STATUTORY RULES OF NORTHERN IRELAND

2005 No. 300

ENVIRONMENTAL PROTECTION

The Hazardous Waste Regulations (Northern Ireland) 2005

Made - - - -	*20th June 2005*
Coming into operation	*16th July 2005*

The Department of the Environment, being a department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the regulation and control of the transit, import and export of waste (including recyclable materials), the prevention, reduction and elimination of pollution caused by waste and the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred on it by Articles 30, 48 and 77 of the Waste and Contaminated Land (Northern Ireland) Order 1997(**3**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Hazardous Waste Regulations (Northern Ireland) 2005 and shall come into operation on 16th July 2005.

(2) The Interpretation Act (Northern Ireland) 1954(**4**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

General interpretation

2.—(1) In these Regulations—

"the 1997 Order" means the Waste and Contaminated Land (Northern Ireland) Order 1997;

"asbestos waste" means waste which contains or is contaminated by asbestos and "domestic asbestos waste" refers to such waste arising from domestic premises;

(**1**) S.I. 1993/2661, S.I. 1992/2870 and S.I. 1988/785
(**2**) 1972 c. 68
(**3**) S.I. 1997/2778 (N.I. 19), *see* Article 2(2) for definition of "Department" and "regulations"
(**4**) 1954 c. 33 (N.I.)

"carrier", in relation to a consignment of hazardous waste, means a person who takes one or more of the following actions, namely, collects the consignment of hazardous waste from the premises at which it was produced or is being held, delivers it to the consignee, or transports it in the course of any leg of its transfer from those premises to the consignee;

"carrier's round", in relation to consignments of hazardous waste, means a journey made by a carrier during which he collects more than one consignment of hazardous waste and transports all consignments collected to the same consignee who is specified in the consignment note;

"collection" means the gathering, sorting or mixing of waste or any one or more of those operations, for the purpose of transport and "collected" and other cognate expressions shall be construed accordingly;

"consignee", in relation to any consignment of hazardous waste, means the person to whom that waste is or is to be delivered for recovery or disposal;

"consignment note", in relation to a consignment of hazardous waste, means the identification form, as set out in Schedule 4, which is required to accompany the hazardous waste when it is transferred pursuant to Article 5(3)(a) of the Hazardous Waste Directive containing the details required by these Regulations to be shown in respect of that consignment;

"consignor", 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;

"conveyance" includes a vehicle designed to carry goods by road or rail and a vessel designed to carry goods by water;

"disposal" means any of the operations provided for in Annex IIA of the Waste Directive and cognate expressions shall be construed accordingly(**5**);

"Department" means Department of the Environment;

"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;

"European Waste Catalogue" means the list of wastes set out in the Annex to Commission Decision 2000/532/EC, as for the time being amended(**6**);

"harbour area" has the same meaning as in the Dangerous Substances in Harbour Areas Regulations (Northern Ireland) 1991(**7**);

"hazardous waste" has the meaning given to hazardous waste by regulation 6 and any reference to hazardous waste shall be taken to include special waste imported from Scotland within the meaning of the Special Waste Regulations 1996(**8**) as amended by the Special Waste Amendment (Scotland) Regulations 2004(**9**);

"the Hazardous Waste Directive" means Council Directive 91/689/EEC(**10**) of 31st December 1991 on hazardous waste, as amended by Council Directive 94/31/EC(**11**);

"holder" means the producer of waste or the person who is or who was, prior to consignment or spillage of the waste, in possession of it, not being the carrier of the waste;

(**5**) 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."

(**6**) The Decision in force at the date of making these Regulations is Commission 2000/532/EC (O.J. No. L226, 6.9.2000, p. 3) as amended by Commission Decision 2001/118/EC (O.J. No. L047, 16.2.2001, p. 1), 2001/119/EC (O.J. No. L047, 16.2.2001, p. 32) and 2001/573/EC (O.J. No. L203, 28.7.2001, p. 18)

(**7**) S.R. 1991 No. 509

(**8**) S.I. 1996/972

(**9**) S.I. 2004/112 (Scotland)

(**10**) O.J. No. L377, 31.12.1991, p. 20

(**11**) O.J. No. L168, 2.7.1994, p. 28

"the List Decision", "the List of Wastes Regulations" and "the List of Wastes" have the meanings given by regulation 5 and the expressions "listed as a waste", "listed as a hazardous waste" and "not listed as hazardous" are construed in accordance with that regulation;

"mixing" shall be construed in accordance with regulation 18;

"non-hazardous waste" and cognate expressions have the meaning given by regulation 7;

"permit" means a permit, licence, or authorisation issued pursuant to The Environment (Northern Ireland) Order 2002(**12**) or The Waste and Contaminated Land (Northern Ireland) Order 1997(**13**) or a registered exemption from a waste management licence in accordance with the Waste Management Licensing Regulations (Northern Ireland) 2003(**14**);

"premises" includes any ship, container, aircraft or vehicle and any other means of transport, any land, with or without buildings, construction or installation and any place situated on a road or on or in water, and vehicle includes any means of transport;

"producer" means any person whose activities produce waste ("original producer") and/or any person who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;

"recovery" means any of the operations provided for in Annex IIB of the Waste Directive and cognate expressions shall be construed accordingly(**15**);

"relevant code" in relation to a consignment note or carrier's schedule, means the code assigned in accordance with regulation 22 to the consignment of hazardous waste to which the consignment note or carrier's schedule relates or, where the consignment is one in a carrier's round, to the consignments in that round;

"schedule of carriers", in relation to a consignment of hazardous waste, means the schedule required to be completed pursuant to regulations 26;

"separation" means separation of a waste from any other waste, substance or material;

"ship" means a vessel of any type whatsoever operating in the marine environment including submersible craft, floating craft and any structure which is a fixed or floating platform; and

"six digit code" 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;

"United Kingdom ship" has the meaning given by section 1 of the Merchant Shipping Act 1995(**16**);

"waste" has the meaning given in regulation 3;

"Waste Directive" has the meaning given in regulation 3;

(2) A reference to the holder of waste—

(a) includes—

(i) where the waste has been transported, a reference to the person who, immediately prior to the consigning of the waste, was the holder;

(ii) where any waste has been spilled, a reference to the person who was, prior to any spill, in possession of the waste;

(b) does not include a reference to the carrier; and

(**12**) S.I. 2002/3153 (N.I. 7)
(**13**) S.I. 1997/2778(N.I. 19)
(**14**) S.R. 2003 No. 493
(**15**) 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 judgement) ". . . the intention of Annexes IIA and IIB 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."
(**16**) 1995 c. 21

(c) where regulations 31 (duty of consignee not accepting delivery) and 32 (further consignment note for rejected consignment) apply, does not include a reference to the consignee who has rejected the load.

(3) Other words and expressions used in these Regulations and which are used in the Waste Directive or the Hazardous Waste Directive have the same meaning as in the Waste Directive or the Hazardous Waste Directive, as the case may be.

The Waste Directive and the meaning of waste

3.—(1) For the purposes of these Regulations—

(a) "the Waste Directive" means Council Directive 75/442/EEC(**17**) on waste as amended by—

(i) Council Directives 91/156/EEC(**18**) and 91/692/EEC(**19**); and

(ii) Commission Decision 96/350/EC(**20**); and

(b) "waste" means anything that—

(i) is waste(**21**) for the purposes of the Waste Directive; and

(ii) subject to regulation 8, 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 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

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

(3) Except as provided for in Regulation 13 (domestic asbestos waste) and 14 (separately collected domestic fractions) these regulations do not apply to hazardous waste that is domestic waste.

The Hazardous Waste Directive

4.—(1) In these Regulations, "the Hazardous Waste Directive" means Council Directive 91/689/EEC(**22**) of 31st December 1991 on hazardous waste, as amended by Council Directive 94/31/EC(**23**).

(2) A reference in these Regulations to—

(a) Annex I, Annex II or Annex III is a reference to the annex of the Hazardous Waste Directive so numbered, as that annex is for the time being 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);

(**17**) O.J. No. L194, 25.7.1975, p. 39
(**18**) O.J. No. L78, 26.3.1991, p. 32
(**19**) O.J. No. L377, 37.12.1991, p. 48
(**20**) O.J. No. L135, 6.6.1996, p. 32
(**21**) 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
(**22**) O.J. No. L377, 31.12.1991, p. 20
(**23**) O.J. No. L168, 2.7.1994, p. 28

(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

5. In these Regulations—

(a) "the List of Wastes Decision" means Commission Decision 2000/532/EC(**24**) of 3rd 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 Northern Ireland pursuant to the List of Wastes Regulations;

(b) "the List of Wastes Regulations" means the List of Wastes (Northern Ireland) Regulations 2005(**25**);

(c) "the List of Wastes" means the List of Wastes set out in the List of Wastes Decision as it is for the time being 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; and

(d) in relation to any waste—

(i) the expressions "listed as a waste" and "listed as a hazardous waste" refer to that waste being listed as a waste, or as a hazardous waste as the case may be, for the time being in the List of Wastes(**26**) provided, in the case of a waste listed as a hazardous waste, it shall only be considered to be listed as a hazardous waste where any relevant limit value of concentration is met; and

(ii) the expression "not listed as hazardous" refers to that waste being not listed as a hazardous waste for the time being 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 shall be construed accordingly.

PART 2

HAZARDOUS AND NON-HAZARDOUS WASTE

Meaning of hazardous waste

6. Subject to regulation 10, a waste is a hazardous waste if it is for the time being—

(a) featured in the List of Wastes(**27**) as a hazardous waste; or

(**24**) O.J. No. L226, 6.9.2000, p. 3
(**25**) S.R. 2005 No. 301
(**26**) S.R. 2005 No. 301
(**27**) 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 and the European Waste Catalogue