

Consultation on proposed amendments to the Hazardous Waste (England and Wales) Regulations 2005

A consultation document issued by the Department for Environment, Food and Rural Affairs

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1 Executive summary.

What this consultation package covers.

The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005 No 894), “the Regulations”, came into force on 16 July 2005. The Regulations implemented the requirements of the EC Hazardous Waste Directive (91/689/EEC).

The Regulations extend to England and Wales, although the only provisions that apply in Wales are the modifications to the Environmental Protection Act 1990 contained in Part 11, which took effect in 2005. Wales has its own set of similar regulations which apply the same controls in Wales: The Hazardous Waste (Wales) Regulations 2005 (S.I. 2005 No. 1806).

We are aware that some provisions in the Regulations are not working as we had originally intended and hence are proposing a few relatively minor amendments to address these. The changes seek to clarify the intention of the regulations and minimise the burden on operators. The amendments will be effected by The Hazardous Waste (England and Wales) (Amendment) Regulations 2009 (“the amendment Regulations”). The amendment Regulations will apply to England only. The Welsh Assembly Government is proposing to consult on corresponding changes to their own set of regulations.

We propose that, other than regulations 15, 16 and 18, the amendment Regulations should come force on 6th April 2009. We propose that regulations 15, 16 and 18 should come into force on 1st October 2009 – as these provisions concern changes to the consignment notes, we propose that industry should be given more time to adjust to using new forms.

What this consultation package contains.

There are three main parts to this consultation package:

- The consultation document
- The consultation impact assessment
- The draft regulations

Background

Who would be affected by the proposed changes?

Anyone who produces, moves, receives or disposes of hazardous waste in England would be affected by the proposed amendments. This consultation should also be of interest to anyone who uses chemicals, products with hazard symbols and/or safety data sheets, and who produces waste, as they may be producing hazardous waste.

2 Introduction.

The aim of this consultation is to set out our proposals for amendments to the Regulations and to invite your comments.

About this consultation and how to respond

The consultation will last 12 weeks. The consultation paper contains:

A copy of the draft regulations

A consultation impact assessment, setting out costs and benefits of the proposed changes

Please return comments by Friday 6 February 2009, preferably by email, to:

By email: waste.management@defra.gsi.gov.uk

By post:
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For your convenience a list of the full proposals and other specific questions asked throughout the document is provided in section 15.

3 Proposals

Summary of the main changes proposed

- I. To clarify that where asbestos waste is produced at domestic premises, a contractor who is engaged to deal with the waste is subject to the Regulations; but the Regulations do not apply to the occupier of the premises.
- II. To clarify that where householders put domestic hazardous waste out separately for collection, or deliver it to civic amenity sites or household waste recycling centres, it must be kept separate and is subject to the requirements of the Regulations.
- III. To amend the Common Provisions on Notifications so that information required to be released by the Environment Agency relates only to the premises producing hazardous waste and does not include information about the actual notifier.

- IV. To require that where someone collects hazardous waste from multiple premises on a single journey they must use the multiple collection procedure and paperwork. And to modify the consignment note for multiple collections in order to make it easier to use.
- V. To reduce the number of low risk premises required to notify by introducing a blanket exemption from notification for all premises producing less than 500kg of hazardous waste in any 12 month period.

These changes are described in more detail in sections 4 – 13 below, and in the attached Impact Assessment, along with other more minor changes.

4 Asbestos waste: proposed amendment of regulation 13.

Domestic waste is generally exempt from the provisions of the Regulations. However, the Regulations do apply to asbestos waste which is also domestic waste. The Regulations were not intended to impose any obligations on the occupier of the domestic premises. However, where the asbestos waste is produced by a contractor who is engaged by the householder to undertake any construction, modification, repair and maintenance or demolition of their premises, then the Regulations are intended to apply to the contractor irrespective of the fact that the asbestos is produced at domestic premises. The contractor must also be treated as the consignor unless he has engaged another person to consign the waste.

We have learnt that some people have found regulation 13 difficult to understand and that there has been confusion about the circumstances in which asbestos produced at domestic premises is subject to the requirements of the Regulations.

The proposed amendment is intended to clarify that occupiers of domestic premises are not subject to the Regulations, but that contractors dealing with the asbestos waste at such premises are. So, where a contractor produces asbestos waste at domestic premises or collects a skip containing asbestos waste from these premises, the waste should not be treated as domestic waste, but should rather be consigned in accordance with the Regulations.

5 Separated domestic fractions: proposed amendment of regulation 14.

Domestic waste is excluded from the requirements of the Hazardous Waste Directive and is therefore excluded from the requirements of the Regulations. However, the exclusion is meant only to apply to **mixed** domestic waste. The Directive does not exclude domestic waste which

has been kept as a distinct fraction of domestic waste. The European Waste Catalogue lists a number of types of domestic waste as hazardous. The requirements of the Hazardous Waste Directive should be applied to such waste.

The Regulations are intended to apply to separated fractions of domestic waste which are hazardous waste. If a householder places hazardous waste, such as a television, for collection separately from his mixed waste receptacle or delivers the waste separately to a civic amenity site or household waste recycling centre (HWRC), the requirements of the Regulations are intended to apply.

The Regulations are not intended to place any requirements on householders themselves. For this reason, the requirements of the Regulations are not generally applied until the waste is accepted at other premises (eg, the premises of the waste collector or a disposal/recovery facility) for collection, disposal or recovery. Once the waste has been accepted at these other premises, the persons who have accepted it must be treated as the producer of the waste for the purposes of the Regulations.

However, it has always been the intention that Part 4 of the Regulations (which generally bans the mixing of hazardous waste) will apply from the time at which the separated fraction of waste is collected by a waste management contractor from the domestic premises or the time at which it is delivered by a householder to a civic amenity site or HWRC.

We understand that the Regulations are not always interpreted in this way and are therefore proposing amendments to the wording of regulation 14 to clarify on whom the obligations lie and at what times.

6 Widening the exemption from the requirement to notify premises: proposed amendment of Part 5.

Hazardous waste producers are required to notify the Environment Agency of each individual premises at which they produce hazardous waste, in order to facilitate the inspection of such premises as required by the Hazardous Waste Directive. The Environment Agency has produced guidance on what they regard as a premise for the purposes of the regulations (see <http://publications.environment-agency.gov.uk/pdf/GEHO0506BKTT-e-e.pdf>). The Government recognises that there would be little environmental benefit in requiring the notification of every site at which hazardous waste was produced. As well as the sites not regarded as premises for the purposes of the regulations by the Environment Agency, certain sites usually produce relatively small amounts of hazardous waste and the frequency at which the Environment Agency would need to inspect the sites would be low. These low-risk premises were therefore made exempt from the notification requirement as long as the total quantity of hazardous

waste produced at the premises was less than 200kg in any period of 12 months. The low-risk exempt premises are listed in regulation 23 of the Regulations.

Having made an assessment of premises notifications since 2005, Defra and the Environment Agency have concluded that premises producing up to 500kg of hazardous waste in a 12 month period represent a relatively low risk and require only a low frequency of inspection. We therefore propose to introduce a blanket exemption from the requirement to notify premises to the Environment Agency for **all** premises producing less than 500kg of hazardous waste in any 12 month period. The intention is to reduce the regulatory burden on businesses whilst maintaining the requisite level of environmental protection. We have proposed changes to the wording of regulation 23 which would effect this change of policy.

Increasing the qualifying limitation to 500kg for all premises would mean that we would consider the provisions for mobile services (regulations 29-31) to be no longer considered necessary, because mobile services are very likely to produce less than 500kg in a 12 month period. It should be noted that this change would mean that mobile service operators producing waste at a particular premises would need to check with the owner/occupier whether the premises are notified. If they were not, they would need to check how much hazardous waste had already been produced at the premises within the previous 12 months and assess whether any hazardous waste produced at that premises would breach the 500kg limit. Where 500kg of hazardous waste is produced in any 12 month period the premises would need to be notified to the Environment Agency.

We believe that a 500kg threshold for all premises would allow mobile service operators to carry out most work without notification and we would not anticipate any adverse impact on operators of mobile services. However, we would particularly welcome comments from mobile service operators regarding this approach.

7 Information which may be sought from the Environment Agency: proposed amendment of regulation 26(8)

The intention of regulation 26(8) was to allow the waste management industry to find out whether particular premises producing hazardous waste had been notified to the Environment Agency. However, its wording means that the Agency is also obliged to divulge information about the person who had notified the premises. Since many waste management companies notify premises on behalf of those who actually produce the waste, it is possible that the information provided by the Agency could be used by some businesses to gain a commercial advantage. The proposed amendment would rectify this so that the information to be released by the Agency would only relate to the premises at which the hazardous waste is produced.

8 Dangerous goods declaration: proposed amendment to regulation 35, and insertion of a new schedule, Schedule 4A.

We proposed to require that, where hazardous waste being moved is also dangerous goods as defined in regulation 2 of The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007 (SI 2007 no.1573), the dangerous goods declaration should be made on a separate form, as opposed to being detailed within the standard consignment note or multiple collection consignment note as at present. We propose that, should the declaration be required, the form must be attached to the appropriate consignment note or multiple collection consignment note.

We propose to effect this by inserting a new paragraph, (6), into regulation 35, and a new Schedule, Schedule 4A. Schedule 4A provides a template form for the dangerous goods declaration. Following the pattern of the present regulation 35 as regards other forms, we propose that either this template form or a form requiring substantially the same information in substantially the same format must be used.

9 Multiple collections: proposed amendment of regulations 38 and 44, and of the multiple collection consignment note in Schedule 6.

In some cases, waste contractors will collect hazardous waste from several premises in one journey. Under the Regulations, there is a multiple collection system with modified paperwork where waste is collected from a number of premises in the course of a single journey. This reflects the fact that the details of the carrier and waste management facility will be the same. Since the Agency has slightly less information to process where waste forms part of a multiple collection it charges a slightly lower fee than it would for the same number of single consignments.

It has been observed that some people collecting waste from multiple premises have chosen to complete the paperwork for individual consignments, but pay the reduced fee that is intended to apply only where the multiple collection consignment note has been completed. Therefore, we propose to amend regulation 38(2) to ensure that where someone collects hazardous waste from multiple premises on a single journey they must use the multiple collection procedure and paperwork.

We propose to amend regulation 44(1) to fit with the amendment to regulation 38(2).

The other amendments we propose to regulations 38 and 44 are to match the amendments we propose to the form of multiple collection consignment note and its annex in Schedule 6. We have been advised that some waste management companies have found this note and annex to be complicated. However, we note that The Hazardous Waste Directive requires that consignment notes contain all the information

requested on the note attached to the Waste Shipments Regulation. It is not therefore open to us to simplify the note to the point that any of this information is omitted.

However, we propose to simplify the note and annex as follows:

- removal of the additional carriage information from the annex
- as explained above, the provision of a separate dangerous goods declaration form which would only need to be completed where the wastes being moved are dangerous goods
- moving the information required to be completed by the consignee in Part C of the form to Part 2.3 of the annex, so that the carrier will no longer be required to include EWC codes in Part C of the note; he will only need to provide the consignment note codes.

10 Duty of consignee not accepting delivery: proposed amendment of regulation 42.

We propose an amendment to regulation 42(3)(a) to reflect the changes to the consignment note and multiple collection consignment note.

Regulation 42(6)(a) was amended in 2008 by paragraph 45(6) of Schedule 2 to Environmental Permitting (England and Wales) Regulations 2007 (SI 2007/3538) (“the EPR”) to read that the hazardous waste producer or holder has a duty to arrange for the transfer of the rejected consignment or part to another specified consignee who “holds a waste permit or is entitled to carry on a registered exemption in respect of the recovery or disposal of the waste”. We consider that the wording is unclear and propose making it closer to the EPR language by amending it to read that the specified consignee should be someone who “holds a waste permit or is entitled to carry on an exempt waste operation for the recovery or disposal of the waste”.

11 The standard consignment note: proposed amendment of Schedule 4.

We propose removing the following information from Part B of Schedule 4 and including it in a separate dangerous goods declaration form which would only need to be completed where the wastes being moved are dangerous goods:

- (i) Packing Group(s)
- (ii) UN identification number(s)
- (iii) Proper Shipping Name(s)
- (iv) UN class(es)
- (v) Special handling requirements.

12 The consignee's return to producer or holder: proposed amendment of Schedule 8.

It is a requirement that the Recovery and Disposal codes and their descriptions in Schedule 8 of the Regulations fully reflect those in Annexes IIA and IIB of Directive 2006/12/EC (the codified Waste Framework Directive). The Regulations are out of date. Therefore, we propose to amend Schedule 8 to make the codes and descriptions consistent with those of the Directive.

13 Other proposed amendments

We propose to amend paragraph (3)(c) of regulation 48 (records of disposal or recovery of hazardous waste by other means) to make it clear that it is a requirement that the disposal or recovery method of waste must be included in the records.

We propose amendments to regulation 49(1) (**producers', holders' and consignors' records**) and regulation 70(10) (**fixed penalties**) to correct typographical errors and thereby clarify the meaning of the regulations.

14 Impact Assessment.

Please see accompanying attachment.

15 Consultation questions.

We are asking consultees to comment on a number of main issues. These are listed I under the following two headings.

- (a) The numbered proposals in the Table below and the relevant sections in this consultation document.
- (b) The questions identified in the Impact Assessment.

Numbered proposals set out in the consultation document.

| Description of proposal | Relevant section |
|--|-------------------------|
| To clarify the asbestos provisions so as to remove confusion about when asbestos produced at domestic premises should be subject to the provisions of the Regulations. | 5 |
| To clarify that where householders put hazardous waste out separately for collection, or deliver it to civic | 6 |

| | |
|--|-----------|
| amenity sites or household waste recycling centres, it must be kept separate and is subject to the requirements of the Regulations. | |
| To reduce the number of low risk premises required to notify by introducing a blanket exemption from notification for all premises producing less than 500kg of hazardous waste in any 12 month period. | 7 |
| To amend the Regulations so that information released by the Environment Agency under the Common Provisions on Notifications is only related to the premises producing hazardous waste and does not include information about the actual notifier. | 8 |
| Dangerous goods declaration: proposed amendment to regulation 35, and insertion of a new schedule, Schedule 4A. | 9 |
| To make it a requirement that where someone collects hazardous waste from multiple premises on a single journey they must use the multiple collection procedure and paperwork. | 10 |
| Duty of consignee not accepting delivery: proposed amendment of regulation 42. | 11 |
| Standard consignment note | 12 |

For each of the above numbered proposals consultees are asked to consider the relevant text in the consultation paper and provide an indication of the advantages and disadvantages and where appropriate the likely impact of the proposal.

Questions Identified in the Impact Assessment.

The questions below are taken from the Impact Assessment.

The Evidence Base of the Impact Assessment quantifies the savings we expect our proposals to deliver to the Industry as a result of:

- (i) increasing the qualifying limitation for notifying premises to 500kg per annum for all premises and;
- (ii) simplifying the multiple collection consignment note.

The Impact Assessment also provides figures for the reduced administrative burden on the industry as a result of a reduction in the paperwork that is required to be completed by producers of hazardous waste.

Consultees are invited to comment on whether the calculations set out in the Impact Assessment seem fairly representative of their experience.