
STATUTORY INSTRUMENTS

2005 No. 895

The List of Wastes (England) Regulations 2005

Citation, commencement and application

1.—(1) These Regulations may be cited as the List of Wastes (England) Regulations 2005 and come into force on 16th July 2005.

(2) These Regulations apply to England only.

Interpretation

2.—(1) In these Regulations—

- (a) “the Waste Directive” means Council Directive [75/442/EEC](#)(1) on waste as amended by—
 - (i) Council Directives [91/156/EEC](#)(2) and [91/692/EEC](#)(3);
 - (ii) Commission Decision [96/350/EC](#)(4); and
 - (iii) Regulation [\(EC\) No 1882/2003](#)(5);
- (b) Directive [67/548/EEC](#) (the Dangerous Substances Directive, which is referred to in the Introduction to the List) means Directive [67/548/EEC](#)(6) on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances as last amended by Council Regulation [\(EC\) No. 807/2003](#)(7); and
- (c) “the Hazardous Waste Directive” means Council Directive [91/689/EEC](#)(8) of 31st December 1991 on hazardous waste, as amended by Council Directive [94/31/EC](#)(9), and a reference to—
 - (i) an annex of the Hazardous Waste Directive is a reference to that annex as it is for the time being set out in the relevant schedule to the Hazardous Waste (England) Regulations; and
 - (ii) hazardous properties is a reference to the properties in Annex III as so set out.

(2) In these Regulations—

- (a) “the List of Wastes Decision” means Commission Decision [2000/532/EC](#)(10) of 3 May 2000 replacing Decision [94/3/EC](#)(11) establishing a list of wastes pursuant to Article

(1) OJ No L 194, 25.7.1975, p. 39.

(2) OJ No. L 78, 26.3.1991, p. 32.

(3) OJ No. L 377, 31.12.1991, p. 48 (as corrected by Corrigendum, OJ L 146, 13.6.2003, p. 52 (91/692/EEC).

(4) OJ No. L 135, 6.6.1996, p. 32.

(5) OJ No. L 284, 31.10.2003 p.1.

(6) OJ No. L 196, 16.8.1967, p. 1.

(7) OJ No. L 122, 16.5.2003, p. 36, which amended the committee procedure in Article 29 with effect from 5th June 2003. Directive [67/548/EEC](#) was also amended from 1st May 2004 by Section K of Annex II to the Act of Accession of ten Member States (OJ L 236, 23.9.2003, p. 53 at p. 96 and was last adapted to technical progress for the 28th time by Commission Directive [2001/59/EC](#) (OJ L 225, 21.8.2001, p. 1.

(8) OJ No. L 377, 31.12.1991, p. 20 (as corrected by Corrigendum to Directive [91/689/EC](#) (OJ No. L23 30.1.1998 EC)).

(9) OJ No. L 168, 2.7.1994, p. 28.

(10) OJ No. L 226, 6.9.2000, p. 3.

(11) OJ No. L 5, 7.1.1994, p. 15.

- 1(a) of Council Directive [75/442/EEC](#) on waste and Council Decision [94/904/EC](#)(**12**) establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive [91/689/EEC](#) on hazardous waste, as amended by—
- (i) Commission Decision [2001/118/EC](#)(**13**);
 - (ii) Commission Decision [2001/119/EC](#)(**14**); and
 - (iii) Council Decision [2001/573/EC](#)(**15**);
- (b) “the List of Wastes” means the list of wastes set out in the Annex to the List of Wastes Decision, as it is set out in Schedule 1, being a list drawn up—
- (i) in relation to wastes belonging to the categories listed in Annex I (Categories of Waste) of the Waste Framework Directive, by the Commission, acting in accordance with the procedure laid down in Article 18 of that Directive;
 - (ii) in relation to hazardous waste, in accordance with the procedure laid down in Article 18 of the Waste Framework Directive on the basis of—
 - (aa) Annex I (Categories or generic types of hazardous waste listed according to their nature or the activity which generated them) to the Hazardous Waste Directive; and
 - (bb) Annex II (Constituents of the wastes in Annex 1.B. which render them hazardous when they have the properties described in Annex III) to the Hazardous Waste Directive,
 and a reference to the List of Wastes includes a reference to the Introduction thereto (“the Introduction to the List”).
- (3) In these Regulations—
- (a) “the Hazardous Waste Regulations” means the Hazardous Waste (England and Wales) Regulations 2005(**16**);
 - (b) “hazardous waste” has the meaning given by regulation 6 of the Hazardous Waste Regulations;
 - (c) “waste” has the meaning given by regulation 2(1)(b) of the Hazardous Waste Regulations; and
 - (d) “dangerous substance” means, notwithstanding paragraph 5 of the Introduction to the List, a substance which for the time being is a dangerous substance within the meaning of regulation 2 of the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002(**17**).

Effect of the List of Wastes

3.—(1) Subject to regulation 2(3)(d) and the following provisions of this regulation, the List of Wastes has effect for purposes connected with the regulation of waste and hazardous waste, and in particular for the purposes of—

- (a) the determination of whether a material or substance is a waste or a hazardous waste, as the case may be;
- (b) the classification and coding of wastes and hazardous waste,

(12) OJ No. L 356, 31.12.1994, p. 14.

(13) OJ No. L 47, 16.2.2001, p. 1.

(14) OJ No. L 47, 16.2.2001, p. 32.

(15) OJ No. L 192, 14.7.2001, p. 24.

(16) S.I. 2005/894.

(17) S.I. 2002/1689, to which there are amendments not relevant to these Regulations.

and accordingly the List of Wastes and the codes and chapter headings shall be recognised and used for those purposes.

(2) Paragraph (1) is without prejudice to any regulations made under section 62A(1) of the Environmental Protection Act 1990(18) or any determination under regulations 8 or 9 of the Hazardous Waste Regulations.

(3) Subject to regulation 2(3)(c), the notes set out in the Introduction to the List have effect for the purposes of—

- (a) the interpretation of the List of Wastes;
- (b) the determination of whether a material or substance is a waste or a hazardous waste, as the case may be; and
- (c) the identification of a waste or hazardous waste, as the case may be.

(4) The different types of wastes in the List of Wastes are fully defined by the six-digit code for the waste and the respective two-digit and four-digit chapter headings, and accordingly, for purposes connected with the regulation of waste or hazardous waste—

- (a) any reference to a waste by its six-digit code as specified in the List of Wastes is to be treated as a reference to that waste; and
- (b) a reference to wastes by the respective two-digit or four-digit chapter heading is a reference to the wastes listed in the List of Wastes under that chapter heading.

(5) Where any provision (howsoever expressed) of an enactment imposes a requirement that the six digit code be given, or authorises any action to be taken or requirement to be dispensed with on condition that the six digit code is given, that requirement or condition shall not be taken to have been complied with unless the code given is the code for the waste, or hazardous waste, as the case may be, in the List of Wastes.

(6) Subject to paragraph (7), a waste marked with an asterisk in the List of Wastes is considered listed in the List of Wastes as a hazardous waste for the purposes of regulation 6(a) of the Hazardous Waste Regulations.

(7) Where a waste marked with an asterisk in the List of Wastes comprises or contains one or more dangerous substances, it is considered a hazardous waste—

- (a) where the description in the List of Wastes makes no reference to a dangerous substance, regardless of the actual concentration of any dangerous substance present or properties of the waste or that substance;
- (b) where a waste is identified as hazardous by a specific or general reference (howsoever expressed) to dangerous substances, if the concentrations of those substances are such (that is, percentage by weight) that the waste—
 - (i) presents one or more of the hazardous properties ; and
 - (ii) in the case of any of the hazardous properties H3 to H8, H10 or H11, satisfies the requirements of regulation 4.

Properties and characteristics of dangerous substances classified as hazardous waste

4. Wastes satisfies the requirements of this regulation in respect of any of the properties H3 to H8, H10(19) and H11 of Annex III, where it displays one or more of the following characteristics—

- (a) flash point ≤ 55 °C;

(18) 1990 c. 43.

(19) In Directive 92/32/EEC amending for the seventh time Directive 67/548/EEC the term “toxic for reproduction” was introduced. The term “teratogenic” was replaced by a corresponding term “toxic for reproduction”. This term is considered to be in line with property H10 in Annex III to Directive 91/689/EEC.

- (b) one or more substances classified(20) as very toxic at a total concentration $\geq 0,1$ %;
- (c) one or more substances classified as toxic at a total concentration ≥ 3 %;
- (d) one or more substances classified as harmful at a total concentration ≥ 25 %;
- (e) one or more corrosive substances classified as R35 at a total concentration ≥ 1 %;
- (f) one or more corrosive substances classified as R34 at a total concentration ≥ 5 %;
- (g) one or more irritant substances classified as R41 at a total concentration ≥ 10 %;
- (h) one or more irritant substances classified as R36, R37, R38 at a total concentration ≥ 20 %;
- (i) one substance known to be carcinogenic of category 1 or 2 at a concentration $\geq 0,1$ %;
- (j) one substance known to be carcinogenic of category 3 at a concentration ≥ 1 %;
- (k) one substance toxic for reproduction of category 1 or 2 classified as R60, R61 at a concentration $\geq 0,5$ %;
- (l) one substance toxic for reproduction of category 3 classified as R62, R63 at a concentration ≥ 5 %;
- (m) one mutagenic substance of category 1 or 2 classified as R46 at a concentration $\geq 0,1$ %;
- (n) one mutagenic substance of category 3 classified as R40 at a concentration ≥ 1 %.

Consequential Amendments

5. Schedule 2 (which makes consequential amendments to secondary legislation) has effect.

Elliot Morley

Minister of State

Department for Environmental, Food and Rural
Affairs

23rd March 2005

(20) The classification as well as the R numbers refer to the Dangerous Substances Directive. The concentration limits refer to those laid down in Dangerous Preparations Directive (1999/45/EC; OJ No. L200, 30.7.1999, p.1) as amended by Regulation (EC) No. 1882/2003 (OJ No. L284, 31.10.2003, p.1).