

## SCHEDULE 5

### REGISTRATION OF BROKERS OF CONTROLLED WASTE

#### PART I

#### GENERAL

##### Interpretation

1.—(1) In this Schedule—

“the Carriers Regulations” means the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991(1);

“date of expiry”, in relation to a broker’s registration, in a case to which sub-paragraph (2) or (3) of paragraph 7 applies, has the meaning given by that sub-paragraph, and in any other case means the date on which the period of three years mentioned in paragraph 7(1) expires;

“notice” means notice in writing;

“relevant offence” means an offence under any of the enactments listed in regulation 3; and

“relevant period” means two months or, except in the case of an application for the renewal of his registration by a person who is already registered, longer period as may be agreed between the applicant and the waste regulation authority.

(2) In determining for the purposes of paragraph 3(13) or 5(1) whether it is desirable for any individual to be or to continue to be authorised to arrange (as dealer or broker) for the disposal or recovery of controlled waste on behalf of other persons, a waste regulation authority shall have regard, in a case in which a person other than the individual has been convicted of a relevant offence, to whether that individual has been a party to the carrying on of a business in a manner involving the commission of relevant offences.

(3) In relation to any applicant for registration or registered broker, another relevant person shall be treated for the purposes of paragraph 3(13) or 5(1) as having been convicted of a relevant offence if—

- (a) any person has been convicted of a relevant offence committed by him in the course of his employment by the applicant or registered broker or in the course of the carrying on of any business by a partnership one of the members of which was the applicant or registered broker;
- (b) a body corporate has been convicted of a relevant offence committed at a time when the applicant or registered broker was a director, manager, secretary or other similar officer of that body corporate; or
- (c) where the applicant or registered broker is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate—
  - (i) has been convicted of a relevant offence; or
  - (ii) was a director, manager, secretary or other similar officer of another body corporate at a time when a relevant offence for which that other body corporate has been convicted was committed.

(4) For the purposes of this Schedule, an application for registration or for the renewal of a registration as a broker of controlled waste shall be treated as pending—

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(1) S.I.1991/1624; regulation 2(2) is amended by regulation 10 of the Controlled Waste Regulations 1992 (S.I. 1992/588).

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- (a) whilst it is being considered by the waste regulation authority; or
- (b) if it has been refused or the relevant period from the making of the application has expired without the applicant having been registered, whilst either—
  - (i) the period for appealing in relation to that application has not expired; or
  - (ii) the application is the subject of an appeal which has not been disposed of.
- (5) For the purposes of this Schedule, an appeal is disposed of when any of the following occurs—
  - (a) the appeal is withdrawn;
  - (b) the appellant is notified by the Secretary of State or the waste regulation authority in question that his appeal has been dismissed; or
  - (c) the waste regulation authority complies with any direction of the Secretary of State to renew the appellant's registration or to cancel the revocation.
- (6) Any notice or other document required by this Schedule to be served on or given to a person may be served or given in accordance with section 160 of the 1990 Act.

### **Registers**

- 2.—(1) It shall be the duty of each waste regulation authority to establish and maintain a register of brokers of controlled waste and—
- (a) to secure that the register is open for inspection at its principal office by members of the public free of charge at all reasonable hours; and
  - (b) to afford to members of the public reasonable facilities for obtaining copies of entries in the register on payment of reasonable charges.
- (2) A register under this paragraph may be kept in any form.

### **Applications for registration**

- 3.—(1) An application for registration or for the renewal of a registration as a broker of controlled waste shall be made to the waste regulation authority for the area in which the applicant has or proposes to have his principal place of business in Great Britain; but if the applicant does not have or propose to have a place of business in Great Britain, the applicant may apply to any waste regulation authority.
- (2) Subject to sub-paragraphs (3) to (5) below, a person shall not make an application for registration or for the renewal of a registration whilst—
- (a) a previous application of his is pending; or
  - (b) he is registered.
- (3) Sub-paragraph (2) above shall not prevent a person from applying for the renewal of a registration where his application is made within the period of six months mentioned in paragraph 7(5).
- (4) An application for registration or for the renewal of a registration in respect of a business which is or is to be carried on by a partnership shall be made by all of the partners or prospective partners.
- (5) A prospective partner in a business carried on by a partnership whose members are already registered may make an application for registration as a partner in that business to the waste regulation authority with whom the business is registered.
- (6) An application for registration shall be made on a form corresponding to the form in Part II of this Schedule, or on a form substantially to the like effect, and shall contain the information required by that form.

(7) An application for the renewal of a registration shall be made on a form corresponding to the form in Part III of this Schedule, or on a form substantially to the like effect, and shall contain the information required by that form.

(8) Where an applicant wishes to apply to be registered both as a carrier and as a broker of controlled waste, he may, instead of making the application on the forms provided for by regulation 4(6) of the Carriers Regulations and sub-paragraph (6) above, make a combined application on a form containing the information required by those forms.

(9) Where an applicant wishes to apply both for the renewal of his registration as a carrier of controlled waste and for the renewal of his registration as a broker of controlled waste, he may, instead of making an application on the forms provided for by regulation 4(7) of the Carriers Regulations and sub-paragraph (7) above, make a combined application on a form containing the information required by those forms.

(10) A waste regulation authority shall provide a copy of the appropriate application form free of charge to any person requesting one.

(11) A waste regulation authority shall charge an applicant in respect of its consideration of his application—

- (a) subject to paragraph (c) below, in the case of either an application for registration as a broker of controlled waste or a combined application for registration as both a carrier and broker of controlled waste, £95;
- (b) in the case of either an application for the renewal of a registration as a broker of controlled waste or a combined application for renewal of registration both as a carrier and as a broker of controlled waste, £65;
- (c) in the case of an application by a registered carrier of controlled waste for registration as a broker of controlled waste, £25,

and the applicant shall pay the charge when he makes his application.

(12) A waste regulation authority shall, on receipt of an application for registration or for the renewal of a registration, ensure that the register contains a copy of the application.

(13) A waste regulation authority may refuse an application for registration or for the renewal of a registration if, and only if—

- (a) there has, in relation to that application, been a contravention of any of the requirements of the preceding provisions of this paragraph; or
- (b) the applicant or another relevant person has been convicted of a relevant offence and, in the opinion of the authority, it is undesirable for the applicant to be authorised to arrange (as dealer or broker) for the disposal or recovery of controlled waste on behalf of other persons.

(14) Where a waste regulation authority decides to refuse an application for registration or for the renewal of a registration, the authority shall give notice to the applicant informing him that his application is refused and of the reasons for its decision.

(15) If an appeal is made under and in accordance with paragraph 6, the waste regulation authority shall, as soon as reasonably practicable, make appropriate entries in its register indicating when the appeal was made and the result of the appeal.

(16) If no such appeal is made, the waste regulation authority shall, as soon as reasonably practicable, make an appropriate entry in its register indicating that the application has not been accepted and that no appeal has been made.

(17) A waste regulation authority may remove from its register—

- (a) a copy of an application included under sub-paragraph (12) above; or
- (b) an entry made under sub-paragraph (15) or (16) above,

at any time more than six years after the application in question was made.

### **Registration as a broker and amendment of entries**

4.—(1) On accepting a person's application for registration or on being directed under paragraph 6(9) to register a person following an appeal in respect of such an application, the waste regulation authority shall make an entry in its register—

- (a) showing that person as a registered broker of controlled waste and allocating him a registration number (which may include any letter);
- (b) specifying the date on which the registration takes effect and its date of expiry;
- (c) stating any business name of his and the address of his principal place of business (together with any telephone, telex or fax number of his) and, in the case of an individual, his date of birth;
- (d) in the case of a body corporate, listing the names of each director, manager, secretary or other similar officer of that body and their respective dates of birth;
- (e) in the case of a company registered under the Companies Acts, specifying its registered number and, in the case of a company incorporated outside Great Britain, the country in which it was incorporated;
- (f) in a case where the person who is registered or another relevant person has been convicted of a relevant offence, giving the person's name, details of the offence, the date of conviction, the penalty imposed, the name of the Court and, in the case of an individual, his date of birth; and
- (g) in a case where the person who is registered or any company in the same group of companies as that person is the holder of a waste management licence, stating the name of the holder of the licence and the name of the authority which granted it.

(2) In the case of a business which is, or is to be, carried on by a partnership, all the partners shall be registered under one entry and only one registration number shall be allocated to the partnership.

(3) On making an entry in its register under sub-paragraph (1) above the waste regulation authority shall provide the registered person or partnership free of charge with a copy of the entry in the register.

(4) On accepting a person's application for the renewal of a registration or on being directed under paragraph 6(9) to register a person following an appeal in respect of such an application, the waste regulation authority shall amend the relevant entry in the register—

- (a) to show the date on which the renewal takes effect and the revised date of expiry of the registration;
- (b) to record any other change disclosed as a result of the application; and
- (c) to note in the register the date on which the amendments are made.

(5) The waste regulation authority shall at the same time as amending the register under sub-paragraph (4) above provide the registered person or partnership free of charge with a copy of the amended entry in the register.

(6) A person who is registered shall notify the waste regulation authority which maintains the relevant register of any change of circumstances affecting information in the register relating to him.

(7) On—

- (a) being notified of any change of circumstances in accordance with sub-paragraph (6) above;
- (b) accepting a prospective partner's application for registration in relation to a business carried on by a partnership whose members are already registered; or
- (c) being directed under paragraph 6(9) to register a prospective partner,

the waste regulation authority shall—

- (i) amend the relevant entry to reflect the change of circumstances or the registration of the prospective partner;
- (ii) note in the register the date on which the amendment is made;
- (iii) provide the registered person or partnership free of charge with a copy of the amended entry in the register.

(8) In this regulation—

“Companies Acts” has the meaning given by section 744 of the Companies Act 1985(2);

“business name” means a name under which a person carries on business and by virtue of which the Business Names Act 1985(3) applies; and

“group” has the meaning given by section 53(1) of the Companies Act 1989(4).

### **Revocation of registration**

5.—(1) A waste regulation authority may revoke a person’s registration as a broker of controlled waste if, and only if—

- (a) that person or another relevant person has been convicted of a relevant offence; and
- (b) in the opinion of the authority, it is undesirable for the registered broker to continue to be authorised to arrange (as dealer or broker) for the disposal or recovery of controlled waste on behalf of other persons.

(2) Where a waste regulation authority decides to revoke a person’s registration as a broker of controlled waste, it shall give notice to the broker informing him of the revocation and the reasons for its decision.

### **Appeals**

6.—(1) Where a person has applied to a waste regulation authority to be registered as a broker of controlled waste in accordance with paragraph 3, he may appeal to the Secretary of State if—

- (a) his application is refused; or
- (b) the relevant period from the making of the application has expired without his having been registered.

(2) A person whose registration as a broker of controlled waste has been revoked may appeal against the revocation to the Secretary of State.

(3) Notice of an appeal to the Secretary of State under sub-paragraph (1) or (2) above shall be given by the appellant to the Secretary of State.

(4) The notice of appeal shall be accompanied by the following—

- (a) a statement of the grounds of appeal;
- (b) in the case of an appeal under sub-paragraph (1) above, a copy of the relevant application;
- (c) in the case of an appeal under sub-paragraph (2) above, a copy of the appellant’s entry in the register;
- (d) a copy of any relevant correspondence between the appellant and the waste regulation authority;
- (e) a copy of any notice given to the appellant under paragraph 3(14) or 5(2);

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(2) 1985 c. 6.

(3) 1985 c. 7.

(4) 1989 c. 40.

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- (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be determined on the basis of written representations.
- (5) The appellant shall at the same time as giving notice of appeal to the Secretary of State serve on the waste regulation authority a copy of the notice and a copy of the documents referred to in sub-paragraph (4)(a) and (f) above.
- (6) Notice of appeal is to be given before the expiry of the period of 28 days beginning with—
  - (a) in the case of an appeal under sub-paragraph (1)(a) above, the date on which the appellant is given notice by the waste regulation authority that his application has been refused;
  - (b) in the case of an appeal under sub-paragraph (1)(b) above, the date on which the relevant period from the making of the application expired without the appellant having been registered; or
  - (c) in the case of an appeal under sub-paragraph (2) above, the date on which the appellant is given notice by the waste regulation authority that his registration as a broker of controlled waste has been revoked,or before such later date as the Secretary of State may at any time allow.
- (7) If either party to an appeal requests a hearing or the Secretary of State so decides, the appeal shall be or continue in the form of a hearing before a person appointed for the purpose by the Secretary of State.
- (8) The person holding such a hearing shall after its conclusion make a written report to the Secretary of State which shall include his conclusions and recommendations or his reasons for not making any recommendations.
- (9) On an appeal under this paragraph the Secretary of State may, as he thinks fit, either dismiss the appeal or give the waste regulation authority in question a direction to register the appellant or, as the case may be, to cancel the revocation.
- (10) The Secretary of State shall—
  - (a) notify the appellant in writing of his determination of the appeal and of his reasons for it and, if a hearing is held, shall also provide him with a copy of the report of the person who conducted the hearing; and
  - (b) at the same time send a copy of those documents to the waste regulation authority.
- (11) Where on an appeal made by virtue of sub-paragraph (1)(b) above the Secretary of State dismisses an appeal, he shall direct the waste regulation authority in question not to register the appellant.
- (12) It shall be the duty of a waste regulation authority to comply with any direction under this paragraph.

### **Duration of registration**

- 7.—(1) Subject to the following provisions of this paragraph, a person's registration as a broker of controlled waste shall cease to have effect on the expiry of the period of three years beginning with the date of the registration or, if it has been renewed, beginning with the date on which it was renewed or, as the case may be, last renewed.
- (2) Where a registered carrier of controlled waste is registered as a broker of controlled waste otherwise than by way of renewal of an existing registration as a broker, and his registration as a carrier will expire within three years of the date of his registration as a broker, if at the time of making his application for registration as a broker he so requests, his registration as a broker shall expire on the same date as his registration as a carrier.
- (3) Where a registered broker of controlled waste is registered as a carrier of controlled waste otherwise than by way of renewal of an existing registration as a carrier, and his registration as

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a broker will expire within three years of the date of his registration as a carrier, if on the next application for renewal of his registration as a broker which he makes after having been registered as a carrier he so requests, his renewed registration as a broker shall expire on the same date as his registration as a carrier.

(4) Registration as a registered broker shall cease to have effect if the registered broker gives notice requiring the removal of his name from the register.

(5) The waste regulation authority shall, no later than six months before the date of expiry of a broker's registration, serve on a registered broker—

- (a) a notice informing him of the date of expiry and of the effect of sub-paragraph (6) below; and
- (b) an application form for the renewal of his registration and a copy of his current entry in the register.

(6) Where an application for the renewal of a registration is made within the last six months prior to its date of expiry, the registration shall, notwithstanding the passing of the expiry date, continue in force—

- (a) until the application is withdrawn or accepted; or
- (b) if the waste regulation authority refuse the application or the relevant period from the making of the application has expired without the applicant having been registered, until—
  - (i) the expiry of the period for appealing; or
  - (ii) where the applicant indicates within that period that he does not intend to make or continue with an appeal, the date on which such an indication is given.

(7) Where a waste regulation authority revokes a broker's registration, the registration shall, notwithstanding the revocation, continue in force until—

- (a) the expiry of the period for appealing against the revocation; or
- (b) where that person indicates within that period that he does not intend to make or continue with an appeal, the date on which such an indication is given.

(8) Where an appeal is made under and in accordance with the provisions of paragraph 6—

- (a) by a person whose appeal is in respect of such an application for the renewal of his registration as was made, in accordance with paragraph 3, at a time when he was already registered; or
- (b) by a person whose registration has been revoked,

that registration shall continue in force after its date of expiry or, as the case may be, notwithstanding the revocation, until the appeal is disposed of.

(9) A registration in respect of a business which is carried on by a partnership shall cease to have effect if any of the partners ceases to be registered or if any person who is not registered becomes a partner.

(10) The duration of a registration in respect of a business which is carried on by a partnership shall not be affected if a person ceases to be a partner or if a prospective partner is registered under paragraph 4(7) in relation to the partnership.

(11) Where a waste regulation authority accepts an application for the renewal of a broker's registration before the expiry date, the renewal shall for the purposes of this Schedule take effect from the expiry date.

### **Cessation of registration**

8. Where by virtue of paragraph 6(11) or 7 a registration ceases to have effect, the waste regulation authority—

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- (a) shall record this fact in the appropriate entry in its register and the date on which it occurred;
- (b) may remove the appropriate entry from its register at any time more than six years after the registration ceases to have effect.