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DRAFT STATUTORY INSTRUMENTS

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**2011 No.**

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

PART 2

Amendments to the 2010 Regulations

**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.