WELSH STATUTORY INSTRUMENTS

2005 No. 1806 (W.138)

ENVIRONMENTAL PROTECTION, WALES

The Hazardous Waste (Wales) Regulations 2005

Made - - - - 5 July 2005

Coming into force in accordance with regulation 1(1)

The National Assembly for Wales, being designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to measures relating to the prevention, reduction and elimination of pollution caused by waste, in exercise of the powers conferred on it by section 2(2) of that Act, makes the following Regulations:

F1 S.I. 2005/850.
F2 1972 c. 68.

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

[F3 2.—(1) For the purposes of these Regulations—

[F4(a) "the Waste Directive" ("*y Gyfarwyddeb Wastraff*") means Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives, as last amended by **[F5**Directive (EU) 2018/851**][F6**, and read in accordance with regulation 2A**];]**

(b) "waste" ("*gwastraff*") means anything that—

(i) is waste within the meaning of Article 3(1) of the Waste Directive **[**F7, as read with Articles 5 and 6 of that Directive**]**; and

(ii) subject to regulation 15, is not excluded from the scope of that Directive by Article 2(1), (2) or (3).

(2) In these Regulations, a reference to the Waste Directive conditions is a reference to the conditions set out in Article 13 of that Directive, that is to say, to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular—

(a) without risk to water, air, soil, plants or animals;

(b) without causing a nuisance through noise or odours; and

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

F3 Reg. 2 substituted (29.3.2011) by The Waste (Miscellaneous Provisions) (Wales) Regulations 2011 (S.I. 2011/971), reg. 1(2), **Sch. para. 2**

F4 Reg. 2(1)(a) substituted (5.7.2018) by The Hazardous Waste (Miscellaneous Amendments) (Wales) Regulations 2018 (S.I. 2018/721), regs. 1(2), **3**

F5 Words in reg. 2(1)(a) substituted (19.11.2020) by The Waste (Wales) (Miscellaneous Amendments) Regulations 2020 (S.I. 2020/1179), regs. 1(2), **4(2)**

F6 Words in reg. 2(1)(a) inserted (31.12.2020) by The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/414), regs. 1(2)(b), **8(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F7 Words in reg. 2(1)(b)(i) inserted (31.12.2020) by The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/414), regs. 1(2)(b), **8(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

[F8**Meaning of the Waste Directive**

2A.—(1) For the purposes of these Regulations, the Waste Directive is to be read in accordance with this regulation.

(2) A reference to one or more member States in a provision imposing an obligation or conferring a discretion on a member State or member States is to be read as a reference to the appropriate authority or local authority which, immediately before **[**F9IP completion day (within the meaning given to that expression in the European Union (Withdrawal Agreement) Act 2020)**]**, was responsible for the United Kingdom's compliance with that obligation or able to exercise that discretion in respect of Wales.

(3) Article 2 is to be read as if—

(a) in paragraph 2—

(i) in the words before point (a), for "other Community legislation" there were substituted " retained EU law ";

(ii) in points (b) and (c), for "Regulation (EC) No 1774/2002" there were substituted " Regulation (EC) No 1069/2009 ";

(iii) in point (d), for the words from "Directive 2006/21/EC" to the end there substituted " the Mining Waste Directive ";

(b) in paragraph 3, the words from "Without prejudice" to "Community legislation," were omitted;

(c) paragraph 4 were omitted.

F10(4) . . . . . .

[F11(5) Article 5 is to be read as if—

(a) in paragraph 1, for "Member States shall take appropriate measures to ensure that a" there were substituted "A";

(b) after paragraph 1 there were inserted—

"**1A.** Any decision as to whether a substance or object is a by-product must be made—

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article.";

(c) paragraphs 2 and 3 were omitted.

(6) Article 6 is to be read as if—

(a) in paragraph 1, for "Member States shall take appropriate measures to ensure that waste" there were substituted "Waste";

(b) after paragraph 1 there were inserted—

"**1A.** Any decision as to whether a substance or object has ceased to be waste, must be made—

(a) in accordance with any regulations or retained direct EU legislation (within the meaning given to that expression in the European Union (Withdrawal) Act 2018) setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(b) having regard to any guidance published by the Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article.";

(c) in paragraph 2—

(i) the first sub-paragraph were omitted;

(ii) in the second sub-paragraph for "Those detailed criteria" there were substituted "Any detailed criteria set out in guidance as referred to in paragraph 1A";

(iii) the third and fourth sub-paragraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4—

(i) in the first sub-paragraph—

(aa) in the first sentence, for the words from the beginning to "Member State", there were substituted "Where criteria have not been set out as referred to in paragraph 1A(a), the Natural Resources Body for Wales";

(bb) the second sentence were omitted;

(ii) in the second sub-paragraph—

(aa) for "Member States" there were substituted "The Natural Resources Body for Wales";

(bb) "by competent authorities" were omitted.

(7) Article 7 is to be read as if—

(a) before paragraph 1 there were inserted—

"**A1.** In this Article, the "list of waste" means the list contained in the Annex to Commission Decision 2000/532/EC, as that list has effect in Wales.";"

(b) in paragraph 1—

(i) the first and second sentences were omitted;

(ii) for the third sentence, there were substituted "The list of waste shall, except as provided in Commission Decision 2000/532/EC, be binding as regards determination of the wastewhich is to be considered as hazardous waste or non-hazardous waste.";

(c) paragraphs 2, 3, 6 and 7 were omitted.**]**

(8) Article 19 is to be read as if—

(a) in paragraph 1, for "Community" there was substituted " national ";

(b) in paragraph 2, for "a Member State" there were substituted " Wales ".

(9) Annex 3 is to be read as if, in entry HP 9, in the second sentence, "in the Member States" were omitted.

(10) In paragraph (2) "local authority" means a county council or a county borough council.**]**

F8 Regs. 2A, 2B inserted (31.12.2020) by The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/414), regs. 1(2)(b), **8(3)**; 2020 c. 1, Sch. 5 para. 1(1)

F9 Words in reg. 2A(2) substituted in earlier amending provision S.I. 2019/414, reg. 8(3) (31.12.2020) by The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1339), regs. 1(3), **2(4)(a)(i)(aa)**

F10 Reg. 2A(4) omitted in earlier amending provision S.I. 2019/414, reg. 8(3) (31.12.2020) by virtue of The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1339), regs. 1(3), **2(4)(a)(i)(bb)**

F11 Reg. 2A(5)-(7) substituted in earlier amending provision S.I. 2019/414, reg. 8(3) (31.12.2020) by The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1339), regs. 1(3), **2(4)(a)(i)(cc)**

[F8Meaning of the "Mining Waste Directive" F12...

2B.—(1) In regulation 2A(3)(a)(iii), "the Mining Waste Directive" means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries, read in accordance with paragraphs (2) and (3).

(2) Article 2 is to be read as if—

(a) in paragraph 2(c), the reference to Article 11(3)(j) of Directive 2000/60/EC were a reference to that Article read in accordance with paragraph (7) of this regulation;

(b) paragraphs 3 and 4 were omitted**.**

(3) Article 3(1) is to be read as if, for "Article 1(a) of Directive 75/442/EEC" there were substituted " Article 3(1) of the Waste Directive, as read with Articles 5 and 6 of that Directive ".

F13(4) . . . . . .

F13(5) . . . . . .

F13(6) . . . . . .

(7) For the purposes of paragraph (2)(a), Article 11(3)(j) of Directive 2000/60/EC is to be read as if—

(a) the first reference to "Member States" were a reference to the appropriate authority;

(b) at the end, there were inserted—

"and "environmental objectives", in relation to a river basin district within the meaning of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017, has the same meaning as in those Regulations".**]**

F8 Regs. 2A, 2B inserted (31.12.2020) by The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/414), regs. 1(2)(b), **8(3)**; 2020 c. 1, Sch. 5 para. 1(1)

F12 Words in reg. 2B heading omitted in earlier amending provision S.I. 2019/414, reg. 8(3) (31.12.2020) by virtue of The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1339), regs. 1(3), **2(4)(a)(ii)(aa)**

F13 Reg. 2B(4)(5)(6) omitted in earlier amending provision S.I. 2019/414, reg. 8(3) (31.12.2020) by virtue of The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1339), regs. 1(3), **2(4)(a)(ii)(bb)**

[F14Annex III to the Waste Directive

3. A reference in these Regulations to—

(a) Annex III is a reference to Annex III (properties of waste which render it hazardous) to the Waste Directive[F15]...;

(b) hazardous properties is a reference to the properties in Annex III.**]**

F14 Reg. 3 substituted (29.3.2011) by The Waste (Miscellaneous Provisions) (Wales) Regulations 2011 (S.I. 2011/971), reg. 1(2), **Sch. para. 3**

F15 Words in reg. 3(a) omitted (20.7.2015) by virtue of The Hazardous Waste (Miscellaneous Amendments) (Wales) Regulations 2015 (S.I. 2015/1417), regs. 1(2), **3(3)**

The List of Wastes

4.—**[**F16(1) In these Regulations, "the List of Wastes"("*y Rhestr Wastraffoedd*") means the list of wastes established by Commission Decision 2000/532/EC 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 from time to time.**]**

(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.

F16 Reg. 4(1) substituted (20.7.2015) by The Hazardous Waste (Miscellaneous Amendments) (Wales) Regulations 2015 (S.I. 2015/1417), regs. 1(2), **3(4)**