Draft Regulations laid before Parliament and the National Assembly for Wales under section 2(8) and (9)(d) and (e) of the Pollution Prevention and Control Act 1999, paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and section 59(3) of the Government of Wales Act 2006 for approval by resolution of each House of Parliament and of the Assembly.

DRAFT STATUTORY INSTRUMENTS

2011 No. XXXX

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Waste (England and Wales) Regulations 2011

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, have in accordance with section 2(4) of the Pollution Prevention and Control Act 1999(**1**) consulted—

(a) the Environment Agency;

(b) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small business respectively as they consider appropriate; and

(c) such other bodies or persons as they consider appropriate.

The Secretary of State is designated(**2**) for the purposes of the European Communities Act 1972(**3**) in relation to the environment. The Welsh Ministers are designated(**4**) for the purposes of that Act in relation to the prevention, reduction and management of waste.

A draft of this instrument has been approved by a resolution of each House of Parliament and by the National Assembly for Wales pursuant to section 2(8) and (9)(d) and (e) of the Pollution Prevention and Control Act 1999(**5**), to paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and to section 59(3) of the Government of Wales Act 2006(**6**).

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999.

(**1**) 1999 c. 24. Functions of the Secretary of State under section 2 (except in relation to offshore oil and gas exploration and exploitation), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 3 of S.I. 2005/1958. Those functions were then transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(**2**) S.I. 2008/301.

(**3**) 1972 c. 68.

(**4**) S.I. 2010/1552.

(**5**) The reference in section 2(8) of the 1999 Act to approval by each House of Parliament has effect in relation to the exercise of functions by the Welsh Ministers as if it were a reference to approval by the National Assembly for Wales by virtue of paragraph 33 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**6**) 2006 c. 32.

PART 1

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Waste (England and Wales) Regulations 2011.

(2) Subject to paragraph (3), they come into force on the day after the day on which they are made.

(3) Regulation 12 comes into force at the end of the period of 6 months beginning with the day on which these Regulations are made.

(4) These Regulations extend to England and Wales.

Application

2. Subject to regulation 47(2), these Regulations do not apply in relation to waste which is excluded from the scope of the Waste Framework Directive by Article 2(1), (2) or (3) of that Directive.

Interpretation

3.—(1) In these Regulations—

"appropriate authority" means—

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the Welsh Ministers;

"controlled waste" has the meaning given in section 75(4) of the Environmental Protection Act 1990(**7**);

"hazardous waste"—

(a) in relation to England has the meaning given in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005(**8**);

(b) in relation to Wales has the meaning given in regulation 6 of the Hazardous Waste (Wales) Regulations 2005(**9**);

"national waste management plan" means a waste management plan prepared by an appropriate authority;

"waste collection authority" means an authority which is a waste collection authority for the purposes of Part 2 of the Environmental Protection Act 1990(**10**);

"the Waste Framework Directive" means Directive 2008/98/EC of the European Parliament and of the Council on waste(**11**);

"waste management plan" has the meaning given in regulation 7(1);

"waste prevention programme" has the meaning given in regulation 4(1) and (2).

(**7**) 1990 c. 43. The definition of "controlled waste" depends on the definitions of "household waste" in section 75(5), "industrial waste" in section 75(6) and "commercial waste" in section 75(7). Section 75(6) and (7) was amended by S.I. 2006/937.
(**8**) S.I. 2005/894, to which there are amendments not relevant to these Regulations.
(**9**) S.I. 2005/1806 (W. 138), to which there are amendments not relevant to these Regulations.
(**10**) See section 30(3), which was amended by the Local Government (Wales) Act 1994, sections 22(3) and 66(8) and paragraph 17(3) of Schedule 9.
(**11**) OJ No L 312, 22.11.2008, p3.

(2) Terms which are used but not defined in these Regulations and are used in the Waste Framework Directive have the same meaning as in that Directive.

PART 2

Waste prevention programmes

Establishment of waste prevention programmes

4.—(1) The appropriate authority must, not later than 12th December 2013—

(a) evaluate the usefulness of the waste prevention measures set out as examples in Annex IV of the Waste Framework Directive and any other such measures the authority thinks fit; and

(b) establish one or more programmes of waste prevention measures (each a "waste prevention programme").

(2) A programme established before the coming into force of these Regulations may be a waste prevention programme.

(3) In this regulation, "waste prevention measures" means measures taken before a substance, material or product has become waste that reduce—

(a) the quantity of waste, including through the re-use of products or the extension of the life span of products;

(b) the adverse impacts of generated waste on the environment and human health; or

(c) the content of harmful substances in materials and products.

Purposes etc. of waste prevention programmes

5. The appropriate authority must ensure that a waste prevention programme—

(a) is compatible with the objectives in paragraphs 1 and 2 of Schedule 1;

(b) has as its purpose a contribution towards breaking the link between economic growth and the environmental impacts associated with the generation of waste;

(c) is expressed in writing and—

(i) sets out the objectives of the programme and a description of existing waste prevention measures; and

(ii) if it is integrated into a waste management plan or other programme, clearly identifies the programme's waste prevention measures.

Monitoring and evaluation of waste prevention programmes

6.—(1) An appropriate authority—

(a) must establish qualitative or quantitative benchmarks; and

(b) may establish qualitative or quantitative targets and indicators,

against which to assess the value of waste prevention programmes.

(2) An appropriate authority must publish the benchmarks and any targets or indicators it establishes.

PART 3

Waste management plans

Requirement for waste management plans

7.—(1) The appropriate authority must ensure that there are one or more plans containing policies in relation to waste management in England or Wales, as the case may be (each a "waste management plan").

(2) A waste management plan may form part of a document and, where this is the case, any requirement of law in relation to the plan applies only to that part.

(3) In this Part—

(a) "England" includes the sea adjacent to England out as far as the seaward boundary of the territorial sea;

(b) "Wales" includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea;

(c) the sea adjacent to England is so much of the sea adjacent to Great Britain as is not the sea adjacent to Wales or the sea adjacent to Scotland;

(d) the sea adjacent to Wales has the same meaning as it has by virtue of section 158(3) or (4) of the Government of Wales Act 2006(**12**); and

(e) the sea adjacent to Scotland has the same meaning as the internal waters and territorial sea of the United Kingdom adjacent to Scotland by virtue of section 126(2) of the Scotland Act 1998(**13**).

Content of waste management plans

8.—(1) The appropriate authority must ensure that the waste management plans (taken together) cover the whole of England or Wales, as the case may be.

(2) The appropriate authority must ensure that the waste management plans (taken together)—

(a) include a statement of the authority's policies for attaining the objectives specified in Part 1 of Schedule 1; and

(b) include the matters set out in Part 2 of Schedule 1.

(3) The appropriate authority must consider, in particular, whether the matters set out in Part 3 of Schedule 1 should be included in the waste management plans.

(4) An appropriate authority must ensure that the waste management plans conform to the strategy for the reduction of biodegradable waste going to landfill—

(a) in relation to England, required by section 17(1) of the Waste and Emissions Trading Act 2003(**14**);

(b) in relation to Wales, required by section 19(1) of that Act.

(5) A statement of policy made before the coming into force of these Regulations may be, or form part of, a waste management plan.

(**12**) 2006 c.32. The boundary between the sea adjacent to Wales and that adjacent to England is described by article 6 and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of section 162 of and paragraph 26 of Schedule 11 to the 2006 Act, S.I. 1999/672 continues to have effect.

(**13**) 1998 c.46. The boundaries between waters which are to be treated as internal waters or territorial sea of the United Kingdom adjacent to Scotland and those which are not are set out in the Scottish Adjacent Water Boundaries Order 1999 (S.I. 1999/1126).

(**14**) 2003 c.33.

PART 4

Waste prevention programmes and waste management plans: general provision

Directions to the Environment Agency

9.—(1) The appropriate authority may give directions to the Environment Agency requiring it—

(a) to advise the authority on the measures or policies which are to be included in a waste prevention programme or waste management plan;

(b) to carry out a survey or investigation into any other matter in connection with the preparation of such a programme or plan or any modification of it, and report its findings to the authority.

(2) A direction given under paragraph (1)(b)—

(a) must specify or describe the matters which are to be the subject of the survey or investigation;

(b) may specify bodies or persons to be consulted before carrying out the survey or investigation; and

(c) may make provision in relation to the manner in which—

(i) the survey or investigation is to be carried out; or

(ii) the findings are to be reported and made available.

(3) The Environment Agency must comply with a direction given under paragraph (1).

(4) Where a direction is given under paragraph (1)(b), the Environment Agency must also consult any body or person that it considers appropriate but is not specified in the direction.

(5) The Environment Agency must make its findings available to the bodies and persons it consults.

Review and modification of programmes and plans

10.—(1) The appropriate authority—

(a) must review each waste prevention programme and national waste management plan at least every sixth year;

(b) may from time to time modify a programme or plan.

(2) The appropriate authority must ensure that the Environment Agency and the bodies or persons mentioned in paragraph (3) are consulted during the preparation of—

(a) proposals for a waste prevention programme or national waste management plan; or

(b) proposals to modify such a programme or plan.

(3) They are such bodies or persons appearing to be representative of—

(a) the interests of local government; and

(b) the interests of industry,

as the authority considers appropriate.

(4) This regulation does not apply to a national waste management plan containing only provision relating to paragraph 8, 9, 10 or 11 of Schedule 1.

(5) Steps taken before the coming into force of these Regulations in relation to a waste prevention programme or national waste management plan may be steps for the purposes of this regulation.