

POLICY NOTE

THE WASTE (MATERIALS FACILITIES) (SCOTLAND) REGULATIONS 2024

SSI 2024/191

The above instrument was made in exercise of the powers conferred by sections 18 and 58, and paragraphs 6 and 22 of schedule 2, of the Regulatory Reform (Scotland) Act 2014. The instrument is subject to the negative procedure.

Summary Box

To make amendments to the Waste Management Licensing (Scotland) Regulations 2011 (“the 2011 regulations”) and the Pollution Prevention and Control (Scotland) Regulations 2012 (“the 2012 regulations”) to refer to an updated Code of Practice on Sampling and Reporting at Materials Facilities. The amendment will also increase the scope of facilities required to comply with the Code.

Policy Objectives

The purpose of this SSI is to support the introduction of more-detailed sampling, recording, and reporting requirements at materials facilities. A materials facility is defined (subject to certain qualifications) as:

- A facility where dry recyclable waste is separated into one or more dry waste streams (a “materials recovery facility”), and/or
- A facility where dry recyclable waste from more than one supplier is bulked together.

These increased sampling, recording, and reporting requirements are being brought in as part of the introduction of extended producer responsibility (EPR) for packaging. The Scottish Government is introducing packaging EPR along with our partners in the other UK governments from April 2025. More detailed sampling data from materials facilities is needed to support calculation of disposal cost payments to local authorities by the packaging EPR scheme administrator in addition to the existing requirements to promote and deliver high quality recycling.

These requirements are being introduced through a new Code of Practice on Sampling and Reporting at Materials Facilities, produced by the Scottish Ministers pursuant to section 34(7) of the Environmental Protection Act 1990 to provide guidance on the discharge of the duties in section 34(2L)(b) which require persons who produce, manage or control waste to take reasonable steps to ensure that waste is managed in a manner that promotes high quality recycling. The new Code of Practice was laid in the Scottish Parliament on 24 June 2024. It replaces the existing Code of Practice published on 2 March 2015. The most significant changes to the reporting requirement are an increase in input sampling frequency from one sample per 125 tonnes to one sample per 75 tonnes, and a more-granular list of material categories to report against.

Regulation 13B of the 2011 regulations requires, *inter alia*, that a waste-management licence authorising the operation of a materials recovery facility must contain a condition requiring the operator to comply with the Code of Practice published on 2 March 2015. Regulation

32A of the 2012 regulations makes similar provision for any pollution prevention and control permit authorising the operation of a materials recovery facility.

This SSI updates that requirement in two ways. First, it substitutes “materials facility”, with the expanded definition set out above, for the narrower “materials recovery facility”. Second, it updates the reference to the Code of Practice, to refer to the new Code issued on 24 June 2024.

Paragraphs 11 and 17 of the 2011 regulations allow certain facilities, including some materials facilities, to be exempt from the requirement to hold a waste-management licence subject to certain conditions. This SSI makes any such exemption, in the case of a materials facility, conditional on compliance with the new Code of Practice.

EU Alignment Consideration

The amendments being made to the Code of Practice support the implementation of packaging EPR and also maintain alignment with the provisions of Directive 2008/98/EC of the European Parliament and of the Council on waste¹ in particular the need to promote and deliver high quality recycling.

Packaging EPR is 4-nations policy being introduced by means of a UK SI expected to be laid in the UK Parliament in autumn 2024. This SI will provide the legislative framework for the new EPR scheme on packaging which will continue our general alignment with current EU law in relation to packaging and packaging waste, including Directive (EU) 2018/852 which includes an amendment obligating all Member States to set EPR schemes for packaging by 2024

Consultation

The substantive changes to the Code of Practice were consulted on through the UK-wide consultation on introducing packaging EPR and set out in the government response published in March 2022². The Scottish government conducted a further consultation from 26 February to 19 April 2024 targeted towards key stakeholders to ensure that the proposed new Code of Practice, which puts these changes into practice, was clear and avoided unintended consequences. Responses mainly highlighted technical questions around sampling and reporting, and brought attention to potential situations where the draft Code required to be clearer on obligations. The Scottish Government has had regard to these points in finalising the Code and this SSI.

Impact Assessments

The Scottish Government has published a partial Equality Impact Assessment (EQIA); a partial Fairer Scotland Duty Assessment (FSDA); and a partial Island Communities Impact Assessment (ICIA) for the main packaging EPR regulations. We have produced a final versions of these impact assessments and are in the process of publishing these.

¹ As last amended by Directive (EU) 2018/851.

² [Packaging EPR - Summary of consultation responses and Government Response - 26 March 2022](#)

Financial Effects

The Scottish Government has previously published a partial Business and Regulatory Impact Assessment (BRIA) and updated BRIA for the packaging EPR scheme. Given the four-nations nature of the policy, updating the BRIA is dependent on the UK Government publishing its final impact assessment. We are confident that the assessment will not materially change from that set out in the updated BRIA.

Scottish Government
Directorate for Environment and Forestry

June 2024