
DRAFT STATUTORY INSTRUMENTS

2010 No.

The Environmental Permitting
(England and Wales) Regulations 2010

PART 2

Environmental Permits

CHAPTER 1

Application to the Crown and requirement for an environmental permit

Application to the Crown

11. Schedule 4 (application of these Regulations to the Crown) has effect.

Requirement for environmental permit

12.—(1) A person must not, except under and to the extent authorised by an environmental permit—

- (a) operate a regulated facility; or
- (b) cause or knowingly permit a water discharge activity or groundwater activity.

(2) Paragraph (1)(b) does not apply if the water discharge activity or groundwater activity is an exempt facility.

(3) Where a person (“A”) would, except for this paragraph, require an environmental permit to receive radioactive waste from another person (“B”) for the purpose of disposing of that waste, A does not require a permit for that receipt where—

- (a) B holds an environmental permit which allows B to dispose of the waste to A; and
- (b) the waste is disposed of by A in accordance with that permit.

CHAPTER 2

Grant of an environmental permit

Grant of an environmental permit

13.—(1) On the application of an operator, the regulator may grant the operator a permit (an “environmental permit”) authorising—

- (a) the operation of a regulated facility; and
- (b) that operator as the person authorised to operate that regulated facility.

(2) Regulation 17 applies in relation to the grant of a single permit authorising the operation of more than one regulated facility by the same operator.

(3) Part 1 of Schedule 5 applies in relation to an application for the grant of an environmental permit.

Content and form of an environmental permit

14.—(1) An environmental permit must specify—

- (a) the regulated facility whose operation it authorises; and
- (b) the operator of that regulated facility.

(2) An environmental permit that authorises the operation of a regulated facility (“regulated facility A”) need not specify any regulated facility of another class that is carried on as part of the operation of regulated facility A.

(3) An environmental permit may be in electronic form.

(4) An environmental permit must include a map, plan or other description of the site showing the geographical extent of the site of the regulated facility.

(5) But if there is more than one regulated facility on the site, the map, plan or other description need show only the combined extent of all the facilities.

(6) Paragraphs (4) and (5) do not apply to an environmental permit authorising—

- (a) the operation of mobile plant; or
- (b) the carrying on of a radioactive substances activity described in paragraph 5(5) of Part 2 of Schedule 23.

Conditions in relation to certain land

15.—(1) Conditions in an environmental permit may require the operator to carry out works or do other things in relation to land which the operator is not entitled to do without obtaining the consent of another person.

(2) If an environmental permit contains such a condition, the person whose consent is required must grant the operator such rights as are necessary to enable the operator to comply with the condition.

(3) Part 2 of Schedule 5 applies where such rights are granted.

Mobile plant operating on the site of another regulated facility: conflict of permit conditions

16. If—

- (a) an environmental permit (“permit A”) authorises the operation of mobile plant on the site of another regulated facility the operation of which is authorised under a separate environmental permit (“permit B”); and
- (b) there is an inconsistency between the requirements imposed by permit A and those imposed by permit B,

the requirements imposed by permit B prevail.

Single site permits etc.

17.—(1) Except as otherwise provided by this regulation, a regulator may not authorise the operation of more than one regulated facility under a single environmental permit.

(2) The regulator may authorise, under a single environmental permit, the operation by the same operator—

- (a) of more than one mobile plant;
- (b) of more than one standard facility (other than a standard facility to which the IPPC Directive applies); or
- (c) subject to paragraph (3) and (4), of more than one regulated facility on the same site.

(3) If one of the regulated facilities mentioned in paragraph (2)(c) is a radioactive substances activity described in paragraph 5(5) of Part 2 of Schedule 23, the permit may authorise the operation of that regulated facility on more than one site.

- (4) If a groundwater activity is carried on as part of a radioactive substances activity—
- (a) the regulator must authorise the carrying on of the groundwater activity under the same environmental permit that authorises the carrying on of the radioactive substances activity; and
 - (b) a separate permit must not be granted in relation to the groundwater activity.

Consolidation of an environmental permit

18.—(1) Paragraph (2) applies if the same operator is authorised by more than one environmental permit to operate—

- (a) more than one mobile plant;
- (b) more than one standard facility, not being a standard facility to which the IPPC Directive applies; or
- (c) more than one regulated facility on the same site.

(2) The regulator may replace the environmental permits (“old permits”) with a consolidated environmental permit—

- (a) applying to the same regulated facilities; and
- (b) subject to the same conditions that applied to the old permits, but varied as the regulator thinks fit.

(3) The regulator may replace a consolidated environmental permit (“old permit”) with 2 or more environmental permits (“new permits”).

(4) Each of the new permits is subject to whichever conditions of the old permit are relevant, varied as the regulator thinks fit.

(5) The regulator may replace a single environmental permit (“old permit”) which has been varied with a consolidated environmental permit subject to the same conditions that applied to the old permit.

- (6) A variation made by a regulator under this regulation—
- (a) is taken to be a regulator-initiated variation under regulation 20(1); and
 - (b) may only be made in accordance with regulation 20.

(7) Paragraphs 17, 18 and 19 of Part 1 of Schedule 5 apply in relation to the decision to make a regulator-initiated variation and the notification of such a decision.

Subsistence of an environmental permit

19. Once granted an environmental permit continues in force until—

- (a) it is revoked in whole in accordance with regulation 22;
- (b) it is surrendered in whole in accordance with—
 - (i) regulation 24, or
 - (ii) regulation 25 and Part 1 of Schedule 5; or
- (c) it is replaced with a consolidated permit in accordance with—
 - (i) regulation 18(2),
 - (ii) regulation 22(5),

(iii) paragraph 19(2) of Part 1 of Schedule 5.

CHAPTER 3

Variation, transfer, revocation and surrender of an environmental permit

Variation of an environmental permit

20.—(1) The regulator may vary an environmental permit on the application of the operator or on its own initiative.

(2) A variation under this regulation must not reduce the extent of the site of a regulated facility.

(3) Paragraph (2) does not apply if the variation relates to any part of an environmental permit (or if applicable, the whole permit) that authorises the operation of a regulated facility of the following description—

- (a) a Part B installation, except to the extent that it relates to a waste operation;
- (b) a stand-alone water discharge activity or stand-alone groundwater activity.

(4) With respect to any part of an environmental permit (or if applicable, the whole permit) that authorises the carrying on of a stand-alone water discharge activity, a regulator must not, without the agreement of the operator, on its own initiative—

- (a) within 4 years after the grant of the permit, vary any condition of the permit that relates to the water discharge activity; or
- (b) within 4 years after the variation of a condition of the permit that relates to the water discharge activity, further vary that condition.

(5) Paragraph (4) does not apply if—

- (a) the regulated facility is a standard facility; or
- (b) the regulator, on its own initiative, varies an environmental permit, or any condition of a permit, in order to comply with—
 - (i) an obligation of the United Kingdom under the Community Treaties; or
 - (ii) a direction given by the appropriate authority under regulation 61.

(6) Part 1 of Schedule 5 applies in relation to an application for the variation of an environmental permit or a proposal to vary an environmental permit on the initiative of the regulator under paragraph (1).

Transfer of an environmental permit

21.—(1) The regulator may, on the joint application of an operator and a proposed transferee, transfer to the proposed transferee an environmental permit or any part of an environmental permit.

(2) Part 1 of Schedule 5 applies in relation to an application for the transfer of an environmental permit in whole or in part.

(3) Paragraph (1) does not apply to an environmental permit (or any part of a permit) that authorises the carrying on of a stand-alone water discharge activity or stand-alone groundwater activity.

(4) The regulator may, on the joint notification of an operator and a proposed transferee, transfer to the proposed transferee any part of an environmental permit (or if applicable, the whole permit) to which paragraph (1) does not apply.

(5) A notification must—

- (a) be made on the form provided by the regulator;

- (b) include such information as is specified on the form; and
 - (c) specify a date on which the transfer is to take place, which must be not less than 20 working days after the date on which the notification is given.
- (6) A transfer following a notification takes effect on the date specified in the notification.
- (7) If—
- (a) an enforcement notice is in force in respect of an environmental permit; and
 - (b) the permit is transferred to another person, either in whole or in part,

the duty to comply with the enforcement notice is also transferred to the other person to the extent that it relates to the permit or part transferred.

Revocation of an environmental permit: general

- 22.—(1) The regulator may revoke an environmental permit in whole or in part.
- (2) If the regulator revokes a permit in part, it may vary the permit conditions to the extent that it considers necessary to take account of the revocation.
- (3) Where the regulator decides to revoke an environmental permit it must serve a notice on the operator specifying—
- (a) the reasons for the revocation;
 - (b) in the case of a partial revocation—
 - (i) the extent to which the environmental permit is being revoked, and
 - (ii) any variation to the conditions of the environmental permit; and
 - (c) the date on which the revocation will take place, which must not be less than 20 working days after the date on which the notice is served.
- (4) Unless the regulator withdraws a revocation notice, an environmental permit ceases to have effect on the date specified in the notice—
- (a) in the case of a revocation in whole, entirely; or
 - (b) in the case of a partial revocation, to the extent of the part revoked.
- (5) In the case of a partial revocation, the regulator may replace the environmental permit with a consolidated environmental permit reflecting the variation.
- (6) Any variation made by a regulator under this regulation—
- (a) is taken to be a regulator-initiated variation under regulation 20(1); and
 - (b) may only be made in accordance with regulation 20.
- (7) Paragraphs 17, 18 and 19 of Part 1 of Schedule 5 apply in relation to the decision to make a regulator-initiated variation and the notification of such a decision.
- (8) If a waste operation, stand-alone water discharge activity or stand-alone groundwater activity is registered as an exempt facility, that part of an environmental permit (or if applicable, the whole permit) that relates to the waste operation, water discharge activity or groundwater activity is revoked on the date of registration.

Revocation of an environmental permit: steps to be taken after the revocation takes effect

- 23.—(1) This regulation applies where the regulator has decided to revoke an environmental permit, or part of a permit, and the regulator considers that, after the revocation takes effect, it is appropriate for the operator to take steps—
- (a) to avoid a pollution risk resulting from the operation of the regulated facility; or

(b) to return the site of the regulated facility to a satisfactory state, having regard to the state of the site before the facility was put into operation.

(2) But this regulation does not apply if the revocation relates to any part of an environmental permit (or if applicable, the whole permit) that authorises the operation of a regulated facility of the following description—

- (a) a Part B installation, except to the extent that it relates to a waste operation;
- (b) mobile plant;
- (c) a stand-alone water discharge activity or stand-alone groundwater activity.

(3) If the operator is already required to take the steps mentioned in paragraph (1) under the environmental permit, the revocation notice must specify the regulator's view under paragraph (1) and state that paragraph (4) applies.

(4) The environmental permit continues to have effect to the extent that it requires the steps to be taken until the regulator issues a certificate stating that it is satisfied that all the steps have been taken.

(5) If the operator is not already required to take the steps mentioned in paragraph (1) under the environmental permit, the revocation notice must specify the regulator's view under paragraph (1) and the steps to be taken.

(6) If paragraph (5) applies, unless the regulator issues a certificate stating that it is satisfied that all the steps have been taken, the steps must be treated as if they were conditions of an environmental permit for the purposes of—

- (a) regulation 20;
- (b) regulation 36; and
- (c) the offence in regulation 38(2).

Notification of the surrender of an environmental permit

24.—(1) This regulation applies to any part of an environmental permit (or if applicable, the whole permit) that authorises the operation of a regulated facility of the following description or class—

- (a) a Part B installation, except to the extent that it relates to a waste operation;
- (b) mobile plant;
- (c) a stand-alone water discharge activity or stand-alone groundwater activity.

(2) By notification to the regulator, the operator may surrender that part of an environmental permit (or if applicable, the whole permit) to which this regulation applies.

(3) A notification must—

- (a) be made on the form provided by the regulator;
- (b) include such information as is specified in the form; and
- (c) specify the date on which the surrender is to take place, which must not be less than 20 working days after the date on which the notification is given.

(4) Subject to paragraph (7), the environmental permit ceases to have effect on the date specified in the notification to the extent specified there.

(5) Paragraphs (6) and (7) apply to a partial surrender if the regulator considers it necessary to vary the environmental permit conditions to take account of that surrender.

(6) The regulator must serve a notice on the operator specifying—

- (a) the regulator's view under paragraph (5);
- (b) the variation; and

(c) the date the variation takes effect.

(7) If the date specified in the notice under paragraph (6)(c) is later than the date specified in the notification under paragraph (3)(c), the variation and partial surrender both take effect on the later date.

Application for the surrender of an environmental permit

25.—(1) This regulation applies to an environmental permit, or any part of a permit, to which regulation 24 does not apply.

(2) By application to the regulator, an operator may surrender an environmental permit, or that part of a permit, to which this regulation applies.

(3) Part 1 of Schedule 5 applies in relation to an application for the surrender of an environmental permit in whole or in part.

CHAPTER 4

Standard rules

Preparation and revision of standard rules

26.—(1) A rule-making authority may prepare standard rules for such regulated facilities as are described in those rules.

(2) In preparing or revising standard rules the authority must consult—

- (a) such persons as it considers are representative of the interests of communities likely to be affected by, or persons operating, the regulated facilities described in the rules; and
- (b) such other persons as it considers are likely to be affected by or have an interest in the rules.

(3) But the duty in paragraph (2) does not apply in relation to revisions which comprise only minor administrative changes.

(4) The authority must keep under review all standard rules published by it under this regulation and revise those rules when it considers necessary.

(5) The authority must publish on its website all standard rules prepared or revised by it under this regulation.

(6) The duty in paragraph (2) may be satisfied by a consultation carried out partially or wholly before the coming into force of these Regulations.

Standard rules as conditions of an environmental permit

27.—(1) This regulation applies where a rule-making authority has published standard rules under regulation 26(5).

(2) At the request of the operator of a standard facility the regulator may include in the environmental permit authorising the operation of the facility a term providing that the relevant rules are conditions of the permit.

(3) If the regulator includes such a term, the relevant rules are conditions of the permit for the purposes of these Regulations, but there is no right of appeal under regulation 31 in relation to such a condition or the relevant rules.

(4) In this regulation, “relevant rules” means the standard rules which apply to the standard facility.

Notification of revisions of standard rules

28.—(1) This regulation applies where the rule-making authority proposes to revise standard rules under regulation 26(4).

(2) Before the rule-making authority complies with regulation 26(5), the regulator must notify any operator who holds a relevant environmental permit—

- (a) of the proposed revisions;
- (b) of the date when the revised rules will be published, which must not be less than 3 months after the date the notification is served; and
- (c) that on this date the revised rules will become conditions of the environmental permit.

(3) But the authority may publish the revised rules before 3 months after the date the notification is served if the revisions comprise only minor administrative changes.

(4) The revised rules take effect when published under regulation 26(5).

(5) In this regulation, “relevant environmental permit” means an environmental permit which will be affected by the proposed revisions.

Revocation of standard rules

29. The rule-making authority may revoke standard rules, but before doing so must consult the persons referred to in regulation 26(2).

Variation of an environmental permit: revocation of standard rules

30.—(1) This regulation applies to an environmental permit which includes a standard rules term if the standard rules applying by virtue of that term have been revoked by the regulator.

(2) The revoked rules continue to have effect until the regulator varies the permit under paragraph (3).

(3) As soon as reasonably practicable after the revocation of the rules, the regulator must vary the permit so as to—

- (a) remove the standard rules term; and
- (b) include such alternative conditions as it considers appropriate.

(4) In this regulation, “standard rules term” means a term of the type mentioned in regulation 27(2).

CHAPTER 5

Appeals in relation to environmental permits

Appeals to an appropriate authority

31.—(1) In this regulation, “application” has the meaning given in paragraph 1 of Part 1 of Schedule 5.

(2) Subject to paragraphs (4) and (5), the following persons may appeal to the appropriate authority—

- (a) a person whose application is refused;
- (b) a person who is aggrieved by a decision to impose an environmental permit condition following that person’s application;
- (c) a person who is aggrieved by a decision to impose a condition on an environmental permit held by that person—

- (i) as a result of a regulator-initiated variation, or
- (ii) to take account of the partial transfer, partial revocation or partial surrender of that environmental permit;
- (d) a person who is aggrieved by the deemed withdrawal under paragraph 4(2) of Part 1 of Schedule 5 of that person's duly-made application;
- (e) a person who is aggrieved by a decision relating to an environmental permit held by that person not to authorise the closure procedure mentioned in—
 - (i) Article 13 of the Landfill Directive after a request referred to in Article 13(a)(ii) of that Directive, or
 - (ii) Article 12 of the Mining Waste Directive after a request referred to in Article 12(2)(b) of that Directive;
- (f) a person on whom an enforcement notice, a revocation notice, suspension notice, prohibition notice, landfill closure notice or mining waste facility closure notice is served.
- (3) In paragraph (2), "person" includes a person to whom an environmental permit is transferred after—
 - (a) an application or a decision mentioned in that paragraph is made, or
 - (b) a notice mentioned in that paragraph is served.
- (4) Paragraph (2) does not apply where—
 - (a) the relevant decision or notice implements a direction of the appropriate authority given under—
 - (i) regulation 61(1),
 - (ii) regulation 62(1) or (6), or
 - (iii) paragraph (7) of this regulation; or
 - (b) an application for the grant or variation of an environmental permit in relation to a Category A mining waste facility that is an existing mining waste facility is refused pursuant to paragraph 14(2) of Schedule 20.
- (5) Paragraph (2)(f) does not apply to the extent that a revocation notice or suspension notice is served because of a failure to pay a charge prescribed in a scheme made under regulation 65(1) in respect of the subsistence of an environmental permit.
- (6) On the determination of an appeal in respect of a notice, the appropriate authority—
 - (a) may quash or affirm the notice; and
 - (b) if it affirms the notice, may affirm it, with or without modifications.
- (7) When determining an appeal in respect of a decision, the appropriate authority has the same powers as the regulator had when making the decision.
- (8) On the determination of an appeal in respect of a decision, unless the appropriate authority affirms the decision the authority must direct the regulator to give effect to its determination when sending a copy of it to the regulator under paragraph 6(2)(a) of Schedule 6.
- (9) Except as otherwise provided by this regulation—
 - (a) an appeal does not have the effect of suspending a decision or notice; but
 - (b) if an appeal is brought against a revocation notice, the notice does not take effect until the final determination or the withdrawal of the appeal.
- (10) Subject to paragraph (13), paragraph (9)(b) does not apply if the revocation notice—
 - (a) relates to any part of an environmental permit (or if applicable, the whole permit) that authorises the carrying on of a stand-alone water discharge activity; and

(b) states that, in the opinion of the regulator, the revocation is necessary for the purpose of preventing or, where that is not practicable, minimising, pollution.

(11) If an appeal is brought under paragraph (2)(c)(i) in respect of a decision to impose a condition on an environmental permit in relation to a stand-alone water discharge activity, the imposition of the environmental permit condition does not take effect, subject to paragraphs (12) and (13), until the final determination or the withdrawal of the appeal.

(12) Paragraph (11) does not apply if the notice effecting the decision includes a statement that, in the opinion of the regulator, the imposition of the condition is necessary for the purpose of preventing or, where that is not practicable, minimising, pollution.

(13) If the appropriate authority, on the application of the appellant, determines that the regulator acted unreasonably in excluding the application of paragraph (9)(b) or (11), then—

- (a) if the appeal is still pending at the end of the day on which the determination is made, paragraph (9)(b) or (11) applies to the decision or notice from the end of that day;
- (b) the appellant is entitled to recover compensation from the regulator in respect of any loss suffered in consequence of that exclusion; and
- (c) any dispute as to a person's entitlement to such compensation or as to the amount of it is to be determined by a single arbitrator appointed—
 - (i) by agreement between the parties to the dispute; or
 - (ii) in the absence of agreement, by the appropriate authority.

(14) Schedule 6 (appeals to the appropriate authority) has effect in relation to the making and determination of appeals under this regulation.