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# Secretary of State determinations on classification of hazardous waste – a guide

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# Introduction

**The purpose of this guide is to explain in more detail the provisions in the Hazardous Waste Regulations relating to the power for the Secretary of State to determine a specific batch of waste as either hazardous or non-hazardous. The guide provides information for those wishing to seek such determination.**

The List of Wastes (England) Regulations 2005 (SI No 895/2005 as amended) transpose the European Commission's List of Wastes Decision (2000/532/EC as amended) into domestic law. The listing of wastes as "hazardous" or "non-hazardous" in the List of Waste Regulations will be appropriate therefore, in a high majority of cases. However, Article 3 of EC Decision 2000/532 allows Member States to decide in exceptional cases and on the basis of documentary evidence provided by the holder that a specific waste indicated in the list as hazardous does not display any of the properties listed in Annex III to Directive 91/689/EEC, in other words that it is non-hazardous. It also allows Member States to decide in exceptional circumstances that a waste indicated in the list as non-hazardous does display one or more of these properties, i.e. that it is hazardous. All such decisions made by Member States must be communicated to the Commission on a yearly basis so that the Commission can consider whether the European List of Wastes requires amendment.

1.2 The provisions on these determinations are transposed in Regulations 8-11 of the Hazardous Waste (England and Wales) Regulations 2005 (SI No 894/2005). Regulations 8 to 11 of the Hazardous Waste Regulations allow the Secretary of State to make determinations to change the classification of a **specific batch** of waste from non-hazardous to hazardous (or vice versa), in exceptional circumstances, where there is evidence that the waste does (or does not) display hazardous properties.

1.3 In terms of the specific relevant legal provisions, Regulation 8 (1) of the Hazardous Waste Regulations allows the Secretary of State to determine, in exceptional cases, that a **specific batch** of waste not listed as hazardous displays one or more of the hazardous properties and should be treated for all purposes as hazardous waste.

1.4 Regulation 9 (1) allows the Secretary of State to determine, in exceptional cases, that a **specific batch** of waste, which is listed as hazardous does not display any of the properties listed in Annex III and should be treated as non-hazardous.

1.5 These provisions for determinations of specific batches are in addition to wider provisions set out in Article 1 (4) of the EC Hazardous Waste Directive (91/689/EEC), which allows Member States to classify as "hazardous", waste not listed as such in the EC's List of Wastes Decision (2000/532/EC as amended) as long as these wastes display one or more of the hazardous properties listed in Annex III of the Directive. Member States must notify any such cases to the European Commission with a view to them being added to the List of Wastes

when this is next revised. These provisions are transposed in Section 62A (1) of the Environmental Protection Act 1990 which was inserted by Regulation 72 of the Hazardous Waste Regulations 2005. They allow the Secretary of State to list in Regulations as hazardous any controlled waste not listed as hazardous in the Hazardous Waste List of the Hazardous Waste Directive. The purpose of these provisions are to allow the Secretary of State to make decisions about the classification of particular types of waste rather than a specific batch. Any changes made in this way would be subject to a consultation period before legislative changes were made.

1.6 The purpose of this guidance is to explain the procedures that will apply for determinations made under Regulations 8 and 9 (specific batches).

## **2. Determinations under Regulation 8**

2.1 The power in Regulation 8 allows the Secretary of State to issue a determination that states a specific batch of waste displays hazardous properties and should be treated as hazardous. This power is available in relation to waste (a) not listed as hazardous in the List of Wastes Regulations; (b) not listed in Regulations made under section 62A of the Environmental Protection Act 1990; or (c) though of type listed as hazardous in the List of Wastes, is treated as non-hazardous by virtue of a determination made under Regulation 9 of the Hazardous Waste Regulations.

### **What should I do if I want to request a determination from the Secretary of State under Regulation 8?**

2.2 Requests for determinations should be made to the Secretary of State via:

Hazardous Waste Unit  
Defra  
Zone 6/E6  
Ashdown House  
123 Victoria Street  
London  
SW1E 6DE

Requests may also be sent by e-mail to:

[waste.policy@defra.gsi.gov.uk](mailto:waste.policy@defra.gsi.gov.uk)

2.3 Requests will need to demonstrate that the specific batch of waste displays any of the hazardous properties listed in Schedule 3 of the Hazardous Waste Regulations (which reproduces Annex III to the Hazardous Waste Directive) and in the case of Hazardous properties H3 to H8, H10 and H11, that the thresholds set out in Regulation 4 of the List of Wastes Regulations (and which replicate those in Regulation 4 of the Lists of Wastes Decision EC 2000/532 as amended) are met (more guidance on this can be found in Technical Guidance WM2 available from the Environment Agency). Requests should include the following information for the waste:

(a) waste type – a description of the waste including the 6 – digit list of waste code and associated list of waste description;

(b) producer – name, address and postcode;

(c) if the person making the requests is not the producer, identify the persons name, address, postcode and relationship to the person in (b);

(d) a detailed description of the process that created it including the nature of inputs and materials used;

(e) planned method of disposal or recovery for the waste

(f) composition of the waste by appropriate chemical and/or physical analysis (all raw data should be supplied);

(g) sampling methodology and statistical analysis applied;

(h) any other test results or chemical analysis that supports the application.

### **What will happen once the Secretary of State receives a request for a determination under Regulation 8?**

2.4 Once a request for a determination is received, the Secretary of State is required (unless there is a situation of emergency or grave danger) by virtue of Regulation 10(2) of the Regulations to consult the holder, anyone with an interest in the specific waste or otherwise directly affected by the determination and the requisite bodies (defined by Regulation 11 as the Environmental Agency, Scottish Environmental Protection Agency, the National Assembly for Wales, the Scottish Executive, the Northern Ireland Department of the Environment, the Health and Safety Executive and any organisation considered to be representative of those people likely to be affected by the relevant determination.) The Secretary of State will specify a period of time for these bodies to respond and while it may be appropriate to vary this period depending on the exact nature of the request, it would not normally be less than one month.

2.5 The Secretary of State will consider all comments received within the specified timeframe and will then issue his decision. Where determinations are approved, this will be in the form of a notice issued to the holder of the waste, the requisite bodies and anybody else who was consulted. The notice will give details of the waste (type), including the List of Wastes code and any other information necessary to identify the specific batch of waste. Notices will also be published on the Defra and Environmental Agency websites.

## **What about wastes determined as “hazardous” in other parts of the UK?**

2.6 Where a waste not listed as hazardous in the List of Wastes Regulations has been determined to be hazardous by the Welsh Assembly Government, the Scottish Executive or the Northern Ireland Department of the Environment, Regulation 8(2) requires that it be treated as hazardous waste for all purposes in England unless it has been classified as non-hazardous by virtue of a determination under regulation 9.

### **3. Determination under Regulation 9**

3.1 The power in Regulation 9 allows the Secretary of State to issue a determination stating that a specific batch of Waste does not display hazardous properties and should be treated as non-hazardous. This power is available in relation to waste listed as hazardous both in the List of Wastes Regulations or in Regulations made under section 62(A) of the Environmental Protection Act 1990, or waste treated as hazardous by virtue of a determination made under Regulation 8.

### **What should I do if I want to request a determination from the Secretary of State under Regulation 9?**

3.2 Requests for determinations should be made to the Secretary of State via:

Hazardous Waste Unit  
Defra  
Zone 6/E6  
Ashdown House  
123 Victoria Street  
London  
SW1E 6DE

Requests may also be sent by email to

[Waste.policy@defra.gsi.gov.uk](mailto:Waste.policy@defra.gsi.gov.uk)

3.3 Requests will need to demonstrate that the waste does not display any of the hazardous properties listed in Schedule 3 of the Hazardous Waste Regulations (which reproduces Annex III to the Hazardous Waste Directive) and in the case of hazardous properties H3 to H8, H10 and H11, that the thresholds set out in Regulation 4 of the Lists of Wastes Decision EC 2000/532 as amended) are not met (more guidance on this can be found in Technical Guidance WM2 available from the Environment Agency). Requests should include the following information for the waste;

(a) waste type – a description of the waste including the 6 – digit list of waste code and associated list of waste description;

(b) producer – name address and postcode;

- (c) if the person making the request is not the producer, identify the persons name, address, postcode and relationship to that person in (b);
- (d) a detailed description of the process that created it including the nature of inputs and materials used;
- (e) planned method of disposal or recovery for the waste
- (f) composition of the waste by appropriate chemical and/or physical analysis (all raw data should be supplied);
- (g) sampling methodology and statistical analysis applied;
- (h) any other test results or chemical analysis that supports the application.

### **What will happen once the Secretary of State receives a request for a determination under Regulation 9?**

3.4 Once a request for a determination is received, the Secretary of State is required (unless there is a situation of emergency or grave danger) by virtue of Regulation 10(2) of the Regulations to consult the holder, anyone with an interest in the specific waste or otherwise directly affected by the determination and the requisite bodies (defined by Regulation 11 as the Environmental Agency, Scottish Environmental Protection Agency, the National Assembly for Wales, the Scottish Executive, the Northern Ireland Department of the Environment, the Health and Safety Executive and any organisation considered to be representative of those people likely to be affected by the relevant determination.) The Secretary of State will specify a period of time for these bodies to respond and while it may be appropriate to vary this period depending on the exact nature of the request, it would not normally be less than one month.

3.5 The Secretary of State will consider all comments received within the specified timeframe and will then issue his decision. Where determinations are approved, this will be in the form of a notice issued to the holder of the waste, the requisite bodies and anybody else who was consulted. The notice will give details of the waste (type), including the List of Wastes code and any other information necessary to identify the specific batch of waste. Notices will also be published on the Defra and Environmental Agency websites.

### **What about wastes determined as non-hazardous in other parts of the UK?**

**3.6** Where a waste listed as hazardous in the List of Wastes Regulations has been determined to be non-hazardous by the Welsh Assembly Government, the Scottish Executive or the Northern Ireland Department of the Environment, Regulation 9(2) requires that it be treated as non-hazardous waste for all purposes in England unless it has been classified as non-hazardous by virtue of a determination under regulation 8.



#### **4. Revocations**

4.1 Under Regulation 10(1) the Secretary of State is able to revoke determinations made under Regulations 8 and 9 and indeed might have to do so in the event that the European Commission challenged any change in waste status notified to them. Before making such a revocation, the secretary of state would need to consult the requisite bodies, the holder of the specific batch of waste and anyone else directly affected or with an interest in the waste. The amount of time allowed for consultation might vary according to the facts of the individual case but would not normally be less than one month.

4.2 Once the Secretary of State has considered any comments received within the specified timeframe, he would issue a notice of the revocation to the holder of the specific waste, the requisite bodies and any other person he had consulted. This notice would also be published on the Defra website.

#### **5. Situations of emergency or grave danger**

5.1 Where the Secretary of State considers that a determination or revocation must be made quickly to avert an emergency or situation of grave danger, he may issue a notice of determination or revocation without consulting. It must be stressed that decisions to proceed on this basis would be made only where the circumstances of the case made this absolutely necessary.