

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL PROTECTION ACT 1990 (AMENDMENT OF
SECTION 57) (ENGLAND AND WALES) REGULATIONS 2005

2005 No. 3026

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.

2. Description

These Regulations widen the scope of the power of direction in section 57 of the Environmental Protection Act 1990 from the holders of waste management licences to the holders of permits under the Pollution Prevention and Control (England and Wales) Regulations 2000 which authorise the disposal or recovery of waste. This would encompass, amongst other activities, landfills, waste incinerators and some cement kilns.

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

None.

4. Legislative Background

4.1 The Regulations are made under section 2(2) of the European Communities Act 1972 (1972 c.68) and amend section 57 of the Environmental Protection Act 1990 (powers of the Secretary of State to require waste to be accepted, treated, disposed of or delivered).

4.2 The amendment to section 57 constitutes a further measure for the purposes of transposing the requirements of Article 4 of the Waste Framework Directive (Directive 75/442/EEC).

4.3 The Waste Framework Directive 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)). Section 57 includes a power on the Secretary of State to be able, by notice in writing, to direct the holder of any waste management licence to accept and keep, or accept and treat or dispose of, controlled waste at specified places on specified terms.

4.4 Article 4 of the Waste Framework Directive (“the Directive”) requires all waste to be recovered or disposed of without endangering human health and with using processes or methods which could harm the environment.

4.5 Regulations 2(4) and (5) insert definitions of “waste permit” and “waste” and define “disposal or recovery” for the purposes of that definition of waste.

Waste is defined to include everything defined as waste in article 1 of the Directive, and also certain agricultural waste which is excluded from the scope of that Directive by its article 2(1)(b)(iii). In relation to that waste, these Regulations constitute a further measure for implementing requirements in relation to the disposal of waste contained in Regulation (EC) 1774/2002¹, and the implementing measures made pursuant to Article 24(6) of that Regulation (in particular, Commission Regulation (EC) No. 811/2003).

5. Extent

This instrument extend to England and Wales only.

6. European Convention on Human Rights

Ben Bradshaw, Minister for Local Environment, Marine and Animal Welfare, has made the following statement regarding Human Rights:

In my view the provisions of the Environmental Protection Act 1990 (Amendment of Section 57)(England and Wales) Regulations 2005 are compatible with the Convention rights.

7. Policy background

- 7.1 The amendments to the section 57 power of direction are required because, currently the power may only be applied to holders of waste management licences, and only applies to controlled waste. As all landfills and most other major waste activities are regulated under the PPC, the power needs to be extended if it is to be retained in any meaningful way. Thus the Regulations are needed to ensure the Government complies with obligations arising under the Waste Framework Directive.
- 7.2 In order that the Government and the Welsh Assembly Government can ensure that the objectives under Article 4 of the Directive are met, in particular during emergencies, it is considered necessary to extend the power of direction such that it may apply to PPC permits authorising the disposal or recovery of waste and to apply to waste as defined in article 1 of the Directive and some types of agricultural waste.
- 7.3 Government published a consultation paper on the proposals on 31 March 2005 requesting comments by 24 June 2005. The consultation was sent to 46 consultees, and published on Defra's website (see <http://www.defra.gov.uk/corporate/consult/waste-powerdir/index.htm>). Three responses were received. Government sought views on two specific questions. First whether consultees were content for the power of direction in section 57 to be extended as proposed, and second whether they were content that waste management licensing (WML) exemptions be included within the power of direction. The majority of consultees who responded supported the proposed extension of the power of direction as proposed, and the majority were against

¹ Regulation (EC) 1774/2002 of the European Parliament and the Council laying down health rules concerning animal by-products not intended for human consumption.

its extension to waste management licensing exemptions. Government accordingly has brought forward regulations which extend the power of direction as proposed, but not to WML exemptions.

8. Impact

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

9. Contact

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