

Explanatory Memorandum to the Hazardous Waste (Wales) (Amendment) Regulations 2009.

This Explanatory Memorandum has been prepared by the Environment, Sustainability and Housing Department of the Welsh Assembly Government and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Description

The Hazardous Waste (Wales) (Amendment) Regulations 2009 (“the amendment Regulations”) amend the Hazardous Waste (Wales) Regulations 2005. The amendment Regulations will extend the exemption from the requirement to notify hazardous waste producing premises, simplify the multiple consignment document, and make a number of correctional amendments to clarify unclear provisions within the 2005 Regulations, in order to improve the procedures followed by the Industry and the Environment Agency.

Matters of special interest to the Subordinate Legislation Committee

The Department for the Environment, Food and Rural Affairs have already made amending regulations which have been in force in England since 6 April 2009. Welsh businesses could be placed at a disadvantage if the proposed amendments to the current regulations are not implemented. The Environment Agency has taken a temporary regulatory position, which is in place until December 2009 where they will treat industry in both Wales and England the same in relation to these amendments.

Legislative Background

The powers enabling the instrument to be made are contained in section 2(2) of the European Communities Act 1972 (as amended) – in relation to measures regarding the prevention, reduction and elimination of pollution caused by waste.

The National Assembly for Wales is designated for this purpose by the European Communities (Designation Order) 2005 (S.I. 2005/850) and this is now exercisable by the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The SI follows the negative resolution procedure.

Purpose and intended effect of the legislation

A post-implementation review indicates that the current Regulations are not working as originally intended. The Amended Regulations make a few minor amendments to clarify those aspects of the Regulations which are not clear.

The 2005 Regulations which came into force on 16 July 2005 set down the regime for the control and tracking of the movement of hazardous waste for the purpose of implementing the Hazardous Waste Directive (Directive 91/689/EC). The Regulations include a requirement for hazardous waste producers to notify their premises to the Environment Agency before hazardous wastes can be removed from the premises. They also exempt certain low risk premises from the requirement as long as they produce less than a specified amount of hazardous waste per annum.

The 2005 Regulations have existed in their present form since they came into force on 16 July 2005. It has been noted by Environment Agency Wales and industry that some of the provisions in the 2005 Regulations are not working as originally intended and hence these minor amendments address these issues.

The main amendment is reducing the number of hazardous waste producing premises required to notify the Environment Agency by increasing the qualifying limitation for qualifying for this exemption from 200kg to 500kg. The effect would be to reduce the regulatory burden on small businesses.

Additional amendments clarify a few minor provisions that enable the Environment Agency Wales to carry out more appropriate enforcement activity. These proposals:

- amend the definition of premises in regulation 5 to make it clear that “premises” covers any possible place or vehicle;
- clarify the point that the 2005 Regulations are intended to apply to a contractor who is engaged to deal with the waste and not the occupier of domestic premises irrespective of the fact that the asbestos is produced at domestic premises.
- make clear that the 2005 Regulations will apply from the point that the separate fraction of waste is collected from the waste management contractor or the point that it is delivered to a civic amenity site;
- ensure that information about a notifier to be released by the Agency is only related to the premises at which the hazardous waste is produced and could not be used by some businesses to gain a commercial advantage;
- Regulation 44(3)(c) (formerly 48(3)(c)) is re-drafted to make it clear that it is a requirement that, where waste is disposed of, the disposal method must be included in the records.

Implementation

On 16 July 2005 parallel regulations were implemented in England under the Hazardous Waste (England and Wales) Regulations 2005. The Department for the Environment, Food and Rural Affairs have already made an amending set of Regulations implementing the above mentioned changes in England.

The Hazardous Waste (England and Wales) (Amendment) Regulations 2009 came into force on the 6 April 2009 and therefore should the making of legislation in Wales be delayed or not made at all then businesses in Wales will not be able to benefit from the increased exemption limit in place in England which would put Welsh businesses at a financial disadvantage.

Consultation

From 13 March 2009 to 8 May 2009, the Department for Environment, Sustainability and Housing conducted a consultation exercise on the proposed amendments to the Hazardous Waste (Wales) Regulations 2005, and included a draft set of amending Regulations. The Regulatory Impact Assessment provides additional information regarding the consultation and a summary of the responses received.

Regulatory Impact Assessment

a) **Options**

Two main options have been identified for the implementation of the Hazardous Waste (Wales) (Amendment) Regulations 2009:

Option 1 – do nothing

This option would entail not implementing the changes and not increasing the exemption from registration for business in Wales and merely maintaining the status quo.

Option 2 – Implement the Amending Regulations

This option would extend the exemption from notification, and clarify unclear provisions.

b) **Benefits**

We have identified that the benefits for each option are as follows:

Option 1 – Do nothing

There are no benefits apart from maintaining the status quo.

Option 2 – Implement the amending Regulations

The benefits of implementing this option are that from the coming into force date of the Hazardous Waste (Wales) (Amendment) Regulations 2009, the increase in the exemption limit from 200kg to 500kg of hazardous waste produced at a premise within a 12 month period will reduce the financial and administrative burden for smaller Welsh businesses.

c) **Costs**

Option 1 – Do nothing

DEFRA have made these same changes in England to the Hazardous Waste (England and Wales) Regulations. The increase in the exemption limit provides savings to business that currently have to register their premises as hazardous waste producers.

If the changes are not implemented in Wales then businesses in Wales will be disadvantaged by not being able to use the new increased exemptions limit and therefore have to register their premises and pay a fee detailed in the costs section below.

Option 2 – Implement the Amending Regulations

The annual costs of notification to a producer for typical premises are between £18 - £28. The charges for notification of premises are as follows:

- (a) £18 for each set of premises notified in electronic form
- (b) £23 for each set of premises notified by telephone; and
- (c) £28 for each set of premises notified in writing.

An analysis of the trends by which producers have notified their premises since the Regulations came into force indicates that widening the notification exemption to include all premises producing less than 500kg of hazardous waste per annum would result in a cost savings to industry of £1,400,000 per annum; an average of £19 per producer. This information has been provided by the Environment Agency and is calculated on a Wales and England basis.

In addition to the charge for registering the administrative burden imposed on a typical producer of hazardous waste as a result of the requirement to notify the Environment Agency has been estimated at £4.10 per annum. Agency data indicates that the introduction of the notification exemption would exempt a further 72,600 producers (Wales and England) out of those who currently notify hazardous waste. Therefore, the adoption of this policy proposal should reduce the administrative burden on producers of hazardous waste by £297,660 per annum (i.e. £4.10 x 72,600 producers).

Having made an assessment of premises notifications since 2005, the Government 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. The Environment Agency therefore expect very little environmental impact as a result of the adoption of this proposal. The intention is to reduce the regulatory burden on businesses whilst maintaining the requisite level of environmental protection.

d) Competition Assessment

We do not consider that there are competition issues, the main change in the amending Regulations, which is the blanket exemption from notification for all premises producing less than 500kg of hazardous waste per annum, will have no detrimental effect on competition.

e) Consultation

The Department for Environment, Sustainability and Housing consulted publicly on the proposed amendments to the Hazardous Waste (Wales) Regulations 2005.

The consultation was launched on 13 March 2009 and ran for 8 weeks until the 8 May 2009. The consultation set out the drivers for change, the vision for the future, the objectives for amending the existing regulations and a number of proposed policy options.

A total of 10 responses were received to the consultation, from a broad cross section of stakeholders. The stakeholders included public sector bodies, trade associations, the private sector and the agricultural sector.

The respondents to the consultation welcomed the four main proposals to the Regulations and although certain minor points were raised which have been clarified within the Regulations there were no major oppositions to the proposed amendments.

No subsequent amendments to the draft Regulations contained within the consultation document have been made as a result of the consultation.

f) Post implementation review

These 2009 amendment Regulations and the original 2005 Regulations will be reviewed in 3 years of coming into force of the amendments.

e) Summary

For the reasons set out above, the Welsh Assembly Government considers that the right option is Option 2, as reflected in the Hazardous Waste (Wales) (Amendment) Regulations 2009.