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STATUTORY INSTRUMENTS

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**2005 No. 894**

**The Hazardous Waste (England and Wales) Regulations 2005**

**PART 2**

**HAZARDOUS AND NON-HAZARDOUS WASTE**

**Hazardous waste**

6. Subject to regulation 9, a waste is a hazardous waste if it is—
- (a) listed as a hazardous waste in the List of Wastes<sup>(1)</sup>;
  - (b) listed in regulations made under section 62A(1) of the 1990 Act; or
  - (c) a specific batch of waste which is determined pursuant to regulation 8 to be a hazardous waste,

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

**Non-hazardous waste**

7. The following are non-hazardous waste—
- (a) a waste which is not a hazardous waste pursuant to regulation 6; or
  - (b) a specific batch of waste which is determined pursuant to regulation 9 to be a non-hazardous waste,

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

**Specific waste to be treated as hazardous**

8.—(1) The Secretary of State, 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 batch of waste in England which—

- (a) is not listed as a hazardous waste in the List of Wastes;
- (b) is not listed in regulations made under section 62A(1) of the 1990 Act; or
- (c) though of a type listed as a hazardous waste in the List of Wastes, is treated as non-hazardous pursuant to regulation 9(2),

displays one or more of the hazardous properties, and accordingly that it shall be treated for all purposes as hazardous waste.

(2) A specific batch of waste produced in Wales, Scotland or Northern Ireland and not listed as hazardous in the List of Wastes and which is for the time being determined by the Welsh Assembly Government, the Scottish Executive or the Northern Ireland Department of the Environment, as the

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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.

case may be, to be hazardous pursuant to Article 3 of the List of Wastes Decision, shall, subject to any determination made under regulation 9, be treated for all purposes as hazardous waste in England.

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

**9.**—(1) The Secretary of State may decide, in exceptional cases, on the basis of documentary evidence provided 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 batch of waste in England which—

- (a) is listed as hazardous waste in the List of Wastes;
- (b) is listed in regulations made under section 62A(1) of the 1990 Act; or
- (c) though of a type not listed as a hazardous waste in the List of Wastes, is treated as hazardous pursuant to regulation 8(2),

does not display any of the properties listed in Annex III to the Hazardous Waste Directive and accordingly that it shall be treated for all purposes as non-hazardous in England.

(2) A specific batch of waste produced in Wales, Scotland or Northern Ireland and listed as a hazardous waste in the List of Wastes and which is for the time being determined by the Welsh Assembly Government, the Scottish Executive or the Northern Ireland Department of the Environment, as the case may be, to be non-hazardous pursuant to Article 3 of the List of Wastes Decision, shall, subject to any determination made under regulation 8, be treated for all purposes as non-hazardous in England.

### **Provisions common to regulations 8 and 9**

**10.**—(1) The Secretary of State may revoke a determination made under regulation 8 or 9.

(2) The Secretary of State shall, before making a determination under regulation 8 or 9 or revoking such a determination, except where she 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 batch of waste; and
- (c) any other person appearing to her—
  - (i) to have an interest in the specific waste; or
  - (ii) to be otherwise directly affected by the determination.

(3) The Secretary of State shall give notice of any determination made under regulation 49 or 50 or revocation of such a determination to—

- (a) the requisite bodies;
- (b) the holder of the specific batch of waste concerned; and
- (c) any person she 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**

**11.** For the purposes of this Part, the “requisite bodies” are—

- (a) the Agency;
- (b) SEPA;
- (c) the National Assembly for Wales;
- (d) the Scottish Executive;

- (e) the Northern Ireland Department of the Environment<sup>(2)</sup>;
- (f) the Health and Safety Executive; and
- (g) any organisation appearing to the Secretary of State to be representative of persons likely to be affected by the relevant determination or revocation of a determination, as the case may be.

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(2) The Northern Ireland Department of the Environment includes its executive agency the Environmental Heritage Service.