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DRAFT STATUTORY INSTRUMENTS

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**2011 No.**

The Environmental Permitting (England  
and Wales) (Amendment) Regulations 2011

PART 1

General

**Citation and commencement**

1. These Regulations—
  - (a) may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2011; and
  - (b) come into force on 1st October 2011, except regulations 2, 3, 12 and 14 which come into force on the day after the day on which these Regulations are made.

**Interpretation**

2. In these Regulations—
  - (a) “the 2010 Regulations” means the Environmental Permitting (England and Wales) Regulations 2010<sup>(1)</sup>; and
  - (b) “the Act” means the Radioactive Substances Act 1993<sup>(2)</sup>.

PART 2

Amendments to the 2010 Regulations

**Amendment of the Environmental Permitting (England and Wales) Regulations 2010**

3. The 2010 Regulations are amended in accordance with regulations 4 to 15.

**Amendment of regulation 2 (interpretation: general)**

- 4.—(1) Paragraph (1) of regulation 2 (interpretation: general) is amended as follows.
  - (2) In the definition of “radioactive material”, for “paragraph 2” substitute “paragraph 3”.
  - (3) In the definition of “radioactive substances activity”, for “paragraph 5” substitute “paragraph 11”.
  - (4) After the definition of “radioactive substances activity”, insert—

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(1) [S.I. 2010/675](#); relevant amendments by [S.I. 2011/988](#).

(2) [1993 c.12](#); amended by [S.I. 2001/4005](#), [S.I. 2010/675](#), [1995 c. 25](#), [1993 c.11](#), [2009 c.23](#)

““radioactive substances exemption” means an exemption under Part 7 of Schedule 23 from the requirement for an environmental permit in respect of a radioactive substances activity;”.

- (5) In the definition of “radioactive waste”, for “paragraph 4” substitute “paragraph 3”.
- (6) In the definition of “waste”, for “paragraph (4)” substitute “paragraph (5) where it applies”.
- (7) For paragraph (4) substitute—
- “(4) Paragraph (5) applies where a person (“A”)—
- (a) carries on a radioactive substances activity described in paragraph 11(2)(b) or (c) or (4) of Part 2 of Schedule 23 in respect of radioactive waste;
  - (b) is exempt under regulation 12(3) from the requirement for an environmental permit in respect of that activity and that waste (“the relevant exemption”); and
  - (c) the waste (“the applicable radioactive waste”) is—
    - (i) NORM waste (as that term is defined in Part 7 of Schedule 23); or
    - (ii) the waste described in the first, second or sixth row of column 1 of table 6 in Part 7 of Schedule 23.”.
- (8) After paragraph (4), insert—
- “(5) Where this paragraph applies, for so long as the relevant exemption applies to A, the applicable radioactive waste must be treated for the purposes of these Regulations as if it were waste other than radioactive waste.”.

#### **Amendment of regulation 5 (interpretation: exempt facilities)**

5. In paragraph (1) of regulation 5 (interpretation: exempt facilities), for the definition of “exempt groundwater activity”, substitute—

““exempt groundwater activity” means—

- (a) a stand-alone groundwater activity that meets the requirements of paragraph 5 of Schedule 2; or
- (b) a groundwater activity that—
  - (i) is a groundwater tracer test as defined in paragraph 1 of Part 3 of Schedule 3;
  - (ii) is also a radioactive substances activity by virtue of the using of radioactive material as a part of that test; and
  - (iii) meets the requirements of paragraph 5 of Schedule 2.”.

#### **Amendment of regulation 12 (requirement for an environmental permit)**

6. In regulation 12 (requirement for an environmental permit), for paragraph (3) substitute—

“(3) In respect of a radioactive substances activity, paragraph (1) does not apply to a person to whom a radioactive substances exemption applies for that activity.

- (4) Paragraph (5) applies to a person (“A”) who—
- (a) receives radioactive waste from another person (“B”) for the purposes of A disposing of that waste; and
  - (b) subsequently disposes of that waste.
- (5) Where this paragraph applies, A does not require an environmental permit—
- (a) for the receipt of waste from B, where B holds an environmental permit which allows B to dispose of the waste to A; or

- (b) for the subsequent disposal of that waste by A, where the waste is disposed of in accordance with the permit held by B.”.

**Amendment of regulation 14 (content and form of an environmental permit)**

7. In regulation 14(6)(b) (content and form of an environmental permit), for “paragraph 5(5)” substitute “paragraph 11(5)”.

**Amendment of regulation 17 (Single site permits etc.)**

8. In regulation 17(3) (single site permits etc.), for “paragraph 5(5)” substitute “paragraph 11(5)”.

**Amendment of regulation 67 (Interpretation of Part 7)**

- 9.—(1) Regulation 67 is amended as follows.
- (2) After the definition of “2007 transitional application”, insert the following definition—  
““article” and “substance” have the meaning given to them in Schedule 23 to these Regulations.”.
- (3) The definition of “radioactive substances exemption order” is revoked.

**Revocation of regulation 72 (Radioactive substances exemption orders)**

10. Regulation 72 is revoked.

**Insertion of regulations 72A, 72B, 72C and 72D**

11. After regulation 71, insert—

**“Previously excluded radioactive material and radioactive waste**

**72A.**—(1) Paragraph (3) applies to a person (“A”) who was carrying on an activity (“the continuing activity”) described in paragraph (2) immediately before 1st October 2011 and who continues to carry on the activity on or after that date.

(2) The continuing activity referred to in paragraph (1) means an activity carried on by A—

- (a) in respect of a substance or article which—
- (i) immediately before 1st October 2011 was not defined as radioactive material or radioactive waste; but
  - (ii) on that date became defined as radioactive material or radioactive waste by virtue of the amendments made to those definitions on that date (“the relevant amendments”);

and

- (b) which on that date became a radioactive substances activity described in paragraph 11(2), (4) or (5) of Part 2 of Schedule 23 by virtue of the relevant amendments.

(3) Where this paragraph applies, A is exempt from the requirement to hold an environmental permit in respect of the continuing activity until the end time set out in regulation 72C.

### **Previously exempt radioactive substances activities**

**72B.**—(1) Paragraph (3) applies to a person (“A”) who was carrying on an activity (“the continuing activity”) described in paragraph (2) immediately before 1st October 2011 and who continues to carry on the activity on or after that date.

(2) The continuing activity referred to in paragraph (1) means an activity—

- (a) described in paragraph 11(2), (4) or (5) of Part 2 of Schedule 23; and
- (b) in respect of which, immediately before 1st October 2011, A was exempted under regulation 72 (as in force at that time) from the requirement to hold an environmental permit (“the existing exemption”).

(3) Where this paragraph applies, the existing exemption continues to apply to A until the time set out in paragraph (4), subject to any conditions which applied to that exemption.

(4) The time referred to in paragraph (3) is—

- (a) if A does not become exempt in respect of the continuing activity under a radioactive substances exemption before 1st April 2012, the end time set out in regulation 72C; or
- (b) if A does become so exempt, the time at which the exemption begins to apply.

### **End time: regulations 72A and 72B**

**72C.**—(1) For the purposes of regulations 72A and 72B, the end time is—

(a) where, before 1st April 2012, A makes a permit application—

- (i) if that application is granted, the time of grant;
- (ii) if that application is refused and—
  - (aa) A appeals against the refusal under regulation 31, the time at which the appeal is determined or withdrawn;
  - (bb) A does not appeal against the refusal, the end of the day which is the final appeal date;

or

(b) where no such application is made, the earliest of—

- (i) 1st April 2012;
- (ii) the time at which A ceases to carry on the continuing activity; or
- (iii) for the purposes of regulation 72A only, the time a radioactive substances exemption first applies to A in respect of the continuing activity.

(2) In paragraph (1)—

“final appeal date” means the last day on which an appeal against a refusal to grant an environmental permit could have been brought under regulation 31, but not including any extension of the time limit for making an appeal allowed by the appropriate authority under paragraph 3(2) of Schedule 6; and

“permit application” means—

- (a) an application for an environmental permit under regulation 13 in respect of (as applicable) the continuing activity under regulation 72A or 72B; or
- (b) an application under regulation 20 for a variation of an existing environmental permit, in respect of the inclusion in the permit of that continuing activity.”.

### **Existing radioactive substances permits**

**72D.**—(1) Paragraph (4) applies to a person (“A”) who was carrying on an activity described in paragraph (2) (“the continuing excluded activity”) or paragraph (3) (“the continuing exempt activity”) immediately before 1st October 2011 and who—

- (a) continues to carry on that activity after that date; and
- (b) holds an environmental permit in respect of the activity (“permit A”).

(2) The continuing excluded activity referred to in paragraph (1) means an activity which—

- (a) was a radioactive substances activity immediately before 1st October 2011; but
- (b) ceases to be such an activity on that date because it was carried on in respect of a substance or article which ceased to be defined as radioactive material or radioactive waste on that date by virtue of the amendments made to the definitions in these Regulations of radioactive material and radioactive waste on that date.

(3) The continuing exempt activity referred to in paragraph (1) means an activity—

- (a) described in paragraph 11(2), 11(4) or 11(5) of Part 2 of Schedule 23 to these Regulations; and
- (b) in respect of which A—
  - (i) immediately before 1st October 2011, was not exempt under regulation 72 (as it was in force at that time); but
  - (ii) is exempt under a radioactive substances exemption.

(4) Where this paragraph applies, subject to paragraph (5), A may surrender any part of permit A that applies to the continuing excluded activity or the continuing exempt activity by notification to the regulator.

(5) A notification under paragraph (4) must be made to the regulator on or before 31st March 2012.

(6) Regulation 24(3) to (7) applies as if the notification were made under that regulation.

### **Amendment to Schedule 1 (activities, installations and mobile plant)**

**12.** In part 2 of Schedule 1 (activities), after Section 6.9 (intensive farming), insert—

#### *“SECTION 6.10*

#### *Carbon capture and storage*

##### **Part A(1)**

- (a) Capture of carbon dioxide streams from an installation for the purposes of geological storage pursuant to Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide<sup>(3)</sup>.”.

### **Amendment to Schedule 5 (environmental permits)**

**13.** In paragraph 5(1)(b) of Part 1 of Schedule 5 (environmental permits), for “paragraph 5(5)” substitute “paragraph 11(5)”.

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(3) OJ No L 140, 5.6.2009, p 114.

### **Amendment to Schedule 22 (groundwater activities)**

14. In paragraph 8 of Schedule 22 (groundwater activities for which a permit may be granted), after sub-paragraph (c) insert—

- “(ca) the injection of carbon dioxide streams for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes, provided that such injection is made in accordance with Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide<sup>(4)</sup>, or excluded from the scope of that Directive pursuant to Article 2(2) of that Directive,”.

### **Substitution of Schedule 23 (radioactive substances activities)**

15. For Schedule 23 (radioactive substances activities), substitute the contents of Schedule 1 (new Schedule 23 to the 2010 Regulations) to these Regulations.

## **PART 3**

### **Consequential amendments, repeals, savings and revocation**

#### **Consequential amendments**

16. Schedule 2 (consequential amendments) has effect.

#### **Repeals**

17.—(1) The Act, except for the provisions referred to in paragraph (2), is repealed.

(2) Those provisions are—

- (a) paragraphs 2, 5 to 9 and 11 of Schedule 4;
- (b) section 49(1) so far as it relates to those paragraphs of that Schedule; and
- (c) section 51.

#### **Savings**

18.—(1) Despite regulations 9(3) and 10, the following provisions continue to have effect for the purposes of regulations 72A and 72B of the 2010 regulations—

- (a) the definition of “radioactive substances activity exemption order” in regulation 67 of the 2010 Regulations; and
- (b) regulation 72 of those Regulations.

(2) Despite their lapse by virtue of regulation 17, the orders listed in Schedule 3 continue to have effect for the purposes of regulations 72A and 72B of the 2010 Regulations.

(3) Despite regulation 17—

- (a) section 8 of the Act (exemptions from the requirement for an environmental permit);
- (b) section 11 of the Act (exemptions from the requirement for an environmental permit for mobile radioactive apparatus); and
- (c) section 15 of the Act (further exemptions from the requirement for an environmental permit)

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(4) OJ No L 140, 5.6.2009, p 114.

continue to have effect so far as they provide authority for the orders listed in Schedule 3.

(4) Despite regulation 17, section 47 of the Act (general interpretation provisions) continues to have effect so far as it applies in relation to the provisions of the Act specified in paragraph (4).

(5) The amendments made by paragraph 1 of Part 1 of Schedule 2 (the Continental Shelf Act 1964) do not have effect in relation to the orders listed in Schedule 3 (and continuing to have effect by virtue of paragraph (3)), and despite regulation 15—

(a) paragraph 1 of Schedule 4 to the Act (consequential amendment to the Continental Shelf Act 1964) continues to have effect in relation to those orders; and

(b) section 49(1) of the Act (consequential amendments and transitional and transitory provisions) continues to have effect so far as it relates to that paragraph of that Schedule.

(6) The amendments made by paragraph 1 of Part 2 of Schedule 2 (The Civil Jurisdiction (Offshore Activities) Order 1987) do not have effect in relation to the orders listed in Schedule 3 (and continuing to have effect by virtue of paragraph (3)).

### Revocation

**19.** The Radioactive Substances (Clocks and Watches) (England and Wales) Regulations 2001(5) are revoked.

Date	<i>Name</i> Minister of State, Department of Energy and Climate Change
Date	<i>Name</i> Minister for Environment and Sustainable Development one of the Welsh Ministers