

STATUTORY INSTRUMENTS

2005 No. 894

The Hazardous Waste (England and Wales) Regulations 2005

PART 2

HAZARDOUS AND NON-HAZARDOUS WASTE

Hazardous waste

6. Subject to regulation 9, a waste is a hazardous waste if it is—
- (a) listed as a hazardous waste in the List of Wastes ^{M1};
 - ^{F1}(b)
 - (c) a specific batch of waste which is determined pursuant to regulation 8 to be a hazardous waste,

and the term “hazardous” and cognate expressions shall be construed accordingly.

Textual Amendments

F1 Reg. 6(b) omitted (31.12.2020) by virtue of [The Waste and Environmental Permitting etc. \(Legislative Functions and Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1540\)](#), regs. 1(2), **8**

Marginal Citations

M1 Wastes listed as hazardous in the List of Wastes are considered hazardous pursuant to the first indent of Article 1.4 of the Hazardous Waste Directive.

Non-hazardous waste

7. The following are non-hazardous waste—
- (a) a waste which is not a hazardous waste pursuant to regulation 6; or
 - (b) a specific batch of waste which is determined pursuant to regulation 9 to be a non-hazardous waste,

and the expression “non-hazardous” and cognate expressions shall be construed accordingly.

Specific waste to be treated as hazardous

8.—(1) The Secretary of State, having regard to [^{F2}Annex III] and the limit values of concentration in the List of Wastes, may determine, in exceptional cases, that a specific batch of waste in England which—

- (a) is not listed as a hazardous waste in the List of Wastes;
- ^{F3}(b)

(c) though of a type listed as a hazardous waste in the List of Wastes, is treated as non-hazardous pursuant to regulation 9(2), displays one or more of the hazardous properties, and accordingly that it shall be treated for all purposes as hazardous waste.

(2) A specific batch of waste produced in Wales, Scotland or Northern Ireland and not listed as hazardous in the List of Wastes and which is for the time being determined ^{F4}... to be hazardous pursuant to [^{F5}paragraph (3)], shall, subject to any determination made under regulation 9, be treated for all purposes as hazardous waste in England.

[^{F6}(3) For the purposes of paragraph (2), a specific batch of waste is determined to be hazardous—

- (a) in relation to Wales if—
 - (i) of a type listed in regulations made under section 62A(2) of the 1990 Act;
 - (ii) it is the subject of a determination by the Welsh Ministers under regulation 8 of the Hazardous Waste (Wales) Regulations 2005;
- (b) in relation to Northern Ireland, it is the subject of a determination by the Department of Agriculture, Environment and Rural Affairs under regulation 9 of the Hazardous Waste Regulations (Northern Ireland) 2005;
- (c) in relation to Scotland, it is the subject of a determination by the Scottish Ministers, because the Scottish Ministers consider that the waste displays one or more of the hazardous properties listed in Annex III.]

Textual Amendments

- F2** Words in reg. 8(1) substituted (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011 \(S.I. 2011/988\)](#), reg. 1(2), **Sch. 2 para. 6** (with regs. 2, 47(2))
- F3** Reg. 8(1)(b) omitted (31.12.2020) by virtue of [The Waste and Environmental Permitting etc. \(Legislative Functions and Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1540\)](#), regs. 1(2), **8**
- F4** Words in reg. 8(2) omitted (31.12.2020) by virtue of [The Waste \(Miscellaneous Amendments\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/188\)](#), regs. 1(2)(b), **11(5)(a)(i)** (as amended by S.I. 2020/1540, regs. 1(2), 11(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in reg. 8(2) substituted (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/188\)](#), regs. 1(2)(b), **11(5)(a)(ii)** (as amended by S.I. 2020/1540, regs. 1(2), 11(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Reg. 8(3) inserted (31.12.2020) by [The Waste \(Miscellaneous Amendments\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/188\)](#), regs. 1(2)(b), **11(5)(b)** (as amended by S.I. 2020/1540, regs. 1(2), 11(2)); 2020 c. 1, Sch. 5 para. 1(1)

Specific waste to be treated as non-hazardous

9.—(1) The Secretary of State may decide, in exceptional cases, on the basis of documentary evidence provided by the holder, and having regard to [^{F7}Annex III] and the limit values of concentration in the List of Wastes, that a specific batch of waste in England which—

- (a) is listed as hazardous waste in the List of Wastes;
- ^{F8}(b)
- (c) though of a type not listed as a hazardous waste in the List of Wastes, is treated as hazardous pursuant to regulation 8(2),

does not display any of the properties listed in Annex III ^{F9} ... and accordingly that it shall be treated for all purposes as non-hazardous in England.

[^{F10}(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.]

(2) A specific batch of waste produced in Wales, Scotland or Northern Ireland and listed as a hazardous waste in the List of Wastes and which is for the time being determined ^{F11}... to be non-hazardous pursuant to [^{F12}paragraph (3)], shall, subject to any determination made under regulation 8, be treated for all purposes as non-hazardous in England.

[^{F13}(3) For the purposes of paragraph (2), a specific batch of waste is determined to be non-hazardous if it is the subject of a decision—

- (a) in relation to Wales, by the Welsh Ministers under regulation 9 of the Hazardous Waste (Wales) Regulations 2005;
- (b) in relation to Northern Ireland, by the Department of Agriculture, Environment and Rural Affairs under regulation 10 of the Hazardous Waste Regulations (Northern Ireland) 2005;
- (c) in relation to Scotland, by the Scottish Ministers that the Scottish Ministers consider that the waste displays none of the hazardous properties listed in Annex III.]

Textual Amendments

- F7** Words in reg. 9(1) substituted (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 2 para. 7(a)(i)** (with regs. 2, 47(2))
- F8** Reg. 9(1)(b) omitted (31.12.2020) by virtue of The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1540), regs. 1(2), **8**
- F9** Words in reg. 9(1) omitted (29.3.2011) by virtue of The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 2 para. 7(a)(ii)** (with regs. 2, 47(2))
- F10** Reg. 9(1A) inserted (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), **Sch. 2 para. 7(b)** (with regs. 2, 47(2))
- F11** Words in reg. 9(2) omitted (31.12.2020) by virtue of The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188), regs. 1(2)(b), **11(6)(a)(i)** (as amended by S.I. 2020/1540, regs. 1(2), 11(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in reg. 9(2) substituted (31.12.2020) by The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188), regs. 1(2)(b), **11(6)(a)(ii)** (as amended by S.I. 2020/1540, regs. 1(2), 11(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Reg. 9(3) inserted (31.12.2020) by The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188), regs. 1(2)(b), **11(6)(b)** (as amended by S.I. 2020/1540, regs. 1(2), 11(2)); 2020 c. 1, Sch. 5 para. 1(1)

Provisions common to regulations 8 and 9

10.—(1) The Secretary of State may revoke a determination made under regulation 8 or 9.

(2) The Secretary of State shall, before making a determination under regulation 8 or 9 or revoking such a determination, except where she considers it inappropriate to do so on account of the nature of any emergency or grave danger, consult—

- (a) the requisite bodies;
- (b) the holder of the specific batch of waste; and
- (c) any other person appearing to her—

- (i) to have an interest in the specific waste; or
- (ii) to be otherwise directly affected by the determination.

(3) The Secretary of State shall give notice of any determination made under regulation 49 or 50 or revocation of such a determination to—

- (a) the requisite bodies;
 - (b) the holder of the specific batch of waste concerned; and
 - (c) any person she has consulted pursuant to paragraph (2)(c).
- (4) The notice shall give reasons for the determination or revocation, as the case may be.

Requisite bodies

11. For the purposes of this Part, the “requisite bodies” are—

- (a) the Agency;
- [^{F14}(aa) the Natural Resources Body for Wales;]
- (b) SEPA;
- (c) the National Assembly for Wales;
- (d) the Scottish Executive;
- (e) the Northern Ireland Department of the Environment ^{M2};
- (f) the Health and Safety Executive; and
- (g) any organisation appearing to the Secretary of State to be representative of persons likely to be affected by the relevant determination or revocation of a determination, as the case may be.

Textual Amendments

F14 Reg. 11(aa) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 4 para. 204** (with Sch. 7)

Marginal Citations

M2 The Northern Ireland Department of the Environment includes its executive agency the Environmental Heritage Service.

Changes to legislation:

There are currently no known outstanding effects for the The Hazardous Waste (England and Wales) Regulations 2005, PART 2.