
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the system of waste management licensing in Part II of the Environmental Protection Act 1990 (c. 43) and the Waste Management Licensing Regulations 1994 (S.I. 1994/1056, as amended), and the system of permitting in the Pollution Prevention and Control (England and Wales) Regulations 2000 (S.I. 2000/1973, as amended), with a new system of environmental permitting in England and Wales.

They transpose provisions of the following Directives which impose obligations either required to be delivered through permits or capable of being delivered through permits:

- Council Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos, as amended (OJ No. L 85, 28.3.1987, p40);
- Council Directive 92/112/EEC on procedures for harmonizing the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry (OJ No. L 409, 31.12.1992, p11);
- European Parliament and Council Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations, as amended (OJ No. L 365, 31.12.1994, p24);
- Council Directive 96/61/EC concerning integrated pollution prevention and control, as amended (OJ No. L 257, 10.10.1996, p26);
- Council Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations, as amended (OJ No. L 85, 29.3.1999, p1);
- Council Directive 1999/31/EC on the landfill of waste, as amended (OJ No. L 182, 16.7.1999, p1);
- Directive 2000/53/EC of the European Parliament and of the Council on end-of life vehicles, as amended (OJ No. L 269, 21.10.2000, p34);
- Directive 2000/76/EC of the European Parliament and of the Council on the incineration of waste, (OJ No. L 145, 28.12.2000);
- Directive 2001/80/EC of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from large combustion plants (OJ No. L 309, 27.11.2001, p1);
- Directive 2002/96/EC of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE), as amended (OJ No. L 37, 13.2.2003, p24);
- Directive 2006/12/EC of the European Parliament and of the Council on waste (OJ No. L 114, 27.4.2006, p9).

Scope

Regulation 8 defines the term “regulated facility” and regulation 12 requires every regulated facility to operate under the authority of an environmental permit.

“Regulated facility” includes every installation and mobile plant. Those terms are defined by regulations 2(1) and 3, and by Schedule 1, which contains detailed descriptions of activities which must be authorised by a permit in order to operate. Schedule 1 also categorises those activities as

“Part A(1)”, “Part A(2)” and “Part B”. These categories are used in regulation 32 to designate the regulator.

“Regulated facility” also includes every waste mobile plant and waste operation not otherwise included. Those terms are defined, respectively, in regulations 8 and 2(1).

“Regulated facility” does not include any “excluded waste operation” or “exempt waste operation”, and operators carrying these on do not therefore require an environmental permit.

“Excluded waste operation” is defined in regulation 4 and covers waste operations which are authorised by other specified regulatory systems.

“Exempt waste operation” is defined in regulation 5. Schedule 2 contains procedure in relation to exempt waste operations, including registration requirements. A waste operation cannot be an exempt waste operation unless it falls within a description in Schedule 3.

Procedure

Part 2 and Schedules 5 and 6 provide procedure in relation to environmental permits.

Regulations 13 (grant of a permit), 20 (variation of a permit), 21 (transfer of a permit) and 25 (surrender of a permit), with Part 1 of Schedule 5, regulate permit applications. Regulation 20 also provides for variation of a permit on the initiative of the regulator. Regulation 24 allows certain permits to be surrendered by notification.

Regulation 15 and Part 2 of Schedule 5 provide for compensation where a permit condition requires interference with the property rights of a person other than the operator.

Regulation 17 allows more than one regulated facility on the same site, or with the same operator, to be authorised by the same permit in some circumstances; regulation 18 allows the consolidation of separate permits.

Regulations 22 and 23 provide for the revocation of a permit on the initiative of the regulator.

Regulations 26-30 provide for the preparation of standard rules applying to a description of regulated facility, which may be incorporated into a permit at the request of an operator.

Regulation 31 and Schedule 6 provide for appeals.

Duties of the regulator

Part 3 and Schedules 7 to 18 provide for the discharge of functions by the regulator in relation to permits.

Regulation 32 sets the regulator for different categories of regulated facility and regulation 33 allows for change of regulator at the direction of the Secretary of State or the Welsh Ministers.

Regulation 34 requires the regulator to review permits from time to time and to inspect regulated facilities.

Regulation 35 and Schedules 7 to 18 require the regulator to exercise its functions so as to comply with the duties set out in those Schedules. Each Schedule requires the regulator to ensure compliance with one of the Directives set out above when exercising its functions in relation to a regulated facility falling within the Schedule’s scope.

Enforcement, powers and functions

Part 4 contains enforcement-related provision.

Regulations 36 and 37 provide, respectively, for enforcement notices (requiring compliance with a permit) and suspension notices (suspending the authorisation of a regulated facility).

Regulation 38 contains offences and regulation 40 provides for a defence. Regulation 39 sets the penalties on conviction.

Part 5 and Schedule 19 makes provision for public registers to be kept by the regulator, including information which may be kept off the register in the interests of national security or because it is confidential in nature.

Part 6 confers powers on the regulator, Secretary of State and Welsh Ministers and imposes duties on the regulator. The Part includes power for the regulator to prevent or remedy pollution and to recover associated costs from the operator (regulation 57), a requirement on the Environment Agency to publish a public participation statement (regulation 59), and power for the Secretary of State or Welsh Ministers to make schemes setting fees and charges in relation to local authority functions under the Regulations (regulation 65; the Environment Agency has a power to make such schemes in relation to its functions under section 41 of the Environment Act 1995 (c. 25)).

Miscellaneous provisions

Part 7 and Schedules 20 to 23 contain miscellaneous and transitional provision, savings, consequential amendments, revocations and repeals.

The Part includes provision requiring public authorities to deliver obligations under the Waste Framework Directive (2006/12/EC, cited above) when making decisions on specified authorisations other than environmental permits, including planning permissions (regulation 68 and Schedule 20).

Regulatory impact assessment

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Environment Regulation Policy Division, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL, and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.