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STATUTORY INSTRUMENTS

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**1998 No. 767**

**ENVIRONMENTAL PROTECTION**

**The Environmental Protection (Prescribed Processes and Substances) (Amendment) (Hazardous Waste Incineration) Regulations 1998**

<i>Made</i>	- - - -	<i>12th March 1998</i>
<i>Laid before Parliament</i>		<i>23rd March 1998</i>
<i>Coming into force</i>	- -	<i>13th April 1998</i>

The Secretary of State for the Environment, Transport and the Regions, as respects England, the Secretary of State for Wales, as respects Wales, and the Secretary of State for Scotland, as respects Scotland, in exercise of the powers conferred on them by section 2 of the Environmental Protection Act 1990(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Environmental Protection (Prescribed Processes and Substances) (Amendment) (Hazardous Waste Incineration) Regulations 1998 and shall, subject to regulation 3, come into force on 13th April 1998.

(2) In these Regulations:

- (a) “the Act” means the Environmental Protection Act 1990;
- (b) “the determination date” for a prescribed process means—
  - (i) in the case of a process for which an authorisation is granted, the date on which the enforcing authority grants it, whether in pursuance of the application or, on an appeal, of a direction to grant it;
  - (ii) in the case of a process for which authorisation is refused and the applicant appeals against the refusal, the date of the affirmation of the refusal;
  - (iii) in the case of a process for which authorisation is refused and no appeal is made against the refusal, the date immediately following the last day, determined in accordance with regulation 10(1) of the Environmental Protection (Applications,

- Appeals and Registers) Regulations 1991(2) on which notice of appeal might have been given;
- (c) “established authorised process” means a process described in paragraph (bb) of Section 5.1, Part A, in Schedule 1 to the principal Regulations which, immediately before 13th April 1998—
- (i) is a Part B process authorised by an authorisation granted by the local enforcing authority before 31st December 1996; or
  - (ii) is not a prescribed process but could be carried out in accordance with a planning permission granted before 31st December 1996;
- (d) “Part A application” means, in relation to a process, an application made in accordance with section 6 of, and Part I of Schedule 1 to, the Act for an authorisation to carry out the process as a Part A process;
- (e) “Part A process” and “Part B process” have the same meaning as in the principal Regulations;
- (f) “planning permission” means permission granted under the Town and Country Planning Act 1990(3) or the Town and Country Planning (Scotland) Act 1997(4);
- (i) “the principal Regulations” means the Environmental Protection (Prescribed Processes and Substances) Regulations 1991(5);
- (j) “recently authorised process” means a process described in paragraph (bb) of Section 5.1, Part A, in Schedule 1 to the principal Regulations which, immediately before 13th April 1998—
- (i) is a Part B process authorised by an authorisation granted by the local enforcing authority on or after 31st December 1996; or
  - (ii) is not a prescribed process but could be carried out in accordance with a planning permission granted on or after 31st December 1996.

### **Amendment of the principal Regulations**

- 2.—(1) At the end of regulation 3(3) of the principal Regulations there shall be added:
- “except that, as respects the application of paragraph (bb) of Section 5.1, Part A, in Schedule 1, it means, subject to regulation 3 of the Environmental Protection (Prescribed Processes and Substances) (Amendment) (Hazardous Waste Incineration) Regulations 1998, 13th April 1998”.
- (2) In Section 5.1 of Schedule 1 to the principal Regulations (incineration):
- (a) after paragraph (b) of Part A there shall be inserted the following paragraph:
 

“(bb) The incineration of hazardous waste in an incineration plant, other than in an exempt hazardous waste incineration plant.”;
  - (b) in the definition of “clinical waste”(6) the words “in the definition of exempt incinerator” shall be inserted before “means”;
  - (c) the following definition shall be inserted before the definition of “exempt incinerator”:
 

““exempt hazardous waste incineration plant” means:

    - (i) an incineration plant for animal carcasses or remains;

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(2) S.I. 1991/507.

(3) 1990 c. 8.

(4) 1997 c. 8.

(5) S.I. 1991/472; relevant amendments are made by S.I. 1994/1271.

(6) The definition of “clinical waste” was substituted by paragraph 8 of Schedule 1 to S.I. 1994/1271.

- (ii) an incineration plant for infectious clinical waste, provided that such waste is not rendered hazardous as a result of the presence of constituents listed in Annex II to Directive 91/689/EEC on hazardous waste(7) other than constituent C35 in that list (infectious substances); or
  - (iii) a municipal waste incineration plant also burning infectious clinical waste which is not mixed with other wastes which are rendered hazardous as a result of one of the properties listed in Annex III to Directive 91/689/EEC other than property H9 in that list (infectious);”;
- (d) the following definitions shall be inserted after the definition of “exempt incinerator”:

““hazardous waste” means any solid or liquid waste as defined in Article 1(4) of Directive 91/689/EEC but shall not include the following waste:

- (i) combustible liquid wastes, including waste oils as defined in Article 1 of Directive 75/439/EEC on the disposal of waste oils(8), provided that they meet the following three criteria:
  - (a) the mass content of polychlorinated aromatic hydrocarbons, e.g. polychlorinated biphenyls or pentachlorinated phenol, amounts to concentrations not higher than those set out in the relevant Community legislation(9);
  - (b) these wastes are not rendered hazardous by virtue of containing other constituents listed in Annex II to Directive 91/689/EEC in quantities or in concentrations which are inconsistent with the achievement of the objectives set out in Article 4 of Directive 75/442/EEC on waste(10); and
  - (c) the net calorific value amounts to at least 30 MJ per kilogramme;
- (ii) any combustible liquid wastes which cannot cause, in the flue gas directly resulting from their combustion, emissions other than those from gas oil, as defined in Article 1(1) of Directive 75/716/EEC on the approximation of the laws of Member States relating to the sulphur content of certain liquid fuels(11) or a higher concentration of emissions than those resulting from the combustion of gas oil as so defined;
- (iii) hazardous waste resulting from the exploration for and the exploitation of oil and gas resources from off-shore installations and incinerated on board;
- (iv) municipal waste covered by Directives 89/369/EEC on the prevention of air pollution from new municipal waste incineration plants(12) and 89/429/EEC on the reduction of air pollution from existing municipal waste incineration plants(13);
- (v) sewage sludges from the treatment of municipal waste waters which are not rendered hazardous by virtue of containing constituents listed in Annex II to Directive 91/689/EEC in quantities or in concentrations which are inconsistent with the achievement of the objectives set out in the Article 4 of Directive 75/442/EEC on waste;

“incineration of hazardous waste in an incineration plant” means the incineration by oxidation of hazardous wastes, with or without recovery of the combustion heat

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(7) OJNo. L377, 31.12.91, p.20.

(8) OJ No. L194, 25.7.75, p.23.

(9) See in particular Council Directive 96/59/EC (OJ No. L243, 24.9.96, p. 31).

(10) OJ No. L194, 25.7.75, p.39; amended by Council Directive 91/156 (OJ No. L78, 26.3.91, p.32).

(11) OJ No. L307, 27.11.75, p.22.

(12) OJ No. L163, 14.6.89, p.32.

(13) OJ No. L203, 15.7.89, p.50.

generated, including pretreatment as well as pyrolysis or other thermal treatment processes, for example, plasma process, in so far as their products are subsequently incinerated, and includes the incineration of such wastes as a regular or additional fuel for any industrial process;”.

(3) In Schedule 2 to the principal Regulations (rules for the interpretation of Schedule 1):

(a) after paragraph 4 there shall be inserted the following paragraph:

“**4A.** Notwithstanding the rule set out in paragraph 4, where a process falls within the description in paragraph (bb) of Part A of Section 5.1 of Schedule 1 and Part B of any other Section in that Schedule, that process shall be regarded as falling only within the description in paragraph (bb) of Part A of Section 5.1.”;

(b) after paragraph 8 there shall be inserted the following paragraph:

“**8A.** The rule in paragraph 8 shall not apply in the case of the incineration of hazardous waste in an incineration plant, as described in paragraph (bb) of Part A of Section 5.1 of Schedule 1, when the prescribed process is a Part B process.”.

### **Transitional Provisions**

**3.—(1)** As respects an established authorised process, the restriction imposed by section 6(1) of the Act, so far as it applies to a Part A process, shall apply only—

(a) where a Part A application is made before 29th February 2000, from the determination date;

(b) where no such application is made, from 29th February 2000.

(2) As respects a recently authorised process, the restriction imposed by section 6(1) of the Act so far as it applies to a Part A process shall apply only—

(a) where a Part A application is made before 13th July 1998, from the determination date;

(b) where no such application is made, from 13th July 1998.

(3) An established authorised process or a recently authorised process which immediately before 13th April 1998 is a Part B process remains a Part B process until such time as, in accordance with paragraph (1) or (2), the restriction imposed by section 6(1) of the Act applies to it as a Part A process.

(4) The provisions of the Act relating to applications contained in, or made under, section 6 of, or Part I of Schedule 1 to, the Act shall apply to a Part A application in respect of an established authorised process or a recently authorised process as though the process were a Part A process from the date on which the application is made.

Signed by authority of the Secretary of State for the Environment, Transport and the Regions

12th March 1998

*Michael Meacher*  
Minister of State, Department of the  
Environment, Transport and the Regions

Signed by authority of the Secretary of State for Wales

11th March 1998

*Win Griffiths*  
Parliamentary Under Secretary of State, Welsh  
Office

11th March 1998

*Sewel*  
Parliamentary Under Secretary of State, Scottish  
Office

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

These Regulations make provision for the implementation in Great Britain of Council Directive [94/67/EC](#) on the incineration of hazardous waste. The Directive is implemented in Great Britain by ensuring that all incineration processes covered by the Directive are prescribed processes designated for central control under Part I of the Environmental Protection Act 1990 (and thus regulated by the Environment Agency in England and Wales and by the Scottish Environment Protection Agency in Scotland) and by directing the Agencies under sections 7 and 10 of the 1990 Act to include in the relevant Part I authorisations the conditions required by the Directive.

Regulation 2 amends Schedule 1 to the Environmental Protection (Prescribed Processes and Substances) Regulations 1991 (S.I. [1991/472](#)) by making the incineration of hazardous waste a prescribed process designated for central control. Previously the incineration of hazardous waste could fall either under central control or under local control or outside of the pollution control regime in Part I of the 1990 Act altogether, depending on the nature and size of the incineration process. Regulation 3 sets out some transitional provisions.

A regulatory appraisal in respect of the Regulations may be obtained from Air and Environment Quality Division, Department of the Environment, Transport and the Regions, Romney House, 43 Marsham Street, London SW1P 3PY; Environment Division, Welsh Office, Cathays Park, Cardiff CF1 3NQ; or the Scottish Office Agriculture, Environment and Fisheries Department, 1J Victoria Quay, Edinburgh EH6 6QQ.