

*Draft Regulations laid before Parliament and the National Assembly for Wales under section 2(8) and (9)(d) and (e) of the Pollution Prevention and Control Act 1999, paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and section 59(3) of the Government of Wales Act 2006 for approval by resolution of each House of Parliament and of the Assembly.*

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DRAFT STATUTORY INSTRUMENTS

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**2011 No. XXXX**

**ENVIRONMENTAL PROTECTION, ENGLAND AND  
WALES**

# The Waste (England and Wales) Regulations 2011

*Made - - - - -*

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*Coming into force in accordance with regulation 1*



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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, have in accordance with section 2(4) of the Pollution Prevention and Control Act 1999<sup>(a)</sup> consulted—

- (a) the Environment Agency;
- (b) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small business respectively as they consider appropriate; and
- (c) such other bodies or persons as they consider appropriate.

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<sup>(a)</sup> 1999 c. 24. Functions of the Secretary of State under section 2 (except in relation to offshore oil and gas exploration and exploitation), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 3 of S.I. 2005/1958. Those functions were then transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

The Secretary of State is designated<sup>(a)</sup> for the purposes of the European Communities Act 1972<sup>(b)</sup> in relation to the environment. The Welsh Ministers are designated<sup>(c)</sup> for the purposes of that Act in relation to the prevention, reduction and management of waste.

A draft of this instrument has been approved by a resolution of each House of Parliament and by the National Assembly for Wales pursuant to section 2(8) and (9)(d) and (e) of the Pollution Prevention and Control Act 1999<sup>(d)</sup>, to paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and to section 59(3) of the Government of Wales Act 2006<sup>(e)</sup>.

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999.

## 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<sup>(f)</sup>;
  - “hazardous waste”—

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(a) S.I. 2008/301.

(b) 1972 c. 68.

(c) S.I. 2010/1552.

(d) The reference in section 2(8) of the 1999 Act to approval by each House of Parliament has effect in relation to the exercise of functions by the Welsh Ministers as if it were a reference to approval by the National Assembly for Wales by virtue of paragraph 33 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(e) 2006 c. 32.

(f) 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.

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

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

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

“waste collection authority” means an authority which is a waste collection authority for the purposes of Part 2 of the Environmental Protection Act 1990(c);

“the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste(d);

“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—

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

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

(c) 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.

(d) OJ No L 312, 22.11.2008, p3.

- (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.

### **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(a); 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(b).

#### **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

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(a) 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.

(b) 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).

(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.

(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(a);

(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

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(a) 2003 c.33.



- (b) proposals to modify such a programme or plan.
- (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(a), or
    - (ii) Part 3 of the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004(b); 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.

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(a) S.I. 2004/1633.

(b) 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(a);

“the 2004 Act” means the Planning and Compulsory Purchase Act 2004(b);

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(a) 1990 c. 8.

(b) 2004 c. 5.

“the 2008 Act” means the Planning Act 2008(a);  
“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(b);  
“planning permission” has the meaning given in section 336 of the 1990 Act(c).

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

- (a) the 1990 Act;
- (b) the Planning (Listed Buildings and Conservation Areas) Act 1990(d);
- (c) the Planning (Hazardous Substances) Act 1990(e);
- (d) the Planning (Consequential Provisions) Act 1990(f);
- (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(g);
- (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(h);
- (b) deciding whether to take action under section 141(2) or (3) or 177(1)(a) or (b) of the 1990 Act(i), 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(j) that planning permission must be deemed to be granted;
- (d) deciding whether—
  - (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;

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(a) 2008 c. 29.

(b) Section 1 was amended by the Local Government (Wales) Act (c. 19), section 18(3) and (4).

(c) 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.

(d) 1990 c. 9.

(e) 1990 c. 10.

(f) 1990 c. 11.

(g) Paragraph 1 was inserted by the Planning and Compensation Act 1991 (c. 34), section 32.

(h) 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).

(i) Section 177 was amended by the Planning and Compensation Act 1991 (c. 34), section 32 and Schedule 7.

(j) 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).

- (e) making a local development order under section 61A of the 1990 Act<sup>(a)</sup>;
  - (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<sup>(b)</sup>;
  - (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)<sup>(c)</sup>; 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<sup>(d)</sup>.

### **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<sup>(e)</sup>;
- (b) paragraph 5 of that Annex, but only in respect of nuisances and hazards arising from traffic beyond the site of the landfill.

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(a) Section 61A was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 40(1).

(b) 2009 c. 20.

(c) 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.

(d) 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).

(e) OJ No L 182, 16.7.1999, p1, as last amended by Directive 2008/98/EC (OJ No L 312, 22.11.2008, p3).

(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<sup>(a)</sup> 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<sup>(b)</sup>;
- (b) functions under Part 4 of the Marine and Coastal Access Act 2009<sup>(c)</sup>, 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;
- (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).

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<sup>(a)</sup> OJ No L 102, 11.4.2006, p15, as amended by Regulation (EC) No 596/2009 (OJ No L 188, 18.7.2009, p14).

<sup>(b)</sup> 1985 c. 48.

<sup>(c)</sup> 2009 c. 23.

## 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(a).

## 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(b).

(2) Sections 3 and 4 of the Control of Pollution (Amendment) Act 1989(c) 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;
- (c) an authority which is a waste disposal authority for the purposes of Part 2 of the Environmental Protection Act 1990(d);
- (d) an authority which is a waste regulation authority for the purposes of Part 2 of the Environmental Protection Act 1990(e);

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(a) 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.

(b) 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.

(c) 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.

(d) 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.

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

- (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)(a); 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)(b); 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—

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



“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(a); 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.

(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(b).

(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(c) 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(d),

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(a) 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.

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

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

(d) 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.



- (iii) section 33 or 34 of the Environmental Protection Act 1990(a),
- (iv) section 110(2) of the Environment Act 1995(b),
- (v) the Hazardous Waste (England and Wales) Regulations 2005(c),
- (vi) the Hazardous Waste (Wales) Regulations 2005(d),
- (vii) the Transfrontier Shipment of Waste Regulations 2007(e),
- (viii) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007(f), or
- (ix) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010(g).

(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.

(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).

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(a) 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.

(b) 1995 c. 25.

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

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

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

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

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

(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(a).

(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.

## 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(b) or, as the case may be, the List of Wastes (Wales) Regulations 2005(c), 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,

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(a) 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.

(b) S.I. 2005/895, amended by S.I. 2005/1673.

(c) S.I. 2005/1820 (W. 148).

- (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).
- (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(a).

## PART 10

### Enforcement

#### Interpretation

**36.** In this Part—

- “the 1989 Act” means the Control of Pollution (Amendment) Act 1989(b);
- “compliance notice” has the meaning given in regulation 38(1);
- “regulation authority” has the meaning given in section 9 of the 1989 Act(c);
- “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).

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(a) ISBN 978-0-230-21012-7.

(b) 1989 c.14.

(c) 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.

## **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;
- (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<sup>(a)</sup>.

(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

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(a) 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).

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

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

### **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(c).

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(a) 1925 c. 86.

(b) 1980 c. 43.

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

(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—

- (a) exempt from the requirement for an environmental permit by virtue of a specified order(a); 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(b);
- (b) the Radioactive Substances (Lead) Exemption Order 1962(c); and
- (c) the Radioactive Substances (Substances of Low Activity) Exemption Order 1986(d).

### **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.

Signed on behalf of the Welsh Ministers

Date

*Name*  
Minster for [ ]  
one of the Welsh Ministers

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(a) See regulation 72 of the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675).  
(b) S.I. 1962/2648.  
(c) S.I. 1962/2649.  
(d) S.I. 1986/1002, amended by S.I. 1992/647.

SCHEDULE 1 Regulations 5, 8 and 11

Waste prevention programmes and waste management plans

PART 1  
Objectives

**Overall objective**

1. To protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.

**Application of the waste hierarchy**

2.—(1) To apply the following waste hierarchy as a priority order in waste prevention and management policy—

- (a) prevention;
- (b) preparing for re-use;
- (c) recycling;
- (d) other recovery (for example energy recovery);
- (e) disposal.

(2) When applying the waste hierarchy in sub-paragraph (1), the appropriate authority must ensure that it—

- (a) encourages the options that deliver the best overall environmental outcome, which may require specific waste streams to depart from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste;
- (b) takes into account—
  - (i) the general environmental protection principles of precaution and sustainability,
  - (ii) technical feasibility and economic viability,
  - (iii) protection of resources, and
  - (iv) the overall environmental, human health, economic and social impacts.

**Protection of human health and the environment**

3. To ensure that waste management is carried out without endangering human health, without harming the environment and, in particular—

- (a) without risk to water, air, soil, plants or animals;
- (b) without causing a nuisance through noise or odours; and
- (c) without adversely affecting the countryside or places of special interest.



### **Principles of self-sufficiency and proximity**

4.—(1) To establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including, where such collection also covers such waste from other producers, taking into account best available techniques.

(2) The network must be designed to enable the European Union as a whole to become self-sufficient in waste disposal and in the recovery of mixed municipal waste collected from private households, and to enable the United Kingdom to move towards that aim taking into account geographical circumstances or the need for specialised installations for certain types of waste.

(3) The network must enable waste to be disposed of and mixed municipal waste collected from private households to be recovered in one of the nearest appropriate installations, by means of the most appropriate technologies, in order to ensure a high level of protection for the environment and human health.

(4) This paragraph does not require that the full range of final recovery facilities be located in England or in Wales or in England and Wales together.

## **PART 2**

### **Matters which must be included in waste management plans**

#### **Analysis of the current waste management situation etc.**

5. An analysis of the current waste management situation in England or Wales, as the case may be, the measures to be taken to improve environmentally sound preparing for re-use, recycling, recovery and disposal of waste and an evaluation of how the plan will support the implementation of the objectives and provisions of the Waste Framework Directive.

#### **General policies in relation to waste**

6. As appropriate and taking into account the geographical level and geographical area to which the plan relates, provisions relating to—

- (a) the type, quantity and source of waste generated within the territory, the waste likely to be shipped from or to the United Kingdom, and an evaluation of the development of waste streams in the future;
- (b) existing waste collection schemes and major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste or waste streams addressed by specific European Union legislation;
- (c) an assessment of the need for new collection schemes, the closure of existing waste installations, additional waste installation infrastructure (in accordance with the objective in paragraph 4), and, if necessary the related investments;
- (d) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary;
- (e) general waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems.

#### **Policies in relation to packaging waste**

7. In pursuance of the objectives and measures in Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste<sup>(a)</sup>, a chapter on the management

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(a) OJ No L 365, 31.12.1994, p10, as last amended by Regulation (EC) No 219/2009, OJ No L 87, 31.3.2009, p109.

of packaging and packaging waste, including measures taken pursuant to Articles 4 and 5 of that Directive.

#### **Policies in relation to separate collection of waste**

8. Measures to promote high quality recycling including the setting up of separate collections of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors.

#### **Policies in relation to bio-waste**

9. As appropriate, measures to encourage the separate collection of bio-waste with a view to the composting and digestion of bio-waste.

#### **Policies in relation to re-use**

10. As appropriate, measures to be taken to promote the re-use of products and preparing for re-use activities, in particular—

- (a) measures to encourage the establishment and support of re-use and repair networks;
- (b) the use of economic instruments;
- (c) the use of procurement criteria;
- (d) the setting of quantitative objectives.

#### **Preparing for re-use, recovery and recycling targets**

11.—(1) Measures to be taken to ensure that, by 2020, at least 50% by weight of waste from households is prepared for re-use or recycled.

(2) Measures to be taken to ensure that, by 2020, at least 70% by weight of the waste mentioned in paragraph (3) is subjected to material recovery.

(3) That waste is construction and demolition waste excluding—

- (a) hazardous waste;
- (b) naturally occurring material falling within code 17 05 04 in Schedule 1 to—
  - (i) the List of Wastes (England) Regulations 2005(a), or
  - (ii) the List of Wastes (Wales) Regulations 2005(b).

## **PART 3**

### **Matters which may be included in waste management plans**

#### **Matters which may be included in a waste management plan**

12. Taking into account the geographical level and geographical area to which the plan relates—

- (a) organisational aspects related to waste management including a description of the allocation of responsibilities between public and private actors carrying out waste management;
- (b) an evaluation of the usefulness and suitability of the use of economic and other instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;

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(a) S.I. 2005/895, to which there are amendments not relevant to these Regulations.

(b) S.I. 2005/1820 (W. 148).

- (c) the use of awareness campaigns and information provision directed at the general public or at a specific set of consumers;
- (d) historical contaminated waste disposal sites and measures for their rehabilitation.

## PART 4

### Public participation in the preparation or modification of a waste prevention programme or national waste management plan

#### Interpretation

13. In this Part—

“consultation bodies” means—

- (a) in relation to a waste prevention programme or national waste management plan relating to England—
  - (i) Natural England, and
  - (ii) the Historic Buildings and Monuments Commission for England (English Heritage);
- (b) in relation to a waste prevention programme or national waste management plan relating to Wales, the Countryside Council for Wales;

“public consultees” means the persons to whose attention proposals for a programme or plan are brought by the appropriate authority pursuant to paragraph 14(1)(b).

#### Public participation procedures

14.—(1) As soon as reasonably practicable after preparing proposals for a waste prevention programme or national waste management plan or for the modification of such a programme or plan, the appropriate authority must—

- (a) send a copy of the proposals to the consultation bodies;
- (b) take such steps as it considers appropriate to bring the proposals to the attention of the persons who in the authority’s opinion—
  - (i) are, or are likely to be, affected by the programme or plan, or
  - (ii) have an interest in the programme or plan;
- (c) inform the public consultees of the address (which may include a website)—
  - (i) at which a copy of the proposals may be viewed, and
  - (ii) from which a copy of the proposals may be obtained;
- (d) invite the consultation bodies and public consultees to express their opinion on the proposals, specifying the address to which, and the period within which, opinions must be sent.

(2) The period referred to in paragraph (1)(d) must be of such length as will ensure that the consultation bodies and the public consultees are given an effective opportunity to express their opinion on the proposals.

(3) The appropriate authority must keep a copy of the proposals at its principal office for inspection by the public at all reasonable times free of charge.

(4) Nothing in paragraph (1)(c) requires the appropriate authority to provide copies free of charge, but where a charge is made it must be reasonable.

## Procedures following public participation

15.—(1) Before decisions on a waste prevention programme or national waste management plan are made, the appropriate authority must take account of any opinion expressed by a consultation body or public consultee.

(2) As soon as reasonably practicable after making decisions on a waste prevention programme or national waste management plan, the appropriate authority must—

- (a) inform the consultation bodies and the public consultees of the matters in paragraph (3);
- (b) take such steps as it considers appropriate to bring those matters to the attention of the public; and
- (c) if it has adopted the programme or plan, make a copy available at its principal office for inspection by the public at all reasonable times free of charge.

(3) The matters are—

- (a) the decisions made by the appropriate authority on the programme or plan;
- (b) the reasons and considerations on which those decisions are based; and
- (c) information about the public participation procedure.

(4) Nothing in paragraph (2)(c) requires the appropriate authority to provide copies free of charge, but where a charge is made it must be reasonable.

## SCHEDULE 2

Regulation 48

### Amendments to the Hazardous Waste (England and Wales) Regulations 2005

#### PART 1

##### Amendments

1. The Hazardous Waste (England and Wales) Regulations 2005<sup>(a)</sup> are amended as follows.
2. For regulation 2, substitute—

#### **“The Waste Directive and the meaning of waste**

2.—(1) For the purposes of these Regulations—

- (a) “the Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste;
- (b) “waste” means anything that—
  - (i) is waste within the meaning of Article 3(1) of the Waste Directive; and
  - (ii) subject to regulation 15, is not excluded from the scope of that Directive by Article 2(1), (2) or (3).

(2) In these Regulations, a reference to the Waste Directive conditions is a reference to the conditions set out in Article 13 of that Directive, that is to say, to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular—

- (a) without risk to water, air, soil, plants or animals;
- (b) without causing a nuisance through noise or odours; and

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<sup>(a)</sup> S.I. 2005/894 amended by S.I. 2006/937, 2007/3476, 2007/3538, 2009/507, 2010/675, 2010/1159.

(c) without adversely affecting the countryside or places of special interest.”.

3. For regulation 3, substitute—

**“Annex III to the Waste Directive**

3. A reference in these Regulations to—

- (a) Annex III is a reference to Annex III (properties of waste which render it hazardous) to the Waste Directive, as that Annex is set out in Schedule 3;
- (b) hazardous properties is a reference to the properties in Annex III.”.

4. In regulation 4(1), in the definition of “the List of Wastes”, omit from “, being the list” to the end.

5. In regulation 5—

(a) in paragraph (1)—

(i) for the definition of “consignment note”, substitute—

““consignment note”, in relation to a consignment of hazardous waste, means the identification document which is required to accompany the hazardous waste when it is transferred pursuant to Article 19(2) of the Waste Directive.”,

(ii) in the appropriate place, insert—

““domestic waste” means waste produced by a household;”,

(iii) for the definition of “multiple collection”, substitute—

““multiple collection” means a journey made by a single carrier which meets the following conditions—

- (a) the carrier collects more than one consignment of hazardous waste in the course of the journey;
- (b) each consignment is collected from different premises;
- (c) all the premises from which a collection is made are in England; and
- (d) all consignments collected are transported by that carrier in the course of a journey to the same consignee;”,

(iv) omit the definition of “multiple collection consignment note”;

(b) for paragraph (2), substitute—

“(2) In these Regulations—

“broker” means an undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;

“collection” means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility;

“dealer” means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste;

“disposal” means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy (Annex I of the Waste Directive sets out a non-exhaustive list of disposal operations);

“holder” means the producer of the waste or the person who is in possession of it;

“management” means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as dealer or broker;

“producer” means anyone whose activities produce waste (original waste producer) or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of the waste;

“recovery” means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy (Annex II of the Waste Directive sets out a non-exhaustive list of recovery operations);

“waste oil” means any mineral or synthetic lubrication or industrial oil which has become unfit for the use for which it was originally intended, such as used combustion engine oils and gearbox oils, lubricating oils, oils for turbines and hydraulic oils,

and cognate expressions must be construed accordingly.”;

- (c) in paragraph (3)(c), for “, schedule of carriers or multiple collection consignment note”, substitute “or schedule of carriers”.

**6.** In regulation 8(1), for “Annexes I, II and III”, substitute “Annex III”.

**7.** In regulation 9—

(a) in paragraph (1)—

- (i) for “Annexes I, II and III”, substitute “Annex III”,  
(ii) omit “to the Hazardous Waste Directive”;

(b) after paragraph (1), insert—

“(1A) The Secretary of State must not decide to treat waste as non-hazardous under paragraph (1) if it has been diluted or mixed with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous.”.

**8.** In regulation 18—

(a) after the words “it has been”, insert “diluted or has been”;

(b) after paragraph (a), insert—

“(aa) in the case of hazardous waste comprising waste oil, waste oil of different characteristics;”.

**9.** In regulation 19—

(a) in paragraph (1), for “(2) and (3)”, substitute “(2), (3) and (4)”;

(b) in paragraph (3), omit “or a registered exemption”;

(c) after paragraph (3), insert—

“(4) Paragraph (1) applies to the mixing of waste oil—

- (a) only to the extent that the prohibition in that paragraph is technically feasible and economically viable; and  
(b) only where such mixing would impede the treatment of the waste oil.”.

**10.** In regulation 20(1)(a), omit “or a registered exemption”.

**11.** In regulation 35—

(a) omit paragraphs (1)(c) and (4);

(b) in paragraph (5)—

- (i) for “consignment note, schedule of carriers or multiple collection consignment note”, substitute “consignment note or schedule of carriers”,  
(ii) for “Schedule 4, 5 or 6”, substitute “Schedule 4 or 5”;

(c) after paragraph (5), insert—

“(6) Until the end of the period of 6 months beginning with the day on which the Waste (England and Wales) Regulations 2011 are made—

- (a) a carrier may elect to use the multiple collection procedure which applied immediately before the coming into force of those Regulations; and
- (b) the forms set out in these Regulations as originally enacted, or forms requiring the same information in substantially the same format, may be used instead of those substituted by the Waste (England and Wales) Regulations 2011.”.

**12.** In regulation 36(1), for “38” substitute “39”.

**13.** Omit regulation 38.

**14.** In regulation 42—

- (a) in paragraph (1), for “regulations 43 and 44” substitute “regulation 43”;
- (b) in paragraph (2), omit “38(6)(b) and (c),”.

**15.** In regulation 43(1), omit “other than a case to which regulation 44 applies”.

**16.** Omit regulation 44.

**17.** In regulation 47—

- (a) after paragraph (5)(b), omit “and”;
- (b) in paragraph (5)(c), at the beginning, insert “subject to paragraph (5A),”;
- (c) after paragraph (5), insert—

“(5A) If the person required to make or retain a register has a waste permit pursuant to which the site is operated, the period for retention of a consignment note required to be kept by regulation 51(2)(a) is—

- (a) for 5 years after the deposit of the waste; or
- (b) if the permit authorises disposal of waste in a landfill, until the permit is surrendered or revoked.

(5B) In paragraph (5A), “landfill” has the meaning given in Article 2(g) of Council Directive 1999/31/EC on the landfill of waste, but does not include any operation excluded from the scope of that Directive by Article 3(2).”.

**18.** In regulation 48—

- (a) in paragraph (3)(c), for “Annex IIA or IIB of the Waste Directive”, substitute “Annex I or II of the Waste Directive (as the case may be)”;
- (b) after paragraph (6)(a), omit “and”;
- (c) in paragraph (6)(b), at the beginning, insert “subject to paragraph (6A),”;
- (d) after paragraph (6), insert—

“(6A) If the person required to make or retain a register has a waste permit pursuant to which the site is operated, the period for retention of a consignment note required to be kept by regulation 51(2)(a) is—

- (a) for 5 years after the disposal or recovery of the waste; or
- (b) if the permit authorises disposal of waste in a landfill (in addition to other treatment), until the permit is surrendered or revoked.

(6B) In paragraph (6A), “landfill” has the meaning given in Article 2(g) of Council Directive 1999/31/EC on the landfill of waste, but does not include any waste excluded from the scope of that Directive by Article 3(2).”.

**19.** In regulation 49—

- (a) in paragraph (1), for “consignor of hazardous waste”, substitute “consignor or broker of, or dealer in, hazardous waste”;
- (b) for paragraph (3), substitute—

“(3) Any person required to keep a record by paragraph (1) must preserve it—

- (a) while the person is a holder of the waste or (if not a holder) has control of the waste; and
  - (b) for 3 years after the date on which the waste is transferred to another person.”.
  - (c) in paragraph (4)—
    - (i) after “holder”, insert “, dealer, broker”,
    - (ii) after “recorded”, insert “chronologically”;
  - (d) in paragraph (5)—
    - (i) after the first occurrence of “holder”, insert “, dealer, broker”,
    - (ii) in sub-paragraph (b), before “consignor”, insert “dealer, broker or”.
- 20.** In regulation 50(3), after “entered”, insert “chronologically”.
- 21.** In regulation 51(2)(a), omit—
- (a) “multiple consignment notes and”; and
  - (b) “or 44”.
- 22.** In regulations 52(1) and 55(3), for “Annex IIA or Annex IIB”, substitute “Annex I or Annex II”.
- 23.** Omit regulation 57.
- 24.** In regulation 60—
- (a) in paragraph (1), for “Article 5”, substitute “Article 16”;
  - (b) omit paragraph (2).
- 25.** In regulation 65(c), for “44” substitute “43”.
- 26.** In the table in regulation 65A(1), for “44” substitute “43”.
- 27.** In regulation 69(1)(e), for “44” substitute “43”.
- 28.** Omit Schedules 1, 2 and 6.
- 29.** For Schedule 3, substitute the Schedule set out in Part 2.
- 30.** For Schedule 4, substitute the Schedule set out in Part 3.
- 31.** In paragraph 4(3)(a) of Schedule 7, for “43 or 44” substitute “36 or 43”.
- 32.** In paragraph 7 of Schedule 7—
- (a) in paragraph (1), for “regulation 38(1)”, substitute “the definition of “multiple collection” in regulation 5(1)”;
  - (b) in paragraph (2), omit the words after “these Regulations”;
  - (c) omit paragraph (3).
- 33.** In Schedule 11, omit paragraphs 3 to 6 and 9 to 23.



## PART 2

### The new Schedule 3

#### “SCHEDULE 3

Regulation 3

#### Annex III to the Waste Directive

#### Properties of waste which render it hazardous

- H1 “Explosive”: substances and preparations which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene.
- H2 “Oxidizing”: substances and preparations which exhibit highly exothermic reactions when in contact with other substances, particularly flammable substances.
- H3-A “Highly flammable”
- liquid substances and preparations having a flash point below 21°C (including extremely flammable liquids), or
  - substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any application of energy, or
  - solid substances and preparations which may readily catch fire after brief contact with a source of ignition and which continue to burn or be consumed after removal of the source of ignition, or
  - gaseous substances and preparations which are flammable in air at normal pressure, or
  - substances and preparations which, in contact with water or damp air, evolve highly flammable gases in dangerous quantities.
- H3-B “Flammable”: liquid substances and preparations having a flash point equal to or greater than 21°C and less than or equal to 55°C.
- H4 “Irritant”: non-corrosive substances and preparations which, through immediate, prolonged or repeated contact with the skin or mucous membrane, can cause inflammation.
- H5 “Harmful”: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may involve limited health risks.
- H6 “Toxic”: substances and preparations (including very toxic substances and preparations) which, if they are inhaled or ingested or if they penetrate the skin, may involve serious, acute or chronic health risks and even death.
- H7 “Carcinogenic”: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce cancer or increase its incidence.
- H8 “Corrosive”: substances and preparations which may destroy living tissue on contact.
- H9 “Infectious”: substances and preparations containing viable micro-organisms or their toxins which are known or reliably believed to cause disease in man or other living organisms.
- H10 “Toxic for reproduction”: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce non-hereditary congenital

malformations or increase their incidence.

- H11 “Mutagenic”: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce hereditary genetic defects or increase their incidence.
- H12 Waste which releases toxic or very toxic gases in contact with water, air or an acid.
- H13(\*) “Sensitizing”: substances and preparations which, if they are inhaled or if they penetrate the skin, are capable of eliciting a reaction of hypersensitization such that on further exposure to the substance or preparation, characteristic adverse effects are produced.
- (\*) As far as testing methods are available.
- H14 “Ecotoxic”: waste which presents or may present immediate or delayed risks for one or more sectors of the environment.
- H15 Waste capable by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics above.

### Notes

1. Attribution of the hazardous properties “toxic” (and “very toxic”), “harmful”, “corrosive”, “irritant”, “carcinogenic”, “toxic to reproduction”, “mutagenic” and “ecotoxic” is made on the basis of the criteria laid down by Annex VI to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances.

2. Where relevant the limit values listed in Annex II and III to Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations shall apply.

### Test methods

The methods to be used are described in Annex V to Directive 67/548/EEC and in other relevant CEN-notes.”



## Amendments to the Environmental Permitting (England and Wales) Regulations 2010

1. The Environmental Permitting (England and Wales) Regulations 2010<sup>(a)</sup> are amended as follows.

2. In regulation 2—

(a) in paragraph (1), for the definition of “waste”, substitute—

““waste”, except where otherwise defined, and subject to paragraph (4), means anything that—

(a) is waste within the meaning of Article 3(1) of the Waste Framework Directive; and

(b) is not excluded from the scope of that Directive by Article 2(1), (2) or (3).”;

(b) after paragraph (3), insert—

“(4) Notwithstanding section 15(2) of the Radioactive Substances Act 1993, radioactive waste must be treated as waste for the purposes of these Regulations and is subject to the requirement for an environmental permit where it—

(a) would (but for this paragraph) be exempt from the requirement for an environmental permit by virtue of—

(i) the Radioactive Substances (Phosphatic Substances, Rare Earths etc.) Exemption Order 1962;

(ii) the Radioactive Substances (Lead) Exemption Order 1962; or

(iii) the Radioactive Substances (Substances of Low Activity) Exemption Order 1986; and

(b) is subject to a radioactive substances activity falling within paragraph 5(2)(b) or (c) or (4) of Part 2 of Schedule 23.”.

3. In regulation 3, for the definition of “the Waste Framework Directive”, substitute—

““the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste;”.

4.—(1) Regulation 72 is renumbered as paragraph (1) of that regulation.

(2) After that paragraph, insert—

“(2) But on the coming into force of the Waste (England and Wales) Regulations 2011, paragraph (1) ceases to apply to radioactive waste to the extent that it is to be treated as waste by virtue of regulation 2(4).”.

5. In Part 2 of Schedule 1—

(a) in paragraph 1 of Section 5.1 of Chapter 5—

(i) in the definition of “hazardous waste”, for “Article 4”, substitute “Article 13”,

(ii) in the definition of “waste”, for “Article 1(1)(a)”, substitute “Article 3(1)”;

(b) in paragraph (c) of Part A(1) of Section 5.3 and in paragraph 3 following that Part of that Section, for each occurrence of “Annex IIA”, substitute “Annex I”;

(c) in paragraph 3 following Part A(1) of Section 5.4, for “Annex IIB”, substitute “Annex II”.

6. In Schedule 2—

(a) omit paragraph 2(3);

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<sup>(a)</sup> S.I. 2010/675, to which there are amendments not relevant to these Regulations.

- (b) in paragraph 3(1)(c), for “Article 4(1)” substitute “Article 13”;
- (c) in paragraph 14—
  - (i) in sub-paragraph (3)(a), after “keep”, insert “chronological”,
  - (ii) for sub-paragraph (4)(a), substitute—
    - “(a) retain any records that it is required to keep under sub-paragraph (3) for a period of—
      - (i) 3 years, if the operation involves the treatment of hazardous waste;
      - (ii) otherwise 2 years;”.

**7. In Section 2 of Chapter 2 of Part 1 of Schedule 3—**

- (a) in the table in paragraph U9 (use of waste to manufacture finished goods), omit the tenth entry (020106);
- (b) in each of the tables in paragraphs U10 (spreading waste on agricultural land to confer benefit) and U11 (spreading waste on non-agricultural land to confer benefit), omit the second entry (020106).

**8. In section 2 of Chapter 3 of Part 1 of Schedule 3—**

- (a) in the table in paragraph T13 (treatment of food waste)—
  - (i) omit the first entry (020203, 020501),
  - (ii) in the second entry (020304, 020501, 020601, 020704), omit the words “excluding milk only”,
  - (iii) in the third entry (200199), omit the words “but excluding foods covered by the Animal By-Products Regulations”;
- (b) omit paragraph T22 (treatment of animal by-product waste at a collection centre).

**9. In Schedule 9—**

- (a) for paragraph 4 substitute—

**“Exercise of relevant functions**

**4.—(1) The regulator must exercise its relevant functions—**

- (a) 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 by a waste operation;
  - (ii) waste generated by a waste operation is treated in accordance with Article 4 of the Waste Framework Directive;
- (b) for the purposes of implementing Article 13 of the Waste Framework Directive, but not in respect of nuisances and hazards arising from traffic beyond the site of a waste operation;
- (c) so as to ensure that the requirements in the second paragraph of Article 23(1) of the Waste Framework Directive are met;
- (d) 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);
  - (iii) Article 23(4);
  - (iv) Article 35(1).

(2) But the following duties take effect in relation to an environmental permit which is in force on the date of coming into force of the Waste (England and Wales) Regulations 2011 on the first review of the permit by the regulator (under regulation 34(1)) after that date—

- (a) the duty in paragraphs (1)(a), (1)(d)(i) and (1)(d)(iii);
  - (b) the duty in paragraph (1)(c), to the extent that it is imposed in relation to Article 23(1)(e) and (f).”;
- (b) omit paragraph 5.
- 10.** In Schedule 10, for paragraph 5(1)(d), substitute—
- “(d) Article 8, but not in respect of nuisances and hazards arising from traffic beyond the site of a landfill;”.
- 11.** In paragraph 2 of Schedule 11, in each definition of “waste”, for “Article 1(1)(a)”, substitute “Article 3(1)”.
- 12.** In paragraph 2(2)(c) of Schedule 12, for “Article 1(1)(a)”, substitute “Article 3(1)”.
- 13.** In paragraph 2 of Schedule 21, in paragraph (a) of the definition of “waste”, after “Article 2(1)”, insert “, (2) or (3)”.
- 14.** In Part 1 of Schedule 25—
- (a) omit the definitions in paragraph 1(1) except for “collection”, “collection point” and “place of production”;
  - (b) for the definition of “collection”, substitute ““collection” has the same meaning as in Article 3(10) of the Waste Framework Directive;”;
  - (c) omit paragraph 2.
- 15.** Omit Part 2 of Schedule 25.

## SCHEDULE 4

Regulation 48(3)

### Amendments to other legislation

#### PART 1

##### Public General Acts

#### **The Control of Pollution (Amendment) Act 1989**

- 1.** After section 9(1A) of the Control of Pollution (Amendment) Act 1989**(a)**, insert—
- “(1AA) But, in the case of a waste collection authority that is a regulation authority by virtue of subsection (1A), the powers conferred on that authority under sections 5 to 7 above are not exercisable by that authority in relation to specified persons (within the meaning of Part 8 of the Waste (England and Wales) Regulations 2011).”.

#### **The Town and Country Planning Act 1990**

- 2.** In section 336(1) of the Town and Country Planning Act 1990**(b)**, for the definition of “waste”, substitute—
- ““waste” includes anything that—
- (a) is waste within the meaning of Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste, and
  - (b) is not excluded from the scope of that definition by Article 2(1), (2) or (3);”.

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**(a)** 1989 c. 14. Section 9(1A) was inserted by section 55 of the Anti-social Behaviour Act 2003.

**(b)** 1990 c. 8.

### **The Environmental Protection Act 1990**

3.—(1) The Environmental Protection Act 1990(a) is amended as follows.

(2) In section 33(13)(b), for “Annex IIA or IIB of Directive 2006/12/EC of the European Parliament and of the Council on waste”, substitute “Annex I or II of Directive 2008/98/EC of the European Parliament and of the Council on waste”.

(3) In section 34(1), for “as a broker”, substitute “as a dealer or broker”.

(4) In section 34(3)(c), at the end, insert “or by virtue of regulations under section 2 of the Pollution Prevention and Control Act 1999”.

(5) Omit section 44A(c).

(6) In section 57(8), for the definition of “waste” substitute—

““waste” means anything that is waste within the meaning of Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste including anything excluded from the scope of that Directive by Article 2(1)(f) or 2(2)(b) or (c), but not including anything excluded by the remainder of that Article”.

(7) In section 62A(d)—

(a) in each of subsections (1)(b) and (2)(b), for “Council Directive 91/689/EEC”, substitute “Directive 2008/98/EC”;

(b) for subsection (3), substitute—

“(3) In this section “the Hazardous Waste List” means the list of wastes established by Commission Decision 2000/532/EC.”.

(8) In section 75(e)—

(a) for subsection (2), substitute—

“(2) “Waste” means anything that is waste within the meaning of Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste.”;

(b) omit subsections (10) to (12).

(9) Omit Schedules 2A and 2B(f).

### **The Environment Act 1995**

4.—(1) The Environment Act 1995(g) is amended as follows.

(2) In section 41(1)(c)(h), for “Council Directive 91/689/EEC”, substitute “Directive 2008/98/EC to the extent that it relates to hazardous waste (within the meaning given by Article 3(2) of that Directive)”.

(3) In section 56(1), for paragraph (h) of the definition of “environmental licence”, substitute—

“(h) registration of a person as a broker of or dealer in controlled waste under any provision which gives effect in England and Wales to Article 26(b) of Directive 2008/98/EC of the European Parliament and of the Council on waste.”.

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(a) 1990 c. 43.

(b) Section 33(13) was inserted by S.I. 2007/3538, regulation 73 and paragraphs 2 and 4(6) of Schedule 21.

(c) Section 44A was inserted by the Environment Act 1995 (c. 25) and amended by S.I. 2007/3538, regulation 73 and paragraphs 2 and 12 of Schedule 21.

(d) Section 62A was inserted by S.I. 2005/894, regulation 72(3).

(e) Section 75(2) was amended by the Environment Act 1995 (c. 25), section 120(1) and paragraph 88 of Schedule 22.

(f) Schedule 2A was inserted by the Environment Act 1995 (c. 25), section 92 and Schedule 12. Schedule 2B was inserted by section 120 and paragraph 95 of Schedule 22 to that Act.

(g) 1995 c.25.

(h) Section 41(1)(c) was amended in relation to England by S.I. 2005/894, regulation 59, and in relation to Wales by S.I. 2005/1806 (W. 138), regulation 59.

### **The Greater London Authority Act 1999**

- 5.—(1) The Greater London Authority Act 1999(a) is amended as follows.
- (2) In section 353 for subsection (4)(a) substitute—
- “(a) the national waste management plan;”.
- (3) In section 354, in subsection (2)(b) for the words from “strategy prepared by” to “waste strategy)” substitute “national waste management plan”.
- (4) In section 360, in subsection (2) after the definition of “municipal waste” insert—
- ““the national waste management plan” has the same meaning as in the Waste (England and Wales) Regulations 2011;”.

### **The Waste and Emissions Trading Act 2003**

6. For section 37(2) of the Waste and Emissions Trading Act 2003(b), substitute—
- “(2) For the purposes of this section, “the Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste.”.

### **The Government of Wales Act 2006**

- 7.—(1) The Government of Wales Act 2006(c) is amended as follows.
- (2) In Field 6 of Part 1 of Schedule 5—
- (a) after the heading “*Not included in matters 6.1 and 6.2*”, in paragraph (a), for “Article 2(1)(b)(v)” substitute “Article 2(1)(e)”;
- (b) after the heading “*Other interpretation of this field*” for the definition of “Waste Directive” substitute—
- ““Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste”.

## **PART 2**

### **Secondary legislation**

### **The Town and Country Planning (Use Classes) Order 1987**

8. For article 3(6)(j) of the Town and Country Planning (Use Classes) Order 1987(d), substitute—
- “(j) as a waste disposal installation for the incineration, chemical treatment (as defined in Annex I to Directive 2008/98/EC under heading D9) or landfill of hazardous waste as defined (in relation to England) in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005 or (in relation to Wales) in regulation 6 of the Hazardous Waste (Wales) Regulations 2005;”.

### **The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991**

- 9.—(1) The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991(e) are amended as follows.
- (2) In regulation 1(2), omit all the definitions except “the 1989 Act” and “notice”.

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(a) 1999 c. 29.

(b) 2003 c. 33.

(c) 2006 c. 32. Field 6 of Part 1 of Schedule 5 was inserted by S.I. 2010/248.

(d) S.I. 1987/764, amended by S.I. 1999/293. There are other amendments but none is relevant.

(e) S.I. 1991/1624; relevant amending instruments are S.I. 1992/588, 1994/1056, 1996/593, 1998/605, 2006/937, 2007/3538.



(3) Omit regulation 1(3), regulations 2 to 18 and Schedule 1.

#### **The Environment Act 1995 (Consequential Amendments) Regulations 1996**

10. Omit paragraphs 9 and 10 of Schedule 2 to the Environment Act 1995 (Consequential Amendments) Regulations 1996(a).

#### **The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999**

11. In Schedule 1 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999(b), in each of paragraphs 9 and 10, for “Annex IIA to Council Directive 75/442/EEC” substitute “Annex I to Directive 2008/98/EC”.

#### **The Town and Country Planning (Development Plan) (England) Regulations 1999**

12.—(1) The Town and Country Planning (Development Plan) (England) Regulations 1999(c) are amended as follows.

- (2) In regulation 2, in paragraph (1) for the definition of “national waste strategy” substitute—  
“the national waste management plan” has the same meaning as in the Waste (England and Wales) Regulations 2011;”.
- (3) In regulation 9, for sub-paragraph (b) of paragraph (1) substitute—  
“(b) the national waste management plan;”.
- (4) In regulation 20, for sub-paragraph (b) of paragraph (1) substitute—  
“(b) the national waste management plan;”.

#### **The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000**

13.—(1) The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000(d) are amended as follows.

- (2) In regulation 2(1)—
  - (a) in the definition of “disposal”, for “Annex IIA of Directive 75/442/EEC, as amended,”, substitute “Annex I of Directive 2008/98/EC on waste”;
  - (b) in the definition of “used PCBs”, for “Directive 75/442/EEC”, substitute “Directive 2008/98/EC”.
- (3) In the title to Schedule 1, for “Annex IIA of Directive 75/442/EEC on waste, as amended”, substitute “Annex I of Directive 2008/98/EC on waste”.

#### **The Town and Country Planning (London Spatial Development Strategy) Regulations 2000**

14. In regulation 6 (regard to be had to certain matters and statement of regard) of the Town and Country Planning (London Spatial Development Strategy) Regulations 2000(e), for paragraph (1)(a) substitute—

“(a) the national waste management plan within the meaning of the Waste (England and Wales) Regulations 2011;”.

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(a) S.I. 1996/593.

(b) S.I. 1999/293; relevant amending instruments are S.I. 2005/894, S.I. 2005/1806 (W. 138).

(c) S.I. 1999/3280, to which there are amendments not relevant to these Regulations.

(d) S.I. 2000/1043, to which there are amendments not relevant to these Regulations.

(e) S.I. 2000/1491, to which there are amendments not relevant to these Regulations.

### **The Packaging (Essential Requirements) Regulations 2003**

15. In regulation 2(2) of the Packaging (Essential Requirements) Regulations 2003(a)—
- (a) in the definition of “packaging waste”, for “Article 1” substitute “Article 3(1)”;
  - (b) for the definition of “recovery”, substitute—  
““recovery” has the meaning given by Article 3(15) of the Waste Directive;”;
  - (c) for the definition of “Waste Directive”, substitute—  
““the Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste”.

### **The End-of-Life Vehicles Regulations 2003**

16. In regulation 2 of the End-of-Life Vehicles Regulations 2003(b)—
- (a) in the definition of “end-of-life vehicle”, for “Article 1(a)”, substitute “Article 3(1)”;
  - (b) for the definition of “recovery”, substitute—  
““recovery” has the meaning given by Article 3(15) of the Waste Directive;”;
  - (c) for the definition of “the Waste Directive”, substitute—  
““the Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste”.

### **The Town and Country Planning (Local Development) (England) Regulations 2004**

17.—(1) The Town and Country Planning (Local Development) (England) Regulations 2004(c) are amended as follows.

- (2) In regulation 2(1), for the definition of “national waste strategy” substitute—  
““national waste management plan” has the same meaning as in the Waste (England and Wales) Regulations 2011;”.
- (3) In regulation 15, for sub-paragraph (f) of paragraph (1) substitute—  
“(f) the national waste management plan;”.

### **The Landfill Allowances and Trading Scheme (England) Regulations 2004**

18. In regulation 2(1) of the Landfill Allowances and Trading Scheme (England) Regulations 2004(d), in the definitions of “disposal” and “recovery”, for “Council Directive 75/442 on waste”, substitute “Directive 2008/98/EC on waste”.

### **The End-of-Life Vehicles (Producer Responsibility) Regulations 2005**

19. In regulation 2 of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005(e)—
- (a) in the definition of “end-of-life vehicle”, for “Article 1(a)”, substitute “Article 3(1)”;
  - (b) for the definition of “recovery”, substitute—  
““recovery” has the meaning given by Article 3(15) of the Waste Directive;”;
  - (c) for the definition of “the Waste Directive”, substitute—  
““the Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste”.

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(a) S.I. 2003/1941, to which there are amendments not relevant to these Regulations.  
(b) S.I. 2003/2635, amended by S.I. 2007/3538. There are other amendments but none is relevant.  
(c) S.I. 2004/2204, to which there are amendments not relevant to these Regulations.  
(d) S.I. 2004/3212, to which there are amendments not relevant to these Regulations.  
(e) S.I. 2005/263, to which there are amendments not relevant to these Regulations.

### **The List of Wastes (England) Regulations 2005**

**20.**—(1) The List of Wastes (England) Regulations 2005(a) are amended as follows.

(2) In regulation 2—

(a) for sub-paragraph (a) of paragraph (1), substitute—

““the Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste”;

(b) for sub-paragraph (c) of paragraph (1), substitute—

“(c) a reference to hazardous properties is a reference to the properties set out in Annex III to the Waste Directive.”;

(c) for sub-paragraph (b) of paragraph (2), substitute—

“(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, and a reference to the List of Wastes includes a reference to its introduction (“the Introduction to the List”).”.

(3) In regulation 4—

(a) before “properties”, insert “hazardous”;

(b) omit “of Annex III”.

(4) Omit paragraphs 1 and 2 of Schedule 2.

### **The Waste Management (England and Wales) Regulations 2006**

**21.** Omit regulations 4 and 12 of the Waste Management (England and Wales) Regulations 2006(b).

### **The Waste Electrical and Electronic Equipment Regulations 2006**

**22.** In regulation 2(1) of the Waste Electrical and Electronic Equipment Regulations 2006(c)—

(a) in the definition of “disposal”, for the words from “Annex IIA” to the end, substitute “Annex I to Directive 2008/98/EC of the European Parliament and of the Council on waste”;

(b) in the definition of “recovery”, for the words “Annex IIB to Directive 2006/12/EC”, substitute “Annex II to Directive 2008/98/EC”;

(c) in the definition of “waste electrical and electronic equipment”, for the words “Article 1(a) of Directive 2006/12/EC”, substitute “Article 3(1) of Directive 2008/98/EC”.

### **The Producer Responsibility Obligations (Packaging Waste) Regulations 2007**

**23.**—(1) The Producer Responsibility Obligations (Packaging Waste) Regulations 2007(d) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1), for the definition of “the Waste Directive”, substitute—

““the Waste Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste”;

(b) in paragraph (2), in the definition of “recovery”, for “Annex IIB” substitute “Annex II”.

(3) In paragraph 2 of Schedule 7—

(a) in sub-paragraph (b), for “Annex IIB” substitute “Annex II”;

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(a) S.I. 2005/895, to which there are amendments not relevant to these Regulations.

(b) S.I. 2006/937, to which there are amendments not relevant to these Regulations.

(c) S.I. 2006/3289, to which there are amendments not relevant to these Regulations.

(d) S.I. 2007/871, to which there are amendments not relevant to these Regulations.

- (b) in sub-paragraph (c), for “Annex IIA or Annex IIB” substitute “Annex I or II”.

#### **The Transfrontier Shipment of Waste Regulations 2007**

24. In regulation 11 of the Transfrontier Shipment of Waste Regulations 2007(a), for “Article 7 of Directive 2006/12/EC” substitute “Article 28 of Directive 2008/98/EC”.

#### **The Environmental Permitting (England and Wales) Regulations 2007**

25. Omit paragraphs 12, 31 and 32 of Schedule 21 to the Environmental Permitting (England and Wales) Regulations 2007(b).

#### **The Town and Country Planning (Mayor of London) Order 2008**

26. In article 6 of the Town and Country Planning (Mayor of London) Order 2008(c), for paragraph (2)(g) substitute—

“(g) the national waste management plan within the meaning of the Waste (England and Wales) Regulations 2011 and prepared by the Secretary of State;”.

#### **The Batteries and Accumulators (Placing on the Market) Regulations 2008**

27. For regulation 7(3) of the Batteries and Accumulators (Placing on the Market) Regulations 2008(d), substitute—

“(3) In this regulation “waste battery” means any battery which is waste within the meaning of Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste.”.

#### **The Environmental Damage (Prevention and Remediation) Regulations 2009**

28. In Schedule 2 to the Environmental Damage (Prevention and Remediation) Regulations 2009(e), in paragraph 3(1), for the words from “Directive 2006/12/EC” to the end, substitute “Directive 2008/98/EC of the European Parliament and of the Council on waste”.

#### **The Renewables Obligation Order 2009**

29. In article 2(1) of the Renewables Obligation Order 2009(f)—

- (a) in the definition of “hazardous waste”, for “Article 1(4) of the Hazardous Waste Directive”, substitute “Article 3(2) of Directive 2008/98/EC of the European Parliament and of the Council on waste”;
- (b) omit the definition of “Hazardous Waste Directive”.

#### **The Waste Batteries and Accumulators Regulations 2009**

30. In regulation 2(1) of the Waste Batteries and Accumulators Regulations 2009(g),—

- (a) in the definition of “disposal”, for “Annex IIA to Directive 2006/12/EC”, substitute “Annex I to Directive 2008/98/EC”;
- (b) for the definition of “waste battery”, substitute—

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(a) S.I. 2007/1711, to which there are amendments not relevant to these Regulations.  
(b) S.I. 2007/3538, to which there are amendments not relevant to these Regulations.  
(c) S.I. 2008/580.  
(d) S.I. 2008/2164.  
(e) S.I. 2009/153, to which there are amendments not relevant to these Regulations.  
(f) S.I. 2009/785, to which there are amendments not relevant to these Regulations.  
(g) S.I. 2009/890.

“waste battery” means any battery which is waste within the meaning of Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council on waste;”.

**The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009**

31. In Schedule 1 to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(a), in each of paragraphs 9 and 10, for “Annex IIA to Council Directive 75/442/EEC” substitute “Annex I to Directive 2008/98/EC”.

**SCHEDULE 5**

Regulation 48(4)

**Revocations**

The following instruments are revoked to the extent specified.

<i>Regulations revoked</i>	<i>References</i>	<i>Extent of revocation</i>
The Environmental Protection (Duty of Care) Regulations 1991	S.I. 1991/2839	The Regulations insofar as they apply in England and Wales
The Waste Management Licensing Regulations 1994	S.I. 1994/1056	The Regulations insofar as they apply in England and Wales
The Controlled Waste (Registration of Carriers and Seizure of Vehicles) (Amendment) Regulations 1998	S.I. 1998/605	The Regulations insofar as they apply in England and Wales
The Environmental Protection (Duty of Care) (England) (Amendment) Regulations 2003	S.I. 2003/63	The whole Regulations
The Environmental Protection Act 1990 (Amendment of Section 57) (England and Wales) Regulations 2005	S.I. 2005/3026	The whole Regulations

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations transpose, for England and Wales, Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No. L 312, 22.11.2008, p3).

Part 2 requires the establishment of waste prevention programmes and makes related provision.

Part 3 and Schedule 1 require waste management plans for England and Wales.

Part 4 and Schedule 1 make supplementary provision in relation to waste prevention programmes and waste management plans, including provision for public participation in their preparation and revision.

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(a) S.I. 2009/2263.

Part 5 imposes duties in relation to the improved use of waste as a resource. Regulation 12 requires the waste hierarchy in Article 4 of the Directive to be applied as a priority order. Regulations 13 and 14 apply from 1st January 2015 to require the separate collection of waste paper, metal, plastic and glass and prohibit mixing of those wastes once separately collected.

Part 6 imposes duties on planning authorities (defined in regulation 16(3)) when exercising certain functions under the planning Acts (defined in regulation 16(2)).

Part 7 imposes duties on authorities responsible for licensing deposits of waste at sea.

Part 8 makes provision in relation to carriers of waste and brokers and dealers in waste and Part 9 provides for the transfer note to be completed on the transfer of waste.

Part 10 provides for enforcement.

Part 11 and Schedules 2 to 4 make provision in relation to the reduction of administrative burden, radioactive waste and the amendment and revocation of other legislation.

A full impact assessment of the effect that this instrument will have on business, the voluntary sector and the public sector is available from the Waste Programme, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL and is annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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