EXECUTIVE NOTE

The Pollution Prevention and Control (Public Participation etc.) (Scotland) Regulations 2005 SSI/2005/510

The above instrument is made in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999. The instrument is subject to negative resolution Parliamentary procedure. Because the instrument is made under the Pollution Prevention and Control Act 1999 to transpose a European Directive, a designation order was required to enter into force beforehand. The necessary designation order came into force on 5 October 2005.

Policy Objectives

The purpose of the instrument is primarily to implement in Scotland the amendments made by the Public Participation Directive 2003/35/EC (PPD) to the public participation provisions within the Integrated Pollution Prevention and Control (IPPC) Directive (96/61/EC). The PPD is one of two legislative instruments that transpose the provisions of the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters (also known as the Aarhus Convention), into European Community Law. The PPD implements the public participation and related access to justice provisions in the Convention. Article 4 of the PPD amends the IPPC Directive. Consistent with Scottish Executive policy, the instrument implements the obligations of the PPD fully by amending the Pollution Prevention and Control (Scotland) Regulations 2000 ("the 2000 Regulations") which transpose the IPPC Directive in Scotland.

The amendments are mainly to Schedules 4 and 7 to the 2000 Regulations which set out in detail the public consultation procedures which apply before SEPA as the environmental regulator in Scotland, takes regulatory decisions in relation to applications for IPPC permits or for their variation. The effect of the amendments is to build in some further time to enable the public to participate effectively in those procedures and expand on SEPA's current duties to take account of those consultations before taking regulatory decisions and, thereafter, to publicise those decisions.

The amendments also make provision to facilitate access to the courts by environmental NGOs for the purposes of the new Article 15a of the IPPC Directive, in relation to SEPA's regulatory decisions under the 2000 Regulations.

In addition, the Regulations make a number of technical refinements to the 2000 Regulations provisions:

- To give SEPA some further flexibility to consider applications for permits under the 2000 Regulations (in relation to existing industrial facilities to which the provisions of Part I of the Environmental Protection Act 1990 might otherwise apply);

- To further clarify SEPA's existing enforcement powers to ensure compliance with Directive 2000/76/EC on the incineration of waste;

- To de-regulate the regulation of certain activities involving the respraying of certain road vehicles in line with recent changes made by S.S.I. 2005/340; and

- To extend certain provisions concerning the revocation of permits to mobile plant.

The Executive recognises that the Regulations represent a further set of amendments to the 2000 Regulations and acknowledges the importance of ensuring that those affected by the 2000 Regulations and subsequent amendments are clear about their purpose and effect. The Executive is, therefore, considering consolidation of the 2000 Regulations and hopes to bring forward proposals in this regard during 2006.

Consultation

In accordance with section 2(4) of the Pollution Prevention and Control Act 1999, the Executive consulted over 400 organisations representing a wide range of trade associations, businesses, local government, environmental organisations and other interested bodies during the preparation of this instrument. The consultation period ran for 12 weeks from 17 February until 12 May 2005. Those consulted included:

The Scottish Environment Protection Agency
Confederation of British Industry
Federation of Small Businesses
COSLA
National Society for Clean Air & Environmental Protection
Royal Environmental Health Institute of Scotland
Health and Safety Executive
Food Standards Agency
Chartered Institute of Waste Management
Chemicals Industry Association
Scottish Water

A summary of the substantive responses received to the consultation paper has been published on the Executive's website (link below).
http://www.scotland.gov.uk/Publications/2005/07/2692308/23097

Comments on proposed amendments to the 2000 Regulations are towards the end of this summary.

Financial Effects

There are no financial implications for the Scottish Executive. There are cost implications for the businesses affected by the new PPD provisions and for the Scottish Environment Protection Agency. These are outlined in the Regulatory Impact Assessment which has been prepared for the instrument.

Scottish Executive Environment and Rural Affairs Department
October 2005