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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2010 No.**

**CLIMATE CHANGE**

**The Waste Information (Scotland) Regulations 2010**

*Made* - - - -

*Coming into force* - -

*10th January 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 79(1) and (2) of the Climate Change (Scotland) Act 2009 (“the 2009 Act”)(a) and paragraph 1A of Schedule 2 to the European Communities Act 1972 (“the 1972 Act”)(b) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act, and it appears to the Scottish Ministers that it is expedient for the reference to Commission Decision 2000/532/EC establishing a list of wastes(c) to be a reference to that instrument as amended from time to time.

In accordance with section 96(4) of the 2009 Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Waste Information (Scotland) Regulations 2010 and come into force on 10th January 2011.

**Interpretation**

2. In these Regulations—

“undertaking” includes any business or profession and—

- (a) in relation to a public body or public office-holder, includes the exercise of any of its functions; and
- (b) in relation to any other body corporate or unincorporate, includes any of the activities of that body;

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(a) 2009 asp 12; see section 78(4) as to the meaning of “specified”.

(b) 1972 c. 68, as relevantly amended by the Scotland Act 1998 (c. 46), Schedule 8 paragraph 15(3); the Legislative and Regulatory Reform Act 2006 (c.51), Part 3 sections 27(1) and (2) and 28 and the European Union Amendment Act 2008 (c.7), Schedule 1 Part 1. The functions conferred on the Minister of the Crown under section 2(2) of the 1972 Act, so far as exercisable within devolved competence, were transferred to the Scottish Ministers by section 53 of the Scotland Act.

(c) 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) and 2001/119/EC (O.J. L 47, 16.2.2001, p.32) and by Council Decision 2001/573/EC (O.J. L 203, 28.7.2001, p.18).

“waste information request” means a request made by SEPA in accordance with regulation 3 to any person having control or management of an undertaking for information which falls within regulation 4; and

“writing” includes text that is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

### **Making of waste information requests**

**3.—**(1) A waste information request must be made in writing and state that it is made in accordance with these Regulations.

(2) A waste information request may be made to a person only by—

- (a) delivering it to that person, or leaving it at that person’s proper address;
- (b) sending it by post to that person at that person’s proper address; or
- (c) sending it to an electronic address (including a fax number or e-mail address) that the person has held out to SEPA as an address at which that person may be contacted for the purpose of receiving such communications.

(3) Where the person to whom the waste information request is made is a body corporate, a partnership or a limited liability partnership, the request may be delivered or sent, in accordance with paragraph (2), to—

- (a) a director or the secretary, chief clerk or other similar officer of the body corporate;
- (b) a partner or person having control or management of the partnership; or
- (c) a member of the limited liability partnership.

(4) For the purposes of this regulation, “proper address” means—

- (a) the registered or principal office or principal place of business of a body corporate;
- (b) the principal place of business of a partnership;
- (c) the registered office or principal place of business of a limited liability partnership;
- (d) where none of sub-paragraphs (a) to (c) applies, the last known address of the person in question.

(5) A waste information request is made on the date on which it is received by the person to whom it is given or sent.

(6) A waste information request sent in accordance with paragraph (2)(c) is, unless the contrary is proved, deemed to be received on the first business day after the day on which it was transmitted.

(7) In this regulation—

“body corporate” does not include a partnership or limited liability partnership; and

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or any day which is a bank holiday in any part of the United Kingdom.

### **Content of waste information requests**

**4.—**(1) A waste information request may seek information relating to any of the following matters—

- (a) the nature of any activities of the undertaking in relation to which the request is made which involve the production or management of waste;
- (b) the geographical locations at which any such activities are carried on, including the postcode and local authority area;

- (c) descriptions of the types of waste produced by or managed in the course of such an activity, including the European Waste Catalogue code;
- (d) the quantities of waste of any description produced by or managed in the course of such an activity;
- (e) the quantities of waste of any description produced, stored, treated, disposed of or transferred during any twelve month period in connection with such an activity;
- (f) in respect of any description of waste transferred during any twelve month period, the initial or (where known) any subsequent destination or holder of that waste;
- (g) in respect of any description of waste treated or disposed of during any twelve month period, whether before or after transfer, the treatment or disposal method where known.

(2) In this regulation—

“European Waste Catalogue code” means the relevant code determined under the Annex to Commission Decision 2000/532/EC establishing a list of wastes, as that instrument may be amended from time to time.

### **Duty to comply with waste information requests**

5.—(1) A person has a duty to provide information to SEPA in writing within the time limit set out in paragraph (2) where—

- (a) that information is the subject of a waste information request made to that person;
- (b) that waste information request has not subsequently been withdrawn in writing by SEPA; and
- (c) before being made to that person, notice of SEPA’s intention to make such a request to that person, or a category of persons including that person, has been published by such means as SEPA considers appropriate.

(2) The time limit referred to in paragraph (1) is 28 days from the making of the waste information request, or such longer period as may be permitted by SEPA in writing.

### **Offences and penalties**

6.—(1) It is an offence for a person—

- (a) to fail, without reasonable excuse, to comply with the duty imposed by regulation 5;
- (b) to make a statement in purported compliance with that duty which that person knows to be false or misleading in a material particular, or recklessly to make such a statement which is false or misleading in a material particular.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association;
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual; or
  - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the offender is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) In paragraph (3), “relevant individual” means—

- (a) in relation to a body corporate—
  - (i) a director, manager, secretary or other similar officer of the body;

- (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

St Andrew's House,  
Edinburgh

A member of the Scottish Executive

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations require persons having control or management of undertakings to comply with any request made to them by the Scottish Environment Protection Agency (“SEPA”) for information relating to waste associated with that undertaking and which falls within the categories set out in regulation 4. The procedure for making waste information requests is contained in regulation 3 and includes details relating to making of requests to bodies corporate, limited liability partnerships and partnerships. Failure to comply with a waste information request is to be an offence punishable on summary conviction with a fine of up to level 5 on the standard scale (currently £5,000).

The information obtained through the making of waste information requests will assist in compliance with Regulation (EC) No. 2150/2002 of the European Parliament and of the Council on waste statistics<sup>(a)</sup>.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from Scottish Government Environmental Quality Division, Area 1-H North, Victoria Quay, Edinburgh EH6 6QQ.

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(a) O.J. L 332, 9.12.2002, p.1, as amended by Commission Regulations (EC) No. 574/2004 (O.J. L 90, 27.3.2004, p.15); 783/2005 (O.J. L 131, 25.5.2005, p.38); 1446/2005 (O.J. L 229, 6.9.2005, p.13) and 849/2010 (O.J. L 253, 28.9. 2010, p. 2) and Regulation (EC) No. 221/2009 of the European Parliament and of the Council on waste statistics (O.J. L 87, 31.03.2009, p.157).

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