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SCOTTISH EXECUTIVE

Scottish Executive Environment Group

**The Waste Management Plan for Scotland
Regulations 2006**

A Consultation

October 2006



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**CONSULTATION PAPER
THE WASTE MANAGEMENT PLAN FOR SCOTLAND REGULATIONS 2006**

Dear Consultee

6 October 2006

Introduction

1. This consultation paper seeks views on the draft National Waste Management Plan for Scotland Regulations 2006, a copy of which are attached. Responses are requested by **29 December 2006**.

2. The attached draft Regulations replace and re-enact the requirements of section 44B of, and schedule 2A to, the Environment Protection Act 1990, as inserted by the Environment Act 1995. The draft Regulations would require an affirmative resolution of the Scottish Parliament before becoming law.

3. Section 44B and schedule 2A require the production of a National Waste Strategy for Scotland. A National Waste Strategy, and a National Waste Plan, for Scotland are already in place. Regulation 3 of the draft Regulations lay down that the Scottish Ministers must have a national waste management plan for Scotland, a requirement which is already met by the National Waste Strategy, the National Waste Plan and other documents outlined in draft Regulation 3(6).

4. The draft Regulations further lay down that if the national waste management plan for Scotland should be amended, the requirements of the Public Participation Directive have to be complied with, unless

- the Plan is designed for the sole purpose of serving national defence; or
- has been prepared for civil emergencies; or
- Strategic Environmental Assessment is applied to the Plan.

5. In practical terms, the Scottish Ministers expect that any significant amendments to the National Waste Strategy or Plan would require to go through Strategic Environmental Assessment procedures, which has its own public participation procedures.

6. Section 44B currently places the duty to produce a National Waste Strategy for Scotland on the Scottish Environment Protection Agency (SEPA). As a holding measure, the Scottish Ministers have issued a direction to SEPA under section 40 of the Environment Act 1995 requiring them to follow Public Participation procedures in relation to any amendments to the National Waste Strategy (with the same exceptions as outlined in paragraph 4 of this paper).

7. The attached draft regulations remove the duty to prepare the National Waste Strategy from SEPA and place the duty on the Scottish Ministers, rather than SEPA, to have a national waste management plan. This issue is discussed further in paragraphs 16 to 21 of this paper.

The draft Waste Management Plan for Scotland Regulations 2006

8. The current requirements in the Environment Protection Act 1990 in relation to the production of a National Waste Strategy for Scotland derive from the Waste Framework

Directive, which requires member states to produce comprehensive Waste Management Plans. The details of the attached draft Regulations are outlined below.

9. **Regulation 1** relates to citation, commencement and extent. **Regulation 2** lays down a number of definitions.

10. **Regulation 3** require the Scottish Ministers to have a national waste management plan. Regulation 3 is along similar lines to section 44B of the Environment Protection Act 1990, which it is replacing. We have taken the opportunity to reflect more closely the terms of the Directive. In particular, Regulation 3 refers to packaging waste, the management of hazardous waste and to suitable disposal sites or installations for the management of waste.

11. The latter point is a key matter. Indent 4 of paragraph 1 of Article 7 of the Waste Framework Directive requires Member States to “draw up as soon as possible one or more waste management plans. Such plans shall relate in particular to suitable disposal sites or installations”. Paragraph 7 of Schedule 4 to the Waste Management Licensing Regulations 1994 (SI 1994/1056) modifies planning legislation to make it a requirement for local (planning) authorities to include provision in development plans (structure and local plans) about criteria for suitable waste disposal sites.

12. The Scottish Ministers expect planning authorities to reflect the need for waste infrastructure in their development plans. A wide range of support material is available to help planning authorities in this task including, as reflected in these draft Regulations:

- the National Waste Strategy;
- the National Waste Plan (which summarises Area Waste Plans);
- National Planning Policy Guideline 10 on planning for waste management (which will shortly be replaced by Scottish Planning Policy 10 a draft of which is currently out for consultation: <http://www.scotland.gov.uk/Publications/2006/08/11100231/0>)
- Planning Advice Note 63 (which provides some supplementary advice on waste management planning);
- SEPA’s Waste Data Digests (which provide information on municipal waste arisings and on the total amount of controlled waste landfilled, as well as listing current waste management sites).
- The National Planning Framework.

13. **Regulation 4** outlines the areas where the Scottish Ministers may give directions to SEPA in relation to the National Waste Management Plan, in addition to the general direction making power conferred by section 40 of the Environment Act 1995.

14. **Regulation 5** lays down that Public Participation procedures do not apply when a waste management plan is required for reasons of national defence or in relation to a civil emergency, or where Strategic Environmental Assessment requirements (which include public participation procedures) apply. As indicated above, the Scottish Ministers expect that any significant amendments to the National Waste Strategy or Plan would require to go through Strategic Environment Assessment procedures.

15. **Regulation 6** lay down the Public Participation Procedures that would apply to any modification of the National Waste Plan, unless such modifications are exempt from these procedures by virtue of regulation 5. **Regulation 7** lays down the procedures following

public participation. **Regulation 8** contains a number of consequential repeals and amendments. The **Schedule** outlines the objectives of the National Waste Management Plan. This schedule replaces, without any changes, the current Schedule 2A to the Environmental Protection Act 1990, as inserted by Schedule 12 to the Environment Act 1995, on the objectives for the purposes of the national waste strategy.

The role of the Scottish Environment Protection Agency and the Scottish Ministers in relation to the National Waste Plan

16. Section 44B of the Environment Act 1995 currently lays down that SEPA shall produce the National Waste Strategy (whereas the equivalent section for England and Wales, section 44A, places the duty to produce strategies for England and Wales on Ministers). The attached draft regulations replace section 44B and lay down, in regulation 3, that the duty to have a national waste management plan for Scotland rests with the Scottish Ministers, rather than with SEPA.

17. The rationale in 1995 for placing the duty on SEPA to prepare the National Waste Strategy for Scotland, rather than Ministers, was that SEPA would have the staff available to carry out this task, whilst the then Scottish Office would not.

18. SEPA have carried out considerable work since the duty to prepare a National Waste Strategy was given to them. In particular:

- In 1999 SEPA published the National Waste Strategy, which was also adopted by the Scottish Ministers;
- SEPA led on the production of the 11 Area Waste Plans for Scotland, bringing local authorities and others together to work towards the goals of sustainable waste management;
- SEPA worked closely with the Executive on the National Waste Plan, published in 2003;
- SEPA produce the Waste Data Digest and other statistical information on waste;
- SEPA provides significant technical expertise in areas such as Life Cycle Analysis and in assessing the environmental impact of the National Waste Plan;
- SEPA have worked closely with the Scottish Executive on the recent consultation papers on the sustainable management of commercial and industrial waste and on household waste prevention.
- SEPA have worked closely with the Scottish Executive on the Strategic Outline Cases submitted by local authorities on their proposals to divert biodegradable municipal waste from landfill. In particular, SEPA have led on carrying out Strategic Environmental Assessments on those Strategic Outline Cases which do not comply with the Best Practicable Environmental Option contained in the Area Waste Plans.

19. However, the Scottish Ministers consider that the position now is different to the position when SEPA were given the duty to produce the National Waste Strategy. Following devolution, we consider that it is right, in principle, that Scottish Ministers should be responsible for all aspects of waste policy including the National Waste Strategy. In recent years, in line with its leadership role in relation to waste policy, the Scottish Executive has provided significant resources through the Strategic Waste Fund to help local authorities and others meet the key targets in the National Waste Plan. In addition, it has taken forward consultations, and action, on policy issues such as the sustainable management of waste from

business and public sector organisations, household waste prevention and targets for public bodies on specifying recycle in contracts.

20. The Scottish Executive therefore considers these Regulations offer the ideal opportunity to transfer formally the duty of preparing Scotland's National Waste Strategy from SEPA to the Scottish Ministers.

21. This in no way reflects adversely on the contributions made so far by SEPA towards the goal of sustainable waste management. Since the publication of the National Waste Plan, SEPA have themselves recognised their evolving role and have taken steps to concentrate their work on the National Waste Strategy on key areas where they still have an important role to play. Key areas where SEPA will continue to have a major role in relation to the National Waste Strategy include:

- Waste data. This includes the Waste Data Digest; Waste Data Flow (an electronic means of recording data) in Scotland; quarterly returns on waste; monitoring and audit of Landfill Allowance Scheme compliance; reviewing SEPA's general waste data strategy; improving commercial and industrial waste data and taking action against illegal exports of waste.
- Land-use planning. This includes SEPA's role as a statutory consultee on waste management planning applications; commenting on local authority draft development plans and any involvement by SEPA in planning inquiries on proposed waste management facilities.
- Area Waste Plans. Some of these are being amended where the Strategic Outline Cases are out of line with the Best Practicable Environmental Option contained in the Area Waste Plans. The Area Waste Plans will be reviewed generally in 2007/08.
- Technical advice. This includes any work on Life Cycle Analysis; monitoring the environmental impact of the National Waste Plan and working with regulatory colleagues within SEPA to help ensure that, where practicable, regulatory work complements the moves towards sustainable waste management.

Questions for consultees

22. The Executive would be grateful for comments on the following questions:

Question one: Do consultees have any general comments on the policy outlined in this paper and on the attached draft regulations?

Question two: Do consultees have any comments on the proposal to transfer the duty to prepare the National Waste Strategy from SEPA to the Scottish Ministers?

Conclusion

23. We would welcome written responses to this consultation paper by 29 December 2006. Please also complete and return the Respondent Information Form attached at Annex C to this paper.

Please email your response to: ruth.campbell@scotland.gsi.gov.uk

Or send your response to:

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EDINBURGH
EH6 6QQ

0131 244 0397

24. All consultation responses will be placed in the Scottish Executive library within 20 working days of the consultation closing.

**Waste Strategy Team
Scottish Executive
October 2006**

Annex A

List of Consultees

British Glass
Chartered Institution of Wastes Management (CIWM)
Community Recycling Network for Scotland (CRNS)
Confederation of British Industries (CBI)
Convention of Scottish Local Authorities (CoSLA)
Environment Link
Federation of Small Businesses Scotland
Planning Exchange
REMADE Scotland
Royal Town Planning Institute
Society of Directors of Planning
Scottish Environment Protection Agency (SEPA)
Scottish Environmental Services Association (SESA)
Scottish Waste Awareness Group (SWAG)
Waste and Resources Action Programme (WRAP)

Annex B

THE SCOTTISH EXECUTIVE CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general, Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Executive encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and [submit their responses](#). Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Executive consultation papers and related publications (eg, analysis of response reports) can be accessed at: [Scottish Executive consultations](#) (<http://www.scotland.gov.uk/consultations>). You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Annex C

RESPONDENT INFORMATION FORM

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately.

Name:

Postal Address:

1. Are you responding: (please tick one)

(a) as an individual (go to Q2a/b and then Q4)

(b) on behalf of a group/organisation (go to Q3 and then Q4)

INDIVIDUALS

2a. Do you agree to your response being made available to the public (in the Scottish Executive library)?

Yes (go to 2b below)

No, not at all (We will treat your response as confidential).

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one of the following):

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

3. The name and address of your organisation will be made available to the public (in the Scottish Executive library and/or on the Scottish Executive website). Are you also content for your response to be made available?

Yes

No (We will treat your response as confidential)

SHARING RESPONSES/FUTURE ENGAGEMENT

4. We may share your response internally with other Scottish Executive policy teams. The Executive may wish to contact you again in the future, but we require your permission to do so. Are you content for the Executive to contact you again in the future in relation to this consultation response?

Yes

No

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This document is also available on the Scottish Executive website: www.scotland.gov.uk
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