

Explanatory Memorandum to The Hazardous Waste (Miscellaneous Amendments) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department for Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Hazardous Waste (Miscellaneous Amendments) (Wales) Regulations 2015.

Carl Sargeant AM

Minister for Natural Resources

24 June 2015

1. Description

This instrument amends the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W 138)) and revokes the List of Waste (Wales) Regulations 2005 (S.I. 2005/1820 (W 148)) (“the List of Waste Regulations”), with consequential amendments made to other subordinate legislation. The changes transpose revisions to European Union (EU) legislation made by Commission Regulation EU 1357/2014/ and Commission Decision 2014/955/EU which takes effect from 1 June 2015. These two instruments amend the list of hazardous waste properties in Annex III to Directive 2008/98/EC (the revised Waste Framework Directive (rWFD)) and make a number of amendments to the European List of Waste Decision (Decision 2000/532/EC).

This instrument also updates references in our legislation following the changes that have been made by the recasting of Directive 2002/96/EC on Waste Electrical and Electronic Equipment (the WEEE Directive) and in relation to changes in terminology relating to dangerous substances, made by Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

Regulations (EC) No 1272/2008 and (EU) No 1357/2014 (the latter substituting a new Annex III to the rWFD) referred to above, are binding and have direct effect in the UK. Likewise, Commission Decision 2014/955 EU which inserts a new list of wastes into Commission Decision 2000/532/EC is also binding in its entirety. However, changes will need to be made to UK domestic legislation to give proper effect to these EU obligations, in part because domestic legislation has been drafted in such a way that it will not be automatically updated as relevant EU legislation is changed from time to time.

Under section 80 of the Government of Wales Act 2006, an EU obligation of the United Kingdom is also an obligation of the Welsh Ministers. Since the relevant domestic legislation for these purposes applies in relation to Wales, the Welsh Ministers are required to make the necessary changes to Wales’ regulations in order to transpose the forthcoming changes in EU law.

Commission Regulation EU 1357/2014 amends Annex III to the rWFD to update classification of hazardous properties of waste. Therefore, references to Annex III in domestic legislation must be updated to incorporate the changes at Community level.

The Commission Decision 2014/955/EU replaces the EU List of Waste in Commission Decision 2000/532/EC with a new list that contains three new entries and makes minor changes to existing waste codes. Each time there is a new Commission Decision amending the EU List of Waste, changes to domestic

regulations need to be made as this is not transposed into domestic law automatically. The Welsh Ministers will transpose the changes to the List of Waste by revoking the List of Wastes (Wales) Regulations 2005, which reproduce the EU List of Waste, replacing references to those Regulations where appropriate with a reference to the EC List of Waste Decision “as amended from time to time”. Such amendments will be technical in nature. This will remove the need to amend domestic legislation every time there is a change to the List of Waste at European level. It will also enable hazardous waste legislation to be contained in one instrument instead of two which will make it easier for the industry to follow.

These Regulations make consequential amendments to other statutory instruments (S.I.'s) as a result of the revocation of the List of Waste Regulations:-

- The Landfill Allowances Scheme (Wales) Regulations 2004;
- The Hazardous Waste (Wales) Regulations 2005;
- The Environmental Permitting (England and Wales) Regulations 2010;
- The Waste (England and Wales) Regulations 2011;
- The Controlled Waste England and Wales Regulations 2012.

3. Legislative background

The Welsh Ministers can make The Hazardous Waste (Miscellaneous Amendments) (Wales) Regulations 2015 using the enabling powers in section 75(8) of the Environmental Protection Act 1990, section 2(2) of and Schedule 1 to, the Pollution Prevention and Control Act 1999, sections 11, 12 and 13 of the Waste and Emissions and Trading Act 2003, and powers conferred by section 2(2) and paragraph 1A of Schedule 2 of the European Communities Act 1972. The Welsh Ministers are designated for purposes of section 2(2) ECA in relation to measures relating to the prevention, reduction and elimination of pollution caused by waste (S.I. 2005/850) and the prevention, reduction and management of waste (S.I. 2010/1552).

This statutory instrument follows the negative procedure and is subject to annulment of the National Assembly for Wales. This instrument is made partly in reliance on powers under section 2(2) ECA 1972, and the Welsh Ministers consider that it is appropriate to follow negative Assembly procedure, because the content of the purpose of the instrument is to implement EU obligations, which are minor and technical in nature, and which will have limited impact in Wales.

4. Purpose & intended effect of the legislation

Hazardous waste is waste that contains hazardous properties that may render it harmful to human health or the environment. Controls on hazardous waste mean that it has to be tracked from cradle to grave and there is a harmonised system across the EU of classifying harmful substances and chemicals and coding of hazardous waste.

The rWFD sets out the legislative framework for the handling of waste in the EU, including hazardous waste. These requirements are transposed in The Hazardous Waste (Wales) Regulations 2005, The List of Waste (Wales) Regulations 2005 and other waste legislation which makes reference to hazardous waste and the List of waste.

The purpose of the instrument is to implement the following new EU legislation:-

1. Commission Regulation No. 1357/2014 will amend hazardous waste properties set out in Annex III to the rWFD. Hazardous waste properties are defined as waste possessing one of the fifteen hazardous waste properties set out in Annex III, for example, H1 is “explosive”, H3 “highly flammable”, H6 “Toxic”, H7 “Carcinogenic”, etc. These changes adopt the definitions from Commission Regulation No. 1272/2008 on the Classification, Labelling and Packaging of Substances and Mixtures Regulation (“CLP”).
2. Commission Decision 2014/955/EU will replace the List of Waste in the Annex to Commission Decision 2000/532/EC with a new list that contains three new entries. Also known as the European Waste Catalogue (EWC), this is a harmonised list across the EU of hazardous and non-hazardous waste and is used to determine whether a material or substance is a waste or a hazardous waste. This list classifies and codes such wastes for purposes connected with the regulation of waste and hazardous waste. The amendments to entries in the list are in relation to metallic mercury (to reflect commitments under the international mercury convention) and to include entries for red mud from alumina production (in order to contribute to a safer management of red mud from this activity).

The new EU legislation is the result of a long review of the hazardous waste definitions and properties, the review of the List of Waste entries and the adoption and alignment of existing EU legislation to the United Nations’ Globally Harmonised System on the classification and labelling of chemicals across all Member States of the European Union.

5. Consultation

Consultation on the Commission regulation has been carried out with Local authorities, Natural Resources Wales, the Industry (landfill and hazardous waste permit operators) and appropriate relevant trade waste bodies covering the industry and producers. In addition, there have been regular stakeholder engagements carried out by Defra and Welsh Government via the Hazardous Waste Stakeholder forum and with Chartered Institute of Waste Management (CIWM)/SIG. Regular e-consultation with industry about the Commission proposals throughout their development have been issued to keep industry aware of these developments.

Natural Resources Wales (NRW) together with the Environment Agency (EA) has raised awareness of these changes with the industry and trade bodies across

England and Wales. The EA, NRW, Scottish Environment Protection Agency (SEPA) and Northern Ireland Environment Agency (NIEA) have issued updated Waste Classification and Assessment – Technical Guidance (WM3) for operators in May 2015 which reflect these new EU changes.

Given that consultation exercises have been carried out with key stakeholders and the industry on the changes arising from the EU proposals and the WM3 technical guidance, the Welsh Government carried out a short focussed consultation on the proposed changes to our legislation which ran from 1 – 15 June 2015. This consultation was issued to all Local authorities, Natural Resource Wales, relevant waste industry operators, waste trade bodies and all landfill operators in Wales. Only one response was received which queried the rationale for the short window to consult. There was no other response on the proposals to amend the legislation in Wales.

6. Regulatory Impact Assessment (RIA)

No RIA has been provided with these Regulations. An Explanatory Memorandum accompanied the Commissions' legislative proposal and the UK was a major participant in the deliberations of the UK Working Group to ensure the proposals were fit-for-purpose for the UK. These changes will essentially maintain the current thresholds at which wastes are classified as hazardous and adopting the new system of chemical classification based on CLP will not introduce any significant impacts on those businesses that produce or manage hazardous wastes. The impact from the introduction of new codes for red alumina and mercury to the List of Waste has been assessed as neutral to the industry in UK. NRW and the EA have been working with the industry since 2011 on these changes which have been reflected in the updated Waste Classification and Assessment – Technical Guidance (WM3) for operators.

This legislation has no impact on the statutory duties under sections 77-79 Government of Wales Act 2006 ("GOWA 2006") or statutory partners under sections 72-75 GOWA 2006.