

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(1) 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
- (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—

(1) [S.I. 2005/894](#) amended by [S.I. 2006/937](#), [2007/3476](#), [2007/3538](#), [2009/507](#), [2010/675](#), [2010/1159](#).

- ““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.”

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