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STATUTORY RULES OF NORTHERN IRELAND

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**2005 No. 300**

**The Hazardous Waste Regulations (Northern Ireland) 2005**

**PART 2**

**HAZARDOUS AND NON-HAZARDOUS WASTE**

**Meaning of hazardous waste**

6. Subject to regulation 10, a waste is a hazardous waste if it is for the time being—
- (a) featured in the List of Wastes(1) as a hazardous waste; or
  - (b) any other waste which (being a waste considered(2) to display one or more of the properties listed in Annex III) is a hazardous waste pursuant to regulation 8; and
  - (c) a specific waste which, though of a type indicated in the List of Wastes as non-hazardous, is determined pursuant to regulation 9 to be a hazardous waste(3),

and the term “hazardous” and cognate expressions shall be construed accordingly.

**Meaning of non-hazardous waste**

7. The following are non-hazardous waste—
- (a) a waste which is not, for the time being, a hazardous waste pursuant to regulation 6; or
  - (b) a specific waste which, though of a type indicated in the List of Wastes as hazardous, is determined pursuant to regulation 10 to be non-hazardous,

and the expression “non-hazardous” and cognate expressions shall be construed accordingly.

**Determination that a waste is hazardous**

8.—(1) Subject to the following provisions of this regulation, where it appears to the Department that, having regard to Annexes I, II and III and the limit values of concentration in the List of Wastes, there are reasonable grounds to suspect that a waste of a type listed, or falling within a type listed, in the List of Wastes as non-hazardous displays one or more hazardous properties, it may determine that, in Northern Ireland, such waste is a hazardous waste.

- (2) The Department may revoke a determination made under paragraph (1)(4).

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(1) Wastes listed as hazardous in the List of Wastes are considered hazardous pursuant to the first indent of Article 1.4 of the Hazardous Waste Directive and the European Waste Catalogue

(2) A waste which a member state considers displays any of the properties in Annex III is a hazardous waste pursuant to the second indent of Article 1.4 of the Hazardous Waste Directive

(3) A specific waste which though not indicated in the List of Wastes as hazardous may be considered pursuant to Article 3 of the List of Wastes Decision to be hazardous if it displays one or more of the properties in Annex III

(4) The second indent of the Hazardous Waste Directive provides for peer review by the other member States of a notification under the second indent of Article 1.4

(3) Before making a determination under paragraph (1) or revoking a determination under paragraph (2), the Department shall consult the requisite bodies, except where it considers it inappropriate to do so in any case on account of the nature of an emergency or grave danger.

(4) The Department shall publish in such manner as it considers appropriate for the purpose of informing persons likely to be affected thereby, a notice of any determination made under paragraph (1) or revocation under paragraph (2), and the notice shall include—

- (a) the date and time at which the determination or revocation, as the case may be, is to take effect (which may be immediately upon publication); and
- (b) a description of the waste sufficient to identify it,

and shall send a copy of the notice to the requisite bodies.

(5) The notice shall give reasons for the determination or revocation, as the case may be.

(6) Where waste enters Northern Ireland from England, Scotland or Wales, a determination in force under this regulation shall apply to it notwithstanding that a determination to like effect is not in force in respect of England, Scotland or Wales, as the case may be.

#### **Specific waste to be treated as hazardous**

**9.—**(1) Without prejudice to regulation 8, the Department, having regard to Annexes I, II and III and the limit values of concentration in the List of Wastes, may determine, in exceptional cases, that a specific waste produced in Northern Ireland and indicated in the List of Wastes as non-hazardous displays one or more of the hazardous properties, and accordingly that that waste is a hazardous waste.

(2) A specific waste produced in England, Wales or Scotland and indicated in the List of Wastes as non-hazardous and which is for the time being determined to be hazardous, pursuant to Article 3 of the List of Wastes Decision, shall be treated for all purposes as hazardous waste in Northern Ireland.

#### **Specific waste to be treated as non-hazardous**

**10.—**(1) The Department may decide, in exceptional cases, on the basis of documentary evidence provided in an appropriate way by the holder, and having regard to Annexes I, II and III and the limit values of concentration in the List of Wastes, that a specific waste produced in Northern Ireland and indicated in the List as being hazardous does not display any of the properties listed in Annex III to the Hazardous Waste Directive.

(2) A specific waste produced in England, Wales or Scotland and indicated in the List of Wastes as hazardous waste and which is for the time being determined to be non-hazardous pursuant to Article 3 of the List of Wastes Decision, shall be treated for all purposes as non-hazardous in Northern Ireland.

#### **Provisions common to regulations 9 and 10**

**11.—**(1) The Department may revoke a determination made under regulation 9 or 10.

(2) The Department shall, before making a determination pursuant to regulation 9 or 10 or revoking such a determination, except where it considers it inappropriate to do so on account of the nature of any emergency or grave danger, consult—

- (a) the requisite bodies;
- (b) the holder of the specific waste; and
- (c) any other person appearing to it—
  - (i) to have an interest in the specific waste; or
  - (ii) to be otherwise directly affected by the determination.

(3) The Department shall give notice of any determination or revocation made under regulation 9 or 10 to—

- (a) the requisite bodies;
  - (b) the holder of the specific waste concerned;
  - (c) any person it has consulted pursuant to paragraph (2)(c).
- (4) The notice shall give reasons for the determination or revocation, as the case may be.

### **Requisite bodies**

12. The “requisite bodies”<sup>(5)</sup> are—

- (a) the Department of the Environment Food and Rural Affairs;
- (b) the Environment Agency of England and Wales;
- (c) the Scottish Executive;
- (d) the Scottish Environment Protection Agency;
- (e) the National Assembly for Wales;
- (f) the Health and Safety Executive for Northern Ireland; and
- (g) any organisation appearing to the Department to be representative of persons likely to be affected by the relevant determination, direction or revocation of a determination or direction, as the case may be.

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<sup>(5)</sup> In addition, the second indent of Article 1(4) of the Hazardous Waste Directive requires notification of determinations there under (regulation 8 of these Regulations) to the Commission; given the Commission’s role, notification to it is implicit for decisions under Article 3 of the List of Wastes Decision (regulations 9 and 10)