

Net Zero, Energy and Transport Committee
Tuesday 10 September 2024
25th Meeting, 2024 (Session 6)

Note by the Clerk on The Waste (Materials Facilities) (Scotland) Regulations 2024 (SSI 2024/191)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 9 October 2024. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instrument is summarised below:

Title of instrument: [The Waste \(Materials Facilities\) \(Scotland\) Regulations 2024](#) (SSI 2024/191)

Laid under: Sections 18 and 58, and paragraphs 6 and 22 of schedule 2, of the [Regulatory Reform \(Scotland\) Act 2014](#)

Laid on: 27 June 2024

Procedure: Negative

Deadline for committee consideration: 7 October 2024 (Advisory deadline for any committee report to be published)

Deadline for Chamber consideration: 9 October 2024 (Statutory 40-day deadline for any decision whether to annul the instrument)

Commencement: 1 April 2025

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a

meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument on 3 September 2024 and reported on it in its [49th Report, 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

8. The purpose of the instrument is to support the introduction of more detailed sampling, recording, and reporting requirements at materials facilities.
9. The policy note explains that 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 the other UK governments from April 2025. The Committee considered a UK SI notification at its [meeting last week](#) setting out a proposal for regulations that would introduce the scheme across the UK. The Committee agreed that it was content for the Scottish Ministers to consent to these regulations being made by the UK Ministers.
10. EPR requires the calculation of disposal cost payments to local authorities by the packaging EPR scheme administrator. In order to calculate these accurately, more detailed sampling data from materials facilities is needed.
11. The sampling 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 replaced the existing Code of Practice published on 2 March 2015.
12. In light of this new Code of Practice, this instrument makes amendments to the [Waste Management Licensing \(Scotland\) Regulations 2011](#) and the [Pollution Prevention and Control \(Scotland\) Regulations 2012](#) to refer to the updated Code. It will also increase the scope of facilities required to comply with the Code.
13. The policy note states that “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”.

14. The Policy Note accompanying the instrument is included in Annexe A. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Committee consideration

15. So far, no motion recommending annulment has been lodged.

16. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:

- seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
- inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

17. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).

18. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Clerks to the Committee
September 2024

Annexe A: Scottish Government Policy Note

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

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.

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

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

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