

EXECUTIVE NOTE

DRAFT : THE WASTE (SCOTLAND) REGULATIONS 2011

1. The above Instrument is proposed to be made in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999 and paragraph 1A of Schedule 2 to the European Communities Act 1972. The Instrument is subject to affirmative resolution procedure.

POLICY OBJECTIVES

Transposition of the revised Waste Framework Directive (2008/98/EC) (rWFD) into Scots law outwith the Waste Management Licensing Regulations (WMLR).

2. A revised version of the Waste Framework Directive (2008/98/EC) came into force on 12 December 2008 and while the essence of the rWFD remains the same with greater emphasis on waste prevention and the waste hierarchy, there are provisions which require transposition into Scots law. These Regulations transpose those provisions into Scots legislation other than the WMLR. A copy of the Directive is attached.

3. The practical implementation of provisions such as separate collections, waste prevention and management plans and the promotion of the waste hierarchy will occur through Scotland's Zero Waste Plan.

Better Regulation

4. Some aspects of the current waste management licensing system can be cumbersome for both operators and regulators alike. In accordance with Better Regulation policy, these Regulations contain legislative amendments which will allow for a more flexible waste management licensing process which, for example, specifically allows for partial transfers and surrenders of site licenses and the issuing of consolidated licences.

CONSULTATION

5. The policy intentions addressed by the draft instrument were the subject of a 12 week consultation to which 39 responses were received.

6. The received comments contained no significant objections to the proposals.

7. While these Regulations assist in transposing the rWFD into Scots law, the practical implementation of provisions such as separate collections, waste prevention and waste management plans and the promotion of the waste hierarchy will occur through Scotland's Zero Waste Plan. It is these issues which will potentially have the most significant impact on stakeholders and further consultation is taking place.

EFFECT OF THE REGULATIONS

8. The legislation affected by these Regulations is:

- The Environmental Protection Act 1990;
- The Environment Act 1995;
- The Town and Country Planning (Scotland) Act 1997;
- The National Waste Management Plan for Scotland Regulations 2007;
- The Special Waste Regulations 1996;
- The Pollution Prevention and Control (Scotland) Regulations 2000.

9. These amendments will assist in meeting our obligation under European Law to transpose the requirements of the rWFD into Scots law and bring the relevant references and meanings into line.

10. The Schedule to these Regulations also contains other minor and consequential amendments across a variety of different pieces of legislation, which are required to take account of the definitional adjustments in the rWFD.

11. Amendments to the Environmental Protection Act 1990 are also included which will allow for a more flexible process relating to the revocation, suspension, surrender and/or transfer of a waste management licence, allowing for site licences to be surrendered, transferred, suspended or revoked in relation only to part of a site.

FINANCIAL IMPLICATIONS

12. It is difficult to quantify the overall potential financial effect these Regulations will have, however it is envisaged that any costs would be minimal. The provisions of the rWFD transposed through these Regulations should not in themselves, have any significant financial impact.

13. The amendments to the waste management licensing system are designed essentially to improve those parts of the process and will not have any detrimental impact financially on either operators or regulators.

14. A Business and Regulatory Impact Assessment is attached.

Zero Waste Delivery Team
Scottish Government
January 2011

Final Business and Regulatory Impact Assessment

Title of Proposal

1. The consolidation of the Waste Management Licensing (Scotland) Regulations 1994 (as amended) incorporating:
 - a) the transposition of the revised Waste Framework Directive (Directive 2008/98/EC);
 - b) amendments arising from the Better Waste Regulation consultation exercise; and
 - c) the amendment of legislation relating to waste carriers.

Purpose and intended effect

Objective

2. The objectives are to be achieved through the introduction of the draft Waste Management Licensing Regulations 2011 and the draft Waste (Scotland) Regulations 2011.
3. There are 4 main drivers to these 2 SSIs:
 - 3.1 To consolidate the Waste Management Licensing Regulations 1994 (as amended) (WMLR) with the aim of making Scottish waste legislation clearer and easier to understand for both regulators and operators.
 - 3.2 To amend certain provisions of the WMLR to provide a more flexible and efficient waste management licensing system, in line with the principles of Better Regulation.
 - 3.3 To transpose the revised Waste Framework Directive (2008/98/EC) fully into Scots law.
 - 3.4 To amend legislation relating to waste carriers to take account of a clarification of Community law by the European Court of Justice (ECJ).

Background

Better Regulation

4. In order to meet its commitment to the principles of better regulation, an agenda has been adopted by the Scottish Government with the principal aim of enhancing and growing Scotland's economic competitiveness by helping to improve the regulatory environment and ensuring that it is suitable and appropriate for Scotland.
5. The Scottish Government is committed to reducing, as far as possible, the burdens on business, charities and the voluntary sector arising from EU Directives and Regulations.

6. Several amendments are contained in these Regulations which, although relatively minor, will provide for a more flexible licensing system which can be more easily applied by SEPA, and provide greater clarity and understanding for waste operators.

7. The Regulations introduce new activities eligible for exemption status which will lessen the regulatory burden on a wider range of recycling and recovery activities, thereby further encouraging the type of waste management operations which will meet the objectives of environmental and human health protection.

8. These Regulations will remove the legal requirement for a Certificate of Technical Competence (CoTC), which is the current means of demonstrating that an applicant is a fit and proper person to hold a waste management licence. The Scottish Government believes that this system exceeds the requirements of the revised Waste Framework Directive (rWFD).

Consolidation of WMLR

9. Scottish legislation on waste stems from the original Waste Framework Directive (75/442/EEC) which has been transposed into UK law mainly through the Environmental Protection Act 1990, and through its subsequent amendments and related subordinate legislation, especially the WMLR.

10. As a result of these amendments, the legislation has become cumbersome and in many instances it is difficult to draw clear and concise guidance from it, for both regulators and industry alike.

11. The consolidation of the waste management licensing regulations is to allow more clarity and understanding of the requirements set by the Directive.

12. A commitment to do this was made to the Subordinate Legislation Committee of the Scottish Parliament.

Transposition of revised Waste Framework Directive (rWFD)

13. A revised version of the Waste Framework Directive (2008/98/EC) came into force on 12 December 2008. The rWFD contains provisions which require transposition into Scots law.

14. The essence of the rWFD remains the same with greater emphasis on waste prevention and the waste hierarchy. The Community legislator, in revising the Directive, explicitly disavowed any intention of amending the definition of waste which has been central to waste regulation. Furthermore, much of the existing case law has been preserved in the new text. The regulatory changes are not, therefore, anything like as great as those to which a completely new Directive would have given rise.

15. Key aspects of the rWFD such as the detailed application of the waste hierarchy, the implementation of waste prevention plans and the separate collection of waste are being dealt with through Scotland's Zero Waste Plan (ZWP).

16. Provisions within the rWFD which require to be transposed into other areas of Scottish waste legislation outwith the WMLR are included within the draft Waste (Scotland) Regulations 2011.

17. To summarise, we propose transposing the revised Waste Framework Directive provisions into Scots law through the following 3 “vehicles”:

- a. **The consolidated Waste Management Licensing Regulations:**
Those provisions relating to the WMLR.
- b. **The Zero Waste Plan for Scotland:**
Those provisions which relate more to strategy and implementation than regulation.
- c. **New Regulations entitled “The Waste (Scotland) Regulations 2011”**
Those provisions affecting legislation outwith the WMLR.

Waste Carriers legislation

18. In June 2005, the European Court of Justice (ECJ) ruled in an infraction case against the Italian Government (Case C–270/03) regarding their transposition of certain legislation relating to waste carriers.

19. Essentially the judgement ruled that waste producers must be registered with the relevant national regulator if they wish to transport their own waste.

20. This is not fully reflected in current Scots law, therefore appropriate amendments require to be made.

Rationale for Government intervention

21. The Scottish Government is committed to the principles of Better Regulation.

22. The legislative changes proposed are properly a matter for the Scottish Government.

23. European law requires that the provisions of the revised WFD must be fully transposed into Member States’ waste legislation.

24. It is important that the provisions are transposed fully into Scots law to avoid infraction proceedings being taken against the UK Government by the Commission which could ultimately lead to heavy fines being imposed for which the Scottish Government would be liable. The matter of fines is considered in more detail under Options. Government intervention is required as, to alter the legal framework, amendments to the existing WMLR and other transposing legislation are required. Again, this is properly a matter for the Scottish Government.

25. Failure to amend Scottish legislation relating to waste carriers following the European Court of Justice (ECJ) ruling against Italy, could see similar action being taken.

26. It should be noted that although fines imposed by the European Commission are levied against the Member State (i.e. the United Kingdom) the liability for payment of the fine, and indeed the costs of any legal action, would fall to the administration(s) whose non-compliance gave rise to the infraction.

Consultation

Within Government

27. Preparatory work for the consultation paper involved discussions across a wide range of Scottish Government interests including:

- Planning Division
- Zero Waste Delivery Team
- Marine Strategy
- Scottish Government Legal Directorate
- Better Regulation and Industry
- Economics (Environment)

28. Whilst not a government department, extensive discussion also took place with the Scottish Environment Protection Agency (SEPA) as it is the regulating authority.

Public Consultation

29. These Regulations were the subject of a 12 week consultation which commenced on 26 February 2010. The consultation was open to members of the public although the WMLR govern only the activities of those persons whose day to day business involves waste.

Business

30. In addition to the consultation mentioned above, a joint public consultation exercise by the Scottish Government and SEPA on BWR was conducted in March 2007.

31. Discussions with external bodies have taken place since that exercise, regarding proposals that were included within this consultation paper.

32. While these two sets of Regulations transpose the rWFD into Scots law, the practical implementation of provisions such as separate collections, waste management plans and the promotion of the waste hierarchy principle will occur through the ZWP. Extensive and ongoing consultation with stakeholders on those measures is currently being carried out. A consultation paper entitled “Regulations to Deliver Zero Waste – a consultation on the proposed Zero Waste (Scotland) Regulations 2011” was launched on 1 December 2010. A number of workshops are also planned, facilitated by Zero Waste Scotland who work with businesses, individuals, communities and local authorities.

Response

33. The Consultation received 39 responses which were considered and taken into account in the production of the draft Regulations. As a result of these comments several amendments, particularly with regard to the Better Waste Regulation element, were made to the draft regulations.

34. For example, we have reinstated into Schedule 1 the paragraph 15 exemption which we had intended to remove and we have narrowed the provision for mobile plant.

35. It was clear from the comments that the exemptions regime is in need of updating, therefore we propose to review the range of activities as part of the Better Regulation exercise in 2011.

Options

Option 1 - Do nothing.

Option 2 - Consolidate the WMLR incorporating the amendments for BWR and waste carriers but do not transpose the provisions of the revised WFD.

Option 3 - Consolidate the WMLR incorporating the amendments for BWR and waste carriers and incorporate the necessary additions and amendments required to transpose the provisions of the revised WFD.

Sectors and groups affected

36. Any business, charity or voluntary or public sector organisation, that requires a waste management licence or exemption in the course of their activities.

37. Any waste producers who transport their own waste.

Option 1 - Do nothing

38. This represents the base case of business as usual against which other options are compared. The existing WMLR and its subsequent amendments remain intact, the requirements of the revised WFD are not fulfilled, and the required amendments to the waste carriers legislation are not made.

Benefits

39. There is no change to the current system. Waste management licensing legislation remains the same, with continuing concerns over clarity and simplicity for both regulators and operators.

Costs

40. Option 1 implies no change for any party, so there would be no costs attributable to any regulatory change. However, this option also implies non-compliance with the revised WFD.

41. This could lead to fines being levied, as a result of legal proceedings which would certainly be taken by the Commission before the European Court of Justice.

42. The maximum advised fine that could be imposed on the UK for the most serious of breaches and the maximum duration is €534,000 (c £490,000) per day (nearly £180 million per year).

43. It should be noted that fines imposed by the European Commission are levied against the Member State (i.e. the United Kingdom). However in the event that the other UK administrations transpose the provisions of the Directive and Scotland does not, then non-compliance would be the fault of Scotland alone. The Scottish Government would then have to pay the fines and indeed the costs of any legal action.

44. Conversely, should Scotland successfully transpose the provisions of the Directive and the rest of the UK doesn't, then non-compliance would not be the fault of Scotland and the Scottish Government would not be liable to pay any fines imposed on the UK.

Option 2 - Consolidate the WMLR, making amendments for BWR and necessary amendment to legislation relating to waste carriers, but do **not** incorporate the additions and amendments to the WMLR required to transpose the provisions of the revised WFD; or make the necessary amendments to Scottish waste legislation outwith the WMLR.

Benefits

Consolidation

45. The principal benefit of the consolidation which forms the background to these changes is that it provides more clarity on the law for waste operators and regulators alike.

46. Mainly this issue is one of convenience. However to the extent that this reduces the time taken to locate any particular provision, it also has the potential to reduce costs relating to administration and services such as e.g. legal fees. It will also help avoid errors arising from referring to out of date legislation.

47. Simplifying the regime could have the effect of encouraging operators into the recovery and recycling business.

48. It is hoped that the greater clarity brought to the legislative process by the consolidation will allow for swifter decision making and subsequently provide potential savings on resources for both regulators and operators.

Better Regulation

49. The Scottish Government is committed to the principles of Better Regulation. During the BWR exercise, representatives of the Scottish waste industry were consulted extensively in order to obtain views on how the regulatory regime can be improved.

50. The inclusion of new exemptions increases the range of activities that operators will be able to undertake without having to pay the larger cost of obtaining a full waste management licence and paying subsequent related fees (Fees outlined in costs section below).

51. The new exemptions will continue to require that the objectives of protection of the environment and human health should be observed, and the exemptions are framed to help ensure that risks are minimised.

52. The removal of the legal requirement for a CoTC, which is the current means of demonstrating that an applicant is a fit and proper person to hold a waste management licence, will improve the flexibility and proportionality of the process by which a waste management licence can be obtained.

Amendments to waste carriers legislation

53. Making the necessary amendments to legislation relevant to waste carriers would obviate the dangers of costs arising from potential legal proceedings by the European Commission.

Not transposing the requirements of the rWFD

54. Option 2 implies that the requirements of the rWFD would not be transposed into Scots law. The situation regarding EC requirements does not change therefore there would be no benefit attained.

Costs

Consolidation

55. Option 2 will involve the Scottish Government and SEPA in the costs of making, printing and publishing the consolidated legislation. These are difficult to quantify but would occur in the ordinary course of the business of these organisations.

56. In view of the minimal difference made by the proposed changes to the practical situation, minimal expense with regard to guidance for SEPA staff will be required.

Better Regulation

57. All of the proposed amendments arising from the BWR exercise are designed to reduce the regulatory burden on operators and in some cases, will actually make costs savings.

58. An example of this is the proposed amendment to allow just one exemption to cover a single farm unit. At present, an exemption is required for each individual site thereby incurring a separate cost for each application.

59. New exemptions will have the administrative costs outlined below.

60. Application fees for full waste management licences range, depending on activity and scale, from £952 - £4,483, with an annual subsistence fee ranging from £1,277 - £10,011. There are also other fees for modification or variation, surrender and transfer.

61. Exemption costs range from £0 - £803, the only other charges being annual fees ranging from £0 - £655.

62. Where an activity which was formerly carried out under a waste management licence is carried out instead under an exemption, this will potentially have the effect of reducing SEPA's revenue in line with the figures stated above.

63. At the same time, however, SEPA's charges currently relate to the amount of regulatory effort required. This is normally considerably greater in the case of waste management licences than in that of exemptions (although there are some instances where this is not the case), so the new exemptions will have the potential effect of reducing SEPA's costs.

64. Given that charges are based on cost recovery, the effects on SEPA's finance should be broadly neutral.

65. At any rate costs to operators, both in time and fees, of exemptions are significantly less than those of licences.

66. In certain circumstances, operators who would previously have required the services of an environmental consultant to assist with their application for a full licence may benefit from a significant reduction in costs.

67. It is also the case that the Scottish Government hopes that more operators will be encouraged to undertake the kind of recovery and recycling activities facilitated by the new exemptions. This would involve more regulatory effort for SEPA, but also potentially greater income. Again, this should balance out.

Amendments to Waste Carriers Legislation

68. There is a registration fee and renewal charge every 3 years when registering with SEPA as a waste carrier.

69. The current charge for initial registration is £157 and thereafter, £108 for renewal every 3 years.

70. However, as most people carrying their own waste will, at some point, be handing it over to a waste management operation, some may choose not to register but simply negotiate carriage of their waste as part of their waste management contract.

71. Any increase in regulatory costs or the costs of waste management arising from the proposed changes (which we believe to be relatively small) are likely to be absorbed by the operator or passed on to those who use the services provided by the operator.

72. They will thus be borne by those who contribute to, or occasion, the production of, the waste. This is in keeping with the "polluter pays" principle, and provides an incentive to minimise waste production.

Not transposing the rWFD

73. The failure to implement the Directive would entail the danger of incurring the fines and costs described in option 1.

Option 3 - Consolidate the WMLR, making amendments for BWR, and necessary amendment to legislation relating to waste carriers and incorporate the necessary additions and amendments required to transpose the provisions of the revised WFD into the WMLR and associated Scottish waste legislation.

Benefits

Consolidation

74. The regulatory position is consolidated with the benefits listed above in option 2.

Better Regulation

75. The implementation of the proposals arising from the BWR exercise to the WMLR are made with the benefits listed above in option 2.

Transposition of the rWFD

76. The revised Directive stresses greater emphasis on maximising waste prevention and cleaner forms of recovery.

77. Whilst Scottish waste legislation has its own characteristics which distinguish it from other member state regimes, there are obviously benefits to maintaining an approximately “level playing field” with the rest of the European community. Moreover the Scottish Government is likely to make use of any deregulatory potential of the new Directive.

Amendments to Waste Carriers Legislation

78. The required amendments to the legislation relating to waste carriers are made with the benefits listed above in option 2.

Costs

Consolidation

79. Option 3 will involve the Scottish Government and SEPA in the costs of making, printing and publishing the consolidated legislation. These are difficult to quantify but would occur in the ordinary course of the business of these organisations.

80. In view of the minimal difference made by the proposed changes to operational practice, minimal expense with regard to guidance for SEPA staff will be required.

Better Regulation

81. Same costs as outlined in option 2.

Amendments to Waste Carriers Legislation

82. Same costs as outlined in option 2.

Transposing the rWFD

83. As there are no major alterations to the Scottish waste regime as a result of the transposition of the rWFD, we do not anticipate there being any great impact on operator costs.

84. The transposition of the rWFD through these 2 sets of draft regulations will not in itself have any significant impact on operator costs.

85. Any potentially significant impact on operators, are more likely to arise from the implementation of certain provisions such as the waste hierarchy principles, the introduction of waste management plans, and separate collections of waste, through the Zero Waste Plan. Any potential impact is being discussed extensively as part of that consultative process.

Scottish Firms Impact Test

86. The consolidation of the WMLR, the amendments to the legislation following the BWR consultation, the new exemptions to be added and the measures being introduced by the transposition of the revised WFD should have no detrimental effect on Scottish businesses in the waste sector.

87. The initial consultation on these regulations took place before the requirements of the new Business Regulatory Impact Assessment (BRIA) came into effect. Therefore face to face discussion with 6-12 businesses did not take place.

88. As stated in the section above, any potentially significant impact on stakeholders, is more likely to arise from the implementation of certain provisions such as the waste hierarchy principle, the introduction of waste management plans, and separate collections of waste, through the Zero Waste Plan. Any potential impact is being discussed extensively as part of that consultative process.

89. A consultation paper entitled "Regulations to Deliver Zero Waste – a consultation on the proposed Zero Waste (Scotland) Regulations 2011" was launched on 1 December 2010. A number of workshops are planned as part of the consultation process, which will be facilitated by Zero Waste Scotland who work with businesses, individuals, communities and local authorities.

90. The simplified regime and new exemptions, on the other hand, are likely to be of assistance to small businesses in particular.

Competition Assessment

91. The changes do not apply selectively. They do not, therefore, result in imposition of costs, or the availability of benefits, to some operators in any industrial sector but not to others.

92. By removing the requirement to hold a CoTC the proposed changes remove a barrier to entry, and thus avoid maintaining what might otherwise be an oligopoly.

93. This assessment has been discussed with the Office of Fair Trading who have agreed with our views above.

Test Run of Business forms

94. New forms will have to be designed for the new exemptions but these will require less detail than the application for a full licence.

Legal Aid Impact Test

95. The Regulations do not create any new offences but they do expand the range of undertakings which are within the scope of an existing offence i.e. waste producers who regularly transport their own waste in the course of their activities will now be required to be registered with the Scottish Environment Protection Agency as waste carriers. This is required in order to comply with a European Court of Justice judgement. Guidance will be provided by SEPA explaining who should register and how this is to be done. It is unlikely that a significant level of non-compliance will arise and, given that only natural persons are eligible to receive legal aid in Scotland, it is very unlikely that these regulations will result in increased legal aid expenditure.

96. This assessment has been discussed with the Legal Aid Team who have agreed with our views above.

Enforcement, sanctions and monitoring

97. SEPA is the authority currently responsible for issuing, enforcing and ensuring compliance with waste management licences as well as for registering and enforcing and ensuring compliance with exemptions. It will continue to be so, in exactly the same way as it is currently.

98. The amendment to waste carriers legislation means that it will now be an offence for certain waste producers not to be registered with SEPA as a waste carrier. This change is unavoidable due to the ECJ judgement. Scottish Government and SEPA will consider the best way to implement this measure in order to minimise any immediate detrimental impact on those operators who may now fall under this requirement.

99. Any amendments to the current regulatory situation are unlikely to result in major changes to SEPA's enforcement practices. There will, however, be the need for training for its officers in respect of the new exemptions described above.

100. The Scottish Government and SEPA will monitor and review the effectiveness of these changes.

Implementation and delivery plan

101. SEPA is the enforcing authority with regards to waste legislation in Scotland. Extensive consultation on all areas of the Regulations have taken place between Scottish Government and SEPA regarding implementation and delivery.

102. The consolidation exercise requires no implementation or delivery strategy as the legislation already exists.

103. Similarly, the amendments and additions arising from the BWR exercise can be implemented easily into the existing regime. No burdens or additional costs are involved.

104. It is intended to produce guidance on certain provisions relating to the transposition of the rWFD, particularly with regard to the expanded definitions and end of waste criteria.

105. Certain provisions relating to the transposition of the revised rWFD such as implementation of the waste hierarchy separate collections of waste and waste management plans are being delivered through the Zero Waste Plan. Further Regulations will arise from the Plan process.

106. It is also intended to produce guidance on the potential effects of the changes to waste carriers legislation.

Post-Implementation review

107. Scottish Government and SEPA will carry out a review of the effectiveness of the regulations within 10 years of the coming into force date.

Summary and Recommendation

Summary costs and benefits

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social -policy and administrative
Option 1: Do nothing.	This is the base line option and would result in no change to the current system.	None. However, this option implies non-compliance with both the rWFD and the ECJ decision on waste carriers, which could potentially lead to fines being levied as a result of legal proceedings being taken by the EC.
Option 2: Consolidate the WMLR incorporating the amendments for BWR and waste carriers but do not transpose the provisions of the revised WFD.	More clarity on Scottish waste law. Providing a more flexible and efficient WML system. Compliance with EC Law relating to waste carriers.	The new exemptions will reduce the regulatory burden on operators and potentially make cost savings. Amending the waste carriers legislation in accordance with the ECJ judgement will ensure avoidance of potential fines for non-compliance being imposed. However this option also implies non-compliance with the rWFD which could potentially lead to fines being levied as a result of legal proceedings being taken by the EC.
Option 3: Consolidate the WMLR incorporating the amendments for BWR and waste carriers and incorporate the necessary additions and amendments required to transpose the provisions of the revised WFD.	More clarity on Scottish waste law. Providing a more flexible and efficient WML system. Increasing the number of activities eligible for exemption from full WML.	The new exemptions will reduce the regulatory burden on operators and potentially make cost savings. Amending the waste carriers legislation in accordance with the ECJ judgement will ensure avoidance of potential fines for non-compliance being imposed. Transposition of the rWFD would remove the danger of fines being

	<p>Compliance with EC Directive.</p> <p>Compliance with EC Law relating to waste carriers.</p>	<p>imposed by the EC for non-compliance.</p>
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Recommendation

Option 3 to Consolidate the WMLR, making amendments for BWR, and necessary amendment to legislation relating to waste carriers and incorporate the necessary additions and amendments required to transpose the provisions of the revised WFD into the WMLR and associated Scottish waste legislation is recommended.

Declaration

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed.....

Date.....

**RICHARD LOCHHEAD MSP
CABINET SECRETARY FOR RURAL AFFAIRS AND THE ENVIRONMENT**

**Scottish Government
January 2011**

TRANSPOSITION NOTE

setting out the transposition of Directive 2008/98/EC of the European Parliament and Council on waste (“the Directive”) dealt with in the Waste Management Licensing (Scotland) Regulations 2011 and the Waste (Scotland) Regulations 2011.

The Directive repeals and replaces certain previous Directives relating to waste, notably the former Waste Framework Directive (2006/12/EC) and the former Hazardous Waste Directive (91/689/EEC, as amended by Directive 94/31/EC). It streamlines the regulatory framework by absorbing the main provisions on hazardous waste and on waste generally into the same instrument. It also strengthens the emphasis on waste prevention, and introduces a new waste hierarchy, prioritising prevention over preparation for re-use, recycling, other forms of recovery (including energy recovery) and disposal in that order.

As many of the provisions of the Directive are not new but have been continued from previous Directives, and others are permissive or otherwise do not impose substantive obligations requiring transposition into national law, it has not been necessary to transpose all elements of the Directive on this occasion. In addition, the waste prevention programmes covered by Article 29 do not need to be in place until December 2013. The table below sets out how those provisions of the Directive requiring to be dealt with now have been transposed. Transposition through amendments contained in the Schedule to the Waste (Scotland) Regulations and Schedule 6 to the Waste Management Licensing (Scotland) Regulations is however not included. These amendments are minor and definitional in nature.

Article	Objective	Implementation
2(1) to (3)	To exclude certain types of waste from the scope of the Directive	Waste Management Licensing (Scotland) Regulations regulation 2(1) (see definition of “Directive waste”); Waste (Scotland) Regulations regulations 2(12)(a), 4, 5(3), 6(2)(c) and 7(2)(b). It should be noted that in some contexts “waste” is defined as including not only waste falling within the scope of the Directive, but also low-level radioactive waste and waste arising from on-site remediation of contaminated land. (See for example the definition of “waste” as opposed to “Directive waste” in regulation 2(1) of the Waste Management Licensing (Scotland) Regulations). This is to ensure that domestic waste controls can continue to be applied to these forms

		of waste, which would otherwise be left unregulated.
4	To ensure the application of the waste hierarchy	Waste Management Licensing (Scotland) Regulations regulation 29 and Schedule 4 Part I paragraphs 2, 3, 4 and 6(2) and (3); Waste (Scotland) Regulations regulation 2(4)(b) and (d) and 5(6). The provisions in the Waste Management Licensing Regulations require the regulator (SEPA), planning authorities and other specified competent authorities to discharge relevant statutory functions with objectives which include application of the hierarchy. The provisions in the Waste (Scotland) Regulations extend the duty of care of those handling waste under section 34 of the Environmental Protection Act 1990 to encompass taking all reasonable steps to implement the hierarchy.
5	To specify when a substance or object may be treated as a by-product and not as waste.	Waste Management Licensing Regulations regulation 2(1) (see definitions of “Directive waste” and “waste”) and Waste (Scotland) Regulations regulations 2(12); 4; 5(3); 6(2)(c); 7(2)(b).
6	To specify when a substance or object may be treated as no longer being waste	As for Article 5.
7	To define what is hazardous waste and provide that the “list of waste” (European Waste Catalogue) is binding in this respect.	Waste Management Licensing Regulations regulation 2(1) (see definition of “special waste”); Waste (Scotland) Regulations regulations 5(2)(b) and 6(4).
10	To require Member States to ensure waste undergoes	Waste Management Licensing Regulations

	recovery operations, including separate collection of different waste streams where appropriate.	regulation 29 and Schedule 4 paragraphs 4, 5 and 6(1)(b) require specified public authorities to exercise specified statutory functions with the objective of ensuring separate collection where appropriate. Further practical detail is provided in the Scottish Government's Zero Waste Plan (which forms part of the National Waste Management Plan for Scotland).
11(1)	To require Member States to promote the re-use of products.	Waste (Scotland) Regulations 2010 regulation 5(10) establishes this as one of the objectives of the National Waste Management Plan.
13	To require waste management to be carried out without endangering human health or harming the environment	Waste Management Licensing Regulations regulation 29 and Schedule 4 paragraphs 2(2)(c), 3(1)(b), 4, 5 and 6(1)(a) require specified public authorities to exercise specified statutory functions with this objective. Section 33(1)(c) and (6) of the Environmental Protection Act 1990 already make it an offence to deal with waste in a way which is likely to cause pollution of the environment or harm to human health. Waste (Scotland) Regulations regulation 2(3) amends this to insert reference to waste "management", aligning more closely with the Directive. The National Waste Management Plan for Scotland Regulations 2007 already have an equivalent of Article 13 as one of the objectives of the National Waste Management Plan (Schedule 1 paragraph 1 to those Regulations). Waste

		(Scotland) Regulations regulation 5(5) amends this to introduce a reference to waste management, in line with the Directive.
16(1)-(3)	To require the establishment of an integrated network of waste disposal and recovery installations.	Waste Management Licensing Regulations regulation 29 and Schedule 4 paragraphs 4, 5 and 6(4) require specified public authorities to exercise specified statutory functions with this objective. Waste (Scotland) Regulations regulation 5(7) and (8) establishes this as an objective of the National Waste Management Plan.
18	To ensure that hazardous waste is not mixed with other materials.	The Special Waste Regulations 1996 regulations 17 and 17A already deal with this. The Waste (Scotland) Regulations regulation 6(8)(b) to (e) and (9) amend these provisions to align with the current Directive wording, extend the mixing ban to substances and materials other than wastes, tighten the exception to the mixing ban and provide that mixing includes dilution, all as required by the Directive.
20	To disapply Directive provisions relating to hazardous waste from hazardous waste produced by households.	Waste (Scotland) Regulations regulations 6(2)(a) and (5) prevent a householder from being treated as a consignor subject to duties concerning consignment notes, and disapply the Special Waste Regulations in relation to mixed domestic waste.
21(1)(a) and (c)	To require waste oils to be collected separately where feasible and to restrict their mixing.	Waste Management Licensing Regulations regulation 15(2) and (3) and Waste (Scotland) Regulations regulation 7(4) deal with mixing; Waste (Scotland) Regulations

		regulation 2(4) deal with separate collection of waste oils as part of the duty of care placed on operators by section 34 of the Environmental Protection Act 1990.
22	To require Member States to take measures to encourage the separate collection and treatment of biowaste and the use of environmentally safe materials made from it.	Waste (Scotland) Regulations regulation 5(10) establishes this as an objective of the National Waste Management Plan.
23(1)	To require waste treatment operators to obtain permits, and to specify matters which permits must deal with.	The basic requirement for a permit is already covered by section 33(1)(a) and (b) of the Environmental Protection Act 1990. The Waste Management Licensing Regulations regulation 29 and Schedule 4 paragraph 8 deals with matters to be covered by permits.
23(3)	To require issue of a permit to be refused where Article 13 would not be complied with.	This is covered by Waste Management Licensing Regulations regulation 29 and Schedule 4 paragraphs 2(1)(c), 5 and 6(1)(a).
23(4)	To ensure that the recovery of energy takes place with a high level of energy efficiency.	Waste (Scotland) Regulations regulation 7(4) require pollution prevention and control permits to contain conditions dealing with this issue. Incineration and co-incineration of waste are regulated under the PPC regime not waste management licensing.
24	To enable the creation of exemptions from permit requirements	Waste Management Licensing Regulations regulation 17 deals with exemption from waste management licensing. Schedule 1 contains the current list of exemptions and associated provisions.
25(1)	To require the setting of conditions for exemptions	See Waste Management Licensing Regulations regulation 17 and Schedule 1.
25(2)	Exemptions relating to	Waste Management

	hazardous waste must contain specific conditions relating to that waste.	Licensing Regulations regulation 17(3) provides that exemptions cover hazardous waste only to the extent specified in Schedule 1. Individual exemptions in that Schedule extending to any hazardous waste are tailored to deal adequately with its special properties.
26	To ensure that waste carriers, dealers and brokers and those falling within exemptions from permitting are registered with the competent authority.	Professional carriers of waste are required to register under either the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 or the Waste Management Licensing Regulations, regulation 29 and Schedule 4 paragraph 12. The latter requires several groups exempt from registration under the 1991 Regulations to participate in a simplified form of registration. Dealers and brokers are required to register under the Waste Management Licensing Regulations regulation 30 and Schedule 5. For registration of exemptions from waste management licensing, see Waste Management Licensing Regulations regs 19-28.
28(1) to (3)	To require Member States to have waste management plans and specify their mandatory content.	Waste (Scotland) Regulations regulation 5(4)(a), (c), (d) and (g) specify the required contents of the National Waste Management Plan and specify documents forming part of the Plan.
30(1)	To ensure that Member States review their waste management plans every sixth year.	Waste (Scotland) Regulations regulation 5(4)(f) requires this review.
34(1) and (2)	To ensure that waste operators are subject to inspection by the competent	Waste Management Licensing Regulations regulation 29 and Schedule 4

	authorities.	paragraph 13 deals with these matters.
35	To ensure that adequate records are kept by waste operators.	Waste Management Licensing Regulations regulation 29 and Schedule 4 paragraph 14 transposes these requirements. For hazardous (special) waste see also the Special Waste Regulations 1996 regs 15, 15A and 16. Regulations 15 and 15A are amended by the Waste (Scotland) Regulations regulation 6(6) and (7) to align with the Directive wording.