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DRAFT STATUTORY INSTRUMENTS

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**2011 No.**

**The Waste (England and Wales) Regulations 2011**

**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(1).

(2) Sections 3 and 4 of the Control of Pollution (Amendment) Act 1989(2) 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—

“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;

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(1) 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.

(2) 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.

- (c) an authority which is a waste disposal authority for the purposes of Part 2 of the Environmental Protection Act 1990<sup>(3)</sup>;
- (d) an authority which is a waste regulation authority for the purposes of Part 2 of the Environmental Protection Act 1990<sup>(4)</sup>;
- (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)<sup>(5)</sup>; 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—

- (a) section 5 or 6 of the Food and Environment Protection Act 1985 (deposits in the sea or incineration)<sup>(6)</sup>; or

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(3) 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.

(4) 1990 c. 43. See section 30(1), which was substituted by the Environment Act 1995, section 120 and paragraph 62(2) of Schedule 22.

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

(6) 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 .

- (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(7); 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.
- (2) Registration must be made using the form provided by the Environment Agency.

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(7) [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.

(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(8).

(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(9) 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(10),

(iii) section 33 or 34 of the Environmental Protection Act 1990(11),

(iv) section 110(2) of the Environment Act 1995(12),

(v) the Hazardous Waste (England and Wales) Regulations 2005(13),

(vi) the Hazardous Waste (Wales) Regulations 2005(14),

(vii) the Transfrontier Shipment of Waste Regulations 2007(15),

(viii) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007(16), or

(ix) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010(17).

(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.

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(8) 1995 c. 25. Section 41 was amended by S.I. 2005/894, 2005/1806 (W. 138), 2006/937, 2007/1711, 2007/3106.

(9) See section 3(5) of the Control of Pollution (Amendment) Act 1989 (c. 14) for the meaning of the term “another relevant person”.

(10) 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.

(11) 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 2006 (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.

(12) 1995 c. 25.

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

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

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

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

(17) 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(18).

(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.

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(18) 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.