STATUTORY INSTRUMENTS

2011 No. 988

The Waste (England and Wales) Regulations 2011

PART 1

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Waste (England and Wales) Regulations 2011.

(2) Subject to paragraph (3), they come into force on the day after the day on which they are made.

(3) Regulation 12 comes into force at the end of the period of 6 months beginning with the day on which these Regulations are made.

(4) These Regulations extend to England and Wales.

Application

2. Subject to regulation 47(2), these Regulations do not apply in relation to waste which is excluded from the scope of the Waste Framework Directive by Article 2(1), (2) or (3) of that Directive.

Interpretation

3.—(1) In these Regulations—

"appropriate authority" means—

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the Welsh Ministers;

"controlled waste" has the meaning given in section 75(4) of the Environmental Protection Act 1990(**1**);

"hazardous waste"—

(a) in relation to England has the meaning given in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005(**2**);

(b) in relation to Wales has the meaning given in regulation 6 of the Hazardous Waste (Wales) Regulations 2005(**3**);

"national waste management plan" means a waste management plan prepared by an appropriate authority;

(**1**) 1990 c. 43. The definition of "controlled waste" depends on the definitions of "household waste" in section 75(5), "industrial waste" in section 75(6) and "commercial waste" in section 75(7). Section 75(6) and (7) was amended by S.I. 2006/937.

(**2**) S.I. 2005/894, to which there are amendments not relevant to these Regulations.

(**3**) S.I. 2005/1806 (W. 138), to which there are amendments not relevant to these Regulations.

"waste collection authority" means an authority which is a waste collection authority for the purposes of Part 2 of the Environmental Protection Act 1990(**4**);

"the Waste Framework Directive" means Directive 2008/98/EC of the European Parliament and of the Council on waste(**5**);

"waste management plan" has the meaning given in regulation 7(1);

"waste prevention programme" has the meaning given in regulation 4(1) and (2).

(2) Terms which are used but not defined in these Regulations and are used in the Waste Framework Directive have the same meaning as in that Directive.

PART 2

Waste prevention programmes

Establishment of waste prevention programmes

4.—(1) The appropriate authority must, not later than 12th December 2013—

(a) evaluate the usefulness of the waste prevention measures set out as examples in Annex IV of the Waste Framework Directive and any other such measures the authority thinks fit; and

(b) establish one or more programmes of waste prevention measures (each a "waste prevention programme").

(2) A programme established before the coming into force of these Regulations may be a waste prevention programme.

(3) In this regulation, "waste prevention measures" means measures taken before a substance, material or product has become waste that reduce—

(a) the quantity of waste, including through the re-use of products or the extension of the life span of products;

(b) the adverse impacts of generated waste on the environment and human health; or

(c) the content of harmful substances in materials and products.

Purposes etc. of waste prevention programmes

5. The appropriate authority must ensure that a waste prevention programme—

(a) is compatible with the objectives in paragraphs 1 and 2 of Schedule 1;

(b) has as its purpose a contribution towards breaking the link between economic growth and the environmental impacts associated with the generation of waste;

(c) is expressed in writing and—

(i) sets out the objectives of the programme and a description of existing waste prevention measures; and

(ii) if it is integrated into a waste management plan or other programme, clearly identifies the programme's waste prevention measures.

(**4**) See section 30(3), which was amended by the Local Government (Wales) Act 1994, sections 22(3) and 66(8) and paragraph 17(3) of Schedule 9.

(**5**) OJ No L 312, 22.11.2008, p3.

Monitoring and evaluation of waste prevention programmes

6.—(1) An appropriate authority—

(a) must establish qualitative or quantitative benchmarks; and

(b) may establish qualitative or quantitative targets and indicators,

against which to assess the value of waste prevention programmes.

(2) An appropriate authority must publish the benchmarks and any targets or indicators it establishes.

PART 3

Waste management plans

Requirement for waste management plans

7.—(1) The appropriate authority must ensure that there are one or more plans containing policies in relation to waste management in England or Wales, as the case may be (each a "waste management plan").

(2) A waste management plan may form part of a document and, where this is the case, any requirement of law in relation to the plan applies only to that part.

(3) In this Part—

(a) "England" includes the sea adjacent to England out as far as the seaward boundary of the territorial sea;

(b) "Wales" includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea;

(c) the sea adjacent to England is so much of the sea adjacent to Great Britain as is not the sea adjacent to Wales or the sea adjacent to Scotland;

(d) the sea adjacent to Wales has the same meaning as it has by virtue of section 158(3) or (4) of the Government of Wales Act 2006(**6**); and

(e) the sea adjacent to Scotland has the same meaning as the internal waters and territorial sea of the United Kingdom adjacent to Scotland by virtue of section 126(2) of the Scotland Act 1998(**7**).

Content of waste management plans

8.—(1) The appropriate authority must ensure that the waste management plans (taken together) cover the whole of England or Wales, as the case may be.

(2) The appropriate authority must ensure that the waste management plans (taken together)—

(a) include a statement of the authority's policies for attaining the objectives specified in Part 1 of Schedule 1; and

(b) include the matters set out in Part 2 of Schedule 1.

(3) The appropriate authority must consider, in particular, whether the matters set out in Part 3 of Schedule 1 should be included in the waste management plans.

(**6**) 2006 c.32. The boundary between the sea adjacent to Wales and that adjacent to England is described by article 6 and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of section 162 of and paragraph 26 of Schedule 11 to the 2006 Act, S.I. 1999/672 continues to have effect.

(**7**) 1998 c.46. The boundaries between waters which are to be treated as internal waters or territorial sea of the United Kingdom adjacent to Scotland and those which are not are set out in the Scottish Adjacent Water Boundaries Order 1999 (S.I. 1999/1126).

(4) An appropriate authority must ensure that the waste management plans conform to the strategy for the reduction of biodegradable waste going to landfill—

(a) in relation to England, required by section 17(1) of the Waste and Emissions Trading Act 2003(**8**);

(b) in relation to Wales, required by section 19(1) of that Act.

(5) A statement of policy made before the coming into force of these Regulations may be, or form part of, a waste management plan.

PART 4

Waste prevention programmes and waste management plans: general provision

Directions to the Environment Agency

9.—(1) The appropriate authority may give directions to the Environment Agency requiring it—

(a) to advise the authority on the measures or policies which are to be included in a waste prevention programme or waste management plan;

(b) to carry out a survey or investigation into any other matter in connection with the preparation of such a programme or plan or any modification of it, and report its findings to the authority.

(2) A direction given under paragraph (1)(b)—

(a) must specify or describe the matters which are to be the subject of the survey or investigation;

(b) may specify bodies or persons to be consulted before carrying out the survey or investigation; and

(c) may make provision in relation to the manner in which—

(i) the survey or investigation is to be carried out; or

(ii) the findings are to be reported and made available.

(3) The Environment Agency must comply with a direction given under paragraph (1).

(4) Where a direction is given under paragraph (1)(b), the Environment Agency must also consult any body or person that it considers appropriate but is not specified in the direction.

(5) The Environment Agency must make its findings available to the bodies and persons it consults.

Review and modification of programmes and plans

10.—(1) The appropriate authority—

(a) must review each waste prevention programme and national waste management plan at least every sixth year;

(b) may from time to time modify a programme or plan.

(2) The appropriate authority must ensure that the Environment Agency and the bodies or persons mentioned in paragraph (3) are consulted during the preparation of—

(a) proposals for a waste prevention programme or national waste management plan; or

(b) proposals to modify such a programme or plan.

(**8**) 2003 c.33.

(3) They are such bodies or persons appearing to be representative of—

(a) the interests of local government; and

(b) the interests of industry,

as the authority considers appropriate.

(4) This regulation does not apply to a national waste management plan containing only provision relating to paragraph 8, 9, 10 or 11 of Schedule 1.

(5) Steps taken before the coming into force of these Regulations in relation to a waste prevention programme or national waste management plan may be steps for the purposes of this regulation.

Public participation in programmes and plans

11.—(1) Part 4 of Schedule 1 (public participation in the preparation or modification of a waste prevention programme or national waste management plan) has effect, but does not apply to a programme or plan—

(a) designed for the sole purpose of serving national defence or taken in case of civil emergencies;

(b) for which a public participation procedure is carried out under—

(i) Part 3 of the Environmental Assessment of Plans and Programmes Regulations 2004(**9**), or

(ii) Part 3 of the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004(**10**); or

(c) containing only provision relating to paragraph 8, 9, 10 or 11 of Schedule 1.

(2) The appropriate authority must ensure that waste prevention programmes and national waste management plans are available on a publicly available website.

(3) Steps taken before the coming into force of these Regulations in relation to a waste prevention programme or national waste management plan may be steps for the purposes of Part 4 of Schedule 1.

PART 5

Duties in relation to waste management and improved use of waste as a resource

Duty in relation to the waste hierarchy

12.—(1) An establishment or undertaking which imports, produces, collects, transports, recovers or disposes of waste, or which as a dealer or broker has control of waste must, on the transfer of waste, take all such measures available to it as are reasonable in the circumstances to apply the following waste hierarchy as a priority order—

(a) prevention;

(b) preparing for re-use;

(c) recycling;

(d) other recovery (for example energy recovery);

(e) disposal.

(**9**) S.I. 2004/1633.
(**10**) S.I. 2004/1656 (W. 170).

(2) But an establishment or undertaking may depart from the priority order in paragraph (1) so as to achieve the best overall environmental outcome where this is justified by life-cycle thinking on the overall impacts of the generation and management of the waste.

(3) When considering the overall impacts mentioned in paragraph (2), the following considerations must be taken into account—

(a) the general environmental protection principles of precaution and sustainability;

(b) technical feasibility and economic viability;

(c) protection of resources;

(d) the overall environmental, human health, economic and social impacts.

Duties in relation to collection of waste

13.—(1) An establishment or undertaking which collects waste paper, metal, plastic or glass must, from 1st January 2015, take all such measures to ensure separate collection of that waste as are available to the establishment or undertaking in that capacity and are—

(a) technically, environmentally and economically practicable; and

(b) appropriate to meet the necessary quality standards for the relevant recycling sectors.

(2) For the avoidance of doubt, co-mingled collection (being the collection together with each other but separately from other waste of waste streams intended for recycling with a view to subsequent separation by type and nature) is a form of separate collection.

(3) Every waste collection authority must, when making arrangements for the collection of waste paper, metal, plastic or glass, ensure that those arrangements are by way of separate collection.

Duty in relation to collected waste

14.—(1) An establishment or undertaking which collects, transports or receives waste paper, metal, plastic or glass must, from 1st January 2015, take all such measures available to it in that capacity as are reasonable in the circumstances to ensure that where that waste has been separately collected it is not mixed with other waste or other material with different properties.

(2) This duty applies only where keeping waste separate facilitates or improves recovery.

Guidance

15.—(1) The appropriate authority may give guidance on the discharge of the duties in regulations 12 to 14.

(2) An establishment or undertaking discharging any of the duties in regulations 12 to 14 must, in doing so, have regard to any such guidance.

PART 6

Duties of planning authorities

General interpretation

16.—(1) In this Part—

"the 1990 Act" means the Town and Country Planning Act 1990(**11**);

(**11**) 1990 c. 8.

"the 2004 Act" means the Planning and Compulsory Purchase Act 2004(**12**);

"the 2008 Act" means the Planning Act 2008(**13**);

"local planning authority" has the same meaning as in 1990 Act;

"mineral planning authority" has the same meaning as in section 1 of the 1990 Act(**14**);

"planning permission" has the meaning given in section 336 of the 1990 Act(**15**).

(2) In this Part, "the planning Acts" means—

(a) the 1990 Act;

(b) the Planning (Listed Buildings and Conservation Areas) Act 1990(**16**);

(c) the Planning (Hazardous Substances) Act 1990(**17**);

(d) the Planning (Consequential Provisions) Act 1990(**18**);

(e) the 2004 Act; and

(f) the 2008 Act.

(3) In this Part, "planning authority" means—

(a) a local planning authority;

(b) a joint committee constituted under section 29 of the 2004 Act;

(c) a person appointed under paragraph 1 of Schedule 6 to the 1990 Act(**19**);

(d) a government department in respect of its functions under the planning Acts; or

(e) an appropriate authority in respect of its functions under the planning Acts.

Meaning of planning functions

17.—(1) In this Part, "planning functions" means any of the following functions, other than a function which must be discharged by statutory instrument—

(a) determining—

(i) an application for planning permission under section 70 of the 1990 Act, or

(ii) an appeal made under section 78 of the 1990 Act in relation to the determination of such an application(**20**);

(b) deciding whether to take action under section 141(2) or (3) or 177(1)(a) or (b) of the 1990 Act(**21**), or under section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990;

(c) deciding whether to direct under section 90(1), (2) or (2A) of the 1990 Act(**22**) that planning permission must be deemed to be granted;

(d) deciding whether—

(**12**) 2004 c. 5.
(**13**) 2008 c. 29.
(**14**) Section 1 was amended by the Local Government (Wales) Act (c. 19), section 18(3) and (4).
(**15**) The definition of "planning permission" in section 336 was amended by the Planning and Compensation Act 1991 (c. 34), sections 32 and 84(6) and Schedules 7 and 19.
(**16**) 1990 c. 9.
(**17**) 1990 c. 10.
(**18**) 1990 c. 11.
(**19**) Paragraph 1 was inserted by the Planning and Compensation Act 1991 (c. 34), section 32.
(**20**) Section 78 was amended by the Planning and Compensation Act 1991 (c. 34), section 17(2) and by the Planning and Compulsory Purchase Act 2004 (c.5), sections 40(2)(e) and 43(2).
(**21**) Section 177 was amended by the Planning and Compensation Act 1991 (c. 34), section 32 and Schedule 7.
(**22**) Section 90(1) was amended by the Environment Act 1995 (c. 25), section 78 and Schedule 10; section 90(2A) was inserted by the Transport and Works Act 1992 (c. 42), section 16(1).

(i) in making or confirming a discontinuance order, to include in the order any grant of planning permission, or

(ii) to confirm (with or without modifications) a discontinuance order insofar as it grants planning permission;

(e) making a local development order under section 61A of the 1990 Act(**23**);

(f) discharging functions under Part 2 of the 1990 Act;

(g) discharging functions in relation to England under—

(i) Part 2 of and Schedule 8 to the 2004 Act, or

(ii) Part 5 of the Local Democracy, Economic Development and Construction Act 2009(**24**);

(h) discharging functions in relation to Wales under Part 6 of and Schedule 8 to the 2004 Act;

(i) deciding whether to—

(i) make a development consent order under section 104 or 105 of the 2008 Act, or

(ii) make changes to, or revoke, such an order under section 153 of that Act, other than in accordance with paragraph 2 of Schedule 6 to that Act.

(2) In paragraph (1)(d), "discontinuance order" means an order under—

(a) section 102 of the 1990 Act (including an order made under that section by virtue of section 104 of that Act)(**25**); or

(b) paragraph 1 of Schedule 9 to the 1990 Act (including an order made under that paragraph by virtue of paragraph 11 of that Schedule).

Exercise of planning functions

18. A planning authority must have regard to the following provisions of the Waste Framework Directive when exercising its planning functions to the extent that those functions relate to waste management—

(a) Article 13;

(b) the first paragraph of Article 16(1), ignoring the words "in cooperation with other Member States where this is necessary or advisable" and "taking into account best available techniques";

(c) Article 16(2) and (3).

Inspections

19.—(1) This regulation applies where a planning authority has planning functions in relation to establishments or undertakings carrying on disposal or recovery of waste.

(2) The planning authority must ensure that appropriate periodic inspections of those establishments or undertakings are made(**26**).

(**23**) Section 61A was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 40(1).
(**24**) 2009 c. 20.
(**25**) Section 102 was amended by the Planning and Compensation Act 1991 (c. 34), section 32 and Schedule 7; section 102 and paragraph 1 of Schedule 9 were amended by section 21 of, and Schedule 1 to, that Act.
(**26**) Sections 196A-196C of the Town and Country Planning Act 1990 (c. 8) provide for powers relevant to inspection. Those sections were inserted by the Planning and Compensation Act 1991 (c. 34).

Further duties in relation to planning permission

20.—(1) A planning authority must not grant planning permission or development consent for a landfill unless it has taken into consideration the requirements of—

(a) paragraph 1.1 of Annex I to Council Directive 1999/31/EC on the landfill of waste(**27**);

(b) paragraph 5 of that Annex, but only in respect of nuisances and hazards arising from traffic beyond the site of the landfill.

(2) A mineral planning authority must not grant planning permission for a mining waste facility to which Article 7 of Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries(**28**) applies unless it is satisfied that—

(a) the operator of that facility will meet the requirements of Article 11(2)(a) of that Directive; and

(b) the management of waste at that facility will not conflict directly or otherwise interfere with the implementation of the plans referred to in Article 7(3)(b) of that Directive.

(3) In this regulation—

"landfill" has the meaning given in Article 2(g) of Directive 1999/31/EC, but does not include any operation excluded from the scope of that Directive by Article 3(2);

"mining waste facility" means a "waste facility" as defined in Article 3(15) of Directive 2006/21/EC, but does not include those facilities mentioned in Article 24(2) or in the first paragraph of Article 24(4).

PART 7

Deposits in the sea

Interpretation

21. In this Part, "offshore licensing functions" means—

(a) functions under Part 2 of the Food and Environment Protection Act 1985(**29**);

(b) functions under Part 4 of the Marine and Coastal Access Act 2009(**30**),

other than functions which must be exercised by statutory instrument.

Exercise of offshore licensing functions

22. An appropriate authority must exercise its offshore licensing functions—

(a) so far as material, for the purposes of implementing the waste management plans;

(b) for the purposes of ensuring that—

(i) the waste hierarchy referred to in Article 4 of the Waste Framework Directive is applied to the generation of waste; and

(ii) waste generated by the disposal or recovery of waste is treated in accordance with Article 4 of the Waste Framework Directive;

(c) for the purposes of implementing Article 13 of the Waste Framework Directive;

(**27**) OJ No L 182, 16.7.1999, p1, as last amended by Directive 2008/98/EC (OJ No L 312, 22.11.2008, p3).
(**28**) OJ No L 102, 11.4.2006, p15, as amended by Regulation (EC) No 596/2009 (OJ No L 188, 18.7.2009, p14).
(**29**) 1985 c. 48.
(**30**) 2009 c. 23.

(d) so as to ensure that the requirements in the second paragraph of Article 23(1) of the Waste Framework Directive are met; and

(e) so as to ensure compliance with the following Articles of the Waste Framework Directive—

(i) Article 18(2)(b) and (c),

(ii) Article 23(3) and (4),

(iii) Article 35(1).

Inspections

23.—(1) This regulation applies where an appropriate authority has offshore licensing functions in relation to establishments or undertakings carrying on disposal or recovery of waste.

(2) The appropriate authority must ensure that appropriate periodic inspections of those establishments or undertakings are made(**31**).

PART 8

Registration of carriers, brokers and dealers

Interpretation

24.—(1) The regulations in this Part, to the extent that they relate to carriers of controlled waste, have effect as if they were made in exercise of the powers in sections 1(3), 2 and 4(6) of the Control of Pollution (Amendment) Act 1989(**32**).

(2) Sections 3 and 4 of the Control of Pollution (Amendment) Act 1989(**33**) have effect as if—

(a) references to carriers of controlled waste in those sections included references to brokers of and to dealers in controlled waste;

(b) references to the transport of controlled waste included references to acting as a broker of or dealer in controlled waste; and

(c) regulations 26 and 28 to 34, to the extent that they relate to brokers and dealers, were made in exercise of the powers in sections 2 and 4(6) of that Act.

(3) Section 3(5) and (6) of the Control of Pollution (Amendment) Act 1989 (in its application to carriers, brokers and dealers) has effect as if—

(a) references to provision made by virtue of subsection (1) or (2) include a reference to regulations 29(5) and 32(1); and

(b) references to a prescribed offence include an offence specified in regulation 29(5)(b).

(4) Section 7(1) of the Control of Pollution (Amendment) Act 1989 has effect as if the words "the provisions of this Act" included a reference to regulation 25.

(5) In this Part—

(**31**) Section 11 of the Food and Environment Protection Act 1985 (c. 48) and sections 246 to 248 of the Marine and Coastal Access Act 2009 (c. 23) provide for powers relevant to inspection.

(**32**) 1989 c.14. Section 2 was amended by the Environmental Protection Act 1990 (c. 43), section 162 and paragraph 31 of Schedule 15, by the Environment Act 1995 (c. 25), section 120 and paragraph 37 of Schedule 22, and by the Clean Neighbourhoods and Environment Act 2005 (c. 16), sections 36 and 107 and Part 4 of Schedule 5.

(**33**) Section 3 was amended by the Environmental Protection Act 1990 (c. 43), section 162 and paragraph 31 of Schedule 15 and by the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 36. Section 4 was also amended by those provisions of the Environmental Protection Act 1990, and by the Environment Act 1995, section 120 and paragraph 37 of Schedule 22. Section 7(1) was amended by those provisions of the Environmental Protection Act 1990 and the Environment Act 1995, and by the Anti-social Behaviour Act 2003 (c. 38), section 55.

"the relevant time" means immediately before the coming into force of these Regulations;

"specified person" means—

(a) a charity or voluntary organisation;

(b) a waste collection authority;

(c) an authority which is a waste disposal authority for the purposes of Part 2 of the Environmental Protection Act 1990(**34**);

(d) an authority which is a waste regulation authority for the purposes of Part 2 of the Environmental Protection Act 1990(**35**);

(e) a carrier which only transports waste produced by the carrier itself, except where it is construction or demolition waste (and "construction" includes improvement, repair and alteration);

(f) a carrier which only transports, a broker which only arranges for the recovery or disposal of, or a dealer which only deals in—

(i) animal by-products;

(ii) waste from a mine or quarry; or

(iii) waste from premises used for agriculture.

Registration of brokers and dealers in controlled waste

25. No person may act as a broker of or dealer in controlled waste unless registered with the Environment Agency.

Exemptions in relation to carriers

26.—(1) The following are not required to be a registered carrier of controlled waste for the purposes of section 1 of the Control of Pollution (Amendment) Act 1989—

(a) a carrier who is a specified person and who does not normally and regularly transport controlled waste;

(b) the operator of a vessel, aircraft, hovercraft, floating container or vehicle, in relation to its use, after it has been loaded with waste in circumstances in which a marine licence is required or would be required but for a marine exemption order for transporting the waste in order to carry out a specified marine operation.

(2) In paragraph (1)(b)—

"marine licence" means—

(a) a licence under Part 2 of the Food and Environment Protection Act 1985; or

(b) a marine licence under Part 4 of the Marine and Coastal Access Act 2009;

"marine exemption order" means an order under—

(a) section 7 of the Food and Environment Protection Act 1985 (exemptions from licensing)(**36**); or

(b) section 74 of the Marine and Coastal Access Act 2009 (which provides for exemptions from marine licensing);

"specified marine operation" means an operation mentioned in—

(**34**) 1990 c. 43. See section 30(2), which was amended by the Local Government (Wales) Act 1994, section 22(3) and paragraph 17(2) of Schedule 9.

(**35**) 1990 c. 43. See section 30(1), which was substituted by the Environment Act 1995, section 120 and paragraph 62(2) of Schedule 22.

(**36**) Section 7(1) was amended by S.I. 1999/1756, article 2 and paragraph 10 of the Schedule.

(a) section 5 or 6 of the Food and Environment Protection Act 1985 (deposits in the sea or incineration)(**37**); or

(b) an item numbered 1 to 6 or 11 to 13 in section 66(1) of the Marine and Coastal Access Act 2009 (which specifies licensable marine activities).

Transitional exemptions

27.—(1) Until the end of 2013, a transitionally exempt carrier is not required to be registered as a carrier of controlled waste for the purposes of section 1 of the Control of Pollution (Amendment) Act 1989.

(2) Until the end of 2013, a transitionally exempt broker is not required to be registered as a broker of controlled waste for the purposes of regulation 25.

(3) In this regulation—

"transitionally exempt carrier" means a carrier who—

(a) at the relevant time was not required to be registered as a carrier of controlled waste for the purposes of—

(i) section 1 of the Control of Pollution (Amendment) Act 1989, and

(ii) paragraph 12(1) of Schedule 4 to the Waste Management Licensing Regulations 1994(**38**); or

(b) had they been a carrier of controlled waste at the relevant time, would not have been required to be registered for those purposes;

"transitionally exempt broker" means a broker who—

(a) at the relevant time was not required to be registered as a broker of controlled waste for the purposes of—

(i) regulation 20(1) of the Waste Management Licensing Regulations 1994, and

(ii) paragraph 12(2) of Schedule 4 to those Regulations, or

(b) had they been a broker of controlled waste at the relevant time, would not have been required to be registered for those purposes.

The register

28.—(1) The Environment Agency must establish and maintain a register of carriers, brokers and dealers.

(2) A register of carriers or brokers held at the relevant time for the purposes of the Control of Pollution (Amendment) Act 1989 or the Waste Management Licensing Regulations 1994 is a register for the purposes of these Regulations.

Procedure for registration

29.—(1) This regulation applies to—

(a) registration of a carrier for the purposes of the Control of Pollution (Amendment) Act 1989; and

(b) registration of a broker or dealer for the purposes of regulation 25.

(**37**) Sections 5 and 6 were amended by the Environmental Protection Act 1990 (c. 43), sections 146 and 162 and Part 8 of Schedule 16. Section 5 was also amended by section 1(1) and Part 2 of Schedule 1 to the Statute Law (Repeals) Act 1993 .

(**38**) S.I. 1994/1056, amended by S.I. 2000/1973, 2006/937, 2007/3538. There are other amendments but none is relevant. The Regulations are revoked by Schedule 5 to these Regulations.

(2) Registration must be made using the form provided by the Environment Agency.

(3) All the information required by the form must be provided, together with any fee prescribed in a charging scheme made by the Environment Agency under section 41 of the Environment Act 1995(**39**).

(4) The Agency may require additional information to be provided.

(5) Registration may be refused if, in the opinion of the Agency—

(a) it is undesirable for the applicant to be authorised to transport controlled waste or to act as a broker or dealer of controlled waste (as the case may be); and

(b) the applicant or another relevant person(**40**) has been convicted of an offence under—

(i) regulation 42,

(ii) section 1, 5 or 7(3) of the Control of Pollution (Amendment) Act 1989(**41**),

(iii) section 33 or 34 of the Environmental Protection Act 1990(**42**),

(iv) section 110(2) of the Environment Act 1995(**43**),

(v) the Hazardous Waste (England and Wales) Regulations 2005(**44**),

(vi) the Hazardous Waste (Wales) Regulations 2005(**45**),

(vii) the Transfrontier Shipment of Waste Regulations 2007(**46**),

(viii) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007(**47**), or

(ix) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010(**48**).

(6) On registration the Agency must provide a certificate of registration to the applicant.

(7) If registration is refused the Agency must notify the applicant and give written reasons for the refusal.

Updating the register

30.—(1) A registered carrier, broker or dealer must within 28 days inform the Environment Agency of any change of circumstance affecting information in the entry relating to that carrier, broker or dealer.

(2) If the Agency becomes aware that the information held on the register is incorrect in respect of any carrier, broker or dealer, it may remove that person from the register where it is reasonable to do so.

(**39**) 1995 c. 25. Section 41 was amended by S.I. 2005/894, 2005/1806 (W. 138), 2006/937, 2007/1711, 2007/3106.

(**40**) See section 3(5) of the Control of Pollution (Amendment) Act 1989 (c. 14) for the meaning of the term "another relevant person".

(**41**) 1989 c. 14. Section 1 was amended by the Environmental Protection Act 1990 (c. 43), section 162 and paragraph 31 of Schedule 15 and by the Clean Neighbourhoods and Environment Act 2006 (c. 16), sections 35 and 107 and Part 4 of Schedule 5. Section 5 was amended by the Clean Neighbourhoods and Environment Act 2006, section 37. Section 7(3) was amended by the Environmental Protection Act 1990, section 162 and paragraph 31 of Schedule 15 and by the Environment Act 1995 (c. 25), section 112 and paragraph 3 of Schedule 19.

(**42**) 1990, c. 43. Section 33 has been amended by S.I. 2005/894, 2006/937, 2007/3538, 2009/1799 and 2010/675 and by the Environment Act 1995 (c. 25) and the Clean Neighbourhoods and Environment Act 2005 (c. 16). Section 34 has been amended by the Deregulation and Contracting Out Act 1994 (c. 40) and by S.I. 1999/1820, 2000/1973, 2005/2900, 2006/123 and 2007/3538. Section 34B was inserted by the Clean Neighbourhoods and Enforcement Act 2005 (c. 16) and amended by S.I. 2007/3538.

(**43**) 1995 c. 25.

(**44**) S.I. 2005/894 amended by S.I. 2006/937, 2007/3476, 2007/3538, 2009/507, 2010/675, 2010/1159 and by these Regulations.

(**45**) S.I. 2005/1806 (W. 138) amended by S.I. 2006/937, 2007/3538, 2009/2861 and 2010/675.

(**46**) S.I. 2007/1711 amended by S.I. 2010/265. There are other amendments but none is relevant.

(**47**) S.I. 2007/3538, amended by S.I. 2010/675 (which revoked regulation 38). There are other amendments but none is relevant.

(**48**) S.I. 2010/675, to which there are amendments not relevant to these Regulations.

(3) Where the Agency has the person's address, it must notify them of the removal and request the correct information.

(4) The Agency must restore the person to the register if the correct information comes to its notice.

Duration of a registration

31.—(1) Unless revoked, registration of a specified person is indefinite.

(2) For other persons registration is for three years unless revoked.

(3) But registration is not valid during any period of removal from the register under regulation 30(2).

Revocation of registration

32.—(1) A registration may be revoked if—

(a) the registered person or another relevant person has been convicted of an offence specified in regulation 29(5)(b); and

(b) in the opinion of the Agency, it is undesirable for the registered carrier, broker or dealer to continue to be authorised to act as a carrier or broker of, or a dealer in, controlled waste (as the case may be).

(2) If a registration is revoked the Agency must notify the registered person and give written reasons for the revocation.

(3) A revocation comes into force—

(a) where no appeal is made, 28 days after the date the notification is received; or

(b) where an appeal is made, when it is withdrawn or refused.

Appeals

33. An appeal under section 4 of the Control of Pollution (Amendment) Act 1989 must be received by the Secretary of State or the Welsh Ministers (as the case may be) within 28 days of the refusal or revocation that is the subject of the appeal.

Inspections

34.—(1) The Environment Agency must ensure that appropriate periodic inspections of registered carriers, brokers and dealers are made(**49**).

(2) If the inspection relates to collection or transport of controlled waste, the Environment Agency must ensure that it covers the origin, nature, quantity and destination of that waste.

(3) In paragraph (2), "collection or transport" includes an operation where waste is transported following transfer between different carriers.

(**49**) Section 108 of the Environment Act 1995 (c. 25) provides for powers relevant to inspection. That section was amended by the Anti-social Behaviour Act 2003 (c. 38), the Clean Neighbourhoods and Environment Act 2005 (c.16) and S.I. 2000/1973.

PART 9

Transfer of waste

The transfer note

35.—(1) This regulation takes effect as if it were made in exercise of the power in section 34(5) of the Environmental Protection Act 1990.

(2) When controlled waste is transferred in accordance with section 34(1)(c) of that Act the written description of the waste ("the transfer note") must—

(a) identify the waste to which it relates by reference to the appropriate codes in the List of Wastes (England) Regulations 2005(**50**) or, as the case may be, the List of Wastes (Wales) Regulations 2005(**51**), give a description of the waste and state—

(i) its quantity and whether it is loose or in a container,

(ii) if in a container, the kind of container,

(iii) the time and place of transfer, and

(iv) the SIC code of the transferor;

(b) give the name and address of the transferor and the transferee and be signed by them;

(c) state whether each of the transferor and transferee are—

(i) the producer of the waste,

(ii) the importer of the waste,

(iii) the transporter of the waste,

(iv) a local authority,

(v) a holder of an environmental permit under the Environmental Permitting (England and Wales) Regulations 2010, in which case the note must include the permit number (if any),

(vi) a person carrying on an operation to which section 33(1)(a) of the Environmental Protection Act 1990 does not apply by virtue of regulation 68(2) of the Environmental Permitting (England and Wales) Regulations 2010,

(vii) a person registered as a carrier of controlled waste under the Control of Pollution (Amendment) Act 1989, in which case the note must include the registration number (if any),

(viii) a person registered as a broker of or dealer in controlled waste, in which case the note must include the registration number (if any);

(d) confirm that the transferor has discharged the duty in regulation 12.

(3) Until the end of the period of 6 months beginning with the day on which these Regulations are made, a transfer note may omit the information required by paragraph (2)(a)(iv) and (d).

(4) The transfer note may be in electronic form if the person producing it can do so in a visible and legible documentary form.

(5) Where the transfer note is in electronic form, the signature required by paragraph (2)(b) must be an electronic signature (and "electronic signature" means data in electronic form which are attached to or logically associated with the transfer note and which serve as a method of authentication).

(**50**) S.I. 2005/895, amended by S.I. 2005/1673.
(**51**) S.I. 2005/1820 (W. 148).

(6) The transferor and the transferee must keep a transfer note, or a copy of it, for at least 2 years and produce it to an officer of the Environment Agency or of a waste collection authority on demand within 7 days.

(7) This regulation does not apply where the waste transferred is hazardous waste and the consignment note and, where appropriate, schedule required by the Hazardous Waste (England and Wales) Regulations 2005 or the Hazardous Waste (Wales) Regulations 2005 are completed and dealt with in accordance with those Regulations.

(8) In this regulation "SIC code" means a code included in the UK Standard Industrial Classification of Industrial Activities 2007 (SIC 2007) published by the Office for National Statistics on 14th December 2007(**52**).

PART 10

Enforcement

Interpretation

36. In this Part—

"the 1989 Act" means the Control of Pollution (Amendment) Act 1989(**53**);

"compliance notice" has the meaning given in regulation 38(1);

"regulation authority" has the meaning given in section 9 of the 1989 Act(**54**);

"restoration notice" has the meaning given in regulation 40(1);

"specified person" has the meaning given in regulation 24(5);

"stop notice" has the meaning given in regulation 39(1).

Enforcement authority

37. The Environment Agency enforces Part 5 and regulation 25.

Compliance notices

38.—(1) A "compliance notice" is a notice requiring a person to take specified steps within a specified period to secure that a contravention does not continue or recur.

(2) If the Environment Agency considers that a person has contravened or is contravening regulation 12(1), 13(1), 14(1) or 25 it may serve a compliance notice on that person.

(3) If a regulation authority considers that a person has contravened or is contravening section 1 of the 1989 Act it may serve a compliance notice on that person.

(4) A compliance notice must—

(a) state the authority's reason for serving it;

(b) specify the matters constituting the contravention;

(c) specify the steps which must be taken to secure that the contravention does not continue or recur;

(**52**) ISBN 978-0-230-21012-7.
(**53**) 1989 c.14.
(**54**) Section 9 was amended in relation to the definition of "regulation authority" by the Environmental Protection Act 1990 (c. 43), section 120 and paragraph 37 of Schedule 22, by the Anti-social Behaviour Act 2003 (c. 38), section 55 and by Part 1 of Schedule 4 to these Regulations.

(d) specify the period within which those steps must be taken;

(e) give information as to the rights of appeal (including the period within which an appeal must be brought).

Stop notices

39.—(1) A "stop notice" is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(2) If the Environment Agency considers that a person is carrying on an activity in contravention of regulation 12(1), 13(1), 14(1) or 25 it may serve a stop notice on that person.

(3) If a regulation authority considers that a person is carrying on an activity in contravention of section 1 of the 1989 Act it may serve a stop notice on that person.

(4) A stop notice must—

(a) state the authority's reason for serving it;

(b) specify the matters constituting the contravention;

(c) specify the steps which must be taken to remedy the contravention;

(d) give information as to the rights of appeal (including the period within which an appeal must be brought).

Restoration notices

40.—(1) A "restoration notice" is a notice requiring a person to take specified steps within a specified period to secure that the position is, so far as possible, restored to what it would have been if a contravention had not occurred.

(2) If the Environment Agency considers that a person has contravened regulation 14(1) it may serve a restoration notice on that person.

(3) A restoration notice must—

(a) state the Environment Agency's reason for serving it;

(b) specify the matters constituting the contravention;

(c) specify the steps which must be taken to secure restoration, so far as possible;

(d) specify the period within which those steps must be taken;

(e) give information as to the rights of appeal (including the period within which an appeal must be brought).

Appeals

41.—(1) A person on whom a compliance notice, stop notice or restoration notice is served may appeal against the decision to serve it.

(2) The grounds for appeal are—

(a) that the decision was wrong in fact;

(b) that the decision was wrong in law;

(c) that the decision was unreasonable;

(d) that any step specified in the notice is unreasonable;

(e) any other reason.

(3) The right of appeal is to the First-tier tribunal(**55**).

(4) The tribunal must determine the standard of proof.

(5) A notice, and any requirement in a notice, is not suspended pending an appeal unless the tribunal directs otherwise.

(6) The tribunal may—

(a) withdraw the requirement or notice;

(b) confirm the requirement or notice;

(c) vary the requirement or notice;

(d) take such steps as the authority serving the notice could take in relation to the act or omission giving rise to the requirement or notice;

(e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the authority.

Offence and penalties

42.—(1) A person is guilty of an offence who—

(a) if they are not a specified person, fails to comply with regulation 25; or

(b) fails to comply with a compliance notice, stop notice or restoration notice.

(2) A person guilty of an offence under—

(a) paragraph (1)(a); or

(b) paragraph (1)(b) in relation to contravention of regulation 25,

is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person guilty of an offence under paragraph (1)(b) in relation to contravention of regulation 12(1), 13(1) or 14(1) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

Proceedings against partnerships and unincorporated associations

43.—(1) Proceedings for an offence under regulation 42(1) alleged to have been committed by a partnership or unincorporated association may be brought against the partnership or association in the name of the partnership or association.

(2) For the purposes of such proceedings the following apply as if the partnership or unincorporated association were a body corporate—

(a) rules of court relating to the service of documents; and

(b) section 33 of the Criminal Justice Act 1925(**56**) and Schedule 3 to the Magistrates' Courts Act 1980(**57**).

(3) A fine imposed on a partnership or unincorporated association is to be paid out of the funds of the partnership or association.

(**55**) Appeals are assigned to the General Regulatory Chamber of the tribunal by article 3 of S.I. 2010/2655. Procedural rules relating to such appeals are set out in S.I. 2009/1976 (amended by S.I. 2010/2653). Appeals must be brought within 28 days of the date on which notice of the act or decision to which the proceedings relate was sent to the appellant: see rule 22(1)(b).

(**56**) 1925 c. 86.

(**57**) 1980 c. 43.

Offences by bodies corporate, partnerships and unincorporated associations

44.—(1) Where a body corporate is guilty of an offence under regulation 42(1), and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

(a) any director, manager, secretary or other similar officer of the body corporate; or

(b) any person who was purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of the offence.

(2) In paragraph (1) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Where a partnership is guilty of an offence under regulation 42(1), and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of a partner, the partner, as well as the partnership, is guilty of the offence.

(4) In paragraph (3) "partner" includes a person purporting to act as a partner.

(5) Where an unincorporated association is guilty of an offence under regulation 42(1), and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of an officer of the association, that officer, as well as the association, is guilty of the offence.

(6) In paragraph (5) "officer", in relation to an unincorporated association, means—

(a) an officer of the association or a member of its governing body; or

(b) a person purporting to act in such a capacity.

Proceedings for contravention of section 1 of the Control of Pollution (Amendment) Act 1989

45. A regulation authority must not institute proceedings against a specified person for contravention of section 1 of the 1989 Act unless—

(a) the authority has served a compliance notice or stop notice on the person in respect of the contravention; and

(b) the person has failed to comply with the notice.

PART 11

Final provisions

Registration: reduction of administrative burden

46.—(1) This regulation applies to the Environment Agency in relation to registration of—

(a) carriers and brokers of, and dealers in, controlled waste (see Part 8); and

(b) establishments and undertakings carrying on exempt waste operations under Schedule 2 to the Environmental Permitting (England and Wales) Regulations 2010(**58**).

(2) The Environment Agency must, where possible, use existing records held by it to obtain information for the registration process in order to reduce the administrative burden.

Radioactive waste

47.—(1) This regulation applies to radioactive waste where it is—

(**58**) S.I. 2010/675 to which there are amendments not relevant to these Regulations.

(a) exempt from the requirement for an environmental permit by virtue of a specified order(**59**); and

(b) subject to a radioactive substances activity falling within paragraph 5(2)(b) or (c) or (4) of Part 2 of Schedule 23 to the Environmental Permitting (England and Wales) Regulations 2010.

(2) Radioactive waste to which this regulation applies must be treated as waste for the purposes of these Regulations.

(3) Sections 33 to 34C of the Environmental Protection Act 1990 apply to radioactive waste to which this regulation applies.

(4) In this regulation—

"environmental permit" has the meaning given in regulation 13(1) of the Environmental Permitting (England and Wales) Regulations 2010;

"radioactive waste" and "radioactive substances activity" have the meanings given in paragraphs 4 and 5 of Part 2 of Schedule 23 to the Environmental Permitting (England and Wales) Regulations 2010;

"specified order" means—

(a) the Radioactive Substances (Phosphatic Substances, Rare Earths etc.) Exemption Order 1962(**60**);

(b) the Radioactive Substances (Lead) Exemption Order 1962(**61**); and

(c) the Radioactive Substances (Substances of Low Activity) Exemption Order 1986(**62**).

Amendments and revocations

48.—(1) Schedule 2 (amendments to the Hazardous Waste (England and Wales) Regulations 2005) has effect.

(2) Schedule 3 (amendments to the Environmental Permitting (England and Wales) Regulations 2010) has effect.

(3) Schedule 4 (amendments to other legislation) has effect.

(4) Schedule 5 (revocations) has effect.

(**59**) See regulation 72 of the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675).
(**60**) S.I. 1962/2648.
(**61**) S.I. 1962/2649.
(**62**) S.I. 1986/1002, amended by S.I. 1992/647.

Signed on behalf of the Welsh Ministers

Jane Davidson
Minister for Environment, Sustainability and Housing
one of the Welsh Ministers

28th March 2011

Henley
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

26th March 2011