
EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations set out 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 extend to England and Wales although the only provisions that apply to Wales are modifications to the Environmental Protection Act 1990 contained in Part 11.

Hazardous Waste

The Waste Framework Directive (Directive [75/442/EEC](#)) regulates, subject to the certain exclusions, the management of all types of waste (“Directive waste”). The Hazardous Waste Directive supplements the Waste Framework Directive by imposing additional requirements in relation to Directive waste which displays certain hazardous properties. These requirements have previously been transposed by the Special Waste Regulations 1996 through controls on “special waste”. These Regulations repeal the Special Waste Regulations 1996 and replace the term “special waste” with “hazardous waste”.

Parts 1 to 3 of the Regulations define Hazardous waste and set out how the Regulations apply to that waste. The definition of hazardous waste in regulation 6 refers to the list of hazardous wastes set out in the List of Wastes (England) Regulations 2005 (S.I.2005/895).

There is an exclusion from these controls for domestic waste which displays hazardous properties but not if it comprises asbestos waste or is collected separately. In both cases, the Regulations do not impose obligations directly on householders.

Mixing Ban

Part 4 bans the mixing of hazardous waste unless it is permitted as part of a disposal or recovery operation in accordance with the Waste Framework Directive. It also imposes a duty to separate different categories of Hazardous Waste where technically feasible.

Notification

Part 5 makes it an offence to remove hazardous waste from premises which have not been notified to the Environment Agency, unless they are exempt premises or the waste has been flytipped. All premises at which hazardous waste is produced or removed must be notified by the producer of the waste or the consignor (the person who arranges for the removal of the waste). Notification lasts 12 months after which the premises must be notified again. A fee is payable to the Environment Agency on notification of premises.

Movement of Hazardous Waste

Part 6 requires documents to be completed whenever hazardous is removed from premises (which includes removal from ships and removal by pipeline). The various types of form are set out in Schedules 4 to 7. This is to ensure that an accurate description of consignments of waste accompanies them whenever they move. This is in addition to any requirements to ensure hazardous waste is properly packaged and labelled (see in particular the Packaging (Essential Requirements) Regulations 2003 (S.I. 2003/1941)).

Changes to legislation: There are currently no known outstanding effects for the The Hazardous Waste (England and Wales) Regulations 2005. (See end of Document for details)

Producers, holders, carriers, consignors and consignees are all required to complete various parts of the forms. If the consignee rejects the waste, suitable alternative arrangements must be made. Schedule 7 deals with cross border transfers within the United Kingdom and Gibraltar.

Records and Returns

Part 7 requires producers, holders, carriers, consignors and consignees to keep records. These must be kept for a minimum of 3 years except in the case of carriers where the period is 12 months. Consignees are required to provide the Environment Agency with a quarterly return setting out the consignments they have received during that period. Consignees may be required to pay a fee to the Environment Agency but are given a right to recover the payment from consignors who sent the waste to them. They are also required to send a return to producers or holders who sent waste to them. Schedule 9 sets out a transitional scheme for fees.

The Agency's functions

Part 8 sets out the Agency's functions. In particular, the Agency is required to inspect producers of hazardous waste periodically and to keep any records sent to it pursuant to Part 7 for a minimum of 3 years.

Emergencies and Grave Danger

Part 9 imposes duties on holders of hazardous waste and the Environment Agency in the event of an emergency or grave danger which arises from hazardous waste.

Enforcement

Part 10 makes it an offence for failure to comply with the requirements of these Regulations. The maximum penalty for failure to comply with a requirement imposed by or under the regulations set out in regulation 69(1) is level 5 on the standard scale (currently £5,000). The Agency may issue fixed penalty notices of £300 instead of seeking conviction in relation to such offences. Other offences under the Regulations (including the provision of false information) are subject to a maximum fine of level 5 if tried summarily and higher fines and also imprisonment if tried on indictment.

Amendments to other legislation

Part 11 omits references to special waste in the Environmental Protection Act 1990 and replaces them with references to hazardous waste. It also gives the Secretary of State the power to designate waste as hazardous for the purposes of these Regulations by means of a statutory instrument. Schedule 11 makes consequential amendments to secondary legislation so that references to special waste are omitted and references to hazardous waste are updated so that they are consistent with these Regulations.

Transitional provision

Schedule 12 makes transitional provision. It provides a two month period for notification in advance of the Regulations fully coming into force. It also makes transitional provision for those cases where the change to hazardous waste from special waste would mean that a person would no longer be authorised to dispose or recover waste.

As these Regulations give effect to a Directive, a transposition note has been prepared setting out how the Government will transpose into UK law the main elements of this Directive. A regulatory impact assessment has also been prepared. Copies of both the transposition note and regulatory impact assessment are available in the libraries of both Houses of Parliament, and from

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Changes to legislation: *There are currently no known outstanding effects for the The Hazardous Waste (England and Wales) Regulations 2005. (See end of Document for details)*

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The volume entitled “Indexes to the United Kingdom Standard Industrial Classification of Economic Activities 2003”, referred to in the definition of “SIC”, is available from the Stationery Office Limited on 0870 600 552.

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