



New Hazardous Waste Regulations

Producers, carriers and consignees of Special Wastes will be familiar with the 1996 *Special Waste Regulations* governing their storage, transport and disposal. However, they will also know that legislation never stands still and the Special Waste Regulations are being replaced. Their successors, the *Hazardous Waste (England and Wales) Regulations 2005*¹ (HWR), are due to come into full force on 16th July 2005 and the Special Wastes Regulations will be repealed. The *List of Wastes (England) Regulations 2005* will come into force on the same day. Regulations that are identical in effect will come into force for Wales.

So much for the form of the new rules; what are the differences?

New definition of Hazardous Waste

The first difference is that "special waste" is not the same as "hazardous waste". The definition of Hazardous Waste is:-

- Any waste listed as hazardous in the List of Wastes Regulations 2005; or
- Any specific batch of waste that the Secretary of State (or other governmental body) determines is exceptionally to be classified as hazardous.

Although there is a huge overlap between wastes that fall within both definitions, there are differences. Examples of waste that IS Hazardous but is not special include:-

- Dental Amalgam
- Fluorescent Tubes
- Televisions and Computer Monitors
- End of life vehicles whose pollutants have not been stripped

Conversely, there are certain types of Special Waste that will not be classed as Hazardous, such as some medicines.

¹ SI 2005/894

Do the HWR cover domestic waste?

DEFRA has indicated that domestic waste is waste produced from accommodation used purely for living purposes and without commercial gain and disposed of via the normal mixed domestic refuse collection service. It is not the same as the old definition of Household Waste in the Special Waste Regulations.

The HWR can cover domestic waste if the waste is hazardous. It will also cover **asbestos** contained in domestic waste and can cover "separately collected fractions" of waste.

What about agricultural, mineral and quarrying waste?

At the moment, these are exempted from the scope of the HWR. This is intended to continue until the new Waste Management Regulations are implemented. The HWR therefore includes an exemption until 1st September 2006, but if the date of implementation of the new Waste Management Regulations slips, then the exemption is likely to be extended.

I am a producer of Hazardous Waste, what do I need to do?

Notification

Premises producing Hazardous Waste on or after 16th July 2005 needs to notify the Environment Agency. The Agency will respond by giving the premises a code. Notification can be made before the 16th July, and will need to be done before that date, as Hazardous Waste cannot be removed from premises after 16th July unless the premises have been notified. The Agency can handle applications for premises in Wales as well as England.

There are exemptions from the requirement to notify, largely on the basis that the quantity of waste produced is small but only if they fall into certain types of producer; contact DSL for more advice on this.

The requirement to notify the Agency will apply to the majority of waste transfer stations

Consigning Waste

"Consignment" is the same term as is used by the old Special Waste Regs, but that does not mean that it is used in the same way. There are significant differences in the new regulations governing consignment. For instance, there is no need to pre-notify the Environment Agency, and the consignment notes are different. The new notes need to be used from 16th July 2005.

Consignees will be obliged to keep detailed records, including quarterly returns to the Environment Agency. These records must be kept for three years.

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Rules for Carriers

Carrier's rounds

The simplification that existed for collections from more than one source under the old Special Waste Regulations changes as well from 16th July. The new arrangements are called "Multiple Collection" and have special consignment notes. It is important to note that the code for each of the premises from which a collection is made must be recorded on the consignment note.

Cross-border collections

The Regulations cover the transport of Hazardous Waste between England, Wales, Scotland, Gibraltar, Northern Ireland and beyond. It is important to note that consignees and carriers need to be aware that if a multiple collection is being organised from sites on both sides of, for example, the English/Welsh border, then these provisions apply.

Offences and Penalties

It is a defence to most of the offences specified by the HWR (which result from breaches of the provisions of the regulations) if a person can prove that:

(a) he was not reasonably able to comply with the provision in question by reason of an emergency or grave danger and that he took all steps as were reasonably practicable in the circumstances for -

- (i) minimising any threat to the public or the environment; and*
- (ii) ensuring that the provision in question was complied with as soon as reasonably practicable after the event; or*

(b) if there is no emergency or grave danger he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence²

Depending on the provision breached, the main offences carry a penalty of a fine not exceeding the statutory maximum in the magistrates courts (currently £5,000) and in the Crown Court, a custodial sentence of up to two years and an unlimited fine. Some offences, mostly relating to failure to provide documentation, carry a fine only. There is also provision for fixed penalty notices of £300 to be served.

² Regulation 66 HWR