

Hazardous Waste Regulations (England And Wales) 2005 Guidance On Offences

1. The Regulations impose obligations on producers of hazardous waste and those involved in the transport, disposal and recovery of such waste. It is an offence not to comply with certain requirements of the Regulations.

Notification, consignment note and other related offences

Regulation 21 (requirement to notify premises)

2. The requirement to notify premises at which hazardous waste is produced or removed from (other than exempt premises). If the premises have not already been notified, the producer of the hazardous waste has a duty to notify the premises.

3. Notification of premises lasts for twelve months. If the notification is not renewed at the end of that period and hazardous waste is later either produced or (irrespective of when it was produced) removed from the premises there will be a breach of Regulation 21.

Regulation 22 (prohibition on removal of hazardous waste from premises unless notified or exempt)

4. It is an offence for any person (person means any legal entity and includes companies as well as individuals) to remove, cause to be removed, or to transport hazardous wastes from premises unless at the time the hazardous waste is removed:
the premises are notified;
the premises are exempt premises; or
the hazardous waste had been deposited at the premises unlawfully under section 33 Environmental Protection Act 1990 (this exclusion does not apply to deposits of waste at a licensed site or a site exempt from licensing under the 1990 Act and the Waste Management Licensing Regulations 1994).

Regulation 34 (assignment of consignment code)

5. Failure to assign a unique code to a consignment of hazardous waste is

an offence. The obligation to assign the unique code rests on the producer, consignor or master of a ship, depending on the circumstances.

6. The unique code must be generated in accordance with the coding standard designated by the Environment Agency.

Regulations 35 – 44 (consignment note procedure)

7. These Regulations set out the procedures to be followed on completing and using consignment notes and carriers schedules. Failure to follow those procedures correctly is an offence.

Regulation 46 and Schedule 7 (Cross boundary movements)

8. The Regulations make provision for movements between England and Wales, Scotland, Northern Ireland and Gibraltar. Failure to comply with these requirements for cross boundary movements is an offence in England.

Regulation 53 (Consignee and self disposal quarterly returns)

9. The Regulations require consignees and those operators disposing of their own waste by deposit at their own sites to make quarterly returns to the Environment Agency. The returns have to be made by 30 April for the first quarter, 31 July for the second quarter, 31 October for the third quarter and 31 January for the final quarter.

10. The returns must be made in a format prescribed by the Environment Agency.

11. It is an offence not to make the return in the prescribed format, to make the return late, or not to make the return at all, or not include information on all the consignments of hazardous waste received in a quarter. See guidance below on Regulation 68 regarding false and misleading information.

Regulation 54 (Consignees' returns to producers, holders or consignors)

12. This Regulation requires consignors to send returns in a specified format to producers or holders to confirm the receipt of the waste.

13. Failure to comply with the requirements of Regulation 54 is an offence. If you are a producer, holder or consignor and have not received a return from the consignee to which you think you are entitled, you

should contact the Environment Agency.

Regulation 55 (duty to supply information)

14. Any person required to keep any of the records referred to in Regulations 47, 48, 49, 50 and 51 (see below) must produce them to the Environment Agency or the emergency services on request. Failure to do so is an offence.

15. Producers, previous holders, consignors, carriers, consignees and establishments and undertakings receiving hazardous wastes for disposal or recovery must provide the Environment Agency with any information or documentary evidence they require to enable them to carry out their functions. Failure to supply that information or evidence is an offence.

More Serious offences

Part 4 (mixing and the duty to separate hazardous wastes)

16. Regulation 19 and 20 prohibit the mixing of different categories of hazardous waste unless the mixing is authorised by a waste permit and require the separation of mixed hazardous wastes where that is technically and economically feasible and necessary to comply with the Waste Directive objectives.

17. Failure to comply with those obligations is an offence.

Requirement to keep records under Regulations 47, 48, 49, 50 and 51

18. Regulations 47, and 48 make provisions about records about tipping waste at disposal sites and receipt of waste at treatment sites or transfer stations. The records must be kept in a register. The Regulations also require that those records are kept for three years or, if the site has a waste permit, until that permit is surrendered or revoked. Where permits are surrendered or revoked the register must be sent to the Environment Agency.

19. Regulations 49, 50 and 51 place obligations on producers, holders, consignors and carriers to keep records concerning the quantity, nature, origin, destination, frequency of collection, mode of transport and treatment in relation to hazardous waste. Producers, holders or consignors have to retain those records for three years. Carriers have to retain the records for twelve months.

20. Consignees returns to producers, holders or consignors also have to be

retained.

21. Records made under the Control of Pollution (Special Waste) Regulations 1980 and/ or the Special Waste Regulations 1996 must also be kept for as long as required by those Regulations. Those records have to be retained until any waste permit held by the operator is surrendered or revoked. Where permits are surrendered or revoked, the register must be sent to the Environment Agency.

22. Failure to comply is an offence.

Regulation 62 (duty on holder in emergency or grave danger)

23. The holder is required to take all lawful and reasonable steps to avert an emergency or grave danger or where that is not possible to mitigate the emergency or grave danger.

24. The holder must notify the Environment Agency where an emergency or grave danger exists and what steps have been taken to avert the emergency or grave danger. If that notification is made orally, it must be confirmed in writing within one week.

25. Failure to comply with these requirements is an offence.

Regulation 68 (false and misleading information)

26. This Regulation makes it an offence to provide false or misleading information or to make a false entry in any record. If a person provides false or misleading information in respect of any of the obligations referred to in the Regulations mentioned above, a separate offence under Regulation 68 is committed.

Penalties (Regulation 69)

27. Notification, consignment and related offences can only be tried in the Magistrates' Court (summary only offences) The maximum penalty that can be imposed on anyone convicted of these offences is the statutory maximum (currently £5,000) or six months in prison.

28. Those offences which are potentially more serious can be tried either in the Magistrates' Court or the Crown Court (triable either way). The maximum sentence that can be imposed in a Crown Court for offences that are triable either way under the Regulations is an unlimited fine or two years imprisonment or both.

Defences (Regulation 66)

29. It is a defence for any person charged with an offence under the Regulations to prove that they were not able to comply with the Regulation because of an emergency or grave danger providing they took all reasonable steps to minimise the threat to the public or the environment and complied with the Regulations as soon as reasonably practicable after the event.

30. It is also a defence if, where there is no emergency or grave danger, all reasonable precautions have been taken and all due diligence exercised to avoid committing the offence.

Liability of persons other than the principal offender (Regulation 67)

31. Where a person has committed an offence under the Regulations due to the act or default of some other person, that other person may be charged and convicted **whether or not** proceedings have been taken against the person with the obligation under the Regulations.

Liability of company officers and members

32. Where an offence is committed by a body corporate, a director, manager, secretary or other similar person of the company can be convicted of the offence if it was committed with their consent or connivance or was attributable to their neglect.

33. Where the affairs of a body corporate are managed by its members and any offence is proved to have been committed by acts or defaults of any member/s in connection with their management functions, those members may be liable as if they were the director of the body corporate.

Fixed Penalty notices (Regulation 70)

34. The Environment Agency determines whether or not to prosecute in line accordance with their published policy. Where an authorised officer of the Environment Agency considers that is appropriate to pursue prosecution and a summary only offence has been committed under the Regulations a fixed penalty notice may be issued. There is no obligation imposed by the Regulations to issue a fixed penalty notice. It is a matter of discretion for the officer. The penalty payable on a fixed penalty notice is £300. The penalty is payable within 28 day of the notice. If a

person pays the fixed penalty within 28 days of the notice, they cannot be taken to court over that offence. If they do not pay, they are likely to be prosecuted.