

**EXPLANATORY MEMORANDUM TO  
THE HAZARDOUS WASTE (ENGLAND AND WALES) (AMENDMENT)  
REGULATIONS 2009**

**2009 No. 507**

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This instrument makes amendments to the Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005 No. 894) “the 2005 Regulations” in order to:

- (i) increase the qualifying limitation in regulation 30 from 200kg to 500kg in any period of twelve months and extend the scope of the exemption from the requirement to notify from specified premises to all premises within the qualifying limitation; and
- (ii) clarify certain provisions of the 2005 Regulations.

**3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**

3.1 None.

**4. Legislative background**

4.1 This instrument amends the 2005 Regulations which implement Council Directive 91/689/EEC on hazardous waste (“Hazardous Waste Directive”). It is being made to increase the qualifying limitation (which determines which premises may be exempted from the requirement to notify the production, collection and removal of hazardous waste) in regulation 30 from 200kg to 500kg in any period of twelve months. It also clarifies certain other provisions in the 2005 Regulations, including in relation to asbestos waste which is domestic waste, the treatment of separated domestic fractions of hazardous waste and the arrangements for the transfer of a rejected consignment of hazardous waste.

**5. Territorial Extent and Application**

5.1 This instrument applies in England.

**6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**7. Policy background**

7.1 The 2005 Regulations came into force on 16 April and 16 July 2005. They implemented the requirements of the Hazardous Waste Directive.

7.2 The 2005 Regulations require producers of hazardous waste to notify annually to the Environment Agency the premises at which they produce hazardous waste. The information provided by notification is used by the Agency to facilitate the inspections of producers of hazardous waste required by the Hazardous Waste Directive. Under the 2005 Regulations certain premises were thought to represent a low environmental risk and so warrant less frequent inspections. They were therefore excluded from the notification requirement if they produced less than 200kg of hazardous waste in any 12 month period.

Having made an assessment of premises notifications since 2005, Defra and the Environment Agency have concluded that premises producing up to 500kg of hazardous waste in a 12 month period represent a low risk and require only a low frequency of inspection.

This instrument therefore introduces a blanket exemption from the requirement to notify premises to the Environment Agency for **all** premises producing less than 500kg of hazardous waste in any 12 month period. This achieves the policy objective of reducing the regulatory burden on businesses whilst maintaining the requisite level of environmental protection. Hazardous waste produced at these premises is still subject to the remaining provisions of the 2005 Regulations.

7.3 Domestic waste is generally exempt from the provisions of the 2005 Regulations. However, regulation 13 does apply to asbestos waste which is also domestic waste. The 2005 Regulations were not intended to impose any obligations on the occupier of the domestic premises. However, where the asbestos waste is produced by a contractor who is engaged by the householder to undertake any construction, modification, repair and maintenance or demolition of their premises, then the 2005 Regulations are intended to apply to the contractor irrespective of the fact that the asbestos is produced at domestic premises. The contractor must also be treated as the consignor unless he has engaged another person to consign the waste.

Some people have found regulation 13 difficult to understand. As a result of this, there has been confusion about the circumstances in which asbestos produced at domestic premises is subject to the requirements of the 2005 Regulations. This instrument clarifies that occupiers of domestic premises are not subject to the 2005 Regulations, but that contractors dealing with the asbestos waste at such premises are.

7.4 The 2005 Regulations are intended to apply to separated fractions of domestic waste which are hazardous waste. If a householder places hazardous waste, such as a television, for collection separately from his mixed waste receptacle or delivers the waste separately to a civic amenity site or household waste recycling centre (HWRC), the requirements of the 2005 Regulations are intended to apply. However the 2005 Regulations are not intended to place any requirements on householders themselves. For this reason, the requirements are not generally applied until the waste is accepted at other premises (eg, the premises of the waste collector or a disposal/recovery facility) for collection, disposal or recovery. Once the waste has been accepted at these other premises, the persons who have accepted it must be treated as the producer of the waste for the purposes of the 2005 Regulations.

It has always been the intention that Part 4 of the 2005 Regulations (which generally restricts the mixing of hazardous waste) will apply from the time at which the separated fraction of waste is collected by a waste management contractor from the

domestic premises or the time at which it is delivered by a householder to a civic amenity site or HWRC. As the 2005 Regulations are not always interpreted in this way, this instrument makes changes to the wording of regulation 14 to clarify on whom the obligations lie and at what times.

7.5 Regulation 42(6)(a) was amended in 2008 by paragraphs 45(1) and (6) of Schedule 21 to Environmental Permitting (England and Wales) Regulations 2007 (SI 2007/3538) (“the EPR”) to read that the hazardous waste producer or holder has a duty to arrange for the transfer of the rejected consignment or part to another specified consignee who “holds a waste permit or is entitled to carry on a registered exemption in respect of the recovery or disposal of the waste”. Since we consider that wording is unclear, this instrument makes it closer to the EPR language by amending it to read that the specified consignee should be someone who “holds a waste permit or carries on an exempt waste operation for the recovery or disposal of the waste”

## **8. Consultation outcome**

8.1 Defra consulted the waste industry on these proposals between 13 November 2008 and 6 February 2009. The response to these proposals was broadly favourable with over 75% support. Some other proposals consulted on are not being taken forward at this time.

A response to the consultation will be published on the Defra website at [link to be inserted here].

## **9. Guidance**

Detailed guidance on all aspects of the amendments will be placed on the Defra and Environment Agency websites.

## **10. Impact**

An Impact Assessment has been prepared for this instrument (this is attached at Annex A).

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to widen the qualifying exemption from 200kg to 500kg in any period of twelve months and also to extend the scope of the exemption from the requirement to notify from specified premises to all premises within the qualifying limitation.

11.3 The majority of all small businesses employing up to 20 people are classified as hazardous waste producers for the purposes of the Hazardous Waste Regulations. Analysis of responses from the consultation exercise indicated widespread support for the widening of the notification exemption as a means to reduce the costs and regulatory burden on small businesses. For further details, please refer to the Costs and Benefits section on pages 12 and 13 of the Impact Assessment attached at Annex A.

**12. Monitoring & review**

Defra and the Environment Agency intend to review implementation of the Regulation within 3 years of implementation, including any potential adverse effects that it might have on pollution risks.

**Contact**

- 13.** Olu Ogunbadejo at the Department for Environment, Food and Rural Affairs Tel: 0207 238 4335 (email: [olu.ogunbadejo@defra.gsi.gov.uk](mailto:olu.ogunbadejo@defra.gsi.gov.uk)) can answer any queries regarding the instrument.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Defra</b>	<b>Title:</b> <b>Impact Assessment of The Hazardous Waste (England and Wales) Regulations 2005</b>	
<b>Stage:</b> Final IA	<b>Version:</b> C.E approved	<b>Date:</b> 5 March 2009
<b>Related Publications:</b> <a href="http://www.defra.gov.uk/corporate/consult/hazardous-wasteregs/index.htm">http://www.defra.gov.uk/corporate/consult/hazardous-wasteregs/index.htm</a>		

### Available to view or download at:

<http://www.defra.gov.uk/corporate/consult/hazardous-wasteregs/index.htm>.

**Contact for enquiries:** Olu Ogunbadejo HIWU, Defra

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### What is the problem under consideration? Why is government intervention necessary?

These Hazardous Waste Regulations affect anyone who handles hazardous waste in England and Wales. A post implementation review indicates that the wording of some of the provisions needs to be amended in order to fully clarify policy intentions.

The Government also intends to act on feedback from the Regulator which indicates that it would be feasible to increase the notification qualifying limitation from 200kg to 500Kg without any detrimental environmental effects.

### What are the policy objectives and the intended effects?

To reduce the number of hazardous waste producing premises required to notify the Environment Agency by increasing the qualifying limitation for qualifying for this exemption from 200kg to 500kg. The effect would be to reduce the regulatory burden on small businesses.

To amend the Regulations in order to clarify those aspects which are not clear. This would enable the Agency to target its enforcement activity more appropriately.

### What policy options have been considered? Please justify any preferred option.

1. Maintain the status quo (no intervention) (Dismissed at consultation)
2. Amend the Regulations to extend the exemption from notification and clarify unclear provisions (Chosen via consultation exercise as this will meet our policy objective to reduce the burden on industry whilst maintaining the requisite environmental protection and further clarify the regulatory role of the Environment Agency).

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

3 years from the coming-into-force date.

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

Jane Kennedy

.....Date: 5<sup>th</sup> March 2009

## Summary: Analysis & Evidence

Policy Option: 2

Description:

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' No costs are expected as a result of this change. The cost of notification only covers administration, registration and maintaining public register costs. Compliance and enforcement work is funded from other Agency resources and there will be no extra enforcement costs to the Agency. See costs and benefits section below.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ N/A		
	<b>Average Annual Cost</b> (excluding one-off)		
	£ N/A		
<b>Total Cost (PV)</b>			£ N/A
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' This figure indicates the benefit to the industry as a result of extending the notification exemption. 72,600 fewer producers will be required to notify the Agency, hence saving each producer £18-20 per notification.
	<b>One-off</b>	<b>Yrs</b>	
	£ N/A	10	
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ 1.59 - 1.76m		
<b>Total Benefit (PV)</b>			£ 13.88 - 15.34m
Other <b>key non-monetised benefits</b> by 'main affected groups'			

**Key Assumptions/Sensitivities/Risks** A key assumption in the of the Government's decision to increase the qualifying limitation to 500kg is on the basis of a review of the trends in the agricultural sector, which was granted a 500kg limit exemption in 2005.

Price Base Year 2005	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ 13.88 - 15.34m	<b>NET BENEFIT (NPV Best estimate)</b> £ 14.6m
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What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		6/4/2009		
Which organisation(s) will enforce the policy?		Environment		
What is the total annual cost of enforcement for these organisations?		£ NA		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ NA		
What is the value of changes in greenhouse gas emissions?		£ NA		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes	Yes	N/A	N/A

**Impact on Admin Burdens Baseline** (2005 Prices)

(Increase - Decrease)

Increase	£ 0.00	Decrease	£ .3m	Net	£ -0.3m
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Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

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### Background.

The Hazardous Waste Regulations which came into force on 16 July 2005, set down the regime for the control and tracking of the movement of hazardous waste for the purpose of implementing the Hazardous Waste Directive (Directive 91/689/EC). The Regulations include a requirement for hazardous waste producers to notify their premises to the Environment Agency before hazardous wastes can be removed from the premises. They also exempt certain low risk premises from the requirement as long as they produce less than a specified amount of hazardous waste per annum.

In the light of 3 years' operational experience, the Government held a consultation exercise between 13 November 2008 and 6 February 2009 on some proposed changes to the Regulations. A link to the consultation is available on the Defra website at <http://www.defra.gov.uk/corporate/consult/hazardous-wasteregs/index.htm>.

This Final Impact Assessment follows on from that consultation exercise.

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### Rationale for Government intervention and desired outcomes of the proposals.

The Government decided to intervene following an assessment it had made of premises notifications since 2005. When the Hazardous Waste Regulations were implemented in 2005, the principle of producer registration was introduced. One of the reasons for this was to provide information on producers so that the Agency could target their inspections, which is a regulatory requirement. The 2005 regulations also provided a definition of 'hazardous' which resulted in some wastes becoming 'newly hazardous'. These wastes included things such as fluorescent tubes. Almost all premises would at some time generate hazardous waste, fluorescent tubes for example, but these producers were not considered producers of large quantities of hazardous waste, but a low risk category. Hence an exemption from registration was given to certain premises generating less than 200 kg a year. All other requirements of the regulations would apply to these producers.

In 2006, the Agricultural sector was brought into waste regulation, and to allow for the farming sector to adjust to the requirements, the hazardous waste exemption threshold for producer registration was set at 500 kg. This threshold was arrived at on the basis of analyses undertaken of the types and quantities of wastes generated by farmers. A review of this threshold has been carried out and as no incidents of badly managed hazardous waste has been attributed to this exemption, the Government considers it appropriate to extend the 500kg exemption threshold across all sectors.

If a producer exceeded the 500kg threshold but was found not to have registered, the Agency would enforce in line with its Enforcement and Prosecution Policy, as it currently does with the present 200kg threshold (and 500 kg Agricultural threshold). The first priority would be the sound and safe management of hazardous waste.

Hence, the consultation invited comments on proposals to introduce a blanket exemption from the requirement to notify premises to the Environment Agency for **all** premises producing less than 500kg of hazardous waste in any 12 month period.

It was noted during the consultation that the proposal to increase the qualifying limitation from 200kg to 500kg for all premises might mean that the provisions for mobile services (regulations

29-31) would no longer be considered necessary as it was considered that mobile services are very likely to produce less than 500kg in a 12 month period and therefore a 500kg threshold for all premises would allow mobile service operators to carry out most work without notification. However, the consultation document asked for comments from the mobile service sector on the likely impacts of this approach on their operations.

The Government also considered that some provisions in the Regulations were not working as originally intended, possibly due to a lack of understanding of the intention of the drafting. For instance, it took account of feedback which suggested that the asbestos provisions in regulation 13 were not clearly understood resulting in confusion regarding the circumstances in which asbestos produced at domestic premises should be subject to the requirements of the Regulations.

There was also suggestion of a similar lack of certainty regarding the drafting of regulation 14 which applies to separated domestic fractions. The Regulations are intended to apply to separated fractions of domestic waste which are hazardous waste. So, if a householder places hazardous waste, such as a television, for collection separately from his mixed waste receptacle or delivers the waste separately to a civic amenity site or household waste recycling centre (HWRC), the requirements of the Regulations are intended to apply. But the intention was not for the regulations to place any requirements on householders themselves. However, it has always been the intention that Part 4 of the Regulations (which generally bans the mixing of hazardous waste) will apply from the time at which the separated fraction of waste is collected by a waste management contractor from the domestic premises or the time at which it is delivered by a householder to a civic amenity site or HWRC.

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In the light of the above, the consultation exercise invited comments on the following proposals:

- To clarify that where asbestos waste is produced at domestic premises, a contractor who is engaged to deal with the waste is subject to the Regulations; but the Regulations do not apply to the occupier of the premises.
- To clarify that where householders put domestic hazardous waste out separately for collection, or deliver it to civic amenity sites or household waste recycling centres, it must be kept separate and is subject to the requirements of the Regulations.
- To amend the Common Provisions on Notifications so that information required to be released by the Environment Agency relates only to the premises producing hazardous waste and does not include information about the actual notifier.
- To require that where someone collects hazardous waste from multiple premises on a single journey they must use the multiple collection procedure and paperwork. And to modify the consignment note for multiple collections in order to make it easier to use.
- To reduce the number of low risk premises required to notify by introducing a blanket exemption from notification for all premises producing less than 500kg of hazardous waste in any 12 month period.
- To require that, where hazardous waste being moved is also dangerous goods as defined in regulation 2 of The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007 (SI 2007 no.1573), the dangerous goods declaration should be made on a separate form, as opposed to being detailed within the standard consignment note or multiple collection consignment note as at present.

- To amend paragraph (3)(c) of regulation 48 (records of disposal or recovery of hazardous waste by other means) to make it clear that it is a requirement that the disposal or recovery method of waste must be included in the records.
- Amendments to regulation 49(1) (**producers', holders' and consignors' records**) and regulation 70(10) (**fixed penalties**) to correct typographical errors and thereby clarify the meaning of the regulations.

Following analysis of the consultation responses and further consideration of the anticipated impacts, the Government has chosen to introduce a blanket exemption from notification for **all** premises producing less than 500kg of hazardous waste in any 12 month period. The Government has decided to act now in order to reduce the regulatory burden on businesses whilst at the same time maintaining all necessary environmental safeguards.

The mobile service provisions are to be reinserted into the regulations. Guidance will be issued to clarify how the mobile service provisions are to apply in the light of the increase in the qualifying limitation.

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The Government does not intend to proceed with the proposed changes to the multiple collection consignment requirements or the carriage of dangerous goods note, for the time being. Instead, it shall be consulting the industry further on these proposals with a view to revisiting them when it comes round to implementing the changes required by the Waste Framework Directive.

The Government has issued amendment regulations, The Hazardous Waste (England and Wales) Regulations 2005, [link to be inserted] which serve to provide the vires for its chosen policy option.

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A summary of responses to this consultation was published on the Defra website and may be found at <http://www.defra.gov.uk/corporate/consult/hazardous-wasteregs/index.htm>.

Guidance on the new regulations is placed on Defra and the Environment Agency websites.

## **Costs and benefits analysis**

### Benefits

#### Notification of premises exemption

The annual cost of notification to a producer for typical premises is between £18 - 28. The charges for notification of premises are as follows:

- (a) £18 for each set of premises notified in electronic form
- (b) £23 for each set of premises notified by telephone; and
- (c) £28 for each set of premises notified in writing.

An analysis of the trends by which producers have notified their premises since the Regulations came into force indicates that widening the notification exemption to include all premises producing less than 500kg of hazardous waste per annum would exempt between 68,970 and 76,230 further producers out of those who currently notify hazardous waste. This would result in cost savings to industry of between **£1,310,430 and 1,448,370** per annum; an average of £19 per producer.

The administrative burden imposed on a typical producer of hazardous waste as a result of the requirement to notify the Environment Agency has been calculated at £4.10 per annum.

Therefore, the Government's decision to increase the qualifying limitation for notification from 200kg to 500kg would reduce this administrative burden on approximately 68,970 to 76,230 producers of hazardous waste. This admin burden reduction is calculated to be between **£282,777** (£4.10 x 68,970) and **£312,543** (4.10 x 76230 producers).

Therefore the total annual cost saving to industry as a result of this change would be within a range of **£1,593,207** (1,310,430 + 282,777) and **£1,760,913** (1,448,370 + £312,543).

This change will serve to reduce the regulatory burden on businesses whilst maintaining the requisite level of environmental protection.

## **Costs**

Having made an assessment of premises notifications since 2005, Defra and the Environment Agency have concluded that premises producing up to 500kg of hazardous waste in a 12 month period represent a relatively low risk and require only a low frequency of inspection. The Environment Agency therefore expect very little environmental impact as a result of the adoption of this proposal. The intention is to reduce the regulatory burden on businesses whilst maintaining the requisite level of environmental protection (please see section 6 of the consultation document <http://www.defra.gov.uk/corporate/consult/hazardous-wasteregs/index.htm> for more background information on widening the notification exemption). The cost of notification only covers administration, registration and maintaining public register costs.

Compliance and enforcement work is funded from other Agency resources and there will be no extra enforcement costs to the Agency as a result of this change.

## **Competition Assessment.**

The competition filter was applied to assess the risk of a significant detrimental effect on competition. The test was informed by discussions with the Environment Agency and industry. Analysis of the competition filter indicated that the main change, which is the blanket exemption from notification for all premises producing less than 500kg of hazardous waste per annum, will have no detrimental effect on competition. It is thought that the compliance costs for the larger firms (i.e. those producing more than 500kgs of waste) should not put them at a significant competitive disadvantage because they could be largely counterbalanced by economies of scale in their general operations.

## **Small Firms Impact Test**

The majority of all small and medium-sized enterprises are classified as hazardous waste producers for the purposes of the Hazardous Waste Regulations. The latest statistics indicate that 212,703 producers of hazardous waste notify their premises to the Environment Agency each year. There are already a lot of producers who are exempt from the notification requirement. The introduction of the notification exemption would exempt a further 72,600 producers of those who currently notify hazardous waste, representing about one-third of the total number of premises, from the notification requirement. Analysis of the consultation responses indicated widespread support for this proposal as a means to reduce the regulatory burden on small firms.

## **Rural Proofing.**

The policy is unlikely to have a different or disproportionate impact in rural areas due to particular rural circumstances or needs.

### **Sustainable Development.**

The sustainable development filter was applied to assess the risk of a significant detrimental effect on competition. Analysis of the “stretching the web” filter indicated either a neutral or beneficial effect of the policy proposal on sustainable development.

### **Legal Aid.**

The proposal does not introduce any new criminal sanctions or civil penalties.

### **Race Equality Impact Assessment.**

The policy proposals do not have any race equality impacts.

### **Disability Equality Impact Assessment.**

The policy proposals do not have any Disability Equality impacts.

### **Gender Equality Impact Assessment.**

The policy proposals do not have any gender equality impacts.

### **Human Rights.**

There are no human rights issues raised by these proposals.

### **Carbon Impact Assessment.**

The proposals do not affect an activity or sector that may have a significant impact on emissions of greenhouse gases, and therefore a full carbon impact assessment has not been completed.

### **Health Impact Assessment.**

The policy proposals will not have an impact on health or health inequalities by virtue of its effects on the wider determinants of health contained in the Department of Health’s screening questions for health impact assessment.

### **Monitoring and review.**

We intend to review implementation of the Regulation within 3 years of implementation, including any potential adverse effects that it might have on pollution risks.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

