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WELSH STATUTORY INSTRUMENTS

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**2005 No. 1806**

**The Hazardous Waste (Wales) Regulations 2005**

**PART 1**

**GENERAL**

**Title, commencement, and application**

- 1.—(1) The title of these Regulations is the Hazardous Waste (Wales) Regulations 2005.
- (2) These Regulations come into force as follows—
- (i) Parts 1, 2, paragraph 1 of Part 1 of Schedule 12 and, for the purposes of that paragraph only, in Part 5, regulation 59(3) and Schedule 9 and regulation 74 on 6 July 2005; and
- (ii) the remainder, on 16 July 2005.
- (3) These regulations apply in relation to Wales.

**The Waste Directive and the meaning of Waste**

- 2.—(1) For the purposes of these Regulations—
- (a) “the Waste Directive” (“*y Gyfarwydddeb Wastraff*”) means Council Directive [75/442/EEC](#)(1) on waste as amended by—
- (i) Council Directives [91/156/EEC](#)(2) and [91/692/EEC](#)(3);
- (ii) Commission Decision [96/350/EC](#)(4); and
- (iii) Regulation (EC) No [1882/2003](#)(5); and
- (b) “waste” (“*gwastraff*”) means anything that—
- (i) is waste(6) for the purposes of the Waste Directive; and
- (ii) subject to regulation 15, is not excluded from the scope of that Directive by Article 2 of that Directive.
- (2) In these Regulations, a reference to the Waste Directive conditions is a reference to the conditions laid down in Article 4 of that Directive, that is to say, to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and in particular—
- (a) without risk to water, air, soil and plants and animals;
- (b) without causing a nuisance through noise or odours; and

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(1) OJNo. L 194, 25.7.1975, p.39.

(2) OJ No. L 78, 26.3.1991, p.32.

(3) OL No. L 377.31.12.1991, p.48 (as corrected by Corrigendum, OJ No. L 146, 13.6.2003, p.52).

(4) OJ. No. L 135, 6.6.1996, p.32.

(5) OJ No. L 284, 31.10.2003, p.1.

(6) Article 1(a) of the Waste Directive defines waste as any substance or object in the categories set out in Annex I (Categories of Waste) to that Directive which the holder discards or intends or is required to discard.

- (c) without adversely affecting the countryside or places of special interest.

### The Hazardous Waste Directive

3.—(1) In these Regulations, “the Hazardous Waste Directive” means Council Directive [91/689/EEC](#)(7) on hazardous waste, as amended by Council Directive [94/31/EC](#)(8).

(2) A reference in these Regulations to—

- (a) Annex I, Annex II or Annex III is a reference to the annex to the Hazardous Waste Directive so numbered, as that annex is set out in these Regulations as follows—
- (i) Schedule 1, which sets out Annex I (Categories or generic types of hazardous waste listed according to their nature or the activity which generated them);
  - (ii) Schedule 2, which sets out Annex II (Constituents of the wastes in Annex I.B which render them hazardous when they have the properties described in Annex III); and
  - (iii) Schedule 3, which sets out Annex III (Properties of wastes which render them hazardous);
- (b) hazardous properties is a reference to the properties in Annex III as so set out.

### The List of Wastes

4.—(1) In these Regulations—

“the List of Wastes Decision” (“*Penderfyniad y Rhestr Wastraffoedd*”) means Commission Decision [2000/532/EC](#)(9) of 3 May 2000 replacing Decision [94/3/EC](#) establishing a list of wastes pursuant to Article 1(a) of Council Directive [75/442/EEC](#) on waste and Council Decision [94/904/EC](#) establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive [91/689/EEC](#) on hazardous waste, as amended by amendments thereto which have effect from time to time in relation to Wales pursuant to the List of Wastes Regulations;

“the List of Wastes Regulations” (“*Rheoliadau'r Rhestr Wastraffoedd*”) means the List of Wastes (Wales) Regulations 2005(10); and

“the List of Wastes” (“*y Rhestr Wastraffoedd*”) means the list of wastes set out in the List of Wastes Decision as it is from time to time set out in the List of Wastes Regulations, being the list referred to in the first indent of Article 1(4) of the Hazardous Waste Directive drawn up on the basis of Annexes I and II, having one or more of the properties listed in Annex III, taking account of the origin and composition of the waste and, where necessary, limit values of concentration.

(2) A reference in these Regulations in relation to any waste to—

- (a) being “listed as a waste” and “listed as a hazardous waste” refers to that waste being listed as a waste, or as a hazardous waste, as the case may be, in the List of Wastes, provided, in the case of a waste to which a limit value of concentration applies, it is only to be considered to be listed as a hazardous waste where the relevant limit value of concentration is satisfied;
- (b) being “not listed as hazardous” refers to that waste being not listed as a hazardous waste in the List of Wastes, whether or not it is listed as a waste, and whether or not it is otherwise a hazardous waste pursuant to these Regulations;

and cognate expressions are to be construed accordingly.

(7) OJ No. L 377, 31.12.1991, p.20 (as corrected by Corrigendum to Directive [91/689/EC](#) (OJ No. L 23 30.1.1998 p.39).

(8) OJ No. L 168, 2.7.1994, p.28.

(9) OJ No. L 226, 6.9.2000, p.3.

(10) S.I.2005/1820 (W.148).

## General Interpretation

### 5.—(1) In these Regulations—

- “the 1990 Act” (“*Deddf 1990*”) means the Environmental Protection Act 1990(**11**);
- “the 1995 Act” (“*Deddf 1995*”) means the Environment Act 1995(**12**);
- “the 1994 Regulations” (“*Rheoliadau 1994*”) means the Waste Management Licensing Regulations 1994(**13**);
- “the 1996 Regulations” (“*Rheoliadau 1996*”) means the Special Waste Regulations 1996(**14**);
- “the Agency” (“*yr Asiantaeth*”) means the Environment Agency;
- “asbestos waste” (“*gwastraff asbestos*”) means waste which contains or is contaminated by asbestos;
- “the Assembly” (“*y Cynulliad*”) means the National Assembly for Wales;
- “authorised person” (“*person awdurdodedig*”) has the meaning given by section 108(15) of the 1995 Act;
- “business day” (“*diwrnod busnes*”) means any day other than any—
- Saturday or Sunday;
  - Good Friday or Christmas Day;
  - day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(**15**); or
  - other public holiday;
- “carrier” (“*cludwr*”), in relation to a consignment of hazardous waste, means a person who takes one or more of the following actions, that is to say, collects the consignment from the premises at which it was produced or premises at which it is being held, delivers it to the consignee, or transports it in the course of its transfer from those premises to the consignee;
- “consignee” (“*traddodai*”), in relation to a consignment of hazardous waste, means the person to whom the waste is or is to be transferred for recovery or disposal;
- “consignment code” (“*cod traddodi*”) is to be construed in accordance with regulation 34(1);
- “consignment note” (“*nodyn traddodi*”), in relation to a consignment of hazardous waste, means the identification form which is required to accompany the hazardous waste when it is transferred pursuant to Article 5(3)(**16**) of the Hazardous Waste Directive;
- “consignor” (“*traddodwr*”), in relation to a consignment of hazardous waste, means the person who causes that waste to be removed from the premises at which it was produced or is being held;
- “emergency or grave danger” (“*argyfwng neu berygl difrifol*”) has the meaning given by regulation 61;
- “emergency services” (“*gwasanaethau brys*”) means those police, fire and ambulance services who are liable to be required to respond to an emergency;

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(11) 1990 c. 43.

(12) 1995 c. 25.

(13) S.I. 1994/1056. Relevant amending instruments are S.I. 1994/1137; 1995/288, 1995/1950, 1996/634, 1996/972, 1996/1279, 1997/2203, 1998/606, 1998/2746, 2000/1973, 2001/503, 2002/674, 2002/1559 and 2005/883.

(14) SI 1996/972 as amended by S.I. 1996/2019, 1997/251, 2001/3148.

(15) 1971 c. 80.

(16) The consignment note is required by Article 5(3) to contain the details specified in Commission Decision 94/774/EC (OJ No. L 310, 3/12/1994 p.70; this decision is expected to be replaced in June 2005). The relevant requirements are contained in Schedule 4 to these Regulations.

“harbour area” (“*ardal harbwr*”) has the same meaning as in the Dangerous Substances in Harbour Areas Regulations 1987(17);

“hazardous waste” (“*gwastraff peryglus*”) is to be construed in accordance with regulation 6;

“mixing” (“*cymysgu*”) is to be construed in accordance with regulation 18;

“mobile service” (“*gwasanaeth symudol*”) means a service operated from premises which consists of any one or more of the following activities, that is to say, the construction, maintenance or repair of any other premises, or of any fixtures, fittings or equipment located on those other premises, being a service in the course of which the operator of the service produces hazardous waste at those other premises;

“multiple collection” (“*amlgasgliad*”) has the meaning given by regulation 38;

“multiple collection consignment note” (“*nodyn traddodi amlgasgliad*”) means the consignment note set out in Schedule 6 and required to be used in relation to multiple collections;

“non-hazardous waste” (“*gwastraff nad yw'n beryglus*”) has the meaning given by regulation 7;

“premises” (“*mangre*”) includes any ship and any other means of transport from which a mobile service is operated;

“quarter” (“*chwarter*”) means any period of three months ending on 31 March, 30 June, 30 September or 31 December;

“registered exemption” (“*esemptiad cofrestredig*”) means an activity set out in Schedule 3 to the 1994 Regulations which is registered with the appropriate registration authority in accordance with those Regulations;

“schedule of carriers” (“*atodlen y cludwyr*”) means the form of schedule set out in Schedule 5 and required to be completed where more than one carrier transports, or is to transport, the consignment;

“SEPA” (“*SEPA*”) means the Scottish Environment Protection Agency;

“ship” (“*llong*”) means a vessel of any type whatsoever including submersible craft, floating craft and any structure which is a fixed or floating platform;

“six digit code” (“*cod chwe digid*”) means the six digit code referable to a type of waste in accordance with the List of Wastes, and in relation to hazardous waste, includes the asterisk;

“SIC” (“*SIC*”) means the publication entitled “the UK Standard Industrial Classification of Economic Activities 2003” prepared by the Office of National Statistics and published by Her Majesty’s Stationery Office on 31 December 2002 and implemented on 1 January 2003(18);

“United Kingdom ship” (“*llong y Deyrnas Unedig*”) has the meaning given by section 1 of the Merchant Shipping Act 1995(19);

“waste management licence” (“*trwydded rheoli gwastraff*”) has the meaning given by section 35(1) of the 1990 Act;

“waste permit” (“*trwydded gwastraff*”) has the same meaning as in Schedule 4 to the 1994 Regulations.

(2) In these Regulations, the following expressions (being the expressions defined in Article 1(b) to (g) of the Waste Directive) have the same meanings as they have in that directive, that is to say—

“producer” (“*cynhyrhydd*”) means anyone whose activities produce waste (“original producer”) or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;

(17) S.I. 1987/37, to which there are amendments not relevant to these Regulations.

(18) ISBN 0116216417.

(19) 1995 c. 21.

“holder” (“*deiliad*”) means the producer of the waste or the person who is in possession of it;

“management” (“*rheoli*”) means the collection, transport, recovery and disposal of waste, including the supervision of such operations and after-care of disposal sites;

“disposal” (“*gwaredu*”) means any of the operations provided for in Annex IIA of the Waste Directive;

“recovery” (“*adfer*”) means any of the operations provided for in Annex IIB of the Waste Directive(20);

“collection” (“*casglu*”) means the gathering, sorting or mixing of waste or any one or more of those operations, for the purpose of transport,

and expressions cognate to these expressions are to be construed accordingly.

(3) In these Regulations—

- (a) any document which is to be provided or given to any person (other than a fixed penalty notice under Part 10) may be provided or given to that person in electronic form if the text is capable of being produced by that person in a visible and legible documentary form;
- (b) any requirement to make, keep or retain a record or to maintain a register may be satisfied in electronic form if the text is capable of being produced by that person in a visible and legible documentary form;
- (c) any requirement for a signature on a notification, consignment note, schedule of carriers or multiple collection consignment note, may be satisfied by an electronic signature incorporated into the document; and
- (d) “electronic signature” (“*llofnod electronig*”) means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.

## 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(21);
  - (b) listed in regulations made under section 62A(1) of the 1990 Act; or
  - (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 are to be construed accordingly.

#### Non-hazardous waste

7. The following are non-hazardous waste—
  - (a) a waste which is not a hazardous waste pursuant to regulation 6; or

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(20) The meaning of “disposal” and “recovery” has been interpreted by the European Court of Justice in C-6/00. The Court held (at paragraph 60 of the judgment) “...the intention of Annexes II A and II B to the Directive is to list the most common disposal and recovery operations and not precisely and exhaustively to specify all the disposal and recovery operations covered by the Directive.”

(21) 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.

- (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 are to be construed accordingly.

#### **Specific waste to be treated as hazardous**

**8.—**(1) The Assembly, having regard to Annexes I, II and III and the limit values of concentration in the List of Wastes, may determine, in exceptional cases, that a specific batch of waste in Wales which—

- (a) is not listed in the List of Wastes;
- (b) is not listed in regulations made under section 62A(1) of the 1990 Act; or
- (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 is to be treated for all purposes as hazardous waste.

(2) A specific batch of waste produced in England, Scotland or Northern Ireland and not listed as hazardous in the List of Wastes and which is for the time being determined by the Secretary of State, the Scottish Executive or the Northern Ireland Department of the Environment, as the case may be, to be hazardous pursuant to Article 3 of the List of Wastes Decision, is to be treated for all purposes as hazardous waste in Wales.

#### **Specific waste to be treated as non-hazardous**

**9.—**(1) The Assembly may decide, in exceptional cases, on the basis of documentary evidence provided by the holder, and having regard to Annexes I, II and III and the limit values of concentration in the List of Wastes, that a specific batch of waste in Wales which—

- (a) is listed as hazardous waste in the List of Wastes;
- (b) is listed in regulations made under section 62A(1) of the 1990 Act; or
- (c) through 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 to the Hazardous Waste Directive and accordingly that it is to be treated for all purposes as non-hazardous in Wales.

(2) A specific batch of waste produced in England, Scotland or Northern Ireland and listed as a hazardous waste in the List of Wastes and which is for the time being determined by the Secretary of State, the Scottish Executive, or the Northern Ireland Department of the Environment, as the case may be, to be non-hazardous pursuant to Article 3 of the List of Wastes Decision, is, subject to any determination made under regulation 8, to be treated for all purposes as non-hazardous in Wales.

#### **Provisions common to regulations 8 and 9**

**10.—**(1) The Assembly may revoke a determination made under regulation 8 or 9.

(2) The Assembly must, before making a determination under regulation 8 or 9 or revoking such a determination, except where it 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 it—
  - (i) to have an interest in the specific waste; or

(ii) to be otherwise directly affected by the determination.

(3) The Assembly must give notice of any determination made under regulation 8 or 9 or revocation made under regulation 8 or 9 to—

- (a) the requisite bodies;
- (b) the holder of the batch of waste concerned; and
- (c) any person it has consulted pursuant to paragraph (2)(c).

(4) The notice must 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;
- (b) SEPA;
- (c) The Secretary of State;
- (d) the Scottish Executive;
- (e) the Northern Ireland Department of the Environment<sup>(22)</sup>;
- (f) the Health and Safety Executive; and
- (g) any organisation appearing to the Assembly to be representative of persons likely to be affected by the relevant determination, or revocation of a determination, as the case may be.

## **PART 3**

### **APPLICATION OF PARTS 4 TO 10**

#### **General application of Parts 4 to 10**

12.—(1) Subject to paragraphs (2) to (4), these Regulations apply to hazardous waste.

(2) Except as provided in regulations 13 (application to asbestos waste) and 14 (application to separately collected fractions), these Regulations do not apply to domestic waste<sup>(23)</sup>.

(3) Nothing in Part 6 of these Regulations (movement of hazardous waste) applies in relation to shipments of waste to which the provisions of Council Regulation 259/93/EEC<sup>(24)</sup>, other than Title III of that Regulation, apply.

(4) These Regulations apply to hazardous waste in Wales notwithstanding that the waste—

- (a) was produced on or removed from premises in Scotland, England, Northern Ireland or Gibraltar; or
- (b) is, or is to be, transported from premises in Wales to premises located in one of those places.

(5) For the avoidance of doubt, in their application to—

- (a) ships' waste, these Regulations apply to any ship;

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<sup>(22)</sup> The Northern Ireland Department of the Environment includes its executive agency the Environmental Heritage Service.

<sup>(23)</sup> Article 1(5) of the Hazardous Waste Directive made provision for specific rules to be made by the European Community taking into consideration the particular nature of domestic waste; no such rules have, at the date of making these Regulations, been adopted.

<sup>(24)</sup> OJ No. L 30, 6.2.1993, p.1.

- (b) the internal waters and the territorial sea of the United Kingdom adjacent to Wales, these Regulations apply, without prejudice to paragraph (3), to a consignment of waste transported in any ship,

in each case (whether the ship is a United Kingdom ship or otherwise and, if a United Kingdom ship, whether registered in Wales or otherwise).

### **Asbestos waste**

**13.**—(1) These Regulations apply to asbestos waste which is domestic waste except in so far as they would, apart from this paragraph, impose obligations on a person to whom paragraph (2) applies.

(2) This paragraph applies to a person who is both the original producer of the domestic waste and either—

- (a) a person who resides at the domestic premises at which the asbestos waste arises; or
- (b) a person who is acting on behalf of such a person without reward.

(3) These Regulations operate in relation to asbestos waste not being domestic waste which is produced in the course of any of the activities of construction, modification, repair and maintenance (including structural works) or demolition of domestic premises or any part thereof, so as to treat any contractor engaged by a domestic occupier—

- (a) as the producer; and,
- (b) where the contractor does not engage another person as consignor, as the consignor,

of the asbestos waste to the exclusion of the occupier.

### **Separately collected domestic fractions**

**14.**—(1) This regulation applies to separately collected domestic fractions, that is to say, hazardous waste which is—

- (a) domestic waste; and
- (b) collected from the premises on which it is produced separately from the collection of other waste from those premises.

(2) For the purposes of paragraph (1), hazardous waste may be considered to be collected separately from the collection of other waste notwithstanding that it is collected at the same time or on the same vehicle or both, provided that the hazardous waste is not mixed with the other waste.

(3) Subject to paragraph (4), these Regulations apply to separately collected fractions.

(4) Nothing in these Regulations applies to separately collected fractions until such waste has been removed from the premises at which it was produced and taken to premises for collections, disposal or recovery.

(5) The establishment or undertaking which accepts such waste at those premises is to be treated as producer of the waste for the purposes of these Regulations.

### **Radioactive waste**

**15.**—(1) This regulation applies where radioactive waste within the meaning of section 2 of the Radioactive Substances Act 1993<sup>(25)</sup>—

- (a) is exempt for the time being from the requirements of—
  - (i) section 13 (disposal of radioactive waste); or

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(25) 1993 c. 12.



(ii) section 14 (accumulation of radioactive waste),  
of that Act by or pursuant to section 15 of that Act; and

(b) has one or more hazardous properties arising other than from its radioactive nature.

(2) Notwithstanding regulation 2(1)(b)(ii), radioactive waste to which this regulation applies is treated as waste for the purposes of these Regulations, and accordingly it is treated as hazardous waste and these Regulations apply to that waste.

### **Agricultural waste**

**16.**—(1) These Regulations do not apply to agricultural waste before 1 September 2006, but apply on and after that date to agricultural waste whenever it became waste.

(2) For the purpose of this Regulation, “agricultural waste” means waste from premises used for agriculture within the meaning of the Agriculture Act 1947(26).

### **Mines and quarries waste**

**17.** These Regulations do not apply to waste from a mine or quarry before 1 September 2006, but apply on and after that date to such waste whenever it became waste.

## **PART 4**

### **MIXING HAZARDOUS WASTE**

#### **Meaning of mixing hazardous waste**

**18.**—(1) For the purposes of these Regulations, hazardous waste of any description is considered to have been mixed if it has been mixed with—

- (a) a different category of hazardous waste;
- (b) a non-hazardous waste; or
- (c) any other substance or material.

#### **Prohibition on mixing hazardous waste without a permit**

**19.**—(1) Subject to paragraphs (2) and (3), no establishment or undertaking which carries out the disposal or recovery of hazardous waste, or which produces, collects or transports hazardous waste, may mix any hazardous waste.

(2) Paragraph (1) does not apply so as to prohibit a process by which waste is produced and which results in the production of mixed wastes, being a process other than one which mixes a waste with any other waste, substance or material, resulting in—

- (a) a change in the nature or composition of that waste; or
- (b) the production of another waste.

(3) Paragraph (1) does not apply to the extent that the mixing is part of a disposal or recovery operation and is authorised by, and is conducted in accordance with, the requirements (howsoever expressed) of a waste permit or a registered exemption.

**Duty to separate mixed wastes**

20.—(1) This regulation applies to the holder where—

- (a) the hazardous waste has been mixed other than under and in accordance with a waste permit or a registered exemption, whether by the holder or a previous holder; and
- (b) separation is both—
  - (i) technically and economically feasible; and
  - (ii) necessary in order to comply with the Waste Directive conditions.

(2) The holder must make arrangements for separation of the waste to be carried out in accordance with a waste permit or registered exemption as soon as reasonably practicable.

(3) In this Regulation “separation” means separation of a waste from any other waste, substance, or material with which it has been mixed.

## PART 5

### NOTIFICATION OF PREMISES

**Requirement to notify premises**

21.—(1) Where hazardous waste is produced at, or removed from, any premises other than exempt premises, the premises must be notified to the Agency in accordance with the requirements of this Part.

(2) Premises duly notified to the Agency in accordance with this Part are notified premises for the purposes of these Regulations for the period of twelve months (“the period of notification”) commencing at the effective time and ending at the end of the last day of that twelve month period.

(3) It is the duty of a hazardous waste producer to notify the relevant premises in accordance with regulations 24 and 26 if they have not otherwise already been notified.

(4) Without prejudice to paragraph (3), a consignor may, in the circumstances described in regulation 25, notify the site premises in accordance with that regulation and regulation 26.

**Prohibition on removal of hazardous waste from premises unless notified or exempt**

22.—(1) Subject to paragraph (2), no person may remove, or cause to be removed, or transport hazardous waste from any premises unless those premises are, at the time of removal of the waste, notified premises or exempt premises.

(2) Paragraph (1) does not apply to the removal or transport of hazardous waste from any premises if the waste was deposited at those premises in contravention of section 33 of the 1990 Act other than in purported compliance with a waste management licence or registered exemption.

**Exemption from the requirement to notify**

23.—(1) Exempt premises need not be notified to the Agency pursuant to this Part.

(2) Premises of a description referred to in paragraph (3) are, to the extent specified in that paragraph, exempt premises for the time being if—

- (a) (other than in relation to a ship), the qualifying limitation is observed; and
- (b) no hazardous waste is removed from the premises by any person other than—
  - (i) a registered carrier; or

- (ii) a carrier exempt from the requirement to register as a registered carrier pursuant to the Control of Pollution (Amendment) Act 1989<sup>(27)</sup>.
- (3) The descriptions of premises are—
  - (a) office premises, to the extent that the hazardous waste arises from the use of the premises as an office;
  - (b) shop premises, to the extent that the hazardous waste arises from the use of the premises as a shop;
  - (c) premises used for agriculture within the meaning of the Agriculture Act 1947<sup>(28)</sup>, to the extent that the hazardous waste arises from the use of the premises for agriculture;
  - (d) premises of a description listed in—
    - (i) paragraphs (a) to (e) of section 75(5) of the 1990 Act; or
    - (ii) Schedule 1 to the Controlled Waste Regulations 1992<sup>(29)</sup>,
  - (e) premises at which waste electrical and electronic equipment is collected, to the extent that the premises are used for that purpose;
  - (f) premises used by a dental, veterinary or medical practice, to the extent that the premises are used for that purpose; and
  - (g) any ship.

#### **Notification by producer**

**24.**—(1) Subject to paragraph (2), a hazardous waste producer must notify to the Agency the site premises or, where he or she operates a mobile service and elects to treat service premises as the relevant premises in relation to any related premises, the service premises—

- (a) before the first occasion on which he or she produces hazardous waste on the site premises, or, in the case of notification of service premises, on any of the related site premises, as the case may require;
- (b) where the relevant premises have previously been notified premises, but the period of notification has expired, before the next occasion on which he or she produces hazardous waste on the site premises or any of the related premises, as the case may require;
- (c) where the premises cease to be exempt premises, before the next occasion on which he or she produces hazardous waste on those premises; or
- (d) where the notified premises cease to be service premises in relation to any related premises on account of the qualifying limitation provided for in regulation 30 being exceeded in relation to those related premises, before those limitations are exceeded.

(2) Where it is not reasonably foreseeable that the producer's activities will produce hazardous waste, paragraph (1) applies as if for "before" on each occasion that it occurs, there were substituted "as soon as reasonably practicable after".

#### **Notification by consignor**

**25.**—(1) A consignor who proposes to remove, or cause to be removed, any hazardous waste from any premises must notify those premises to the Agency if—

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<sup>(27)</sup> 1989 c. 14.

<sup>(28)</sup> 1947 c. 48.

<sup>(29)</sup> S.I. 1992/588. Regulation 2 was amended by regulation 24(3) of S.I. 1994/1056; there are other amendments to S.I. 1992/588 not relevant to these Regulations.

- (a) they are the site premises and the producer is not known or cannot be located without unreasonable inconvenience or expense; or
- (b) the waste was not produced at those premises.

### **Common provisions on notifications**

**26.**—(1) This regulation applies whether notification is given by or on behalf of the producer or consignor.

(2) Notification of the relevant premises may be given in writing or by telephone.

(3) Notification may not without the consent of the Agency be given more than one month in advance of the effective time.

(4) The person giving notification must provide to the Agency the following information—

- (a) his or her name and address and details of how he or she can be contacted, and where he or she is giving notification on behalf of another person, the name and address of that person and details of how that person can be contacted;
- (b) the address of the premises being notified;
- (c) the classification of the premises in accordance with the SIC; and
- (d) such other information as the Agency may reasonably require in connection with its functions of monitoring the movement of hazardous waste, or carrying out inspections pursuant to regulation 56 of these Regulations or paragraph 13 of Schedule 4 to the 1994 Regulations.

(5) If there are any changes in the information provided pursuant to paragraph (4) during the period of notification, the premises are not to be treated as notified until the Agency have received the updated information such that the requirements of paragraph (4) are met.

(6) The Agency may prescribe a model format for notifications of premises in writing and, where for the time being a format is prescribed pursuant to this paragraph—

- (a) the Agency must publish the model format on its website and in such other manner as it may consider appropriate for informing persons required to notify premises of its content; and
- (b) the Agency is not obliged to consider any notification unless it is made in that model format, or in a format substantially to like effect.

(7) The person giving notification must pay to the Agency the relevant fee payable in respect of the notification of premises at the same time as giving notification (but no fees are payable in relation to information provided pursuant to paragraph (5)).

(8) The Agency must inform on request a person who is the holder of hazardous waste or who carries on the business of consigning or collecting hazardous waste whether any premises from which that person proposes to remove, cause to be removed or transport any hazardous waste, and if so, the particulars held by the Agency concerning the person who notified the premises and the effective time of notification.

### **Premises code**

**27.**—(1) When notification of relevant premises is duly made to and the relevant fee received by the Agency, it must on receipt thereof issue to the person making the notification a registration code, being a code unique to those premises (a “premises code”).

(2) The premises code may consist of letters, numbers or symbols, or any combination of letters, numbers and symbols.

### **Effective time**

**28.**—(1) Subject to paragraph (2) of this Regulation and without prejudice to regulation 26(3), the time at which notification takes effect (“the effective time”) is—

- (a) where a previous period of notification remains in force, on the expiration of that period;
- (b) where the person giving notification requests a date for commencement, at the beginning of the date so requested;
- (c) in any other case, at the beginning of the fourth business day following the day on which notification is given.

(2) A notification cannot take effect before the time at which the Agency issues the premises code for the period covered by the notification.

### **Mobile services**

**29.**—(1) Where the producer of the hazardous waste operates a mobile service, premises to which paragraph (2) applies (“service premises”) are the relevant premises in relation to any related premises whilst that mobile service is operated within the qualifying limitation and the tenure restriction is observed in relation to each related premises.

(2) The premises to which this paragraph applies are—

- (a) the premises from which the mobile service is operated; or
- (b) where the mobile service is operated from more than one set of premises, the producer’s principal place of business.

(3) Where any premises are both—

- (a) site premises apart from the mobile service; and
- (b) service premises in relation to the mobile service,

a single notification may be made.

### **The qualifying limitation**

**30.**—(1) The qualifying limitation for—

- (a) a mobile service is that the total quantity of hazardous waste produced in the course of that service at any one set of related premises is less than 200kg in any period of twelve months; and
- (b) any exempt premises is that the total quantity of hazardous waste produced at the premises is less than 200kg in any period of twelve months.

(2) Hazardous waste produced at shop premises by customers of the occupier are to be treated as being produced by the occupier for the purposes of this Regulation.

### **The tenure restriction**

**31.** The tenure restriction is that the operator of the mobile service neither owns nor occupies those related premises.

### **General interpretation of Part 5**

**32.** In this Part—

“the 1963 Act” (“*Deddf 1963*”) means the Offices, Shops and Railway Premises Act 1963<sup>(30)</sup>;

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(30) 1963 c. 41.

“effective time” (“*amser effeithiol*”) has the meaning given by regulation 28;

“exempt premises” (“*mangre esempt*”) has the meaning given by regulation 23;

“notified premises” (“*mangre a hysbyswyd*”) has the meaning given by regulation 21(2);

“office premises” (“*mangre swyddfa*”) has the meaning given by section 1(2)(a) of the 1963 Act;

“period of notification” (“*cyfnod hysbysu*”) has the meaning given by regulation 21(2);

“registered carrier” (“*cludwr cofrestredig*”) means a carrier registered pursuant to the Control of Pollution (Amendment) Act 1989<sup>(31)</sup>;

“related premises” (“*mangre gysylltiedig*”) means the site premises at which a mobile service produces waste for which relevant premises are service premises in accordance with regulation 29;

“relevant premises” (“*mangre berthnasol*”) means the premises which the producer or consignor is required to notify;

“relevant fee” (“*ffi berthnasol*”) means the fee payable in accordance with a scheme made pursuant to section 41 of the 1995 Act;

“service premises” (“*mangre gwasanaeth*”) has the meaning given by regulation 29(1);

“shop premises” (“*mangre siop*”) has the meaning given by section 1(3) of the 1963 Act;

“site premises” (“*mangre safle*”) means the premises at which hazardous waste is produced; and

“waste electrical and electronic equipment” (“*cyfarpar gwastraff trydanol ac electronig*”) has the same meaning as in Directive 2002/96/EC<sup>(32)</sup>.

## PART 6

### MOVEMENT OF HAZARDOUS WASTE

#### *Consignment codes*

#### **Coding standard**

33.—(1) It is the duty of the Agency from time to time to designate, and at all times to maintain in force a designation of, a standard (in these Regulations referred to as a “coding standard”), making provision for the composition of consignment codes for the purposes of this Part.

(2) The coding standard must enable each consignment of hazardous waste to be given a unique consignment code.

(3) The standard must make provision for different codes for consignment notes completed in relation to hazardous waste removed by pipeline pursuant to regulation 41, where piping is continuous for more than one quarter.

(4) The standard must make provision for consignment codes to consist of letters, numbers or symbols, or any combination of letters, numbers and symbols.

#### **Consignment codes**

34.—(1) It is the duty of—

<sup>(31)</sup> 1989 c. 14.

<sup>(32)</sup> OJ No. L 037, 13.12.2003, p.24.

- (a) the producer, in relation to—
  - (i) a consignment of hazardous waste to be removed from premises at which the waste is produced (other than a ship);
  - (ii) hazardous waste to be removed by pipeline from premises (other than a ship) situated in a case to which regulation 41 applies; or
  - (iii) hazardous waste to be deposited within the curtilage of premises at which it was produced;
- (b) the master of the ship, in relation to any hazardous waste removed from a ship in a harbour area (including waste accidentally spilled on land adjacent to the ship); and
- (c) the consignor, in relation to any other consignment of hazardous waste,

to assign to the hazardous waste a unique code in accordance with the coding standard for the time being in force.

(2) The code assigned pursuant to paragraph (1) is to be the consignment code of the hazardous waste concerned for the purposes of these Regulations.

#### *Documents to be completed for consignments*

#### **Completion of the consignment note**

**35.**—(1) Where hazardous waste is removed from any premises—

- (a) a consignment note must be completed in accordance with paragraph (3) of this regulation and the requirements of the relevant regulation if one of the following regulations applies—
  - (i) regulation 36 (standard procedure);
  - (ii) regulation 39 (removal of ship’s waste to reception facilities);
  - (iii) regulation 40 (removal of ship’s waste other than to reception facilities);
  - (iv) regulation 41 (removal of waste by pipeline); or
  - (v) where the consignment or any part thereof is rejected by the consignee, in accordance in each case with regulation 42 and 43;
- (b) if regulation 37 (Schedule of carriers) applies, a schedule of carriers must be completed in accordance with that regulation and paragraph (3) of this regulation; and
- (c) if regulation 38 (multiple collection) or regulation 44 (multiple collection procedure for rejected consignments) applies, a multiple collection consignment note must be completed in accordance with the applicable regulation and paragraph (4) of this regulation.

(2) The form of consignment note set out in Schedule 4, or a form requiring the same information in substantially the same format, is to be used and must be completed so as to contain (in the place indicated in the form) all the information provided for in that Schedule which is applicable to the case.

(3) The form of the schedule of carriers set out in Schedule 5, or a form requiring the same information in substantially the same format, is to be used and must be completed so as to contain (in the place indicated in the form) all the information provided for in that Schedule which is applicable to the case.

(4) The form of multiple collection consignment note set out in Schedule 6, or a form requiring the same information in substantially the same format, is to be used and must be completed so as to contain (in the place indicated in the form) all the information provided for in that Schedule which is applicable to the case.

(5) In this Part, a reference to a part of a consignment note, schedule of carriers or multiple collection consignment note by its number or description is a reference to that part as it is required to be so numbered or described as the case may be in the form in Schedule 4, 5 or 6 as the case may require.

### **Standard procedure**

**36.**—(1) This regulation applies in all cases where a consignment of hazardous waste is to be removed from premises except in cases to which any of regulations 38 to 41 apply.

(2) Before the consignment is removed—

(a) the hazardous waste producer, or holder, as the case may be, must—

(i) prepare a copy of the consignment note for each of the following: the hazardous waste producer or holder (where different from the consignor); the consignor; the carrier; and the consignee;

(ii) complete Parts A and B on each copy; and

(iii) give every copy to the carrier;

(b) the carrier must complete Part C on each copy and give every copy to the consignor;

(c) the consignor must—

(i) complete Part D on each copy;

(ii) where the hazardous waste producer or holder, as the case may be, is not the consignor, give one copy to him or her;

(iii) retain one copy; and

(iv) give every remaining copy to the carrier.

(3) The carrier must ensure that every copy which he or she has received—

(a) travels with the consignment; and

(b) is given to the consignee on delivery of the consignment.

(4) Subject to regulation 42, on receiving the consignment the consignee must—

(a) complete Part E on both copies; and

(b) give one copy to the carrier.

### **Schedule of carriers**

**37.**—(1) This regulation applies in all cases (whether under regulation 36, or regulation 40) where more than one carrier transports, or is to transport, the consignment.

(2) Before the consignment is removed—

(a) the consignor must—

(i) prepare a copy of the schedule of carriers for the hazardous waste producer or holder (where different from the consignor), the consignor, every carrier and the consignee; and

(ii) give every copy to the first carrier;

(b) the first carrier must ensure that every copy he or she has received travels with the consignment;

(c) on delivery of the consignment to each subsequent carrier—

(i) the previous carrier must give the subsequent carrier every copy of the schedule which he or she has received;



- (ii) the subsequent carrier must complete the relevant certificate on each copy, give one to the previous carrier who must retain it, and ensure that every remaining copy which he or she has received travels with the consignment; and
- (iii) when the consignment is delivered to a consignee, the carrier must retain one copy of the carrier's schedule and give every remaining copy to the consignee.

(3) Where—

- (a) arrangements for the transport of the consignment have not been made with all carriers intended to be involved before transport commences; or
- (b) there is a change in any such arrangements after transport commences for any reason,

paragraph (2) applies as if the carrier in possession of the consignment when further arrangements are made, in the case of paragraph (a), or take effect, in the case of paragraph (b), were the consignor and the next carrier were the first carrier.

(4) Where this Regulation applies, other than in the case of a rejected consignment of hazardous waste, regulation 36 has effect as if—

- (a) a reference to the hazardous waste being removed includes reference to its possession being transferred to the next carrier;
- (b) in paragraph (2)(a)(i), the reference to “the carrier” were a reference to “every carrier”;
- (c) in paragraphs (2)(a)(iii), 2(b) and (2)(c)(iv), the reference to “the carrier” were a reference to “the first carrier”;
- (d) in paragraph (3)(b), in relation to a carrier who is not the final carrier, the reference to “the consignee” were a reference to “the subsequent carrier”;
- (e) in paragraph (4)(b), the reference to “the carrier” were a reference to “the final carrier”.

### **Multiple collections**

**38.**—(1) This regulation applies to a journey made by a single carrier which meets the following conditions—

- (a) the carrier collects more than one consignment of hazardous waste in the course of the journey;
- (b) each consignment is collected from different premises (none of which is a ship);
- (c) all the premises from which a collection is made are in Wales; and
- (d) all consignments collected are transported by that carrier in the course of the journey to the same consignee,

and a journey which meets these conditions is referred to in these Regulations as a “multiple collection”.

(2) Where the carrier elects to apply the multiple collection procedure set out in this regulation to a multiple collection, the requirements of this regulation apply to the carrier, and to the producers, holders and consignors of the consignments collected in the course of the round.

(3) Before the first collection, the carrier must—

- (a) prepare two copies of the multiple consignment collection note plus one copy for each hazardous waste producer or holder, as the case may be, from whom waste is to be collected during the round, and one copy for each consignor, in cases where the hazardous waste producer, or holder, as the case may be, is not the consignor; and
- (b) complete Parts A and B on each copy.

(4) Before the removal of waste from each set of premises from which a collection is made—

- (a) the producer, or holder, must complete the annex to the multiple collection consignment note on each copy;
  - (b) the consignor and carrier must sign their respective declarations to the annex to the multiple collection consignment note on each copy of the note; and
  - (c) the carrier must pass a completed copy to the producer or holder in each case (and where the producer or holder is not the consignor, the consignor).
- (5) After collection of the last consignment but before delivery to the consignee, the carrier must complete the particulars for completion by the carrier in section C on both remaining copies of the consignment note.
- (6) Subject to regulation 42, on delivery of the waste—
- (a) the carrier must pass to the consignee both remaining copies of the note;
  - (b) the consignee must complete the particulars for completion by the consignee in Section C and complete the certificate in part D of the note on both copies; and
  - (c) the consignee must return one copy of the completed note to the carrier.

#### **Removal of ships' wastes to reception facilities**

**39.**—(1) This Regulation applies where hazardous waste is removed from a ship (including excesses or spillage from loading or unloading, which have been accidentally spilled on land adjacent to the ship) in a harbour area—

- (a) to reception facilities provided within that harbour area; or
  - (b) by pipeline to any such facilities provided outside a harbour area.
- (2) Before the waste is removed from the ship the master of the ship must—
- (a) prepare two copies of the consignment note;
  - (b) complete Parts A, B and D on each copy;
  - (c) retain one copy; and
  - (d) give one copy to the operator of the facilities.

(3) Subject to regulation 42, on receiving a consignment of hazardous waste the operator of the facilities must complete Part E on the copy which he or she has received.

#### **Removal of ships' wastes other than to reception facilities**

**40.**—(1) This regulation applies where hazardous waste is removed from a ship in a harbour area other than in a case to which regulation 39 applies.

- (2) Before the consignment is removed—
- (a) the master of the ship must—
    - (i) prepare three copies of the consignment note;
    - (ii) complete Parts A and B on each copy; and
    - (iii) give every copy to the carrier;
  - (b) the carrier must complete Part C on each copy;
  - (c) the master of the ship must—
    - (i) complete Part D on each copy;
    - (ii) retain one copy; and
    - (iii) give every remaining copy to the carrier;

- (d) the carrier must ensure that every copy which he or she has received—
  - (i) accompanies the consignment; and
  - (ii) is given to the consignee on delivery of the consignment.
- (3) Subject to regulation 42, on receiving the consignment the consignee must—
  - (a) complete Part E on both copies; and
  - (b) give one copy to the carrier.

### **Removal of wastes by pipeline**

**41.**—(1) This regulation applies where hazardous waste is removed from any premises (other than a ship) on which it is produced or stored by pipeline.

(2) Before the waste is piped, and, where the piping is continuous, at the commencement of each quarter, the producer, or holder, as the case may be, must—

- (a) prepare one copy of the consignment note for each of the following: the producer or holder, as the case may be (where different from the consignor), the consignor and the consignee;
  - (b) complete Parts A, B and D on each copy, provided that in Part B3 the average flow rate must be recorded, together with an estimate of the total volume of waste to be piped per week or calendar month.
- (3) The consignee must complete Part E on each copy with the following modifications—
- (a) in Part E1, the reference to the date on which the waste was received is to be taken to be a reference to the last date on which waste was received by the consignee pursuant to that consignment note; and
  - (b) in Part E2, the particulars of the vehicle registration are not required.
- (4) The consignee must retain one copy and ensure that a copy is given to the consignor, and to the hazardous waste producer or holder (where different from the consignor).

### *Rejected consignments*

### **Duty of consignee not accepting delivery**

**42.**—(1) This regulation and regulations 43 and 44 apply where the consignee does not accept delivery of a consignment of hazardous waste, whether wholly or in part.

(2) The requirements of regulation 36(4), 38(6)(b) and (c), 39(3) or 40(3) (which relate to the duties of the consignee on acceptance of the consignment) as the case may be, do not apply to the consignee in respect of a consignment, or part thereof, which has been rejected.

(3) If copies of the consignment note relating to a rejected consignment have been given to the consignee he or she must—

- (a) indicate on Part E of each copy that he or she receives that he or she does not accept the consignment, or part of the consignment, as the case may be, and the reasons why he or she does not accept the consignment or part;
- (b) retain one copy;
- (c) give one copy to the carrier; and
- (d) as soon as reasonably practicable, send a copy to the consignor, and (if different from the consignor), the producer or holder, where known.

(4) If no copy of the consignment note has been given to the consignee he or she must—

- (a) prepare a written explanation of his or her reasons for not accepting delivery, including such details of the consignment, the hazardous waste producer or holder, the consignor and the carrier as are known to him or her;
  - (b) give such written explanation to the carrier;
  - (c) as soon as reasonably practicable, send one copy to the consignor, and (if different from the consignor) the producer or holder, where known; and
  - (d) retain a copy of his or her written explanation.
- (5) On being informed that the consignee will not accept delivery of the consignment or part, the carrier must—
- (a) inform the Agency;
  - (b) seek instructions from the hazardous waste producer or holder; and
  - (c) take all reasonable steps to ensure those instructions are fulfilled (including completing any consignment note on their behalf).
- (6) It is the duty of the hazardous waste producer or holder identified in the relevant part of the consignment note, as the case may be, to—
- (a) make arrangements as soon as reasonably practicable for the transfer of the rejected consignment or part to another specified consignee who holds a waste permit or is registered to carry on an exempt activity for the recovery or disposal of the waste; and
  - (b) forthwith—
    - (i) give instructions to the carrier accordingly; and
    - (ii) inform the Agency of the arrangements and instructions.
- (7) If in any case within paragraph (6)(a) no alternative consignee can be found within 5 business days, the hazardous waste producer or holder identified in the relevant part of the consignment note must make arrangements to return the waste to premises from which it was removed for its storage in accordance with the Waste Directive conditions until a suitable consignee can be found.

### **Further consignment note for rejected consignment**

**43.—**(1) This regulation applies to the removal of any consignment following rejection by the consignee other than in a case to which regulation 44 applies.

(2) Before the consignment or part is moved from the original place for delivery, the hazardous waste producer or holder identified in the relevant part of the original consignment note must ensure that a copy of a new consignment note is prepared in respect of the rejected consignment or part for each of the following:

- (a) the hazardous waste producer;
  - (b) where the hazardous waste producer or holder is not the consignor, the consignor;
  - (c) the carrier; and
  - (d) the new consignee.
- (3) The producer or holder must —
- (a) complete Parts A and B on each copy of the note as follows—
    - (i) the information required to complete Part A should be copied from the original consignment note, including the relevant consignment code to which the letter “R” must be added to the end;
    - (ii) the new consignee’s name and address (including the postcode) must be entered in Part A4; and

- (iii) subject to paragraph (4), the relevant information from the original consignment note must (where part of the load is rejected, in so far as it relates to that part) be copied to Part B; and
  - (b) give every copy to the carrier.
- (4) Where the consignee who rejected the consignment or part states in his or her written explanation that the description of the waste in the original consignment note is incorrect, the producer or holder must instead include an accurate description of the waste in the new consignment note.
- (5) The carrier must complete Part C on each copy.
- (6) The producer or holder identified in the relevant part of the original consignment note must—
  - (a) complete Part D on each copy;
  - (b) where the producer or holder is not the consignor, give one copy to the producer or holder as the case may be; and
  - (c) give every remaining copy to the carrier.
- (7) The carrier must ensure that every copy of the new consignment note which he or she has received—
  - (a) travels with the rejected consignment or part; and
  - (b) is given to the new consignee on delivery of the consignment or part.
- (8) The new consignee must—
  - (a) complete Part E on both copies of the new consignment note; and
  - (b) give one copy to the carrier.
- (9) Where there is to be more than one carrier—
  - (a) in paragraphs (3)(b), (5) and (6)(c), references to the carrier are to be treated as references to the first carrier;
  - (b) in paragraphs 2(c) and (7), references to the carrier are to be treated as references to each carrier;
  - (c) in paragraph (7)(b), in relation to a carrier who is not the final carrier, the reference to “the new consignee” is to be treated as a reference to “the subsequent carrier”; and
  - (d) in paragraph (8)(b) the reference to the carrier is to be treated as a reference to the final carrier.

#### **Procedure for rejected multiple collection consignments**

**44.**—(1) Where two or more consignments comprising part of a multiple collection are rejected and are to be delivered to the same consignee, if the carrier elects to apply the multiple collection procedure set out in regulation 38 to such a delivery, the following requirements apply—

- (a) the carrier must—
  - (i) prepare two copies of the multiple consignment collection note, plus one copy for each hazardous waste producer or holder, as the case may be, from whose consignment has been rejected, and one copy for each consignor, in cases where the hazardous waste producer, or holder, as the case may be, is not the consignor; and
  - (ii) complete Parts A and B on each copy;
- (b) before the removal of waste from the original delivery premises—
  - (i) the producer, or holder, must complete the annex to the multiple collection consignment note on each copy prepared by the carrier;

- (ii) the consignor and carrier must sign their respective declarations to the annex to the multiple consignment note on each copy of the note prepared by the carrier;
- (iii) the carrier must pass a completed copy to the producer or holder in each case (and where the producer is not the consignor, to the consignor);
- (c) on delivery of the waste to the new consignee—
  - (i) the carrier must complete the particulars for completion by the carrier in section C on every copy of the consignment note;
  - (ii) the carrier must pass to the consignee every copy of the note;
  - (iii) the consignee must complete the particulars for completion by the consignee in Section C and complete the certificate in Part D of the note on every copy of the note; and
  - (iv) the consignee must return one copy of the completed note to the carrier.

*Duty to deliver within time limit*

**Duty to deliver consignment promptly**

**45.** It is the duty of the carrier to deliver the consignment to the consignee promptly and without undue delay.

*Cross-border movements*

**Cross-border movement of hazardous waste**

**46.** Schedule 7 has effect in connection with the mutual recognition of consignment notes and the cross border movement of hazardous waste between England and Wales, Scotland, Northern Ireland and Gibraltar.

## PART 7

### RECORDS AND RETURNS

*Site records*

**Records of tipped (discharged) hazardous waste**

**47.—(1)** Any person who tips (discharges) hazardous waste (whether by way of disposal or storage) in or on any land must record and identify the waste in accordance with the following requirements of this regulation and regulation 51.

- (2) A record must include either—
  - (a) a site plan marked with a grid, or
  - (b) a site plan with overlays on which the deposits of the tipped (discharged) waste are shown in relation to the contours of the site.
- (3) Records made under this regulation are to be kept in a register.
- (4) Deposits must be identified by reference to both—

- (a) the relevant description and six digit code in the List of Wastes, together with a description of the composition of the waste; and
  - (b) the consignment note relating to such waste, save that where waste is disposed of within the curtilage of the premises at which it is produced the deposits must be described by reference to the quarterly return made to the Agency by the hazardous waste producer under regulation 53.
- (5) A person who is required to compile or retain a register pursuant to this regulation must—
- (a) update the register as soon as reasonably practicable and in any event within 24 hours of the receipt, or deposit, as the case may be, of the waste;
  - (b) keep the register on the site where the tipping takes place; and
  - (c) retain the records—
    - (i) for three years after deposit of the waste; or
    - (ii) if he or she has a waste permit pursuant to which the site is operated, until that permit is surrendered or revoked.
- (6) In reckoning any period of hours for the purposes of this regulation or regulation 48, only the days or hours of any business day are to be counted.

#### **Records of disposal or recovery by other means**

**48.**—(1) Any person who—

- (a) disposes of hazardous waste in or on land (other than any disposal covered by regulation 47);
- (b) recovers hazardous waste in or on land; or
- (c) receives hazardous waste at a transfer station,

must record and identify any hazardous waste received in accordance with the following requirements of this regulation and regulation 51.

(2) The waste must be identified in the record by reference to the relevant description in the List of Wastes and six digit code, and the entry must include a description of the composition of the waste.

(3) The record must include—

- (a) the quantity, nature and origin of any such waste;
- (b) the relevant hazardous properties;
- (c) where applicable, the recovery method in respect of the waste by reference to the numbering and description applicable in accordance with Annex IIB of the Waste Directive; and
- (d) an inventory showing the specific location at which the waste is being held.

(4) Records made under this regulation must be kept in a register.

(5) The register must be updated as soon as reasonably practicable and in any event no later than 24 hours after—

- (a) a consignment of hazardous waste is received;
- (b) any recovery or disposal operations are carried out or any hazardous waste is placed in storage at the transfer station, as the case may be; or
- (c) any hazardous waste is removed from the premises.

(6) A person who is required to make or retain records pursuant to this regulation must—

- (a) keep the register of the records on the site where the recovery operations take place or the transfer station is operated, as the case may be; and

- (b) retain the records—
  - (i) where the hazardous waste is fully recovered, or remains at a transfer station, as the case may be, until it leaves the site and for three years thereafter; or
  - (ii) if he or she has a waste permit pursuant to which the site is operated, until that permit is surrendered or revoked.

*Producer and transport records*

**Producers', holders' and consignors' records**

**49.**—(1) A producer or holder of hazardous waste, and where different from the producer, a consignor of hazardous waste, must keep a record of the quantity, nature, origin and, where relevant, the destination, frequency of collection, mode of transport and treatment method of the waste.

(2) Where the waste is transported the duty in paragraph (1) includes a requirement to keep a record of particulars sufficient to identify the carrier.

(3) The producer, holder or consignor, as the case may be, must preserve the records to be made pursuant to this regulation whilst he or she remains the holder of the waste and for at least three years afterwards commencing on the date on which the waste is transferred to another person.

(4) The information to be recorded pursuant to the foregoing provisions of this regulation must be recorded in a register kept by the producer, holder or consignor, as the case may be, for the purpose.

(5) The register required to be kept and retained by a producer, holder or consignor under paragraph (4) of this regulation must be kept—

- (a) in relation to the register required to be kept by a producer or holder—
  - (i) at the premises notified pursuant to regulation 24;
  - (ii) if he or she no longer occupies those premises, at his or her principal place of business (or such other address as agreed with the Agency for that purpose); or
  - (iii) if no premises were notified in relation to the waste, at his or her principal place of business (or such other address as agreed with the Agency for that purpose).
- (b) the register required to be kept by a consignor other than the producer or holder must be kept at his or her principal place of business.

(6) If the producer or holder ceases to occupy the notified premises before the period referred to in paragraph (3) expires, he or she must inform the Agency forthwith.

**Carrier's records**

**50.**—(1) An establishment or undertaking which transports hazardous waste must keep a record of the quantity, nature, origin and, where relevant, the destination, frequency of collection, mode of transport and treatment method of the waste in accordance with the following requirements of this regulation.

(2) The establishment or undertaking must keep the records to be made pursuant to this regulation for at least twelve months commencing on the date of delivery of the waste to its destination.

(3) The information required to be recorded pursuant to paragraph (1) must be entered in a register and the register kept at the carrier's principal place of business.

**Registers and records: common provisions**

**51.**—(1) The following provisions of this regulation apply in relation to registers required to be kept under regulations 47 to 50.



(2) A person who is required to keep a register must enter in the register each copy received by them of—

- (a) any consignment note (including multiple consignment notes and, where consignments are not accepted, the original note, a copy of any explanation of the reasons for rejection prepared pursuant to regulation 42 and the consignment note prepared pursuant regulation 43 or 44),
- (b) any consignee's return to the producer, holder or consignor received pursuant to regulation 54; and
- (c) any carrier's schedule given to him or her pursuant to regulation 37.

(3) A person who is required to keep a register or retain records until his or her waste permit is surrendered or revoked must send those records or that register to the Agency when the permit is surrendered or revoked.

(4) Every register kept or record made pursuant to regulation 15 or 16 of the 1996 Regulations, and every record made pursuant to regulation 13 or 14 of the Control of Pollution (Special Waste) Regulations 1980, must—

- (a) be kept with the register kept pursuant to regulation 47 to 49 by the person required to keep that register for so long as is mentioned in the relevant regulation; and
- (b) be sent by that person together with that register if it is sent to the Agency.

#### **Previous holder's right to information**

**52.**—(1) An establishment or undertaking to which hazardous waste is delivered for disposal or recovery, as the case may be, has the duty, owed to any previous holder of the waste, to supply to that previous holder on request documentary evidence that the disposal or recovery operation concerned has been carried out, indicating where applicable, the relevant entry listed in Annex IIA or Annex IIB, as the case may be, to the Waste Directive.

(2) Any request for information under this regulation must be in writing and must specify the period (which may not be less than seven days) within which the information is to be supplied.

#### **Consignee and self-disposal quarterly returns**

**53.**—(1) Every consignee must make a return, in these Regulations referred to as a consignee quarterly return, to the Agency of information relating to all consignments of hazardous waste received by him or her in any quarter in accordance with paragraph (4).

(2) The return must include—

- (a) rejected consignments;
- (b) hazardous waste delivered by pipeline where regulation 41 applies; and
- (c) in the case of multiple collections, each individual consignment collected.

(3) Where in any quarter hazardous waste is disposed of by depositing it within the curtilage of the premises at which it is produced, the producer must make a return in respect of that quarter of information relating to the deposit to the Agency, in accordance with paragraph (4).

(4) A return to be made pursuant to this regulation in respect of a quarter must be made no later than the time specified in the right hand column of the table below in relation to the quarter specified in the left hand column:

<b>Quarter in which the hazardous waste was received, or deposited, as the case may be</b>	<b>Return to be received by the Agency not later than</b>
Ending on 31 March	30 April in the same year as the quarter falls

<b>Quarter in which the hazardous waste was received, or deposited, as the case may be</b>	<b>Return to be received by the Agency not later than</b>
Ending on 30 June	31 July in the same year as the quarter falls
Ending on 30 September	31 October in the same year as the quarter falls
Ending on 31 December	31 January in the year next following the year in which quarter falls

(5) The Agency may prescribe a format for returns to be made under this regulation and, where for the time being a format is prescribed pursuant to this paragraph—

- (a) the Agency must publish the format on its website and in such other manner as it may consider appropriate for informing persons required to submit such returns of its content; and
- (b) the Agency is not obliged to consider a return as properly made for the purposes of these Regulations unless it is made in that format, or in a format substantially to like effect.

(6) If the Agency prescribes a fee payable by a consignee by charging scheme made under section 41 of the Environment Act 1995 as a means of recovering its costs incurred in performing functions in relation to the consignments included on the consignee quarterly returns, a consignee may recover from a consignor any fees paid under these Regulations in relation to consignments sent by that consignor.

#### **Consignee's return to the producer, holder or consignor**

**54.**—(1) Without prejudice to any duty under these Regulations on the part of the consignee to send any document or copy thereof to the producer, holder or consignor, a consignee must send to a producer or holder identified in the relevant part of a consignment note—

- (a) a return in a form corresponding to that set out in Schedule 8 or a form substantially to like effect within one month of the end of the quarter in which the waste concerned was accepted; or
- (b) a copy of the consignment note together with a description of the method of disposal or recovery undertaken in relation to the waste, within one month of the end of the quarter in which the waste concerned was accepted.

(2) Where hazardous waste was delivered by pipeline in a case to which regulation 41 applies, paragraph (1) applies so that the return required under sub-paragraph (a) or the information required under sub-paragraph (b) is to be supplied within one month of the end of the quarter in which the waste concerned was piped.

(3) Where regulation 42 applies, this regulation does not apply to the consignment or part concerned.

#### **Duties to supply information**

**55.**—(1) A person who is required to retain any record pursuant to any of the foregoing provisions of this Part must, at any time during the period in which the record is required to be retained produce that record to the Agency or emergency services on request.

(2) A producer, holder, previous holder, consignor, carrier or consignee of hazardous waste must supply to the Agency on request such information as the Agency may reasonably require for the purposes of performing its functions in connection with these Regulations and for the purposes of monitoring the production, movement, storage, treatment, recovery and disposal of hazardous waste.

(3) An establishment or undertaking to which hazardous waste is delivered for recovery or disposal, as the case may be, has the duty to supply to the Agency on request documentary evidence

that the disposal or recovery operation concerned has been carried out, indicating, where applicable, the relevant entry listed in Annex IIA or Annex IIB, as the case may be, of the Waste Directive.

(4) A person who is required to supply information to the Agency pursuant to this regulation must supply that information in such form as the Agency may reasonably request.

(5) The power conferred by paragraph (4) includes power to require the production in a visible and legible documentary form of any information held in electronic form.

(6) Any request for information under this regulation is to be in writing and must specify the period within which the information is to be supplied.

## **PART 8**

### **THE AGENCY'S FUNCTIONS**

#### *Inspections*

##### **Inspections of hazardous waste producers**

**56.** It is the duty of the Agency to carry out appropriate periodic inspections of hazardous waste producers.

##### **Inspections of collection and transport operations**

**57.**—(1) In relation to the appropriate periodic inspections of collection and transport operations which are required to be conducted pursuant to Article 13 of the Waste Directive by the Agency(**33**), without prejudice to the generality of the requirement to conduct such inspections, it is the duty of the Agency insofar as the inspections relate to hazardous waste to conduct the inspections so that they cover more particularly the origin and destination of the hazardous waste.

(2) In paragraph (1), “collection and transport operations” includes operations where the hazardous waste is transported following transfer between different carriers.

##### **Agency to retain registers etc**

**58.** The Agency must retain registers and any accompanying records sent to it pursuant to regulation 51(3) for a period of not less than three years commencing with the receipt thereof by the Agency.

##### **Fees**

**59.**—(1) Section 41 of the 1995 Act (power to make schemes imposing charges) is amended as follows.

(2) For subsection (1)(c) substitute—

“(c) as a means of recovering costs incurred by it in performing functions conferred by regulations made for the purpose of implementing Council Directive 91/689/EEC the Agency may require the payment to it of such charges as may from time to time be prescribed;”.

(3) Schedule 9 has effect to make provision in relation to fees to be charged by the Agency in connection with these Regulations until a charging scheme under section 41 of the 1995 Act to

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(33) See paragraph 13 of Schedule 4 to the 1994 Regulations.

recover the costs incurred by the Agency in performing functions under these Regulations takes effect.

#### **Provision of information to the National Assembly**

**60.**—(1) The Agency must inform the Assembly each year of any changes in the following information for every establishment or undertaking which carries out disposal or recovery of hazardous waste principally on behalf of third parties and which is likely to form part of the integrated network referred to in Article 5 of the Waste Directive—

- (a) name and address;
- (b) the method used to treat waste; and
- (c) the types and quantities of waste which can be treated.

(2) The Agency must provide the information required by paragraph (1) in the format provided for pursuant to the fourth paragraph of Article 8(3) of the Hazardous Waste Directive.

## **PART 9**

### **EMERGENCIES AND GRAVE DANGER**

#### **General**

**61.**—(1) This Part has effect for the purpose of making provision for an emergency or grave danger.

(2) For the purposes of these Regulations, an “emergency or grave danger” is a present or threatened situation arising from a substance or object which is, or which there are reasonable grounds to believe is, hazardous waste, and the situation constitutes a threat to the population or the environment in any place.

#### **General duties on the holder in the event of an emergency or grave danger**

**62.**—(1) In cases of emergency or grave danger, a holder of hazardous waste must—

- (a) take all lawful and reasonable steps to avert the emergency or grave danger; or
- (b) where it is not reasonably practicable to comply with paragraph (a), take all lawful and reasonable steps to mitigate the emergency or grave danger.

(2) For the purposes of paragraph (1), an act or omission may be considered lawful notwithstanding that it would, apart from this regulation, constitute a breach of these Regulations.

(3) Where the holder of hazardous waste knows or has reasonable grounds to believe that an emergency or grave danger has arisen, he or she must notify the Agency as soon as reasonably practicable of the circumstances.

(4) Where the holder takes any step in compliance with paragraph (1), he or she must, save where such step has completely averted the emergency or grave danger without breach of these Regulations, notify the Agency as soon as reasonably practicable.

(5) For the purposes of paragraph (4), an emergency or grave danger is not considered to have been completely averted if any release has taken place of a substance or object which is, or which there are reasonable grounds to believe is, hazardous waste, whether or not the holder believes he or she has completely destroyed, retrieved or rendered harmless the substance or object.

(6) In the event of notification pursuant to paragraph (3) or (4) being made orally, the holder must confirm in writing to the Agency the matters notified within one week of the oral notification.

(7) For the purposes of this regulation a person is not to be released from any requirement imposed by this regulation merely because he or she has ceased to be the holder through the waste having left his or her possession or control due to the release.

### **General duties of the Agency**

**63.**—(1) The Agency must exercise its functions (whether under these Regulations or otherwise) so as to take all reasonably practicable steps necessary or expedient to avert or mitigate an emergency or grave danger.

(2) An authorised person must, in exercising functions in relation to an emergency or grave danger, so exercise his or her powers under sections 108 and 109 of the 1995 Act as to take all reasonably practicable steps to avert or mitigate the emergency or grave danger.

## **PART 10**

### **ENFORCEMENT**

#### **Enforcement**

**64.**—(1) Subject to paragraph (2), it is the duty of the Agency to enforce these Regulations.

(2) Paragraph (1) is without prejudice to any right of action which any person may have arising apart from these Regulations, or any other right, power or duty of any person either at law or arising pursuant to any agreement or arrangement (expressly or impliedly) or in consequence of any act or omission.

#### **Offences**

**65.** It is an offence for a person to fail to comply with any requirement imposed on that person by or under the following provisions of these Regulations—

- (a) Part 4;
- (b) regulations 21, 22, 24, 25 and 26;
- (c) regulations 34 to 44;
- (d) regulation 46 and Schedule 7;
- (e) Part 7 (with the exception of regulation 52); and
- (f) regulation 62.

#### **Defences**

**66.** It is a defence for a person charged with an offence under regulation 65 to prove that—

- (a) he or she was not reasonably able to comply with the provision in question by reason of an emergency or grave danger and that he or she took all steps as were reasonably practicable in the circumstances for—
  - (i) minimising any threat to the public or the environment; and
  - (ii) ensuring that the provision in question was complied with as soon as reasonably practicable after the event; or
- (b) if there is no emergency or grave danger, he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

### **Liability of persons other than the principal offender**

67.—(1) Where the commission by any person of an offence under this Part is due to the act or default of some other person, that other person may be charged with and convicted of an offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where an offence under this Part which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to, any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that person, as well as the body corporate, is liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) applies in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

### **False and misleading information**

68.—(1) Any person who, in purported compliance with a requirement imposed by or under any of the foregoing provisions of these Regulations to furnish any information, makes a statement which he or she knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, commits an offence.

(2) A person who intentionally makes a false entry in any record or register required to be kept by virtue of any of the foregoing provisions of these Regulations commits an offence.

### **Penalties**

69.—(1) A person who commits an offence under regulation 65 in connection with any of the following regulations—

- (a) regulation 21 (requirement to notify premises);
- (b) regulation 22 (prohibition on removal of waste from premises unless notified or exempt);
- (c) regulations 24 to 26 (notifications);
- (d) regulation 34 (consignment codes);
- (e) regulations 35 to 44 (consignment notes);
- (f) regulation 46 and Schedule 7 (cross-border consignments);
- (g) regulation 53 (consignee and self-disposal quarterly returns);
- (h) regulation 54 (consignee's return to the producer, holder or consignor); or
- (i) regulation 55 (duties to supply information),

is liable on summary conviction, to a fine not exceeding level 5 on the standard scale.

(2) A person who commits an offence under regulation 65 or 68 in connection with any other requirement under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

### **Fixed penalties**

70.—(1) Where an authorised person acting on behalf of the Agency has reason to believe that a person has committed an offence under regulation 65 to which this regulation applies, the authorised

person may give that person a notice offering that person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

- (2) This regulation applies to an offence consisting of—
  - (a) a failure to comply with any requirement of; or
  - (b) making a false or misleading statement in purported compliance with,any of the regulations listed in regulation 69(1)(a) to (i).
- (3) Where a person is given a notice under this regulation in respect of an offence—
  - (a) no proceedings may be instituted for that offence before the expiration of twenty eight days following the date of the notice; and
  - (b) he or she may not be convicted of that offence if he or she pays the fixed penalty before the expiration of that period.
- (4) A notice under this regulation must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and must state—
  - (a) the period during which, by virtue of paragraph (3), proceedings will not be taken for the offence;
  - (b) the amount of the fixed penalty; and
  - (c) the name of the person to whom and the address at which the fixed penalty may be paid.
- (5) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).
- (6) Where a letter is sent in accordance with paragraph (5) payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (7) A fixed penalty notice issued pursuant to this section must be in the form set out in Schedule 10.
- (8) The fixed penalty payable in pursuance of a notice under this regulation is £300; and as respects the sums received by or on behalf of the Agency, those sums must be paid to the Assembly.
- (9) In any proceedings a certificate which—
  - (a) purports to be signed by or on behalf of the chief finance officer of the Agency;
  - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,is evidence of the facts stated.
- (10) In paragraph (9), “chief finance officer” means the person having responsibility for the financial affairs of the Agency.

## **PART 11**

### **FINAL PROVISIONS**

#### **Savings for certain privileges**

**71.—**(1) Nothing in these Regulations is to be taken as requiring any person to produce any documents or records if he or she would be entitled to refuse to produce those documents or records in any proceedings in any court on the grounds that they are the subject of legal professional privilege,

or as authorising any person to take possession of any documents or records which are in the possession of a person who would be so entitled.

(2) Except as provided in paragraph (3), nothing in these Regulations may be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person's spouse.

(3) A person must comply with a request from the Agency to give information pursuant to regulation 55(2), notwithstanding that to do so may incriminate that person or that person's spouse, but information given in response to such a request may not be given in evidence in any criminal proceedings against that person or that person's spouse.

### **Revocations and savings**

**72.**—(1) Subject to the following paragraphs, the 1996 Regulations are revoked.

(2) Where a consignment has been removed from premises before these Regulations come into force, and a consignment note has been raised in relation to that consignment under the 1996 Regulations, then—

- (a) for a period of 72 hours after these Regulations come into force entirely—
  - (i) the 1996 Regulations continue to apply in all other respects to that consignment;
  - (ii) the provisions of these Regulations (other than regulation 62 (general duties on the holder in the event of an emergency or grave danger)) do not apply to that consignment during that period;
- (b) thereafter—
  - (i) these Regulations apply to that consignment except that the requirement to make a consignee quarterly return in relation to that consignment pursuant to regulation 53 does not arise; and
  - (ii) the requirement on the consignee to send a copy of the consignment note sent to the Agency continues to apply in relation to any consignment sent pursuant to the 1996 Regulations.

### **Consequential Amendments**

**73.** Schedule 11 (which makes consequential amendments to legislation) has effect.

### **Transitional Provisions**

**74.** Schedule 12 (which makes provisions transitional upon these Regulations coming into force) has effect.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(34)

5 July 2005

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly