

# Scottish Statutory Instrument 2003 No. 170

## The Waste Incineration (Scotland) Regulations 2003

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### SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 170**

### ENVIRONMENTAL PROTECTION

#### The Waste Incineration (Scotland) Regulations 2003

<i>Made</i>	<i>10th March 2003</i>
<i>Laid before the Scottish Parliament</i>	<i>11th March 2003</i>
<i>Coming into force</i>	<i>1st April 2003</i>

The Scottish Ministers, in exercise of the powers conferred by section 2 of and

Schedule 1 to the Pollution Prevention and Control Act 1999<sup>[1]</sup> and of all other powers enabling them in that behalf, having in accordance with section 2(4) of that Act consulted the Scottish Environment Protection Agency, such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they consider appropriate, and such other bodies or persons as they consider appropriate, hereby make the following Regulations:

**Citation, commencement and extent**

1. - (1) These Regulations may be cited as the Waste Incineration (Scotland) Regulations 2003 and shall come into force on 1st April 2003.

(2) These Regulations extend to Scotland only.

**Interpretation**

2. - (1) In these Regulations-

"the 1990 Act" means the Environmental Protection Act 1990<sup>[2]</sup>;

"the 2000 Regulations" means the Pollution Prevention and Control (Scotland) Regulations 2000<sup>[3]</sup>;

"authorisation" means an authorisation granted under section 6 of the 1990 Act;

"existing waste incineration installation" means a waste incineration installation or mobile plant which-

(a) in the case of such an installation or mobile plant which is a co-incineration plant, is one which-

(i) is in operation before 28th December 2002 following the grant of a relevant approval; or

(ii) is put into operation by 28th December 2004 following the grant of a relevant approval before 28th December 2002 or the grant of a relevant approval, where the application for such an approval was duly made before 28th December 2002; or

(b) in any other case is one which-

(i) is in operation before 28th December 2002 following the grant of a relevant approval;

(ii) is put into operation by 28th December 2003 following the grant of a relevant approval before 28th December 2002; or

(iii) is put into operation by 28th December 2004 following the grant of a relevant approval, where the application for such an approval was duly made before 28th December 2002,

and where an installation or mobile plant becomes authorised as a waste incineration installation or mobile plant for the first time as a result of a variation or modification granted for the purposes of sections 10, 11 or 37 of the 1990 Act or regulation 13 of the 2000 Regulations, references

in this definition to a relevant approval shall be construed as references to that variation or modification and not to the original relevant approval, and references to the grant of a relevant approval shall be construed as references to the service of a notice giving effect to that variation or modification;

"licence" means a waste management licence granted under section 36 of the 1990 Act;

"permit" means a permit granted under regulation 7 of the 2000 Regulations;

"relevant approval" means any of the following:-

- (a) a permit;
- (b) an authorisation;
- (c) a licence;
- (d) an activity which is-
  - (i) registered under regulation 18 of the Waste Management Licensing Regulations 1994<sup>[4]</sup> as exempt from the requirement to have a licence; and
  - (ii) carried out so as to comply with all the conditions detailed in those Regulations appropriate for that exemption.

(2) In these Regulations, any word or expression used which is defined in the 2000 Regulations shall have the same meaning as it has in those Regulations.

### **Applications in relation to existing waste incineration installations or mobile plants**

3. - (1) Subject to paragraph (4) below, where an existing waste incineration installation or mobile plant is on 31st December 2004 subject to a permit, the operator shall during the period beginning with 1st January 2005 and ending with 31st March 2005 make an application under regulation 13 of the 2000 Regulations for a variation of the conditions of that permit.

(2) Subject to paragraph (4) below, where an existing waste incineration installation or mobile plant (other than one mentioned in Section 5.1 of Part 1 of Schedule 1 to the 2000 Regulations), is on 31st December 2004 subject to an authorisation, the operator shall during the period beginning with 1st January 2005 and ending with 31st March 2005 make an application in one of the following forms:-

- (a) an application for a variation of the conditions of an authorisation under section 11 of the 1990 Act; or
- (b) an application for a permit under regulation 7 of the 2000 Regulations.

(3) An application made under paragraphs (1) or (2) shall contain (in

addition to any other information which may be required), the information specified in paragraph 1B of Part 1 of Schedule 4 to the 2000 Regulations.

(4) With the consent of the Scottish Environment Protection Agency, an application under paragraph (1) or (2) may be made before the beginning of the periods specified in those paragraphs.

(5) Where a waste incineration installation or mobile plant would have fallen within paragraph (a)(ii), (b)(ii) or (b)(iii) of the definition of existing waste incineration installation or mobile plant in regulation 2(1) had it been put into operation before the date specified in the applicable paragraph, it shall not be put into operation after that date unless-

(a) in the case of an installation or mobile plant which is already subject to a permit, the permit is varied pursuant to an application under regulation 13 of the 2000 Regulations; or

(b) in any other case, a permit is granted in relation to the installation.

### **Transitional provisions**

**4.** In respect of any installation or mobile plant which by operation of these Regulations becomes a Part A installation or Part A mobile plant within the meaning of the 2000 Regulations, Part 1 of Schedule 3 to the 2000 Regulations shall apply to such an installation or mobile plant subject to the following modifications:-

(a) in paragraph 4, in sub-paragraph (1) for "31st October 1999" there is substituted "28th December 2002";

(b) in paragraph 6-

(i) for the definition of "existing" there is substituted-

" "existing" in relation to a Part A installation or a Part A mobile plant means a waste incineration installation or mobile plant which-

(a) in the case of such an installation or mobile plant which is a co-incineration plant, is one which-

(i) is in operation before 28th December 2002 following the grant of a relevant approval; or

(ii) is put into operation by 28th December 2004 following the grant of a relevant approval before 28th December 2002 or the grant of a relevant approval, where the full application for such an approval was made before 28th December 2002; or

(b) in any other case is one which-

(i) is in operation before 28th December 2002 following the

grant of a relevant approval;

(ii) is put into operation by 28th December 2003 following the grant of a relevant approval before 28th December 2002; or

(iii) is put into operation by 28th December 2004 following the grant of a relevant approval, where the full application for such an approval was made before 28th December 2002;";

(ii) in the definition of "new" for "31st October 1999" there is substituted "28th December 2002";

(iii) for the definition of "relevant authorisation" there is substituted-

"relevant authorisation" means any of the following:-

(a) a permit;

(b) an authorisation;

(c) a licence;

(d) an activity which is-

(i) registered under regulation 18 of the Waste Management Licensing Regulations 1994[5] as exempt from the requirement to have a licence; and

(ii) carried out so as to comply with all the conditions detailed in those Regulations appropriate for that exemption."; and

(iv) in the definition of "transitional date" for "the date 6 months after the date on which these Regulations come into force" there is substituted "30th September 2003".

### **Amendments to the 2000 Regulations**

**5.** The 2000 Regulations have effect subject to the following amendments.

**6.** In regulation 2 (interpretation: general)-

(a) after the definition of "variation notice" there is inserted-

" "waste incineration installation" means that part of an installation or mobile plant which includes any of the following activities:-

(a) the incineration or co-incineration of waste in an incineration or co-incineration plant falling within paragraphs (a), (b), (c), (d) or (e) of Part A of Section 5.1 of Part 1 of Schedule 1; or

(b) any activity falling within any Section of that Part of that

Schedule which is carried out in a co-incineration plant as defined in Section 5.1 of that Part of that Schedule."; and

(b) after paragraph (2) there is inserted-

" (2A) For the purposes of these Regulations a change in the operation of a waste incineration installation which involves the incineration or co-incineration for the first time of hazardous waste shall be treated as a substantial change in operation, and for the purposes of this paragraph, "co-incineration" and "hazardous waste" shall have the meanings given in Section 5.1 of Part I of Schedule 1."

7. In regulation 15 (application to surrender a permit for a Part A installation or Part A mobile plant)-

(a) in paragraph (1), for "This regulation" there is substituted "Subject to paragraph (1A), this Regulation"; and

(b) after paragraph (1) there is inserted-

" (1A) This regulation does not apply in relation to that part of any installation or mobile plant where an activity falling within paragraphs (d) or (e) of Part A of Section 5.1 of Part 1 of Schedule 1 is carried out."

8. For regulation 16(1) (notification of surrender of a permit for a Part B installation or Part B mobile plant) there is substituted-

" (1) This regulation applies where an operator of-

(a) a Part B installation or Part B mobile plant, or

(b) an installation or mobile plant where an activity falling within paragraphs (d) or (e) of Part A of Section 5.1 of Schedule 1 is carried out,

ceases or intends to cease operating the installation (in whole or in part) or the mobile plant."

9. In Part 1 of Schedule 1 (activities), for Section 5.1 (incineration) there is substituted-

" SECTION 5.1 -

*Incineration and co-incineration of waste*

PART A

- (a) The incineration of hazardous waste in an incineration plant.
- (b) Unless carried out as part of any other Part A activity, the incineration of hazardous waste in a co-incineration plant.
- (c) The incineration of non-hazardous waste in an incineration plant with a capacity of 1 tonne or more per hour.
- (d) The incineration of non-hazardous waste in an incineration plant with a capacity of less than 1 tonne per hour.
- (e) Unless carried out as part of any other Part A activity, the incineration of non-hazardous waste in a co-incineration plant.
- (f) Unless carried out as part of any other Part A activity, the incineration of hazardous waste in an excluded plant.
- (g) Unless carried out as part of any other Part A activity, the incineration of non-hazardous waste in an excluded plant with a capacity of one tonne or more per hour.

PART B

The following activities if operated at installations not falling under Part A of this Section:-

- (a) The incineration of waste which is not hazardous waste in an excluded plant with a capacity of 50 kilogrammes or more per hour but less than 1 tonne per hour.
- (b) The cremation of human remains.

Interpretation of Section 5.1

In this Section-

"co-incineration" means the use of wastes as a regular or additional fuel in a co-incineration plant or the thermal treatment of waste for the purposes of disposal in a co-incineration plant;

"co-incineration plant" means any stationary or mobile plant whose main purpose is the generation of energy or production of material products and-

- which uses wastes as a regular or additional fuel; or
- in which waste is thermally treated for the purpose of disposal;

if co-incineration takes places in such a way that the main purpose of the plant is not the generation of energy or production of material products but rather the thermal treatment of waste, the

plant shall be regarded as an incineration plant;

this definition covers the site and the entire plant including all co-incineration lines, waste reception, storage, on site pre-treatment facilities, waste-, fuel- and air-supply systems, boiler, facilities for the treatment of exhaust gases, on-site facilities for treatment or storage of residues and waste water, stack devices and systems for controlling incineration operations, recording and monitoring incineration conditions;

"excluded plant" means-

(a) a plant treating only the following wastes:-

- (i) vegetable waste from agriculture and forestry;
- (ii) vegetable waste from the food processing industry, if the heat generated is recovered;
- (iii) fibrous vegetable waste from virgin pulp production and from production of paper from pulp, if it is co-incinerated at the place of production and the heat generated is recovered;
- (iv) wood waste with the exception of wood waste which may contain halogenated organic compounds or heavy metals as a result of treatment with wood-preservatives or coating, and which includes in particular such wood waste originating from construction and demolition waste;
- (v) cork waste;
- (vi) radioactive waste;
- (vii) animal carcasses as regulated by Directive 90/667/EEC<sup>[6]</sup> and by Regulation (EC) No. 1774/2002 of the European Parliament and of the Council of 3rd October 2002 laying down health rules concerning animal by-products not intended for human consumption<sup>[7]</sup>; and
- (viii) waste resulting from the exploration for, and the exploitation of, oil and gas resources from off-shore installations and incinerated on board the installation; and

(b) an experimental plant used for research, development and testing in order to improve the incineration process and which treats less than 50 tonnes of waste per year;

"hazardous waste" means any solid or liquid waste as defined in Article 1(4) of Council Directive 91/689/EEC of 12th December 1991 on hazardous waste<sup>[8]</sup> except for-

(a) combustible liquid wastes including waste oils as defined in Article 1 of Council Directive 75/439/EEC of 16th June 1975 on the disposal of waste oils<sup>[9]</sup> provided that they meet the following criteria:-



- (i) the mass content of polychlorinated aromatic hydrocarbons, e.g. polychlorinated biphenyls (PCB) or pentachlorinated phenol (PCP) amounts to concentrations not higher than those set out in the relevant Community legislation[10];
- (ii) these wastes are not rendered hazardous by virtue of containing other constituents listed in Annex II to Directive 91/689/EEC in quantities or in concentrations which are inconsistent with the achievement of the objectives set out in Article 4 of Directive 75/442/EEC[11];
- (iii) the net calorific value amounts to at least 30 MJ per kilogramme; and

(b) any combustible liquid wastes which cannot cause, in the flue gas directly resulting from their combustion, emissions other than those from gasoil as defined in Article 1(1) of Directive 93/12/EEC[12] or a higher concentration of emissions than those resulting from the combustion of gasoil as so defined;

"incineration" means the thermal treatment of wastes with or without recovery of the combustion heat generated;

"incineration plant" means any stationary or mobile technical unit and equipment dedicated to the thermal treatment of wastes with or without recovery of the combustion heat generated. This includes the incineration by oxidation of waste as well as other thermal treatment processes such as pyrolysis, gasification or plasma processes in so far as the substances resulting from the treatment are subsequently incinerated.

This definition covers the site and the entire incineration plant including all incineration lines, waste reception, storage, on site pretreatment facilities, waste-fuel and air-supply systems, boiler, facilities for the treatment of exhaust gases, on-site facilities for treatment or storage of residues and waste water, stack, devices and systems for controlling incineration operations recording and monitoring incineration conditions;

"non-hazardous waste" means waste which is not hazardous waste;

"waste" means any solid or liquid waste as defined in Article 1(a) of Directive 75/442/EEC[13].".

**10.** In Part 1 of Schedule 1, in Section 6.8, in paragraph (b) of Part A, "except by incineration" is omitted and after "day" there is inserted "other than by incineration or co-incineration at installations falling within Section 5.1 of this Schedule."

**11.** In Part 1 of Schedule 3[14] (Part A installations and mobile plant), in Table 1 in paragraph 2(2) for the entry relating to activities falling within Part A of Section 5.1 there is substituted-

Section 5.1	

Part A	
paragraph (a), (b), (c), (d) and (e)	1st January to 31st March 2005
paragraph (f) and (g)	1st June to 31st August 2005"

12. In Part 1 of Schedule 4 (application for permits)-

(a) in paragraph 1(1)(d), after "Part A mobile plant", there is inserted "(except for an installation or mobile plant falling within paragraph (d) and (e) of Part A of Section 5.1 of Part 1 of Schedule 1)";

(b) after paragraph 1A<sup>[15]</sup> insert-

" **1B** - (1) Subject to paragraph (2), an application for a permit to operate a waste incineration installation shall in addition contain a description of the measures which are envisaged to guarantee in respect of that installation that-

(a) the plant is designed, equipped and will be operated in such a manner that the requirements of Directive 2000/76/EC<sup>[16]</sup> of the European Parliament and of the Council of 4th December 2000 on the incineration of waste are met, taking into account the categories of waste to be incinerated;

(b) the heat generated during the incineration and co-incineration process is recovered as far as practicable, for example, through combined heat and power, the generating of process steam or district heating;

(c) the residues will be minimised in their amount and harmfulness and recycled where appropriate;

(d) the disposal of the residues which cannot be prevented, reduced or recycled will be carried out in conformity with national and Community legislation<sup>[17]</sup>; and

(e) the proposed measurement techniques for emissions into the air comply with Annex III of Directive 2000/76/EC of the European Parliament and of the Council of 4th December 2000 on the incineration of waste and, as regards water, comply with paragraphs 1 and 2 of that Annex.

(2) Sub-paragraph (1) shall not apply to an existing waste incineration installation in respect of which an application for a permit is duly made before 28th December 2004."

13. In Part 1 of Schedule 7 (applications for variation of conditions), after paragraph (1)(f) there is inserted-

" (g) in the case of an application for the variation of the conditions of a permit in respect of a waste incineration installation or mobile plant the information specified in paragraph 1B of Part 1 of Schedule 4, or where such information has previously been included in an application made

under these Regulations, a statement of any changes as respects the matters dealt with in that paragraph which would result if the proposed change in the operation of the installation or mobile plant requiring the variation were made".

14. In Schedule 9 (registers) at the end of paragraph 1 there is added-

" (x) a list which identifies all waste incineration installations which have a capacity of less than two tonnes per hour and which are the subject of a permit or an authorisation granted under section 6 of the Environmental Protection Act 1990<sup>[18]</sup> containing conditions which give effect to the provisions of Directive 2000/76/EC of the European Parliament and of the Council of 4th December 2000 on the incineration of waste;".

**Amendments to the Waste Management Licensing Regulations 1994**

15. The Waste Management Licensing Regulations 1994<sup>[19]</sup> shall have effect subject to the following amendments:-

(a) in paragraph (1)(bb) of regulation 16 (exclusion of activities under other control regimes from waste management licensing), "paragraph (a) or (b)" is omitted, and

(b) in paragraph 29 of Schedule 3, for "an exempt incineration plant" there is substituted "an incineration plant or a co-incineration plant with a capacity of less than 50 kg per hour which is an excluded plant".

ROSS FINNIE

A member of the Scottish Executive

St Andrew's House, Edinburgh  
10th March 2003

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**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made under section 2 of the Pollution Prevention and Control Act 1999 (c.24.). They implement in Scotland the provisions of Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste (O.J. No. L 332, 28.12.00, p.91.) (the Directive), together with the Pollution Prevention and Control (Waste Incineration Directive) (Scotland) Directions 2003 and the Environmental Protection Act (Waste Incineration Directive) (Scotland) Directions 2003.

Regulation 3 requires applications to be made by the operators of certain existing waste incineration installations (as defined in regulation 2) within the period 1st January to 31st March 2005. The applications must be made under the Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323) (the 2000

Regulations) or the Environmental Protection Act 1990 (1990 c.43.) and must contain the information specified in regulation 12. Regulation 3(5) prohibits certain waste incineration installations or mobile plants from being put into operation until the relevant application has been determined.

Regulation 4 contains transitional provisions for waste incineration installations or mobile plants which require a permit under the 2000 Regulations as a result of these Regulations.

Regulations 5 to 14 make a number of amendments to the 2000 Regulations. These include: an extension of the definition of "substantial change in operation" in regulation 2 of those Regulations; a revision of Sections 1.1 and 5.1 of Part 1 of Schedule 1 (which describes the waste incineration installations which are subject to the 2000 Regulations); amendments to the transitional timetable in Schedule 3 and the requirements of Schedules 4 and 7 which apply to waste incineration installations; and an addition to the list of information in Schedule 9 which is required to be kept on the public register maintained under the 2000 Regulations.

Regulation 15 makes consequential amendments to the Waste Management Licensing Regulations 1994.

Copies of (a) the Pollution Prevention and Control (Waste Incineration Directive) (Scotland) Directions 2003; (b) the Environmental Protection Act (Waste Incineration Directive) (Scotland) Directions 2003; and (c) the Regulatory Impact Assessment which has been prepared in respect of these Regulations can be obtained from the Scottish Executive Environment and Rural Affairs Department, Victoria Quay, Edinburgh, EH6 6QQ.

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*Notes:*

[1] 1999 c.24. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46), as read with section 5(3) of the said Act of 1999.[back](#)

[2] 1990 c.43.[back](#)

[3] S.S.I. 2000/32 as amended by S.S.I 2003/185 and S.S.I. 2003/204.[back](#)

[4] S.I. 1994/1056; relevant amending instruments are S.I. 1995/288, 1996/634 and 972, 1998/606 and S.S.I. 2000/323.[back](#)

[5] S.I. 1994/1056; relevant amending instruments are S.I. 1995/288, 1996/634 and 972, 1998/606 and S.S.I. 2000/323.[back](#)

[6] O.J. No. L 363, 27.12.90, p.51.[back](#)

[7] O.J. No. L 273, 10.10.2002, p.1.[back](#)

[8] O.J. No. L 377, 31.12.91, p.20 amended by Council Directive 94/31/EC (O.J. No. L 168, 02.07.94, p.28).[back](#)

[9] O.J. No. L 194, 25.07.75, p.23.[back](#)

[10] In particular Council Directive 96/59/EC (O.J. No. L 243, 24.09.96, p.31).[back](#)

[11] O.J. No. L 194, 25.07.75, p.39 amended by Council Directives 91/156/EEC (O.J. No. L 78, 26.03.91, p.32) and 91/692/EEC (O.J. No. L 377, 31.12.91, p.48) and

Commission Decision 96/350/EC (O.J. No. L 135, 06.06.96, p.32).[back](#)

[12] O.J. No. L 74, 27.03.93, p.81 amended by Council Directive 99/32/EC (O.J. No. L 121, 11.05.99, p.13).[back](#)

[13] O.J. No. L 194, 25.7.78, p.39.[back](#)

[14] Paragraph 2(2) of Part I of Schedule 3 is amended by the Pollution Prevention and Control (Scotland) Amendment Regulations 2003 (S.S.I. 2003/171).[back](#)

[15] Schedule 4 is amended by the Landfill (Scotland) Regulations 2003 (S.S.I. 2003/208).[back](#)

[16] O.J. No. L 332, 28.12.00, p.91.[back](#)

[17] For example, Council Directive 75/442/EEC (on waste) (O.J. No. L 194, 25.07.75, p.39), as amended by Council Directives 91/156/EEC (O.J. L 78, 26.03.91, p.32) and 91/692/EEC (O.J. No. L 377, 31.12.91, p.48) and Commission Decision 96/350/EC (O.J. No. L 135, 06.06.96, p.32) and Part II of the Environmental Protection Act 1990 (c.43) and the Waste Management Licensing Regulations 1994 (S.I. 1994/1056) (as amended).[back](#)

[18] 1990 c.43.[back](#)

[19] S.I. 1994/1056; relevant amending instruments are S.I. 1995/288, 1996/634, 1996/972; 1998/606; S.S.I. 2000/323 and S.S.I. 2003/.[back](#)

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