SCOTTISH STATUTORY INSTRUMENTS

2003 No. 171

ENVIRONMENTAL PROTECTION

The Waste Management Licensing Amendment (Scotland) Regulations 2003

Made - - - -	*10th March 2003*
Laid before the Scottish Parliament - - - -	*11th March 2003*
Coming into force - -	*1st April 2003*

The Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and section 74(6) of the Environmental Protection Act 1990(**2**) and of all other powers enabling them in that behalf, hereby make the following regulations.

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Waste Management Licensing Amendment (Scotland) Regulations 2003 and shall come into force on 1st April 2003.

(2) These Regulations extend to Scotland only.

Amendment of the Environment Act 1995

2.—(1) The Environment Act 1995(**3**) is amended as follows.

(2) In section 56(1) (interpretation of Part I), in the definition of "environmental licence" in the application of Part I of that Act to SEPA, for paragraph (j) there is substituted–

(**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 (c. 46).

(**2**) 1990 c. 43. The functions of the Secretary of State, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. Section 74(6) enables regulations to be made prescribing the qualifications and experience required of a person for the purposes of the management of an activity authorised by a waste management licence granted under section 35. The qualifications and experience so prescribed are treated by regulation 4(5)(b) of S.S.I. 2000/323 (which applies to Scotland and which amended regulation 1 of S.I.1994/1056) as the qualifications and experience required of a person for the purposes of technical competence to manage a waste management activity authorised by a permit under Part II of S.S.I 2000/323 (which implements Council Directive 96/61/EC of 24th September 1996 concerning integrated pollution prevention and control (O.J. No. L 257, 10.10.96, p.26)). The extension of S.S.I.2000/323 to landfills by regulation 8 of S.S.I.2003/185 (which apply to Scotland and which implement Council Directive 99/31/EC on the landfill of waste (O.J. No. L 182, 16.7.99, p.1)) has the effect that the qualifications and experience prescribed pursuant to section 74(6) apply to persons managing a landfill pursuant to a landfill permit.

(**3**) 1995 c. 25. Section 56 was amended by the Pollution Prevention and Control Act 1999 (c. 24), Schedule 2, paragraph 17 and by S.S.I. 2000/323, Schedule 10, paragraph 5(2).

"(j) registration in respect of an activity falling within paragraph 7, 9, 19, 45(1) or (2) of Schedule 3 to those Regulations, except where the waste which is the subject of the activity consists wholly or mainly of agricultural waste within the meaning of those Regulations;".

Amendment of the Waste Management Licensing Regulations 1994

3. The Waste Management Licensing Regulations 1994(**4**) are amended as set out in regulations 4 to 12 below.

4. In regulation 1(3) (interpretation), the following definitions are inserted at the appropriate places–

"agriculture" has the same meaning as it has for the purposes of the Agriculture (Scotland) Act 1948(**5**);

"agricultural waste" means waste from premises used for agriculture;

"European Waste Catalogue" means the list of wastes pursuant to Article 1(a) of the Directive and Article 1(4) of Directive 91/689/EEC on hazardous waste set out in Commission Decision 2000/532/EC(**6**);

"landfill" has the same meaning as it has for the purposes of the Landfill (Scotland) Regulations 2003 (**7**);

"the register" means the register of exempt activities maintained by SEPA for the purpose of regulation 18 of these Regulations.".

5. For regulation 4(**8**) there is substituted–

"**Technical competence**

4.—(1) Subject to paragraphs (2) and (3) below and without prejudice to the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 2002(**9**), Schedule 1A has effect to prescribe for the purposes of section 74(3)(b) of the 1990 Act (management of activities to be in the hands of a technically competent person) the qualifications required of a person if that person is to be considered technically competent in relation to a facility of a type listed in Table 1 of that Schedule.

(2) Paragraph (1) does not apply in relation to a facility which is used exclusively for the purpose of–

(a) carrying on business as a metal dealer;

(b) dismantling motor vehicles; or

(c) the burial of dead domestic pets.

(3) Where–

(a) a person was technically competent for the purposes of section 74(3)(b) of the 1990 Act in relation to a facility immediately prior to 1st April 2003 (whether or

(**4**) S.I.1994/1056, amended by S.I. 1994/1137, 1995/288, 1950, 1996/593, 634, 672, 916, 972, 973, 1279, 1997/351, 2203, 1998/606, 2746 and S.S.I. 2000/323.
(**5**) 1948 c. 45; "agriculture" is defined in section 86(3).
(**6**) O.J. L.226, 6.9.2000, p.3, as amended by Commission Decisions 2001/118/EC (O.J. L 47, 16.2.2001, p.1), 2001/119/EC (O.J. L 47, 16.2.2001, p.32) and 2001/573 (O.J. L 203, 28.7.2001, p.18).
(**7**) S.S.I. 2003/insert no. ; "landfill" is defined in regulations 3 and 4 of those Regulations.
(**8**) Regulation 4 was amended by S.I. 1996/634, 916 and 1997/2203.
(**9**) S.I. 2002/2934 implementing Council Directive 92/51/EEC on a second general system for the recognition of professional education and training. Regulation 9 and Part 1 of Schedule 2 (Professions regulated by law or public authority) of those Regulations designates the Waste Management Industry Training and Advisory Board as the authority for certified technically competent persons.

not the management of the facility was in the hands of that person at that time); and

(b) that person is required to obtain a new certificate in order to remain technically competent in relation to that facility as a result of the Waste Management Licensing Amendment (Scotland) Regulations 2003(**10**);

then, until 1st April 2005, that person shall be treated as technically competent in relation to that facility for the purposes of section 74(3)(b) of the 1990 Act.".

6. In regulation 17 (exemptions from waste management licensing), after paragraph (5) insert–

"(6) It shall be the duty of SEPA to have regard to any guidance issued to it by the Scottish Ministers with respect to the discharge of its functions in relation to an exempt activity.".

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

(a) in paragraph (4), for "(4A) and (4B)" substitute "(4A) to (4D)";

(b) after paragraph (4B) insert–

"(4C) Paragraph (4) above does not apply in the case of an exempt activity falling within paragraphs 7, 9 or 19 of Schedule 3 and the provisions of this paragraph shall instead apply to such an activity.

(b) An establishment or undertaking which intends to carry out an exempt activity to which this paragraph applies shall provide to SEPA a written notice given on a form provided for the purpose by SEPA ("the notice") together with,

(i) a plan and the documents specified in Part 1 of Schedule 3A and such other information as SEPA reasonably requires, and

(ii) payment of the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995.

(c) Subject to sub-paragraph (d), unless SEPA has within the period of 21 days from the date on which it received the notice, either–

(i) entered the relevant particulars in the register in relation to the establishment or undertaking which submitted the notice, or

(ii) served on it a notice of refusal stating that registration is refused and giving reasons for that decision,

those particulars shall be deemed to be entered in the register at the end of that 21 day period.

(d) Particulars entered or deemed to be entered into the register under this paragraph shall be deemed to be removed from the register on the expiry of 12 months from the date on which they were entered or deemed to be entered ("the removal date"), unless the establishment or undertaking has no later than 21 days before the removal date provided to SEPA–

(i) a notice containing a request that registration of an exempt activity registered under this paragraph be renewed ("the renewal notice") and either confirmation that the particulars submitted in the notice and the plan and documentation which accompanied it remain accurate or a revision of such of the particulars of the notice and plan and documentation as are no longer accurate, and

(**10**) S.S.I. 2003/171 .

(ii) the renewal notice is accompanied by payment of the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995.

(4D) Subject to sub-paragraphs (b) and (c), SEPA may in the case of an exempt activity falling within paragaphs 7, 9 and 19 of Schedule 3, remove from the register the relevant entry for that activity where–

(i) the establishment or undertaking to which the relevant entry relates is no longer carrying out that activity;

(ii) the activity is being carried out in breach of any of the conditions or limitations in those paragraphs of Schedule 3 or of any of the registration obligations in regulation 18A which apply in relation to it;

(iii) the activity is being carried out in breach of regulation 17(2) of these Regulations; or

(iv) the activity is being carried out in breach of regulation 17(4) of these Regulations.

(b) Before removing the relevant entry from the register, SEPA shall serve on the establishment or undertaking to which the relevant entry relates a notice ("notice of removal") stating that the registration is cancelled on a date specified in the notice and giving reasons for the cancellation.

(c) A notice of removal served in accordance with sub-paragraph (b) can be withdrawn by SEPA at any time and the relevant entry reinstated in the register with or without amendment of the particulars relating to that entry.";

(c) in paragraph (6)(a) for "paragraph 45(1) or (2)" substitute "paragraph 7, 9, 19, 45(1) or 45(2)"; and

(d) delete paragraph (7).

8. After regulation 18 insert–

"**Registration obligations**

18A.—(1) The obligations described in paragraph (2) ("the registration obligations") shall apply to establishments or undertakings whose particulars are entered into the register in relation to an exempt activity falling within paragraphs 7, 9 and 19 of Schedule 3, to the extent specified in paragraph (2).

(2) At least 21 days written notice of the date on which the exempt activity is first to be carried on shall be given to SEPA unless this information was provided in the notice or renewal notice given under regulation 18;

(b) Records shall be kept of the quantity, nature, origin, destination and method of recovery or disposal of all waste used in reliance of an exempt activity falling within the following descriptions–

(i) paragraph 7; and

(ii) paragraphs 9 and 19 where the volume of waste used exceeds 2,500 cubic metres.

(c) Records kept under sub-paragraph (b) of this regulation shall be kept for a period of at least 2 years and shall be made available to SEPA on request.

(3) A person who carries on an exempt activity in breach of the registration obligations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.".

9. After Schedule 1 (information and evidence required in relation to an application for the surrender of a site licence), insert–

"SCHEDULE 1A Regulation 4

Certificates of Technical Competence

1. The qualifications required of a person if that person is to be regarded as technically competent for the purposes of section 74(3)(b) of the 1990 Act to manage a facility of a description listed in Table 1 are that that person must hold one of the certificates awarded by the Waste Management Industry Training and Advisory Board ("WAMITAB")(**11**) the codes of which are specified in relation to that description of facility in that Table; and the certificates to which the codes refer are set out in Table 1A.

Table 1

Number	*Type of Facility*	*Certificate Code*
1	Landfill site for hazardous waste	A, D, or G
2	Landfill site for hazardous waste – single waste stream	A, D, G or H
3	Landfill site for non-hazardous waste	A, B, D, E, G or I
4	Landfill site for non-hazardous waste – single waste stream	A, B, D, E, G, H, I or J
5	Landfill site for inert waste with a total capacity of greater than 50,000 cubic metres	A, B, C, D, E, F, G, I or K
6	Landfill site for insert waste with a total capacity of greater than 50,000 cubic metres – single waste stream	A, B, C, D, E, F, G, H, I, J, K or L
7	Closed landfill site for hazardous waste	A, D, G or M
8	Closed landfill site for hazardous waste – single waste stream	A, D, G, H or M
9	Closed landfill site for non-hazardous waste	A, B, D, E, G, I or M

Notes to Table 1:

The following certificates ceased to be awarded on 9th October 1997: A, B, C, N, O, Z, AA, BB, and CC.

The following certificates will cease to be awarded on 31st March 2003: D, E, F, P, Q, R, DD, EE, FF, GG and HH.

(**11**) WAMITAB is a private law body which was set up in 1989 by the waste management industry.