

2014 No. 656

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Waste (England and Wales) (Amendment) Regulations 2014

<i>Made</i>	- - - -	<i>14th March 2014</i>
<i>Laid before Parliament</i>		<i>14th March 2014</i>
<i>Laid before the National Assembly for Wales</i>		<i>14th March 2014</i>
<i>Coming into force</i>	- -	<i>6th April 2014</i>

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(a) consulted—

- (a) the Environment Agency;
- (b) the Natural Resources Body for Wales;
- (c) 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
- (d) such other bodies or persons as they consider appropriate.

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

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, sections 5(3)(b) and (4)(b) and 8(2) of the Control of Pollution (Amendment) Act 1989(e), and section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999.

(a) 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). Section 2(4)(aa) was inserted by S.I. 2013/755 (W 90), article 4(1), Schedule 2, Part 1, paragraphs 394 and 395(1) extending the consultation duty in section 2(4) to the Natural Resources Body for Wales to the extent that regulations made under section 2 apply to Wales.

(b) S.I. 2008/301.

(c) 1972 c.68.

(d) S.I. 2010/1552.

(e) 1989 c.14. In relation to Wales, the functions of the Secretary of State conferred by that Act were transferred to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions were then transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32). Section 5, as originally enacted, was substituted in England and Wales by the Clean Neighbourhoods and Environment Act 2005 (c.16), section 37. For the definition of “appropriate person” and “prescribed” see section 9(1) of the Control of Pollution (Amendment) Act 1989 (the definition of “appropriate person” was inserted by section 39(1) of the Clean Neighbourhoods and Environment Act 2005).

Title, commencement and interpretation

1.—(1) These Regulations—

- (a) may be cited as the Waste (England and Wales) (Amendment) Regulations 2014;
- (b) come into force on 6th April 2014.

(2) In these Regulations, “the Waste Regulations” means the Waste (England and Wales) Regulations 2011(a).

Amendment of the Waste Regulations

2. The Waste Regulations are amended in accordance with regulations 3 to 7.

Regulation 24 (interpretation)

3. For regulation 24(3)(b), substitute—

“(b) references to a prescribed offence include a relevant offence within the meaning of regulation 29”.

Regulation 29 (procedure for registration)

4. Regulation 29 is amended as follows—

(a) for paragraph (5)(b), substitute—

“(b) the applicant or another relevant person has been convicted of a relevant offence”;

(b) after paragraph (5), insert—

“(5A) A “relevant offence” means an offence under—

- (a) the Scrap Metal Dealers Act 1964(b),
- (b) section 1, 8, 9, 10, 11, 17, 18, 22 or 25 of the Theft Act 1968(c), where the offence relates to scrap metal or is an environment-related offence,
- (c) section 170 or 170B of the Customs and Excise Management Act 1979(d), where the offence relates to scrap metal,
- (d) section 9 of the Food and Environment Protection Act 1985(e),
- (e) section 1, 5 or 7 of the Control of Pollution (Amendment) Act 1989(f),
- (f) section 33, 34 or 34B of the Environmental Protection Act 1990(g),
- (g) section 85, 202 or 206 of the Water Resources Act 1991(h),

(a) 2011/988, amended by S.I. 2013/755 (W 90); there are other amending instruments but none is relevant.

(b) 1964 c.69. This Act was repealed by section 19(1)(a) of the Scrap Metal Dealers Act 2013 (c.10).

(c) 1968 c.60. Section 9 was amended the Sexual Offences Act 2003 (c. 42), sections 139 and 140 and Schedule 6, paragraph 17 and Schedule 7. Section 18 was amended by the Fraud Act 2006 (c. 35), section 14(1) and (3) and Schedule 1, paragraph 4 and Schedule 3. Section 25 was also amended by that Act, section 14(1) and Schedule 1, paragraph 8(a).

(d) 1979 c.2. Section 170B was inserted by the Finance (No 2) Act 1992 (c.48), section 3 and Schedule 2, paragraph 8.

(e) 1985 c.48.

(f) 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 2005 (c.16), sections 35 and 107 and Part 4 of Schedule 5. 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.

(g) 1990 c.43. Section 33 was 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 was 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 Environment Act 2005 (c. 16) and amended by S.I. 2007/3538.

(h) 1991 c.57. Section 85 was repealed by S.I. 2010/675, regulation 107 and Schedule 26, Part 1, paragraph 8(2)(a). Section 202 was amended by the Environment Act 1995 (c. 25), section 120, Schedule 22, paragraph 128. Section 206 was also amended by that Act, section 112, Schedule 19, paragraphs 5(2) to 5(5) and by the Water Act 2003 (c. 37), section 101(1), Schedule 7, Part 1, paragraph 11.

- (h) the Transfrontier Shipment of Waste Regulations 1994(a),
 - (i) section 110 of the Environment Act 1995(b),
 - (j) the Control of Major Accident Hazards Regulations 1999(c),
 - (k) the Pollution Prevention and Control (England and Wales) Regulations 2000(d),
 - (l) Part 1 of the Vehicles (Crimes) Act 2001(e),
 - (m) regulation 17(1) of the Landfill (England and Wales) Regulations 2002(f),
 - (n) section 327, 328 or 330 to 332 of the Proceeds of Crime Act 2002 (g),
 - (o) the Hazardous Waste (England and Wales) Regulations 2005(h),
 - (p) the Hazardous Waste (Wales) Regulations 2005(i),
 - (q) section 1 of the Fraud Act 2006(j), where the offence relates to scrap metal or is an environment-related offence,
 - (r) the Waste Electrical and Electronic Equipment Regulations 2006(k),
 - (s) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007(l),
 - (t) the Producer Responsibility Obligations (Packaging Waste) Regulations 2007(m),
 - (u) the Transfrontier Shipment of Waste Regulations 2007(n),
 - (v) regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010(o),
 - (w) regulation 42 of these Regulations,
 - (x) section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(p),
 - (y) the Waste Electrical and Electronic Equipment Regulations 2013(q),
 - (z) the Scrap Metal Dealers Act 2013(r).
- (5B) A relevant offence also includes—
- (a) attempting or conspiring to commit a relevant offence;
 - (b) inciting or aiding, abetting, counselling or procuring the commission of a relevant offence; and
 - (c) an offence under Part 2 of the Serious Crime Act 2007(s) (encouraging or assisting crime) committed in relation to a relevant offence.
- (5C) For the purposes of paragraph (5A)—

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- (a) S.I. 1994/1137. These Regulations were revoked by S.I. 2007/1711, regulation 60(1)(a) and (2).
 - (b) 1995 c.25.
 - (c) S.I. 1999/743, amended by S.I. 2005/1088; there are other amending instruments but none is relevant.
 - (d) S.I. 2000/1973. These Regulations were revoked by S.I. 2007/3538, regulation 74(1) and Schedule 22.
 - (e) 2001 c.3. Part 1 was repealed by section 19(1)(d)(i) of the Scrap Metal Dealers Act 2013.
 - (f) S.I. 2002/1559. These Regulations were revoked by S.I. 2007/3538, regulation 74(1) and Schedule 22.
 - (g) 2002 c.29. Sections 327 and 328 were amended by the Serious Organised Crime and Police Act 2005, section 102(1) and (2). Section 330 was amended by section 104(1) of that Act and by S.I. 2006/308 and 2007/3398. Sections 331 and 332 were amended by sections 102(1), (6) and (7) and 104(1), (5) and (6) of that Act and by the Crime and Courts Act 2013, section 15(3), Schedule 8, Part 2, paragraphs 108, 130 and 131.
 - (h) S.I. 2005/894, relevant amending instruments are S.I. 2007/3476 and S.I. 2011/988.
 - (i) S.I. 2005/1806 (W. 138), amended by S.I. 2011/971 (W. 141); there are other amending instruments but none is relevant.
 - (j) 2006 c.35.
 - (k) S.I. 2006/3289. These Regulations were revoked by S.I. 2013/3113, regulation 96(2)
 - (l) S.I. 2007/3538. Regulation 38 was revoked by S.I. 2010/675, regulation 108(1) and Schedule 27.
 - (m) S.I. 2007/871. to which there are amendments not relevant to these Regulations.
 - (n) S.I. 2007/1711, to which there are amendments not relevant to these Regulations.
 - (o) S.I. 2010/675, to which there are amendments not relevant to these Regulations.
 - (p) 2012 c.10. Section 146 was repealed by the Scrap Metal Dealers Act 2013, section 19(1)(f).
 - (q) S.I. 2013/3113.
 - (r) 2013 c.10.
 - (s) 2007 c.27.

“environment-related offence” means an offence which relates to the transportation, shipment or transfer of waste, or to the prevention, minimisation or control of pollution of the air, water or land which may give rise to any harm;

“harm” means—

- (a) harm to the health of human beings or other living organisms;
- (b) harm to the quality of the environment;
- (c) offence to the senses of human beings;
- (d) damage to property; or
- (e) impairment of, or interference with, amenities or other legitimate uses of the environment.”.

(c) after paragraph (6), insert—

“(6A) The appropriate body must, on payment of a reasonable charge, provide any person who has been provided with a certificate of registration under paragraph (6) with a copy of the certificate if requested.

“(6B) The appropriate body must ensure that any copy is numbered and marked so as to show that it is a copy of the certificate and that it has been provided by the appropriate body under this regulation.”.

Regulation 32 (revocation of registration)

5. For regulation 32(1)(a), substitute—

“(a) the registered person or another relevant person has been convicted of a relevant offence within the meaning of regulation 29;”.

Regulation 35 (the transfer note)

6. Regulation 35 is amended as follows—

- (a) in the heading, for “The transfer note” substitute “Waste information”;
- (b) in paragraph (2), for “(“the transfer note”)” substitute “(“written information”);”;
- (c) in paragraph (3)—
 - “(i) for “a transfer note” substitute “the written information”,
 - (ii) for “information” substitute “matters”.
- (d) in paragraphs (4) and (5), in each place where it occurs, for “transfer note” substitute “written information”;
- (e) in paragraph (6), for “a transfer note” substitute “the written information”.

Part 10A (authority to transport controlled waste)

7. After regulation 45 (proceedings for contravention of section 1 of the Control of Pollution (Amendment) Act 1989), insert—

“PART 10A

Authority to transport controlled waste

Specified requirements under section 5 of the Control of Pollution (Amendment) Act 1989

45A.—(1) Where a person is required to produce an authority for transporting controlled waste under section 5(2)(a) (power to require production of authority, stop and search etc) of the Control of Pollution (Amendment) Act 1989—

- (a) a copy of that person’s certificate of registration as a carrier of controlled waste made in accordance with regulation 29(6A) and (6B) is authority for these purposes(a); and
- (b) where the authority cannot be produced forthwith when required to do so, the authority must be produced at, or sent to, the relevant office no later than 5 working days from when required.

(2) For the purposes of paragraph (1)(b)—

- (a) “relevant office” means an office of the appropriate body as may be specified by the authorised officer of a regulation authority or constable at the time the requirement is made;
- (b) “working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(b).

(3) For the purposes of paragraph (2)—

- (a) “authorised officer” has the meaning given in section 9(1B) of the Control of Pollution (Amendment) Act 1989(c);
- (b) “regulation authority” has the meaning given in section 9(1) of that Act, as read with section 9(1A) and (1AA)(d).”.

14th March 2014

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

12th March 2014

Alun Davies
Minister for Natural Resources and Food
one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Waste (England and Wales) Regulations 2011 (S.I. 2011/988) (“the Waste Regulations”). The Waste 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).

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- (a) Section 5(3)(a) of the Control of the Pollution (Amendment) Act 1989 provides that for the purposes of subsection (2)(a), a person’s authority for transporting controlled waste is his certificate of registration as a carrier of controlled waste.
 - (b) 1971 c.80.
 - (c) Section 9(1B) of the Control of the Pollution (Amendment) Act 1989 was inserted, in relation to England and Wales, by the Clean Neighbourhoods and Environment Act, section 39(1), (3).
 - (d) The definition of “regulation authority” in section 9(1) of the Control of the Pollution (Amendment) Act 1989 was substituted by the Environment Act 1995, section 120, Schedule 22, paragraph 37(8). In the definition of “regulation authority” paragraph (aa) was inserted by S.I. 2013/755 (W 90) article 4(1), Schedule 2, Part 1, paragraphs 188 and 190(b). Section 9(1A) was inserted, in relation to England and Wales, by the Anti-Social Behaviour Act 2003, section 55(1), (3). Section 9(1AA) was inserted, in relation to England and Wales by S.I. 2011/988, regulation 48(3), Schedule 4, Part 1, paragraph 1.

Regulation 4 amends regulation 29 of the Waste Regulations by adding a new list of “relevant offences” for the purposes of refusing registration of carriers, brokers and dealers of controlled waste in accordance with regulation 29(5) and by providing for the making of copies of certificates of registration.

Regulation 6 amends regulation 35 by replacing the references in that regulation to “a transfer note” with references to “written information”.

Regulation 7 inserts a new Part relating to the production of authority for transporting controlled waste (which is the certificate of registration) where this is required under section 5(2)(a) of the Control of Pollution (Amendment) Act 1989 (c.14).

A full impact assessment of the effect that this instrument will have on business, the voluntary sector and the public sector is available from Waste Regulation and Crime, Department for Environment, Food and Rural Affairs, Area 2B, Nobel House, 17 Smith Square, London, SW1P 3JR and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

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