EXPLANATORY MEMORANDUM TO

THE HAZARDOUS WASTE (MISCELLANEOUS AMENDMENTS) REGULATIONS 2015

2015 No. 1360

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To update domestic legislation in light of amendments to two EU instruments establishing the classification for waste and hazardous waste and the replacement of an EU instrument concerning waste electrical equipment.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument inserts in domestic legislation references to an EU instrument "as amended from time to time". The EU instrument in question establishes a classification system for wastes of all kinds and is therefore a technical document. See under the heading "Policy background" below for more information.

4. Legislative Context

General context

4.1 The classification system for waste and hazardous waste is established by two EU instruments: Directive 2008/98/EC of the European Parliament and of the Council on waste ("the Waste Framework Directive") (see Annex III) and Commission Decision 2000/532/EC establishing a list of wastes ("the EU List of Wastes"). These instruments were amended in December 2014.

4.2 In addition, a 2002 EU instrument concerning waste electrical equipment was replaced by a new instrument: Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment.

4.3 Accordingly, provisions of the following domestic instruments require updating:

- the Environmental Protection Act 1990
- the Hazardous Waste (England and Wales) Regulations 2005
- the Batteries and Accumulators (Placing on the Market) Regulations 2008
- the Cremation (England and Wales) Regulations 2008
- the Waste Batteries and Accumulators Regulations 2009

- the Environmental Permitting (England and Wales) Regulations 2010
- the Waste (England and Wales) Regulations 2011
- the Controlled Waste (England and Wales) Regulations 2012

Enabling powers

4.4 The instrument is made using a combination of regulation-making powers.

4.5 The amendments to the Environmental Permitting (England and Wales) Regulations 2010 are made under section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999. In order to rely on this power, the Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2015 was recently made under paragraph 20 of Schedule 1 to the Act. The Order designates two EU instruments which are the subject of the provisions being amended.

4.6 Otherwise, the instrument is made under section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

Position of devolved administrations

4.5 The Welsh, Scottish, and Northern Irish administrations will be making similar changes to various domestic legislation for which they are responsible.

5. Territorial Extent and Application

5.1 The provisions of this instrument are of varying extent and application:

- Regulations 2 to 6 bear the same extent as the provisions they amend: Regulations 2, 3 and 5 extend to England and Wales; Regulations 4 and 6 extend to the UK.
- Regulation 10 bears the same application as the instruments it revokes: it applies to England only.
- Regulations 7 to 9 and 11 bear a different application to the provisions they amend: they apply to England only.

6. European Convention on Human Rights

6.1 Rory Stewart, Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

> "In my view the provisions of the Hazardous Waste (Miscellaneous Amendments) Regulations 2015 are compatible with the Convention rights."

7. Policy background

- What is being done and why

Updating in light of EU amendments to properties of waste which render it hazardous

7.1 Provisions of domestic instruments which refer to Annex III to the Waste Framework Directive (eg in section 62A(1)(b) of the Environmental Protection Act 1990) are being updated. This is because Annex III, which establishes properties of waste which render it hazardous, was replaced on 19th December 2014 with a revised Annex setting out a new classification system for hazardous waste.

Updating in light of EU amendments to the EU List of Wastes

7.2 Provisions of domestic instruments which refer to specific wastes in the EU List of Wastes (eg in section 62A(3) of the Environmental Protection Act 1990) are being updated. This is because the EU List of Wastes was amended on 30th December 2014 to reflect changes to EU chemicals classifications (eg references to "dangerous substances" were replaced with references to "hazardous substances" and 3 new kinds of wastes were added to the List).

Revocation of the List of Wastes (England) Regulations 2005

7.3 In 2005 the List of Wastes (England) Regulations 2005 were made. These copy out the EU List of Wastes. Various provisions of domestic legislation refer to specific wastes in those Regulations. As the EU List of Wastes was amended on 30th December 2014, the Regulations are now outdated. Our policy is to revoke the Regulations and replace references to wastes as set out in the Regulations with references to the equivalent wastes in the EU List of Wastes.

Insertion of ambulatory references

7.4 In addition to updating references to the EU List of Wastes, we are also inserting references to the List "as amended from time to time". The List establishes a classification system for wastes of all kinds: it describes and assigns a six-digit code to each kind of waste. There are 839 waste codes in the List. The classifications derive from EU chemicals legislation. The List needs to be occasionally amended to reflect minor changes to chemicals classifications. The List is a technical document. Future amendments would be minor and technical. We therefore consider it appropriate to refer in domestic legislation to the List as amended from time to time.

Updating in light of replacement of directive on waste electrical equipment

7.5 The instrument updates references to a 2002 EU instrument concerning waste electrical equipment. This is being done because the 2002 instrument was replaced with a new instrument: Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment.

Transitional provisions

7.6 The instrument contains transitional provisions modifying permits authorising activities relating to waste or hazardous waste. The handling of waste and hazardous waste is subject to authorisation via a permit issued by the Environment Agency. Permits (or standard rules which apply to a group of permits as conditions of those permits) may contain textual references to the outdated classification system for waste or hazardous waste. The instrument therefore modifies those permits so that any outdated reference is taken to be the equivalent updated reference.

- Consolidation

7.7 The instrument revokes the List of Wastes (England) Regulations 2005 and the List of Wastes (England) (Amendment) Regulations 2005.

8. Consultation outcome

8.1 The EU consulted extensively with Member States during the development of the new system of classification of waste and hazardous waste. Defra carried out informal consultation with key stakeholders and the waste industry throughout the process for amending the EU Decision and Regulation. Our consultation with stakeholders was aimed at ensuring that the technical changes did not result in any unjustified reclassification of wastes as hazardous, which might result in extra costs and burdens to waste producers. Stakeholder feedback indicated that this objective was achieved.

8.2 Defra consulted with the Environment Agency about the modifications required to Environmental Permitting Regulations. The Environment Agency has consequently notified waste permit holders of these modifications which update their permits to remove references to outdated waste codes or classifications.

9. Guidance

9.1 The Environment Agency consulted on associated draft Technical Guidance, which explains how waste must be classified from 1 June 2015 under the amended classification system. Draft guidance was published for public consultation between 12 November 2014 and 2 February 2015. There were 40 responses to the consultation. The public consultation was followed up by a stakeholder workshop in February 2015, attended by 30 consultees comprising representatives of waste producer and trade associations.

9.2 Over 80% of respondents to the public consultation supported the draft Technical Guidance. Of the rest, the main concerns raised related to the need for the Regulator to provide further clarity on specific elements of the Technical Guidance. These concerns were addressed at the February stakeholder event resulting in strong industry support for the technical changes.

9.3 The Technical Guidance (WM3) has been published by the Environment Agency.

10. Impact

10.1 The impact on business, charities or voluntary bodies is neutral.

10.2 The impact on the public sector is neutral.

10.3 An Impact Assessment has not been prepared for this instrument because these are minor technical changes which do not introduce additional costs for businesses.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 We will monitor the effectiveness of the Instrument through the administration of the hazardous waste control system, primarily through the Environment Agency's ability to monitor, track and account for all hazardous movements within England.

13. Contact

Olu Ogunbadejo at the Department for Environment, Food and Rural Affairs (Defra) (email - olu.ogunbadejo@defra.gsi.gov.uk) can answer any queries regarding the instrument.