

**EXPLANATORY MEMORANDUM TO THE  
LIST OF WASTES (ENGLAND) REGULATIONS**

**2005 No. 895**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum does not contain information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 These Regulations implement the European Waste List pursuant to Article 1(a) of Directive 75/442/EEC on waste and Article 1(4) of Directive 91/689/EEC on hazardous waste (as set out in Decision 2000/532/EC (as amended by 2001/118/EC, 2001/119/EC and 2001/573/EC)).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative Background**

- 4.1 The Regulations are made under section 2(2) of the European Communities Act 1972 (1972 c.68).

- 4.2 The Waste Framework Directive (Directive 75/442/EEC) controls the recovery and disposal of waste. The Waste Framework Directive is implemented through a variety of regulatory regimes though the main one is Part 2 of the Environmental Protection Act 1990 (see in particular Schedule 4 to the Waste Management Licensing Regulations 1994 (S.I.1994/1056). Article 1(a) of the Directive includes a requirement for the European Commission to draw up a list of waste. The purpose of this is to provide a classification of wastes and a common terminology which will aid the management of waste within the Community.

- 4.3 The Hazardous Waste Directive (91/689/EEC) supplements the Waste Framework Directive by imposing additional requirements on waste which displays certain hazardous properties. Article 1(4) of the Hazardous Waste Directive includes a requirement for a list of hazardous waste. The purpose is to have a more precise and uniform definition of hazardous waste within the Community.

- 4.4 In 2000, the European Commission agreed a new consolidated list of waste to fulfil both these purposes in Decision 2000/532/EC. This has been amended by Decisions in 2001/118/EC, 2001/119/EC and 2001/573/EC. The List of Wastes Regulations transpose this list.

- 4.5 The Regulations will provide a national list which will meet the purposes of the lists referred to in article 1(a) of the Waste Framework Directive and the first

indent of article 1(4) of the Hazardous Waste Directive. It will be possible to identify waste by means of the entries on the list as they are set out from time to time in our national legislation. Presence on the list will not itself mean that a substance is waste, but it does indicate that it may be.

4.6 The effect of a waste being listed as a hazardous waste is that the waste will fall within the definition of hazardous waste in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005. The controls which apply to hazardous waste in those Regulations will therefore apply. More generally other controls which apply to hazardous waste (eg in relation to landfills) will also apply as the relevant regulations will cross refer. At present, definition of hazardous waste is made by reference to the European legislation. This will no longer be necessary.

4.7 It should be noted that Member States must apply hazardous waste controls to waste which is not on the list but which exhibits hazardous properties. This is being transposed in England by the Hazardous Waste (England and Wales) Regulations 2005.

4.8 A transposition note relating to the Hazardous Waste Directive is attached at Annex A. This also covers the Hazardous Waste (England and Wales) Regulations 2005.

## **5. Extent**

5.1 This instrument applies to England.

## **6. European Convention on Human Rights**

6.1 Not applicable

## **7. Policy background**

7.1 The regulations are being made to transpose the European Waste Catalogue, implemented by the European Commission on 1 January 2002. The Catalogue lists all wastes, grouped according to generic industry, process or waste type and differentiates between hazardous and non-hazardous waste.

7.2 The regulations are part of a change from the domestic special waste regime to one which applies the Community term hazardous waste. This is intended to provide a clearer and more effective transposition.

7.3 These regulations were issued for consultation in July 2004 and the response was broadly favourable.

## **8. Impact**

8.1 A Regulatory Impact Assessment is not required for these regulations because they will have no direct impact.

## **9. Contact**

Alison Gadsby at Defra Tel: 020 7082 8759 or e-mail: [alison.gadsby@defra.gsi.gov.uk](mailto:alison.gadsby@defra.gsi.gov.uk) can answer any queries regarding the instrument.

(These contact details are supplied for Parliamentary purposes only. For HMSO Online, these details should be deleted and replaced by [waste.policy@defra.gsi.gov.uk](mailto:waste.policy@defra.gsi.gov.uk).)

**TRANSPOSITION OF THE HAZARDOUS WASTE DIRECTIVE 1991/689/EEC**  
**This Transposition Note has been prepared by the Department for Environment, Food and Rural Affairs to show how the main elements of Directive 91/689/EEC of 12 December 1991 and which approximate the laws of the member states on the controlled management of hazardous waste have been transposed.**

**This note has been published to accompany the Hazardous Waste (England and Wales) Regulations 2005 and the List of Wastes (England) Regulations 2005, which were laid before Parliament on**

### **Background**

The Waste Framework Directive (75/442/EEC) as amended controls the recovery and disposal of waste. The Hazardous Waste Directive supplements these requirements with additional controls for hazardous waste. Article 1(4) of the Directive defines "hazardous waste" as waste on a list drawn up by the European Commission. The current list is set out in EC Decision 2000/532/EC [http://europa.eu.int/eur-lex/en/consleg/pdf/2000/en\\_2000D0532\\_do\\_001.pdf](http://europa.eu.int/eur-lex/en/consleg/pdf/2000/en_2000D0532_do_001.pdf) as amended by 2001/118/EC, 2001/119/EC and 2001/573/EC.

These have so far been transposed by the Special Waste Regulations made under Part 2 of the 1990 Act. These Regulations revoke those in England and put in place a new regime, which refers to Directive terms more clearly. Similar amendments are being made in Wales. Article 1(4) of the Directive (which deals with the definition of hazardous waste) is in part transposed in Wales by these Regulations.

### **Main elements of the Directive**

<b>HAZARDOUS WASTE DIRECTIVE (91/689/EEC)</b>			
<b>Articles</b>	<b>Objectives</b>	<b>Implementation</b>	<b>Responsibility</b>
1(4)	Definition of Hazardous Waste. This has been supplemented by a list set out in Commission Decision 2000/532/EC. Article 3 of the Decision also allows Member States to determine that waste indicated as hazardous on the list does not display the relevant properties.	Regulation 6 (a) defines as hazardous waste that is listed as hazardous in the List of Wastes as set out from time to time in the List of Wastes (England) Regulations 2005. This replicates the European List.	The European Commission has responsibility for changes to the European List. The Secretary of State will be responsible for transposing any future changes in the List of Wastes (England) Regulations 2005.
	The European list can be supplemented by waste that Member States consider also displays hazardous properties. .	Regulation 6 (b) includes in the definition of "hazardous", wastes listed as such in Regulations under section 62A of the Environmental Protection Act 1990. Section 62A (as inserted by Part 11 of these regulations), requires the Secretary of State to include on a list any waste in England which is not on the European list but appears to display	The Regulations give the responsibility of designating extra wastes as hazardous in England to the Secretary of State and in Wales to the National Assembly for Wales.

		hazardous properties. The National Assembly for Wales are under the same duty in Wales	
Article 1(5)	Domestic waste is excluded from the Directive's requirements.	Regulation 12(2) excludes domestic waste from the requirements of the regulations.	The Secretary of State has carried forward this requirement in regulation 12(2).
Article 2(1)	On every site where hazardous waste is tipped (discharged) the waste must be recorded and identified.	Regulation 47 requires any person tipping or discharging hazardous waste to record and identify the waste in accordance with various requirements set out in the regulation.  Regulation 48 places record keeping requirements on other disposal or recovery of hazardous waste or waste received by treatment and transfer stations.	Those who receive hazardous waste (consignees).
Article 2(2)	Establishments and undertakings, which dispose of, recover, collect or transport hazardous waste must not mix different categories of hazardous waste, nor mix hazardous waste with non-hazardous waste or other substances and materials.	Regulation 18 defines mixing as the mixing of hazardous waste with a different category of hazardous waste, with a non-hazardous waste or with any other substance or material. Regulation 19(1) prohibits establishments or undertakings that carry out the disposal or recovery of hazardous waste, or which produce, collect or transport hazardous waste, from mixing the waste.	Anyone who produces, collects, or transports hazardous waste and anyone who carries out disposal and/or recovery of hazardous waste.
Article 2(3)	As a derogation from Article 2(2), mixing can be allowed where the operation is subject to the permitting requirements in Articles 9,10 and 11 of Directive 75/442/EEC.	Regulation 19(3) disapplies the prohibition in regulation 19(1), where the mixing operation is authorised and conducted in accordance with the requirements of a waste permit.	Any holder of hazardous waste who mixes must obtain prior authorisation.
Article 2(4)	Where waste is already mixed with other waste, substances or materials, separation must be effected where technically and economically feasible and where necessary to comply with Article 4 of Directive 75/442/EEC (The Waste Directive).	Regulation 20 places a duty on the holder of hazardous waste to separate mixed waste where separation is technically and economically feasible and necessary to comply with Waste Directive conditions.	The holder of the waste.
Article 3	This disapplies the derogation from permitting requirements offered to those who carry out their own waste disposal given in Article 11 (1)(a) of Directive 75/442/EEC. It also allows Member States to waive the permitting requirements of Article 10 of that Directive for establishments that recover hazardous waste, where rules are adopted for such exemptions, the	Permitting requirements and exemptions are already covered by the Waste Management Licensing Regulations 1994 (as amended) and by other parallel regimes. These Regulations do not address article 3.	Secretary of State

	establishments or organizations using them are registered with the competent authorities and the rules are notified to the EC at least three months before they come into force.		
Article 4 (1)	The requirements of Article 13 of Directive 75/442/EEC (for appropriate periodic inspections by the competent authorities) are also to apply to producers of hazardous waste.	Regulation 56 places a duty on the Environment Agency to carry out appropriate periodic inspections of hazardous waste producers.	Environment Agency
Article 4(2)	The requirements of Article 14 of Directive 75/442/EEC (to keep records of the quantities, nature, origin and, where relevant, the destination, frequency of collection, mode of transport and treatment method and to make these records available, on request, to the competent authority) are also to apply to producers and to all establishments and undertakings that transport hazardous waste.	Regulation 49(1) places an obligation on producers of hazardous waste to keep records of the quantity, nature, origin and, where relevant, the destination, frequency of collection, mode of transport and treatment method of the waste.  Regulation 50(1) places the same obligation on establishments or undertakings that transport hazardous waste.  Regulation 55(1) places a duty on anybody required to keep such records, to produce the record at the request of the Environment Agency.	Hazardous waste producers
Article 4(3)	Requires records to be kept for at least three years except in the case of establishments and undertakings transporting hazardous waste when they need to be kept only for 12 months. Documentary evidence that management operations have been carried out must be supplied at the request of the competent holders or of a previous holder.	Regulation 50(2) requires establishments and undertakings that transport hazardous waste to keep their record for at least 12 months.  Regulations 47(5)(c)(i), 48(6)(b)(i) and 49(3) require that all other records be kept for three years unless the permit under which the site is operated is surrendered or revoked. In that case the records are sent to the Agency, which is required to keep them for at least 3 years.  Regulation 55(3) places a duty on waste management facilities to provide the Environment Agency on request with evidence that management operations have been carried out.  Regulation 52(1) places a duty on waste management facilities to provide previous holders with evidence that management operations have been carried out.	

Article 5(1)	Hazardous waste must be properly packaged and labelled in accordance with the international and Community Standards in force.	Packaging and labelling requirements are not affected by these Regulations and apply in addition to any requirements included.	Waste holder
Article 5(2)	Requires that hazardous waste inspections concerning collection and transport operations made on the basis of Article 13 of Directive 75/442/EEC shall cover more particularly the origin and destination of the waste.	Regulation 57 places a duty on the Environment Agency to conduct these inspections so that they cover more particularly the origin and destination of the hazardous waste. The duty to inspect is transposed already under paragraph 13 of Schedule 4 to the Waste Management Licensing Regulations 1994 (S.I.1994/1056).	Environment Agency
Article 5(3)	Hazardous waste is to be accompanied by an identification form containing the details specified in Section A of Annex I to Council Directive 84/631/EEC (as amended).	Regulation 36 and Part 6 require the completion of a consignment note where waste is removed from any premises. The consignment note includes the details specified in Section A Annex I to Council Directive 84/631/EEC (as amended). Schedule 7 deals with the recognition of consignment notes produced in other parts of the UK and Gibraltar.	The waste producers, holders, carriers and consignees all have responsibilities to complete these notes.
Article 6	Member States must draw up Waste Plans and make them public.	The Waste Strategy made under section 44A of the Environmental Protection Act 1990 has implemented this requirement in England. It does not form part of these regulations.	Secretary of State
Article 7	Requires Member States to take all necessary steps, including, where appropriate, temporary derogations from the Directive to ensure that hazardous waste is so dealt with as not to constitute a threat to the population or the environment.	Regulations 62 and 63 sets out the duties on the holder of hazardous waste and the Environment Agency in the event of an emergency. There is also a defence under regulation 66 for a person who is not able to comply with the Regulations by reason of emergency or grave danger.	The waste holder and the Agency have the responsibility for taking steps to prevent threats to the population or the environment.
Article 8(3)	Requires Member States to send annual information to the European Commission on establishments and undertakings that dispose of or recover hazardous waste.	Regulation 60 places a duty on the Environment Agency to provide the Secretary of State with the information that Defra will need in order to make these returns to the Commission.	The initial responsibility lies with the Environment Agency to provide Defra with the information. Defra is responsible for sending the information on to the Commission.