning as in the Community Regulation as defined in regulation 2(1) of the Animal By Products (Scotland) Regulations 2003(**15**).".

(2) in paragraph 30–

(i) for sub paragraph (1)(a) there is substituted "the waste consists of plant tissue;";

(1)
(1)
(1)
(1)
(15) S.S.I. 2003/411.