
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 228

The Waste Management Licensing (Scotland) Regulations 2011

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Waste Management Licensing (Scotland) Regulations 2011 and come into force on 27th March 2011, subject to paragraph (2).

(2) Regulation 34 so far as revoking regulation 4 of, and Schedule 1A to, the 1994 Regulations comes into force on 30th April 2011.

(3) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1990 Act” means the Environmental Protection Act 1990(1);

“the 1991 Regulations” means the Environmental Protection (Prescribed Processes and Substances) Regulations 1991(2);

“the 1994 Regulations” means the Waste Management Licensing Regulations 1994(3);

“the 1995 Act” means the Environment Act 1995(4);

“the 2000 Regulations” means the Pollution Prevention and Control (Scotland) Regulations 2000(5);

“the 2003 Act” means the Water Environment and Water Services (Scotland) Act 2003(6);

“the 2003 Regulations” means the Landfill (Scotland) Regulations 2003(7);

“the 2005 Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2005(8)

“the 2011 Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011;

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- (1) 1990 c.43, as relevantly amended by the Natural Heritage (Scotland) Act 1991 (c.28) Schedule 2 paragraph 10(2); the Local Government etc. (Scotland) Act 1994 (c.39) Schedule 13 paragraph 167(6) and Schedule 14 paragraph 1; the Environment Act 1995 (c.25) Schedule 19 paragraph 4(1), Schedule 22 paragraphs 64, 66(2), 68(3)(b), 72, 76, 77, 83, 86 and 88 and Schedule 24 paragraph 1; the Waste Minimisation Act 1998 (c.44) section 1; the Water Industry (Scotland) Act 2002 (asp 3) Schedule 7 paragraph 20(2) and (3); the Nature Conservation (Scotland) Act 2004 (asp 6) schedule 7 paragraph 7; S.S.I. 2000/323 Schedule 10 Part 1 paragraph 3(3) and (4); 2000/430 article 2; 2002/83 article 2; 2003/173 article 2; 2005/324 article 2 and 2009/247 regulation 3.
- (2) S.I. 1991/472, as relevantly amended by S.I. 1992/614 Schedule 1 paragraph 9(a); S.I. 1993/2405 regulation 2(1); S.I. 1994/1271 Schedule 1 Part II paragraphs 3, 4 and 5(a) and Schedule 3 paragraphs 8 to 11 and S.I. 1995/3247 Schedule 1 Part 1 paragraph 3.
- (3) S.I. 1994/1056, as relevantly amended by S.S.I. 2003/171 regulation 9 and 2004/275 regulation 9(a).
- (4) 1995 c.25, as relevantly amended by S.S.I. 2000/323 Schedule 10(1) paragraph 5(4) and S.S.I. 2006/181 Schedule 1(IV) paragraph 8(5).
- (5) S.S.I. 2000/323, as relevantly amended by S.S.I. 2003/146 regulations 5, 15(a)(ii) and (iii), 16(a) and (b) and 17(c)(ii); 2003/170 regulation 9; 2003/235 Schedule 6 paragraph 3(4) and (11); 2004/26 regulation 13; 2005/101 regulation 5 and 2005/340 regulations 4, 9(a) and (b) and 11(a).
- (6) 2003 asp 3, as relevantly amended by S.S.I. 2005/348 Part 1 regulation 3(2).
- (7) S.S.I. 2003/235, as relevantly amended by the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) schedule 2(2) paragraph 8; S.S.I. 2003/343 regulation 4 and S.S.I. 2010/60, Part 1 regulation 3(4).
- (8) S.S.I. 2005/348, to which there are amendments not relevant to these Regulations.

“agriculture” has the same meaning as in section 86(3) of the Agriculture (Scotland) Act 1948⁽⁹⁾;

“agricultural waste” means waste from premises used for agriculture;

“battery” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or one or more secondary battery cells (rechargeable; an accumulator), but does not include any battery excluded from the scope of the Batteries Directive by Article 2(2) of that Directive;

“Batteries Directive” means Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators⁽¹⁰⁾;

“broker” means any undertaking arranging the recovery or disposal of waste on behalf of others, whether or not such arrangements involve the broker taking physical possession of the waste;

“co-incineration” means the use of wastes as a regular or additional fuel in a co-incineration plant or the thermal treatment of waste for the purposes of disposal in a co-incineration plant;

“co-incineration plant” means any stationary or mobile plant whose main purpose is the generation of energy or production of material products and—

- (a) which uses wastes as a regular or additional fuel, or
- (b) in which waste is thermally treated for the purpose of disposal,

if co-incineration takes place in such a way that the main purpose of the plant is not the generation of energy or production of material products but rather the thermal treatment of waste, the plant shall be regarded as an incineration plant; this definition covers the site and the entire plant including all co-incineration lines, waste reception, storage, on site pre treatment facilities, waste-, fuel- and air supply systems, boiler, facilities for the treatment of exhaust gases, on site facilities for treatment or storage of residues and waste water, stack devices and systems for controlling incineration operations, recording and monitoring incineration conditions;

“coastal water” has the same meaning as in section 3(8) of the 2003 Act;

“construction work” includes the alteration, repair or improvement of existing works;

“controlled activity” has the same meaning as in the 2011 Regulations;

“controlled waste” has the meaning given by section 75;

“dealer” means any undertaking which acts in the role of principal to purchase and subsequently sell waste, whether or not this involves the dealer taking physical possession of the waste;

“the Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste⁽¹¹⁾;

“Directive waste” means anything that is waste within the meaning of Article 3(1) of the Directive, as read with Articles 5 and 6, and which is not excluded from the scope of the Directive by Article 2(1), (2) or (3);

“disposal” means any of the operations listed in Part II of Schedule 4, and any other operation relating to waste which is not recovery even where it has as a secondary consequence the reclamation of substances or energy, and any reference to waste being disposed of is a reference to its being submitted to any such operations;

⁽⁹⁾ 1948 c.45, to which there are amendments not relevant to these Regulations.

⁽¹⁰⁾ O.J. L 266, 26.9.2006, p.1, as amended by Directive 2008/103/EC (O.J. L 327, 5.12.2008, p.7).

⁽¹¹⁾ O.J. L 312, 22.11.2008, p.3.

“disposal licence” has the same meaning as in section 3(1) of the Control of Pollution Act 1974(12);

“European Waste Catalogue” means the list of wastes set out in Commission Decision 2000/532/EC(13) establishing a list of wastes;

“exempt activity” means any of the activities set out in Schedule 1;

“incineration” means the thermal treatment of wastes with or without the recovery of the combustion heat generated;

“incineration plant” means any stationary or mobile technical unit and equipment dedicated to the thermal treatment of wastes with or without recovery of the combustion heat generated. This includes the incineration by oxidation of waste as well as other thermal treatment processes such as pyrolysis, gasification or plasma processes in so far as the substances resulting from the treatment are subsequently incinerated. This definition covers the site and the entire incineration plant including all incineration lines, waste reception, storage, on site pre treatment facilities, waste-, fuel- and air supply systems, boiler, facilities for the treatment of exhaust gases, on site facilities for the treatment or storage of residues and waste water, stack devices and systems for controlling incineration operations, recording and monitoring incineration conditions;

“inland waters” means an inland water as defined in section 3(6) of the 2003 Act, excluding groundwater;

“landfill” has the same meaning as in regulation 2(1) of the 2003 Regulations;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(14);

“mines or quarries waste” means waste from a mine or quarry;

“operational land” has the same meaning as in sections 215 and 216 of the Town and Country Planning (Scotland) Act 1997(15);

“producer” means anyone whose activities produce waste, or anyone who carries out pre-processing, mixing or other operations resulting in a change in its nature or composition;

“recovery” means any of the operations listed in Part III of Schedule 4, and any other operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in a plant or in the wider economy, and any reference to waste being recovered is a reference to its being submitted to any such operations;

“recycling”, except in relation to WEEE, means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery or reprocessing into materials that are to be used as fuels or for back-filling operations;

“recycling”, in relation to WEEE, has the same meaning as in Article 3(e) of the WEEE Directive;

“the register” means a register of exempt activities maintained under regulation 20;

“reuse”, in relation to WEEE, has the same meaning as in Article 3(d) of the WEEE Directive;

(12) 1974 c. 40, as relevantly amended by the Criminal Procedure (Scotland) Act 1975 (c.21) section 289B(1), 289F and 289G; the 1995 Act Schedule 19 paragraph 1(3) and S.S.I. 2006/181 Schedule 1 Part 1 paragraph 1.

(13) 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).

(14) 1994 c.39, as relevantly amended by the 1995 Act Schedule 22 paragraph 232(1).

(15) 1997 c.8, as relevantly amended by the Transport Act 2000 (c.38) Schedule 5 paragraph 11; the Planning etc. (Scotland) Act 2006 (asp 17) Part 10 section 54(10); S.I. 2000/2040 Schedule 1 Part 1 paragraph 20; S.I. 2001/1149 Schedule 1 Part 1 paragraphs 113(2) to (4); S.S.I. 2006/243 article 4(10) and S.I. 2006/1157 Schedule 1 paragraph 1.

“site licence” has the same meaning as in section 35(12);

“special waste” has the same meaning as in regulation 2 of the Special Waste Regulations 1996(16), except that it includes only such radioactive waste as falls within paragraph (b) of the definition of “waste” below;

“surface water” has the same meaning as in section 3(3) of the 2003 Act;

“treatment”, except in relation to WEEE and batteries and to treatment of land, means recovery or disposal operations, including preparation prior to recovery or disposal;

“treatment”, in relation to WEEE, has the same meaning as in Article 3(h) of the WEEE Directive;

“waste” means—

- (a) Directive waste;
- (b) radioactive waste within the meaning of section 1A of the Radioactive Substances Act 1993(17) which is exempt from the requirement for authorisation under section 13 or 14 of that Act by virtue of an order made, or having effect as if made, under section 15(2) of that Act;
- (c) where land is undergoing on-site remediation of contamination, that land including unexcavated contaminated soil and any contaminated buildings permanently connected with that land;

“waste management licence” has the same meaning as in section 35(1);

“waste motor vehicle” has the same meaning as in regulation 2 of the End-of-Life Vehicles (Storage and Treatment) (Scotland) Regulations 2003(18);

“the waste regulation authority” means the Scottish Environment Protection Agency;

“waste oil” means any mineral-based or synthetic lubricating or industrial oil which has become unfit for the use for which it was originally intended and, in particular, used combustion engine oil, gearbox oil, lubricating oil, oil for turbines and hydraulic oil;

“the water environment” has the same meaning as in section 3 of the 2003 Act;

“WEEE” means electrical or electronic equipment which is waste including all components, subassemblies and consumables which are part of the product at the time of discarding;

“the WEEE Directive” means Directive 2002/96/EC of the European Parliament and of the Council on waste electrical and electronic equipment(19), as amended by Directive 2003/108/EC(20);

“work” includes any preparatory work;

“writing” includes text that is—

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

(2) In these Regulations, in relation to batteries—

- (a) “industrial battery” means any battery or battery pack which is—
 - (i) designed exclusively for industrial or professional uses;
 - (ii) used as a source of power for propulsion in an electric vehicle;

(16) S.I. 1996/972, to which there are amendments not relevant to these Regulations.

(17) 1993 c. 12, as relevantly amended by the Radioactive Substances Act 1993 Amendment (Scotland) Regulations 2011.

(18) S.S.I. 2003/593.

(19) O.J. L 37, 13.2.2003, p.24.

(20) O.J. L 345, 31.12.2003, p.106.

- (iii) unsealed but is not an automotive battery; or
 - (iv) sealed but is not a portable battery;
 - (b) “portable battery” means any battery or battery pack which—
 - (i) is sealed;
 - (ii) can be hand-carried by an average natural person without difficulty; and
 - (iii) is neither an automotive nor an industrial battery;
 - (c) “the treatment conditions” means the provisions of Article 12(2) and Annex III, Part A of the Batteries Directive; and
 - (d) other expressions defined in Article 3 of the Batteries Directive have the same meanings as in that Directive.
- (3) Any reference in these Regulations to carrying on business as a metal dealer has the meaning given by section 37(2) of the Civic Government (Scotland) Act 1982(21).
- (4) The provisions of section 160 apply to—
- (a) the service or giving of any notice required or authorised by these Regulations to be served on or given to a person; or
 - (b) the sending or giving of any document required or authorised by these Regulations to be sent or given to a person,
- as if the service or giving of any such notice or, as the case may be, the sending or giving of any such document, was required or authorised by or under the 1990 Act.
- (5) In these Regulations, unless the context otherwise requires, any reference to—
- (a) a numbered section is a reference to the section in the 1990 Act bearing that number;
 - (b) a numbered regulation or Schedule is a reference to the regulation in, or Schedule to, these Regulations bearing that number; and
 - (c) a numbered paragraph is a reference to the paragraph in that regulation or Schedule bearing that number in the regulation or Schedule of which that paragraph forms part.

Relevant Offences

3. Any offence is a relevant offence for the purposes of section 74(3)(a) if it is an offence under any of the following enactments—
- (a) section 3, 5(6), 18(2), 92(6) or 93(3) of the Control of Pollution Act 1974;
 - (b) section 2 of the Refuse Disposal (Amenity) Act 1978(22);
 - (c) section 9(1) of the Food and Environment Protection Act 1985(23);
 - (d) section 1, 5, 6(9) or 7(3) of the Control of Pollution (Amendment) Act 1989(24);
 - (e) section 23(1), 33, 34(6), 44, 47(6), 57(5), 59(5), 63(2), 71(3) or 80(4);
 - (f) section 33 of the Clean Air Act 1993(25);
 - (g) the Special Waste Regulations 1996;
 - (h) regulation 30(1) of the 2000 Regulations;

(21) 1982 c.45, to which there are amendments not relevant to these Regulations.

(22) 1978 c.3, as relevantly amended by the Criminal Procedure (Scotland) Act 1975 (c.21) section 289E; the Roads (Scotland) Act 1984 (c.54) section 157(2) and Schedule 9 paragraph 78(2) and the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40) Schedule 4 paragraph 15.

(23) 1985 c.48, as relevantly amended by the 1990 Act section 146(4).

(24) 1989 c.14, as relevantly amended by the 1990 Act Schedule 15 paragraph 31(2).

(25) 1993 c.11, to which there are amendments not relevant to these Regulations.

- (i) regulation 19(1) of the 2003 Regulations;
- (j) regulation 40(1) of the 2005 Regulations;
- (k) regulation 73 of the Waste Electrical and Electronic Equipment Regulations 2006⁽²⁶⁾;
- (l) the Transfrontier Shipment of Waste Regulations 2007⁽²⁷⁾;
- (m) regulation 42 of the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008⁽²⁸⁾;
- (n) regulation 89 of the Waste Batteries and Accumulators Regulations 2009⁽²⁹⁾;
- (o) regulation 10(6), 11(7), 12(5) or 18(4) of the Environmental Liability (Scotland) Regulations 2009⁽³⁰⁾;
- (p) section 39(1) of the Marine (Scotland) Act 2010⁽³¹⁾; and
- (q) regulation 44(1) of the 2011 Regulations.

Notice of Appeal

4.—(1) An appeal under section 43 or 66(5) (appeals to the Scottish Ministers from decisions with respect to waste management licences or from determinations that information is not commercially confidential) must be made by notice in writing.

(2) The notice must be accompanied by—

- (a) a statement of the grounds of appeal;
- (b) where the appeal relates to an application for a waste management licence or for the modification, surrender or transfer of a waste management licence, a copy of the appellant's application and supporting documents;
- (c) where the appeal relates to a determination under section 66(2) or (4) that information is not commercially confidential, the information in question;
- (d) where the appeal relates to an existing waste management licence (including a waste management licence which has been suspended or revoked), a copy of that waste management licence;
- (e) a copy of any correspondence relevant to the appeal;
- (f) a copy of any other document relevant to the appeal including, in particular, any relevant consent, determination, notice, planning permission, established use certificate or certificate of lawful use or development; and
- (g) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be determined on the basis of written representations.

(3) The appellant must serve a copy of the notice of appeal on the waste regulation authority together with copies of the documents mentioned in paragraph (2).

(4) The appellant may withdraw an appeal by notifying the Scottish Ministers in writing.

(5) The appellant must send a copy of any notification given under paragraph (4) to the waste regulation authority.

⁽²⁶⁾ S.I. 2006/3289, as relevantly amended by S.I. 2007/3454 Schedule 1 paragraph 28.

⁽²⁷⁾ S.I. 2007/1711, as relevantly amended by S.I. 2008/9 regulations 4 and 5 and S.I. 2010/265 Part 3 regulation 8.

⁽²⁸⁾ S.I. 2008/3257, as relevantly amended by S.I. 2010/897 regulation 2(13) and (15).

⁽²⁹⁾ S.I. 2009/890.

⁽³⁰⁾ S.S.I. 2009/266.

⁽³¹⁾ 2010 asp 5.

Time limit for making an appeal

5.—(1) Notice of appeal must be given—

- (a) in the case of an appeal under section 43, before the expiry of the period of 6 months beginning with—
 - (i) the date of the decision which is the subject of the appeal; or
 - (ii) the date on which the waste regulation authority is deemed by section 36(9), 37(6), 39(10) or 40(6) to have rejected the application;
- (b) in the case of an appeal under section 66(5), before the expiry of the period of 21 days beginning with the date on which the determination which is the subject of the appeal is notified to the person concerned.

(2) The Scottish Ministers may, in relation to an appeal under section 43, at any time allow notice of appeal to be given after the expiry of the period mentioned in paragraph (1)(a).

Reports of hearings

6.—(1) The person hearing an appeal under section 43(2)(c) must make a written report to the Scottish Ministers.

(2) A written report under paragraph (1) must include that person's conclusions and recommendations or reasons for not making any recommendations.

(3) Paragraph (1) does not apply if the person has been appointed to determine the appeal under section 114(1)(a) of the 1995 Act.

Notification of determination

7.—(1) The Scottish Ministers or other person determining an appeal under section 43 or 66(5) must notify the appellant in writing of their, or that person's, decision and of their, or that person's, reasons for that decision.

(2) The Scottish Ministers must provide the appellant with a copy of any report made to them under regulation 6 if they determine an appeal after a hearing under section 43(2)(c).

(3) The Scottish Ministers or other person determining an appeal must, at the same time as notifying the appellant of their, or that person's, decision, send the waste regulation authority a copy of any document sent to the appellant under this regulation.

Particulars to be entered in public registers

8.—(1) A register maintained by the waste regulation authority under section 64(1) must contain full particulars of—

- (a) current or recently current waste management licences ("licences") granted by the authority and any associated working plans;
- (b) current or recently current applications to the authority for licences, or for the transfer or modification of licences, including details of—
 - (i) documents submitted by applicants containing supporting information;
 - (ii) written representations considered by the authority under section 36(4)(b) or (7)(b), or 37(5);
 - (iii) notices by the authority rejecting applications;
 - (iv) emergencies resulting in the postponement of references under section 37(5)(a);
- (c) notices issued by the authority under section 37 effecting the modification of licences;

- (d) notices issued by the authority under section 38 effecting the revocation or suspension of licences or imposing requirements on the holders of licences;
 - (e) notices of appeal under section 43 relating to decisions of the authority and other documents relating to those appeals served on or sent to the authority under regulation 4(3) or (5) or 7(3);
 - (f) convictions of holders of licences granted by the authority for any offence under Part II of the 1990 Act (whether or not in relation to a licence) or regulation 19(1) of the 2003 Regulations including the name of the offender, the date of conviction, the penalty imposed and the name of the Court;
 - (g) reports produced by the authority in discharge of any functions under section 42, including details of—
 - (i) remedial or preventive action taken by the authority under section 42(3);
 - (ii) notices issued by the authority under section 42(5);
 - (h) any monitoring information relating to the carrying on of an activity under a licence granted by the authority which was obtained by the authority as a result of its own monitoring or was given to the authority in writing by virtue of any condition of the licence or section 71(2);
 - (i) directions given by the Scottish Ministers to the authority under section 35(7), 37(3), 38(7), 42(8) or 66(7);
 - (j) any summary prepared by the authority of the amount of special waste produced or disposed of in Scotland;
 - (k) registers and records provided to the authority under regulation 15(5) or 16(1) of the Special Waste Regulations 1996;
 - (l) applications to the authority under section 39 for the surrender of licences, including details of—
 - (i) documents submitted by applicants containing supporting information and evidence;
 - (ii) information and evidence obtained under section 39(4);
 - (iii) written representations considered by the authority under section 39(7)(b); and
 - (iv) notices of determination and certificates of completion issued under section 39(9);
 - (m) written reports under section 109(2) of the 1995 Act by persons authorised by the authority under section 108(1) or (2) of that Act where the articles or substances seized and rendered harmless are waste;
 - (n) all particulars of any conditioning plan or notification as referred to in paragraph 1(3) of Schedule 5 to the 2003 Regulations;
 - (o) all particulars of any notice of a decision under paragraph 1(3)(b) of Schedule 5 to the 2003 Regulations;
 - (p) all particulars of any notification or report required before definitive closure of a landfill under regulation 17(4) of the 2003 Regulations.
- (2) Paragraph (1) is subject to sections 65 and 66 and regulation 9.
- (3) The register must contain a record of—
- (a) the exercise of any power under section 108(4) of the 1995 Act by any person authorised by the authority in connection with its functions under Part II of the 1990 Act;
 - (b) when the power was exercised;
 - (c) what information was obtained; and
 - (d) what action was taken.

(4) Where any information which shows whether or not there is compliance with any condition of a waste management licence is excluded from the register under section 66, the register must contain a statement indicating whether or not there is compliance with that condition.

(5) For the purposes of this regulation—

- (a) waste management licences are “recently current” for the period of twelve months after they cease to be in force; and
- (b) applications for waste management licences or for the transfer or modification of such licences, are “recently current”—
 - (i) if they relate to a waste management licence which is current or recently current; or
 - (ii) in the case of an application which is rejected, for the period of twelve months beginning with the date on which the waste regulation authority gives notice of the rejection or, as the case may be, on which the application is deemed by section 36(9), 37(6) or 40(6) to have been rejected.

Information to be excluded or removed from a register

9.—(1) Nothing in regulation 8(1)(g) or (m), (3) or (4) requires a register maintained by the waste regulation authority under section 64(1) to contain information relating to, or to anything which is the subject matter of, any criminal proceedings (including prospective proceedings) at any time before those proceedings are finally disposed of.

(2) Nothing in regulation 8 requires a register maintained by the waste regulation authority under section 64 to contain—

- (a) any monitoring information mentioned in regulation 8(1)(h) after four years have elapsed from that information being entered in the register; or
- (b) any information which has been superseded by later information after four years have elapsed from the later information being entered in the register.

Mobile plant

10.—(1) Plant is treated as being mobile plant for the purposes of Part II of the 1990 Act only if it falls within paragraph (2) and it is—

- (a) an incinerator which is an exempt incinerator for the purposes of Section 5.1 of Schedule 1 to the 1991 Regulations;
 - (b) plant for—
 - (i) the recovery, by filtration or heat treatment, of waste oil from electrical equipment; or
 - (ii) the destruction by dechlorination of waste polychlorinated biphenyls or terphenyls (PCBs or PCTs);
 - (c) plant for the vitrification of waste;
 - (d) plant for the dewatering of muds, sludges, soils and dredgings;
 - (e) plant for the treatment by lime stabilisation of sludge;
 - (f) plant for the treatment of contaminated material, substances or products for the purpose of remedial action with respect to land or the water environment;
 - (g) plant for the treatment of clinical waste; or
 - (h) plant for the treatment of sewage.
- (2) Plant falls within this paragraph only if it is—

- (a) designed and intended to move or to be moved regularly from place to place with a view to being used at each place, or
- (b) if not so designed, readily capable of so moving or being so moved and intended for that purpose.

(3) For the purposes of paragraph (1)(g) above, “clinical waste” has the meaning given by regulation 1(2) of the Controlled Waste Regulations 1992⁽³²⁾.

Conditions of site licences: treatment of WEEE

11. A site licence which is granted or varied by the waste regulation authority and which authorises the storage or treatment (or both) of WEEE must contain such conditions as the authority considers necessary to give effect to the provisions of Article 6(1), (3) and (4) and Annexes II and III of the WEEE Directive.

Conditions of site licences: treatment and storage of batteries

12. A site licence which is granted or varied by the waste regulation authority and which authorises the storage or treatment (or both) of waste batteries must contain such conditions as the authority considers necessary to give effect to the treatment conditions.

Conditions of site licences: incineration of waste industrial and automotive batteries

13.—(1) A site licence which is granted or varied by the waste regulation authority and which authorises the incineration of waste must contain conditions prohibiting the incineration of waste industrial and automotive batteries.

(2) Such conditions shall not prohibit the incineration of residues of any batteries that have undergone both treatment and recycling, provided that the treatment and recycling—

- (a) used best available techniques, in terms of the protection of health and the environment; and
- (b) complied, as a minimum, with Community legislation, in particular as regards health and safety and waste management.

Health at work

14. No conditions may be imposed in any waste management licence for the purpose only of securing the health of persons at work (within the meaning of Part I of the Health and Safety at Work etc. Act 1974⁽³³⁾).

Waste oils

15.—(1) A waste management licence or disposal licence which authorises the recycling of waste oil must include conditions which ensure that base oils derived from recycling—

- (a) do not constitute special waste; and
- (b) do not contain PCBs or PCTs at all or do not contain them in concentrations beyond a specified maximum limit which in no case is to exceed 50 parts per million.

(2) A waste management licence or disposal licence which authorises the keeping of waste oil must include conditions which ensure that it is not mixed with special waste or PCBs or PCTs.

⁽³²⁾ S.I. 1992/588, as relevantly amended by S.I. 1994/1056 regulation 24(2) and by S.I. 1996/972 regulation 24.

⁽³³⁾ 1974 c.37, to which there are amendments not relevant to these Regulations.

(3) A waste management licence or disposal licence which is granted or varied by the waste regulation authority and which authorises the treatment of waste oil must include conditions which ensure that, so far as technically feasible and economically viable—

- (a) waste oils having different characteristics are not mixed; and
- (b) waste oils are not mixed with other kinds of waste or substances, if such mixing would impede their treatment.

(4) In this regulation, “PCBs or PCTs” means polychlorinated biphenyls, polychlorinated terphenyls and mixtures containing one or both of such substances.

Exclusion of activities under other control regimes from waste management licensing

16.—(1) Section 33(1)(a), (b) and (c) does not apply in relation to the carrying on of any of the following activities—

- (a) the deposit in or on land, recovery or disposal of waste under an authorisation granted under Part I of the 1990 Act where the activity is or forms part of a process designated for central control under section 2(4);
- (b) the disposal of waste under an authorisation granted under Part I of the 1990 Act where the activity is or forms part of a process within paragraph (a) of Part B of Section 5.1 (incineration) of Schedule 1 to the 1991 Regulations insofar as the activity results in the release of substances into the air;
- (c) the deposit in or on land, recovery or disposal of waste under a permit granted under the 2000 Regulations to operate a Part A installation;
- (d) the disposal of waste under a permit granted under the 2000 Regulations where the activity is or forms part of an activity within Part A of Section 5.1 (incineration) of Part 1 of Schedule 1 to those Regulations;
- (e) the disposal of waste under a permit granted under the 2000 Regulations where the activity is or forms part of an activity within paragraph (a) or (b) of Part B of Section 5.1 (incineration) of Part 1 of Schedule 1 to those Regulations insofar as the activity results in the release of substances into the air;
- (f) the disposal of liquid waste under an authorisation granted or deemed to have been granted under the 2005 Regulations or the 2011 Regulations;
- (g) the recovery or disposal of waste where the activity is or forms part of an operation which is for the time being the subject of a licence under Part II of the Food and Environment Protection Act 1985;
- (h) the recovery or disposal of waste where the activity is for the time being the subject of a licence under Part 4 of the Marine (Scotland) Act 2010; and
- (i) the disposal of agricultural waste under an authorisation granted or deemed to have been granted under the 2005 Regulations or the 2011 Regulations.

(2) Paragraph (1)(a), (b) and (e) does not apply insofar as the activity involves the final disposal of waste by deposit in or on land.

(3) In paragraph (1)(c), “Part A installation” has the meaning given by regulation 2(1) of the 2000 Regulations.

Exemptions from waste management licensing

17.—(1) Subject to the following provisions of this regulation and to any conditions or limitations in Schedule 1, section 33(1)(a) and (b) does not apply in relation to the carrying on of any exempt activity set out in that Schedule.

(2) Paragraph (1) does not apply to the carrying on of an exempt activity on any land where that land is covered by a site licence.

(3) Paragraph (1) applies to the carrying on of an exempt activity insofar as it involves special waste—

- (a) only to the extent indicated in Schedule 1; and
- (b) provided that the activity does not involve the carrying out, by an establishment or undertaking, of its own disposal of such waste at the place of production.

(4) In the case of an exempt activity carried on by an establishment or undertaking on any land not within its ownership or control the establishment or undertaking shall obtain all consents necessary to enable the activity to be carried out.

(5) Unless otherwise indicated in Schedule 1, paragraph (1) does not apply to the carrying on of an activity in so far as it involves the storage or treatment of WEEE.

(6) Any exempt activity set out in Schedule 1 containing no specific reference to batteries does not apply to the storage or treatment of batteries collected in accordance with Article 8 of the Batteries Directive.

(7) In the case of an exempt activity involving the carrying out by an establishment or undertaking of the disposal or recovery of waste, paragraph (1) applies only if—

- (a) the type and quantity of waste; and
- (b) the method of disposal or recovery,

are consistent with ensuring the attainment of the objectives mentioned in paragraph 6(1)(a) of Part I of Schedule 4.

(8) In the case of a person carrying on an exempt activity which is a controlled activity, paragraph (1) applies only if that person—

- (a) takes all reasonable steps to secure efficient and sustainable water use; and
- (b) complies with the requirements of—
 - (i) until 22 December 2013, Council Directive [80/68/EEC](#) on the protection of groundwater against pollution caused by certain dangerous substances⁽³⁴⁾;
 - (ii) from 22 December 2013, Directive [2006/118/EC](#) of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration⁽³⁵⁾; and
 - (iii) Directive [2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy⁽³⁶⁾.

(9) For the purposes of Schedule 1, a container, lagoon or place is secure in relation to waste kept in it if all reasonable precautions are taken to ensure that the waste cannot escape from it and members of the public are unable to gain access to the waste, and any reference to secure storage means storage in a secure container, lagoon or place.

(10) For the purposes of Schedule 1, “benefit to agriculture or ecological improvement” is construed in accordance with Schedule 2 and any guidance issued under paragraph (11) of this regulation.

(11) The waste regulation authority must 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.

⁽³⁴⁾ O.J. L 20, 26.1.1980, p.43.

⁽³⁵⁾ O.J. L 372, 27.12.2006, p.19.

⁽³⁶⁾ O.J. L 327, 22.12.2000, p.1, as amended by Directive [2008/105/EC](#) (O.J. L 348, 24.12.2008, p.84). This Directive was designated for the purposes of paragraph 20(2)(c) of Schedule 1 to the 1999 Act by [S.S.I. 2010/131](#).

Exemptions from waste management licensing: controlled activities

18.—(1) Where a person carries out an exempt activity, which is a controlled activity, in accordance with regulation 17(8), that person is deemed to be authorised under the 2011 Regulations for the purposes of regulation 4 of those Regulations.

(2) Paragraph (1) does not apply to any activity specified in section 20(3)(c) or (d) of the 2003 Act or to any activity connected with such an activity and to which section 20(3)(e) of that Act applies.

Exempt activities: registration requirement

19.—(1) It is an offence for an establishment or undertaking to carry on an exempt activity involving the recovery or disposal of waste without being registered with the appropriate registration authority.

(2) The appropriate registration authority is—

- (a) in the case of an exempt activity falling within paragraph 23 of Schedule 1, the authority responsible for granting an authorisation under regulation 27 of the Animal By-Products (Scotland) Regulations 2003⁽³⁷⁾ under which the exempt activity is carried on; and
- (b) in any other case, the waste regulation authority.

(3) 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.

(4) Subject to regulation 31 and notwithstanding the revocation of the 1994 Regulations by regulation 34(1), an exemption which is registered under regulation 18 of the 1994 Regulations as at 27th March 2011 shall continue in effect as if it was registered under these Regulations, but shall fall due for renewal where applicable on the date on which it would have so fallen due under the relevant provisions of the 1994 Regulations.

Register of exempt activities

20.—(1) Each appropriate registration authority must maintain a register of establishments and undertakings carrying on exempt activities involving the recovery or disposal of waste in respect of which it is the appropriate registration authority.

(2) Each appropriate registration authority must—

- (a) secure that any register maintained by it under this regulation is open to inspection by members of the public free of charge at all reasonable hours; and
- (b) afford to members of the public reasonable facilities for obtaining, on payment of reasonable charges, copies of entries in the register.

(3) Registers kept under this regulation may be kept in any form.

Register of exempt activities: registration of information

21.—(1) The register must contain the following relevant particulars in relation to each establishment or undertaking registered under regulation 19(1)—

- (a) the name and address of the establishment or undertaking;
- (b) the activity which constitutes the exempt activity; and
- (c) the place where the activity is carried on.

(2) The appropriate registration authority must enter the relevant particulars in the register in relation to each establishment or undertaking carrying out an exempt activity other than one to which

(37) S.S.I. 2003/411, as relevantly amended by S.S.I. 2009/7 regulation 2(2).

regulation 23 or 25 applies, if it receives notice of them in writing or otherwise becomes aware of them.

(3) The appropriate registration authority is taken to be aware of the relevant particulars in relation to—

- (a) an exempt activity carried on under an authorisation granted under Part I of the 1990 Act, or storage related to such an activity;
- (b) an exempt activity carried on under a permit granted under the 2000 Regulations, or storage related to such an activity; and
- (c) an exempt activity falling within paragraph 23 of Schedule 1.

Register of exempt activities: removal of information

22.—(1) The appropriate registration authority may remove from the register the entry relating to an exempt activity where it is satisfied that—

- (a) the establishment or undertaking to which the relevant entry relates no longer exists or is no longer carrying on that activity;
- (b) the activity is no longer being carried on in compliance with the conditions or limitations of the relevant paragraph of Schedule 1 or with the relevant provisions of regulation 17;
- (c) the establishment or undertaking carrying on an activity to which regulation 23 or 25 applies has not complied with the requirements of regulation 24, 26 or 27, as the case may be; or
- (d) there has been a breach of any of the registration obligations in regulation 28 which apply in relation to an activity.

(2) The appropriate registration authority must serve on the establishment or undertaking to which an entry relates a notice (“notice of removal”) before removing that entry from the register.

(3) A notice of removal must state—

- (a) the date on which the entry is to be removed; and
- (b) reasons for the removal.

(4) The date specified under paragraph (3)(a) must be at least 21 days after the date on which the notice is served.

(5) The appropriate registration authority may withdraw a notice of removal at any time and reinstate the relevant entry in the register with or without amendment of the particulars relating to that entry.

(6) Paragraphs (2) to (5) do not apply to the removal of an entry from the register under paragraph (1)(c).

Register of exempt activities: requirements in respect of recovery and storage of scrap metal or waste motor vehicles

23.—(1) This regulation applies to an exempt activity falling within paragraph 45(1) or (2) of Schedule 1.

(2) In relation to an exempt activity to which this regulation applies, the appropriate registration authority must enter the relevant particulars in the register in relation to an establishment or undertaking only if—

- (a) it receives notice of them in writing;
- (b) that notice is provided by that establishment or undertaking;

- (c) that notice is accompanied by a plan of each place at which any such exempt activity is or will be carried on showing—
 - (i) the boundaries of that place;
 - (ii) the locations within that place at which the exempt activity is or is to be carried on;
 - (iii) the location and specifications of any such impermeable pavements or drainage systems as are mentioned in paragraph 45(1)(c) or (2)(f) or (g) of Schedule 1; and
 - (iv) the location of any such secure containers as are mentioned in paragraph 45(2)(e) of Schedule 1;
- (d) in the case of waste motor vehicles, it has first verified, further to its inspection of each such place—
 - (i) the type of waste to be treated;
 - (ii) the quantities of waste to be treated;
 - (iii) the technical and any other requirements relevant to the site; and
 - (iv) the safety precautions to be taken

in order to achieve the objectives referred to in Article 13 of the Directive; and

- (e) that notice is also accompanied by payment of the charge prescribed for the purpose by a charging scheme under section 41 of the 1995 Act in respect of each such place where any such exempt activity is carried on.

(3) Registration of an exempt activity involving waste motor vehicles under paragraph (2) continues subject to a requirement that verification of the matters mentioned in paragraph (2)(d) upon inspection is made annually in respect of the activity.

Annual requirements in respect of recovery and storage of scrap metal or waste motor vehicles

24.—(1) An establishment or undertaking carrying on an exempt activity which is registered under regulation 23(2) must send to the appropriate registration authority annually—

- (a) details of the total quantity of each kind of waste recovered during the preceding 12 months at each place where the exempt activity is carried on;
- (b) an up to date plan of that place containing the details referred to in regulation 23(2)(c); and
- (c) the charge prescribed for the purpose by a charging scheme under section 41 of the 1995 Act.

(2) The appropriate registration authority must serve on each establishment or undertaking carrying on an exempt activity which is registered under regulation 23(2) a renewal notice—

- (a) in respect of each place at which that activity is carried on;
- (b) not later than one month before the anniversary of the date when the notice, plan and fee referred to in regulation 23(2), or the details, plan and charge referred to in paragraph (1), as the case may be, were received by the authority in respect of that place.

(3) The renewal notice must specify—

- (a) the amount of the payment due in respect of the charge under paragraph (1)(c);
- (b) the method of payment;
- (c) the date of the anniversary referred to in paragraph (2)(b);
- (d) that payment is due on that date or, if later, upon the day falling one month after the date of the notice (“the due date”); and
- (e) the effect of payment not being made by the due date.

(4) The appropriate registration authority must amend the register in accordance with paragraph (5) or, as the case may be, (6), if the charge payable under paragraph (3)(d) is not received within 2 months of the due date.

(5) Where the establishment or undertaking—

- (a) is registered in respect of only one place in relation to the relevant exempt activity; or
- (b) is registered in respect of more than one place and the charge in respect of each of those places has not been received by the authority

the authority must remove the relevant entry in respect of that establishment or undertaking from the register.

(6) Where the establishment or undertaking is registered in respect of more than one place in relation to the relevant exempt activity and the charge has been received by the authority in respect of one or more (but not all) of those places, the authority must amend the register by removing the entry in respect of those places in relation to which the charge has not been received.

(7) The authority must notify the establishment or undertaking in writing if it removes or amends an entry in its register relating to that establishment or undertaking under this regulation.

Register of exempt activities: requirements in relation to certain exempt activities

25.—(1) This regulation applies to exempt activities falling within paragraphs 7, 8(2), 9, 10, 12, 19, 42, 46, 47, 49, 50 or 51 of Schedule 1.

(2) An establishment or undertaking which intends carrying on an exempt activity to which this regulation applies must provide to the appropriate registration authority—

- (a) a written notice given on a form provided for the purpose by the appropriate registration authority (“the notice”);
- (b) a plan of each place at which the activity will be carried on, the information specified in Schedule 3 and such other information as the appropriate authority reasonably requires; and
- (c) payment of any charge prescribed for the purpose by a charging scheme under section 41 of the 1995 Act.

(3) Subject to paragraph (4), unless the appropriate registration authority has within the period of 21 days from the date on which it received the notice either—

- (a) entered the relevant particulars in the register in relation to the establishment or undertaking which submitted the notice; or
- (b) served on it a notice of refusal stating that registration is refused and giving reasons for that decision,

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

(4) In the case of a notice in relation to an exempt activity falling within paragraph 46 of Schedule 1, the relevant particulars will be deemed to be entered in the register on the date which is requested in the notice, provided that—

- (a) the notice was submitted to the appropriate authority as soon as practicable before the requested date; and
- (b) the appropriate registration authority has not within the period prior to the requested date either entered the relevant particulars in the register or served a notice of refusal on the establishment or undertaking.

Annual requirements in respect of certain exempt activities

26.—(1) Particulars entered or deemed to be entered into the register under regulation 25 will 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 requirements of paragraph (2) are met.

(2) An establishment or undertaking to which regulation 25 applies must send to the appropriate registration authority no later than 21 days before the removal date—

- (a) a notice containing a request that registration of the exempt activity be renewed (“the renewal notice”);
- (b) confirmation that the particulars submitted in the notice and documentation submitted under regulation 25(2) remain accurate or a revision of such of the particulars of the notice or documentation as are no longer accurate; and
- (c) any charge prescribed for the purpose by a charging scheme under section 41 of the 1995 Act.

(3) This regulation does not apply to activities falling within paragraph 47(1) or (2) of Schedule 1.

Annual requirements in respect of WEEE

27.—(1) An establishment or undertaking carrying on an exempt activity under paragraph 47(1) or (2) of Schedule 1 must send to the appropriate registration authority annually—

- (a) an up to date plan of each place at which it carries on that activity together with the information referred to in regulation 25(2)(b);
- (b) the charge prescribed for the purpose by a charging scheme under section 41 of the 1995 Act.

(2) The appropriate registration authority must serve on each establishment or undertaking carrying on an exempt activity under paragraph 47(1) or (2) of Schedule 1 which is registered under regulation 25 a renewal notice—

- (a) in respect of each place where the activity is carried on;
- (b) not later than one month before the anniversary of the date when the notice, plan, information and charge referred to in regulation 25(2), or the plan, information and charge referred to in regulation 27(1), as the case may be, were received by the authority in respect of that place.

(3) The renewal notice must specify—

- (a) the amount of the payment due in respect of the charge under paragraph (1)(b);
- (b) the method of payment;
- (c) the date of the anniversary referred to in paragraph (2)(b);
- (d) that payment is due on that date or, if later, upon the day falling one month after the date of the notice (“the due date”); and
- (e) the effect of payment not being made by the due date.

(4) The appropriate registration authority must amend the register in accordance with paragraph (5) or, as the case may be, (6), if the charge payable under paragraph (3)(d) is not received within 2 months of the due date.

(5) Where the establishment or undertaking—

- (a) is registered in respect of only one place in relation to the relevant exempt activity; or
- (b) is registered in respect of more than one place and the charge in respect of each of those places has not been received by the authority

the authority must remove the relevant entry in respect of that establishment or undertaking from the register.

(6) Where the establishment or undertaking is registered in respect of more than one place in relation to the relevant exempt activity and the charge has been received by the authority in respect of one or more (but not all) of those places, the authority must amend the register by removing the entry in respect of those places in relation to which the charge has not been received.

(7) The authority must notify the establishment or undertaking in writing if it removes or amends an entry in its register relating to that establishment or undertaking under this regulation.

Registration obligations

28.—(1) The obligations described in paragraphs (3) to (5) (“the registration obligations”) apply, to the extent specified in paragraphs (2) to (5), to establishments or undertakings whose particulars are entered into the register in relation to an exempt activity falling within paragraphs 7, 8(2), 9, 10, 12, 19, 42, 46, 47 49, 50 and 51 of Schedule 1.

(2) Sub-paragraph (3) does not apply in the case of an exempt activity falling within paragraph 46 of Schedule 1.

(3) An establishment or undertaking must give at least 21 days written notice of the date on which the exempt activity is first to be carried on to the appropriate registration authority unless this information was provided in the notice or renewal notice given under regulations 25, 26 or 27.

(4) An establishment or undertaking must keep records of the quantity, nature, origin, destination and method of recovery or disposal of all waste treated in reliance upon an exempt activity falling within the following paragraphs of Schedule 1—

- (a) paragraphs 7, 8(2), 10, 46 and 50;
- (b) paragraphs 9 and 19 where the volume of waste treated exceeds 2,500 cubic metres;
- (c) paragraph 12 where the volume of waste treated exceeds 10 tonnes per annum.

(5) Records kept under paragraph (4) must be kept for a period of at least 2 years and must be submitted or made available to the appropriate registration authority on request.

(6) A person who carries on an exempt activity in breach of the registration obligations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Waste Framework Directive

29. Schedule 4 (which implements certain provisions of the Directive) has effect.

Registration of brokers and dealers

30.—(1) It is an offence for an establishment or undertaking to arrange (as broker or dealer) for the recovery or disposal of controlled waste on behalf of another person, or to purchase and sell controlled waste as a principal, unless it is a registered broker or dealer in controlled waste.

(2) Paragraph (1) does not apply in relation to an arrangement under which an establishment or undertaking will itself carry out the recovery or disposal of the waste and it is authorised to do so by—

- (a) a waste management licence;
- (b) an authorisation under Part I of the 1990 Act;
- (c) a permit under the 2000 Regulations;
- (d) an authorisation granted under the 2005 Regulations or the 2011 Regulations;
- (e) a licence under Part II of the Food and Environment Protection Act 1985; or
- (f) a licence under Part 4 of the Marine (Scotland) Act 2010.

(3) Paragraph (1) does not apply in relation to an arrangement for the recovery or disposal of waste made by, or to the purchase and sale of waste by, a person who is registered as a carrier of controlled waste, or who is registered for the purposes of paragraph 12(1) of Part I of Schedule 4, if as part of the arrangement that person transports the waste to or from any place in Scotland.

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

(5) Section 157 applies in relation to an offence under this regulation as it applies in relation to an offence under the 1990 Act.

(6) Schedule 5 (which makes provision about the registration of brokers of and dealers in controlled waste) has effect.

(7) Section 71(2) and (3) (power to obtain information) have effect as if the provisions of this regulation and Schedule 5 were provisions of Part II of the 1990 Act.

(8) Where a person is registered as a broker of controlled waste under regulation 20 of and Schedule 5 to the 1994 Regulations on 27th March 2011, that registration shall be treated as if it were a registration under this regulation and shall expire on the date specified in connection with the original registration.

Transitional provisions

31. Any exempt activity within the meaning of the 1994 Regulations lawfully carried on immediately before or registered as at 27th March 2011 under Schedule 3 to those Regulations, but which is not an exempt activity within the meaning of these Regulations, may continue to be carried on—

- (a) where the establishment or undertaking carrying on the activity applies to the waste regulation authority for a waste management licence in relation to the activity in question before 27th September 2011, until the date on which the licence applied for is granted, or if the application is (or is deemed to be) rejected, until the date on which—
 - (i) the period for appealing expires without an appeal having been made; or
 - (ii) any appeal is withdrawn or finally determined; and
- (b) in any other case, until 27th September 2011.

32. Where an activity which was not an exempt activity under the 1994 Regulations becomes an exempt activity under these Regulations, the holder of a waste management licence relating only to such an activity shall be deemed to have surrendered it to the waste regulation authority, and that authority shall be deemed to have accepted the surrender.

Savings

33. Notwithstanding the revocation of the 1994 Regulations, the amendments to other enactments made by those Regulations continue to have effect.

Revocation and consequential amendments

34.—(1) The 1994 Regulations are revoked.

(2) The amendments specified in Schedule 6 have effect.

St Andrew's House,
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16th March 2011

RICHARD LOCHHEAD
A member of the Scottish Executive