POLICY NOTE

THE ENVIRONMENTAL AUTHORISATIONS (SCOTLAND) AMENDMENT REGULATIONS 2025

SSI 2025/XXX

The above instrument was made in exercise of the powers conferred by section 18 and schedule 2 of the Regulatory Reform (Scotland) Act 2014. The instrument is subject to affirmative procedure.

Summary Box

The purpose of the instrument is to amend The Environmental Authorisations (Scotland) Regulations 2018 ("the 2018 Regulations") to incorporate technical provision for the regulation of industrial emissions activities, other emissions activities, waste activities, and water activities by the Scottish Environment Protection Agency (SEPA).

The provision for the regulation of these activities is largely in keeping with the current regimes. However, this instrument makes a number of changes to the way in which sewage sludge and other waste to land activities are regulated and extends environmental regulation to the activities of carbon capture, non-waste anaerobic digestion and certain generators by bringing them within the scope of the 2018 Regulations.

At the same time this instrument makes a number of changes to the common framework for environmental regulation and authorisation provided by the 2018 Regulations: to enhance opportunities for public participation in relation to certain authorisation applications, and make changes to the third party representation procedure; to give SEPA the ability to revoke a permit or registration where the authorised person is a sole operator who has died, or a body corporate that has been dissolved; and make provision so that information from the register maintained by SEPA under the 2018 Regulations with respect to a permit or registration, and the conditions of that permit or registration, is presumed to be correct unless there is evidence to the contrary, along with a related provision that causing false information to be put on the register is an offence under the Regulations.

Policy Objectives

The Environmental Authorisations (Scotland) Regulations 2018 ("the 2018 Regulations") came into force in September 2018. Those regulations set out the common procedures for an authorisation framework with the aim of integrating, as far as possible, the authorisation, procedural and enforcement arrangements relating to the environmental activities within scope of the regulations. The 2018 Regulations include technical provision for radioactive substances activities which therefore brought that regime into this integrated authorisation framework.

At present, this framework still applies only to the regulation of radioactive substances. This instrument extends its scope to the regulation of water, waste, industrial and other emissions activities. In so doing, the 2018 Regulations as amended by this instrument will replace the current separate regimes for the environmental regulation of those activities by, for example,

the Pollution Prevention and Control (Scotland) Regulations 2012, the Water Environment (Controlled Activities) Regulations 2015 and the Waste Management Licensing (Scotland) Regulations 2011.

This instrument also seeks to improve the regulation of the application of sewage sludge and other waste to land for the purposes of soil improvement by making a number of changes to the current regime as it is brought into scope of the 2018 Regulations, and brings into scope of environmental regulation carbon capture activities, non-waste anaerobic digestion activities and also certain generators of electricity. The changes made to the regulation of the application of sewage sludge and other waste to land give effect to certain key recommendations arising from the review of legislation and guidance relevant to the storage and spreading of sludge to land that was undertaken in 2015 by the Scottish Government (The spreading of sewage sludge to land (CR/2016/23): research reports[1]).

Carbon capture and non-waste anaerobic digestion activities have been identified as new activities for regulation by SEPA. This will provide a level playing field and ensure environmental risks are appropriately managed, with the aim of achieving proportionate and equitable regulation of these activities based on the associated level of risk to the environment.

This instrument will extend environmental controls to combustion plants that generate electricity and aggregate to 1 MWth or more at the same location. The use of unabated generators can have a significant impact on air quality, and individual plants with a capacity of 1 MWth or more are already regulated. Sites where there are smaller plants which aggregate to 1 MWth have an equivalent environmental impact and bringing this activity into the 2018 Regulations is in line with our commitments to improve air quality, and our net zero and decarbonisation goals. It will also provide a level playing field and ensure environmental risks are appropriately managed, with the aim of achieving proportionate and equitable regulation of generation activities based on risk to the environment.

At the same time, this instrument will enhance the opportunities for public participation in relation to certain authorisation applications, and also make amendments to the third party representation procedure in the 2018 Regulations. Additionally, it will give SEPA the ability to revoke a permit or registration where the authorised person is a sole operator who has died, or a body corporate that has been dissolved and make provision so that information from the register maintained by SEPA under the 2018 Regulations with respect to a permit or registration, and the conditions of that permit or registration, is presumed to be correct unless there is evidence to the contrary, with a related provision that causing false information to be put on the register is an offence under the 2018 Regulations.

This instrument, by amending the 2018 Regulations, will enable a simplified, streamlined, and standardised common framework for environmental authorisation and regulation in Scotland.

[1] https://www.gov.scot/collections/sewage-sludge-research/#thespreadingofsewagesludgetoland(cr/2016/23):researchreports

Background

Prior to the 2018 Regulations, SEPA regulated the four main environmental regimes (industrial emissions, radioactive substances, waste, and water) in the absence of a common framework. The legislation underpinning each of these four environmental regimes developed over time, and resulted in the four regimes having similar but different regulatory requirements, such as differences in the application process, enforcement procedures and types of authorisation.

The 2018 Regulations established a common framework for environmental authorisation and regulation in Scotland and the regulation of radioactive substances activities was the first of the existing environmental regimes to be brought into this common framework, with the intention of later bringing in the other regimes.

The common framework is a key component of the joint Scottish Government-SEPA programme of policy, legislative and operational improvements which will deliver a simpler, more risk-based, proportionate system of environmental regulation. It also enables SEPA to deliver proportionate, joined up, outcome focussed regulation whilst reducing the regulatory burden for operators.

The application of sewage sludge to land is currently regulated by the Sludge (Use in Agriculture) Regulations 1989 and the Waste Management Licensing (Scotland) Regulations 2011, which address the requirements of handling, storage, transportation, and use of sewage sludge and other waste applied to land for the purposes of soil improvement. In light of a considerable number of complaints received by Scottish Ministers relating to the use of sewage sludge, a review of the legislation and guidance relevant to the storage and spreading of sludge to land was undertaken in 2015 by the Scottish Government. This instrument implements the key recommendations arising from that review. This activity is described as the recovery of waste by application to land for the purpose of soil improvement which more accurately describes the activity which can involve the application to land of waste other than sewage sludge. Additionally, due to limited options for recovery or disposal of sewage sludge on the islands, this instrument includes a provision for SEPA to grant an exemption to the Maximum Permissible Limit of cadmium in soil in specific circumstances.

The role of carbon capture is evolving, and several types of carbon capture technologies are emerging. Current regulation under the Pollution Prevention and Control (Scotland) Regulations 2012 (the 2012 Regulations) covers only one specific activity, that is capture of carbon dioxide streams from an installation and proposals for new plants are already coming forward which would not be subject to regulation under the 2012 Regulations. This means operations with the same environmental risk are treated differently. For example, an identical carbon capture plant where the captured carbon is utilised rather than going to geological storage would currently not be regulated in the same way as one where the carbon is going to geological storage. Environmental regulation needs to support the deployment of carbon capture technology in-line with our national 2045 net-zero greenhouse gas emissions reduction target, as well as protect the environment and human health. Carbon capture technologies are evolving at pace with different contexts, scales, and environmental impacts. There are potential significant impacts on air and water quality, and from noise. Impacts on the environment could include emissions to air from amines, nitrogen oxides and sulphur oxides from the capture plant itself or noise from use of compression equipment.

Anaerobic digestion processes biomass (plant and animal materials) into methane or biogas for heating and power. Management of materials in this manner can be a significant source of pollution to air and water from gaseous releases and liquid effluent. The impact of an anaerobic digestion plant on the environment will depend on the location, size, management of the process and infrastructure of the site, but there have been instances of anaerobic digestion plants causing significant impacts. Anaerobic digestion plants processing non-waste biomass present similar risks to the environment as those processing waste biomass which are currently regulated.

Generators of electricity aggregating on the same site to 1 MWth or more that generate and then supply electricity, either to the grid or for independent production for use at site of generation, can have a significant impact on air quality. Generators can be used in arrays to supply power and as back up to power supplied from the grid. Some may be operated intermittently to supply the grid to balance electricity supply and demand in real time. Additionally, standby generation is relied upon by island communities in Scotland to provide additional peak supply and contingency in the event of subsea cable faults. Controls of specified generators have been in place in England and Wales since 2018 which regulate these generators. The expectation is that the operation of these plants will meet modern emissions standards.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights:
In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Environmental Authorisations (Scotland) Amendment Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

Statements required by the European Union (Withdrawal) Act 2018

The Cabinet Secretary for Net Zero and Energy has the made the following statement under paragraph 16(2) of Part 1 of schedule 8 of the European Union (Withdrawal) Act 2018:

"In my view, there are good reasons for the amendment or revocation by this instrument of a number of regulations made under section 2(2) of the European Communities Act 1972.

This is because the various regulations providing for the current environmental regulatory regimes will be replaced by the Environmental Authorisations (Scotland) Regulations 2018 ("the 2018 Regulations"). The Environmental Authorisations (Scotland) Amendment Regulations 2025 ("the 2025 Regulations") amend the 2018 Regulations to bring the environmental authorisation regimes for water, waste and industrial emissions activities within scope of the 'integrated authorisation framework' provided for in the 2018 Regulations. Additionally, a number of amendments consequential to the move to the integrated authorisation framework are required to update references to refer to the 2018 Regulations and authorisations under those Regulations to ensure the proper operation of the statute book."

The Cabinet Secretary for Net Zero and Energy has the made the following statement under paragraph 16(3) of Part 1 of schedule 8 of the European Union (Withdrawal) Act 2018:

"Much of the current regulatory regime for environmental activities, including the various regulations made under section 2(2) of the European Communities Act 1972, but also regulations made using different powers, is contained within assimilated law which transposed environmental regulation requirements under EU legislation prior to IP completion date. The effect on assimilated law of the amendments to, and revocations of, regulations made under section 2(2), as well as amendments and revocations of other regulations, is to consolidate that existing regulatory regime for environmental activities within the framework provided by the 2018 Regulations, which are also assimilated law, whilst maintaining existing standards. The provisions in the 2025 Regulations are consequently largely in keeping with the current regimes, whether made under section 2(2) or otherwise, and which are being amended or revoked."

EU Alignment Consideration

This instrument, and the consequential revocation of the various existing regulations in this area maintains alignment with EU law and, in particular, the relevant Directives, including the Waste Framework Directive (2008/98/EC), the Landfill Directive (1999/31/EC), the Sludge Directive (86/278/EEC), the Industrial Emissions Directive (2010/75/EU), the Medium Combustion Plant Directive (2015/2193/EU), the Petrol Vapours Directives (94/63/EC and 2009/126/EC), the Energy Efficiency Directive (2012/27/EU), the Water Framework Directive (2000/60/EC) and the Basic Safety Standards Directive (2013/59/Euratom).

Consultation

Between 15 December 2023 and 30 March 2024, the Scottish Government held a public consultation on the : Environmental Authorisations (Scotland) Regulations 2018: proposed amendments - Scottish Government consultations - Citizen Space[2]. SEPA also ran a concurrent consultation on its authorisation guide (the SEPA authorisation guide allocates each activity it regulates to a specific level of authorisation; general binding rules, notification, registration and permits ("light touch" through to bespoke conditions)).

The proposals presented in the consultation were generally welcomed by the stakeholders. The following themes were noted:

- Support for the proposed draft Regulations including technical provisions to bring water, waste, and industrial activities into a single regulatory regime to improve clarity and continuity to levels of authorisation and other regulatory processes.
- Common framework proposals including changes to the third party representation procedure in relation to certain applications for a new permit, or applications to vary an existing permit, with a related power that SEPA can require pre-application consultation in certain circumstances were generally welcomed, with concerns raised that pre-application consultation requirements could potentially extend the time of the application process.

[2] https://consult.gov.scot/environment-forestry/easr-2018-proposed-amendments/

- The inclusion of the sewage sludge regime in these Regulations to implement the legislative recommendations arising from the review of sewage sludge held in 2016 provoked a wide and varied list of comments / objections ranging from outright opposition to the practice, to technical and legal suggestions.
- The extension of environmental regulation to the new activities (carbon capture, non-waste anaerobic digestion, and generators of electricity aggregating to 1 MWth or more) were generally accepted. However this was tempered with comments requesting that any regulation needs to be proportionate and that care is required to support "fledging" sectors (carbon capture and non-waste anaerobic digestion). Concerns were expressed about immediately meeting the proposed requirements on the islands.

Impact Assessments

Following screening it was determined that impact assessments were not required for: child rights and wellbeing impact assessment; data protection impact assessment; equalities impact assessment; fairer Scotland duty impact assessment; island communities impact assessment; and strategic environmental assessment. No specific or noteworthy impacts relevant to these impact assessments were identified, with this SSI retaining the regulatory framework established by the 2018 Regulations; improving the regulation of the application of sewage sludge to land; and bring into scope of environmental regulation the activities of carbon capture, non-waste anaerobic digestion and certain generators of electricity.

Financial Effects

The 2025 Regulations' new activities will bring additional costs for business. These will include direct costs (e.g. fees payable to SEPA) as well as indirect costs (e.g. investment to bring facilities up to compliance standards). It was not possible to get a full picture of these costs for the Business and Regulatory Impact Assessment (BRIA) across all of the new activities. Where this is the case, a qualitative approach was taken. As the 2025 Regulations represent the final part of putting in place an integrated authorisation framework for the regulation of environmental activities in Scotland under which SEPA can regulate in a more efficient way, those that are regulated will also see benefits in terms of efficiencies and clarity over their obligations. In parallel SEPA are reviewing their charging schemes so that regulated operators pay a fair fee for SEPA's work to protect and improve Scotland's environment when it comes to the risks those activities may pose for the environment.

Scottish Government
Directorate for Environment and Forestry
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