

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Hazardous Waste (Miscellaneous Amendments) Regulations 2015

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum (SICM) must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Hazardous Waste (Miscellaneous Amendments) Regulations 2015 were laid before Parliament on 9 June 2015 and come into force on 1 July 2015. The Regulations can be found at:

<http://www.legislation.gov.uk/ukxi/2015/1360/contents/made>

Summary of the Regulations and their objective

3. The Hazardous Waste (Miscellaneous Amendments) Regulations 2015 amend The Hazardous Waste (England and Wales) Regulations 2005, revoke The List of Wastes (England) Regulations 2005, and amend other statutory instruments, in order to implement changes to EU legislation on hazardous waste and how it is classified and other related matters:
 - a. Commission Regulation 2008/1272/EC, the Classification, Labelling and Packaging Regulation (CLP) changes the way chemicals are classified and introduce a system based on hazard classes, categories and statement codes. The new CLP adopts and aligns existing EU legislation to the United Nations’ Globally Harmonised System on the classification and labelling of chemicals across all European Union countries, for example, the definition of dangerous substance is now replaced by a definition of hazardous substance;
 - b. Commission Regulation 1357/2014 replaces Annex III of the EU Waste Framework Directive (2008/98/EC) (“the Waste Directive”) and makes changes to how hazardous waste is coded and assessed; and
 - c. Commission Decision 2014/955/EU make changes to the EU List of Waste Decision (2000/532/EC) (the “List of Waste Decision”) to align with the CLP and Annex III of the Waste Directive. The new changes also include criteria to classify waste containing persistent organic pollutants (POPs) as hazardous once the concentration limit in the waste is exceeded and amends several existing waste codes. Three new waste codes relating to metallic mercury red mud from alumina production have also been added to the List.
4. The Commission Regulation is binding and has direct effect in the UK. However, changes need to be made to UK legislation to give proper effect to the EU legislation, in part because domestic legislation is drafted in

such a way that it will not be automatically updated as relevant EU legislation changes.

5. As a result of the changes in EU law, the Hazardous Waste (Miscellaneous Amendments) Regulations 2015 amongst other things, make consequential amendments to section 62A of the Environmental Protection Act 1990 (“the Act”) for England and Wales.
6. The Hazardous Waste (Miscellaneous Amendments) Regulations 2015 apply in relation to England, save for the amendments set out in regulations 2 and 4 to 6, which extend to England and Wales.

Provision to be made by the Regulations for which consent is sought

7. Section 62A of the Act is amended by regulation 2, as follows. The references to the Waste Framework Directive (2008/98/EC) in subsections (1)(b) and (2)(b) are updated to reflect the changes to Annex III of the Directive (Properties of waste which render it hazardous). Amendment of subsection 3 creates an ambulatory reference to the EU List of Waste Decision (2000/532/EC) so that future amendments to this section of the Act will not be necessary every time there is a change to the List of Waste Decision at European level.
8. It is the view of the Welsh Government that the provision described in paragraph (7) above falls within the legislative competence of the National Assembly for Wales in so far as it relates to environmental protection, including pollution, nuisances and hazardous substances, and prevention, reduction, collection, management, treatment and disposal of waste under paragraph 6 (Environment) of Part 1, Schedule 7, to the Government of Wales Act 2006.

Why is it appropriate for the Regulations to make this provision?

9. The amendment is necessary as a result of the changes to EU legislation and is of a minor and technical nature. It is necessary to give effect to the EU legislation outlined in paragraph 3. The terms of the Commission Regulation or the amendment to the List of Wastes Decision do not afford any discretion in terms of policy or drafting as between Wales and England.
10. It is the view of the Welsh Government that it is appropriate to deal with the amendment of section 62A in these Regulations as it provides the most practical and expedient approach to making this technical amendment for both England and Wales.
11. Previous Statutory Instrument Consent Memorandums have related to Statutory Instruments which are subject to the affirmative procedure in the UK Parliament and where they must be approved by both the House of Commons and the House of Lords to become law. This is the first SICM in the Assembly that relates to Regulations laid in Parliament under the

negative procedure which automatically become law unless there is an objection from a member of either House. That being the case, the regulations would come into force on 1 July 2015.

Financial implications

12. There are no anticipated financial implications for the Welsh Government.

Carl Sargeant AM
Minister for Natural Resources
June 2015