

2014 No. 4

ENVIRONMENTAL PROTECTION

**The Environmental Protection (Duty of Care) (Scotland)
Regulations 2014**

<i>Made</i>	- - - -	<i>8th January 2014</i>
<i>Laid before the Scottish Parliament</i>		<i>10th January 2014</i>
<i>Coming into force</i>	- -	<i>1st March 2014</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 34(5) of the Environmental Protection Act 1990(a) and paragraph 1A of Schedule 2 to the European Communities Act 1972(b) (“the 1972 Act”), and all other powers enabling them to do so.

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

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Protection (Duty of Care) (Scotland) Regulations 2014 and come into force on 1st March 2014.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Environmental Protection Act 1990;

“transfer note” has the same meaning as in regulation 3(1);

“transferor” and “transferee” mean, in relation to a transfer of controlled waste by a person who is subject to the duty in section 34(1) of the Act(d), the person who transfers the waste and the person who receives the waste; and

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- (a) 1990 c.43. As relevantly amended by S.S.I. 2012/148. The functions conferred upon the Secretary of State, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
- (b) 1972 c.68. Paragraph 1A of Schedule 2 to the 1972 Act was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51) and amended by Part 1 of Schedule 1 to the European Union (Amendment) Act 2008 (c.27). The functions conferred upon the Minister of the Crown, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
- (c) OJ L 226, 6.9.2000, p.3. As amended by Commission Decision 2001/118/EC (OJ L 47, 16.2.2001, p.1), Commission Decision 2001/119/EC (OJ L 47, 16.2.2001, p.32), and Council Decision 2001/573/EC (OJ L 203, 28.7.2001, p.18).
- (d) As amended by S.S.I. 2000/323, S.S.I. 2011/226, S.S.I. 2012/148 and S.S.I. 2012/360.

“written description” means the written description for the purposes of section 34(1)(c)(ii) of the Act.

(2) In these Regulations a reference to a document—

- (a) being in writing includes an electronic communication within the meaning of section 15 (general interpretation) of the Electronic Communications Act 2000(a); and
- (b) being signed means, where the document is in electronic form, an electronic signature (and “electronic signature” means data in electronic form which are attached to or logically associated with the document and which serve as a method of authentication).

Transfer Notes

3.—(1) The transferor and the transferee must ensure that a document as described in paragraphs (3) and (4) is completed in writing and signed by each of them in respect of the waste being transferred (“a transfer note”).

(2) A transfer note must be prepared at the same time as the written description is transferred in accordance with section 34(1)(c) of the Act.

(3) A transfer note must—

- (a) give the name and address (including the postcode) of the transferor and the transferee;
- (b) give the date and place (including the postcode) of the transfer;
- (c) state whether the transferor is the producer of the waste;
- (d) state whether the transferor is the importer of the waste;
- (e) describe the type, composition and quantity of the waste being transferred (including, where the waste is in a container, the type of container);
- (f) identify the waste being transferred by reference to the appropriate six-digit code in the European Waste Catalogue; and
- (g) identify the activity carried out by the transferor in respect of the waste being transferred by reference to the SIC code for that activity.

(4) A transfer note must where the transferor or transferee is a person described in column 1 of the Table—

- (a) state that the transferor or transferee is such a person; and
- (b) include the additional information where specified in column 2 of the Table.

TABLE

Category of person	Additional information
A waste collection authority.	
A person who holds a— (a) waste management licence under section 35 of the Act(b); or (b) disposal licence under section 5 of the Control of Pollution Act 1974(c).	If the waste being transferred is to be kept, treated or disposed of by that person, the relevant licence number and the name of the licensing authority.

(a) 2000 c.7. Section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).
 (b) As amended by the Environment Act 1995 (c.25), Schedule 2, paragraph 66(2); and S.S.I. 2000/323 and S.S.I. 2011/226.
 (c) 1974 c.40. Section 5 was amended by Part II of Schedule 34 to the Local Government, Planning and Land Act 1980 (c.65); paragraph 31 of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11); paragraph 1 of Part II of Schedule 16 to the Environment Protection Act 1990 (c.43); paragraph 19 of Schedule 23 and paragraph 1 of Schedule 4 to the Environment Act 1995 (c.25); paragraph 2(1) of Schedule 1 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40); and paragraph 23 of Schedule 2 to the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11).

A person who holds a permit under the Pollution Prevention and Control (Scotland) Regulations 2012(a) which authorises the carrying out of a specified waste management activity within the meaning of those Regulations.	
A person to whom section 33(1)(a) and (b) of the Act(b) does not apply by virtue of regulations under subsection (3) of that section.	
A person registered as a carrier of controlled waste under— (a) section 2 of the Control of Pollution (Amendment) Act 1989(c); or (b) paragraph 12 of Part I of Schedule 4 to the Waste Management Licensing (Scotland) Regulations 2011(d).	The name of the waste regulation authority with whom that person is registered and the registration number.

(5) In this regulation—

“European Waste Catalogue” means the list set out in Commission Decision 2000/532/EC establishing a list of wastes, as that instrument may be amended from time to time; and

“SIC code” means the code for an activity in the UK Standard Industrial Classification of Economic Activities 2007 (SIC 2007)(e), as amended from time to time.

Special waste: exception to requirement to prepare a transfer note

4. Regulation 3 does not apply where—

- (a) the waste transferred is special waste within the meaning of the Special Waste Regulations 1996(f); and
- (b) a consignment note (and if appropriate schedule) is completed and dealt with in accordance with those Regulations.

Duty to keep a written description of waste or a transfer note

5. The transferor and the transferee must keep the written description and the transfer note (or copies of them) for a period of two years from the date of transfer of the waste.

Duty to produce a written description of waste or a transfer note

6.—(1) A competent authority may request any person required to keep a written description, or a transfer note under regulation 5, to produce the description or note (or a copy) to that authority.

(2) The person must produce the description or note (or the copy) as soon as is reasonably practicable, and in any case—

- (a) within 7 days from the date of the request; or
- (b) such longer period as is permitted by that authority.

(a) S.S.I. 2012/360.

(b) As amended by S.S.I. 2009/247.

(c) 1989 c.14. Section 2 was amended by paragraph 31 of Schedule 15 to the Environmental Protection Act 1990 (c.43) and paragraph 37 of Schedule 22 to the Environment Act 1995 (c.25).

(d) S.S.I. 2011/228.

(e) Published on 14th December 2007 (ISBN 0116216417) and effective from 1st January 2008.

(f) S.S.I. 1996/972. As relevantly amended by S.I. 1996/2019 and S.I. 1997/25, and by S.S.I. 2000/323, S.S.I. 2011/226 and S.S.I. 2011/228.

- (3) The description or note (or copy) must be—
- (a) given to an officer of that authority; or
 - (b) sent to the address specified by that authority when making the request.
- (4) In this regulation, “competent authority” means—
- (a) the Scottish Environment Protection Agency; or
 - (b) a waste collection authority for the purposes of Part 2 of the Act^(a).

Revocation

7. The Environmental Protection (Duty of Care) Regulations 1991^(b) are revoked.

St Andrew’s House,
Edinburgh
8th January 2014

RICHARD LOCHHEAD
A member of the Scottish Government

(a) Section 30(3) of the Environmental Protection Act 1990 has the effect that in Scotland a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39) is a waste collection authority.

(b) S.I. 1991/2839. As relevantly amended by S.S.I. 2000/323, S.S.I. 2003/235 and S.S.I. 2003/533.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 34(1) of the Environmental Protection Act 1990 (“the 1990 Act”) imposes a duty on any person who imports, produces, keeps or manages controlled waste, or who as broker or dealer has control of such waste, to take such measures on the transfer of the waste as are reasonable in the circumstances to secure that there is transferred with the waste such a written description of the waste as will enable other persons to avoid a contravention of any duty under that section or under section 33 of the 1990 Act.

Section 34(5) of the 1990 Act enables the Scottish Ministers to make regulations imposing requirements on a person subject to a duty under section 34(1) of that Act, as respects the making and retention of documents, and the furnishing of documents or copies of documents.

Regulation 3 provides that persons transferring and receiving waste must, at the same time as the written description of waste is transferred, complete and sign a transfer note in respect of the waste.

Regulation 4 provides an exception to the requirement for a transfer note where the waste transferred is special waste.

Regulation 5 provides for persons transferring and receiving waste to keep the written description and the transfer note for at least two years.

Regulation 6 provides for persons who are required under regulation 4 to keep a document to produce the document (or a copy) to SEPA or to a waste collection authority under the 1990 Act on request.

Regulation 7 revokes the Environmental Protection (Duty of Care) Regulations 1991.

Section 34(6) of the 1990 Act provides for it to be an offence to fail to comply with a requirement in these Regulations.

No business and regulatory impact assessment has been prepared for these Regulations as no additional impact upon business, charities or voluntary bodies is foreseen.

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