

2002 No. 2980

**ENVIRONMENTAL PROTECTION,
ENGLAND AND WALES**

**The Waste Incineration (England and Wales)
Regulations 2002**

Made - - - - - 3rd December 2002

Laid before Parliament 4th December 2002

Coming into force - - 28th December 2002

The Secretary of State, in exercise of the powers conferred on her by section 2 of the Pollution Prevention and Control Act 1999(a), having in accordance with section 2(4) of that Act consulted the Environment Agency, such bodies or persons appearing to her to be representative of the interests of local government, industry, agriculture and small businesses respectively as she considers appropriate, and such other bodies and persons as she considers appropriate, hereby makes the following Regulations:

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Waste Incineration (England and Wales) Regulations 2002.
- (2) These Regulations shall come into force on 28th December 2002.
- (3) These Regulations extend to England and Wales.

Interpretation

- 2.—(1) In these Regulations—
 - “the 1990 Act” means the Environmental Protection Act 1990(b);
 - “the 2000 Regulations” means the Pollution Prevention and Control (England and Wales) Regulations 2000(c);
 - “authorisation” means an authorisation granted under section 6 of the 1990 Act;
 - “existing waste incineration installation” means a waste incineration installation which—
 - (a) in the case of an installation which is a co-incineration plant, is put into operation before 28th December 2004 subject to a relevant approval; or
 - (b) in any other case—
 - (i) is put into operation before 28th December 2003 subject to a relevant approval granted before 28th December 2002; or

(a) 1999 c. 24. Directive 2000/76/EC was designated for the purposes of paragraph 20 of Schedule 1 to the Pollution Prevention and Control Act 1999 by the Pollution Prevention and Control (Designation of Council Directives on Large Combustion Plants, Incineration of Waste and National Emission Ceilings) Order 2002, SI 2002/2528. The Secretary of State can exercise these powers only in relation to England and Wales—see section 53 of the Scotland Act 1998 (c. 46) and section 5(3) of the Pollution Prevention and Control Act 1999.

(b) 1990 c. 43.

(c) S.I. 2000/1973; relevant amending instruments are S.I. 2001/503, 2002/275, 2002/1559 and 2002/2688.

- (ii) is put into operation before 28th December 2004 subject to a relevant approval granted on the basis of a duly made application submitted before 28th December 2002;

and where an installation becomes authorised as a waste incineration installation for the first time as a result of a modification or variation pursuant to section 10, 11 or 37 of the 1990 Act or regulation 17 of the 2000 Regulations, references in this definition to a relevant approval shall be construed as references to that modification or variation and not to the original relevant approval, and references to the grant of an approval shall be construed as references to the service of the notice effecting the modification or variation; and

“relevant approval” means any of the following—

- (a) a permit;
- (b) an authorisation;
- (c) a waste management licence granted under section 36 of the 1990 Act; or
- (d) an exemption registered under regulation 18 of the Waste Management Licensing Regulations 1994(a), and the entry of particulars in the register under regulation 18 of those Regulations shall be treated as the grant of a relevant approval for the purposes of the definition of “existing waste incineration installation”.

(2) In these Regulations, words and expressions which are defined in the 2000 Regulations shall have the same meaning as in those Regulations.

Applications in relation to waste incineration installations

3.—(1) Where an existing waste incineration installation is on 31st December 2004 subject to a permit, the operator shall within the period 1st January to 31st March 2005 make an application under regulation 17 of the 2000 Regulations for a variation of the conditions of that permit.

(2) Where an existing waste incineration installation (not being one falling within Section 5.1 of Part 1 of Schedule 1 of the 2000 Regulations) is on 31st December 2004 subject to an authorisation, the operator shall within the period 1st January to 31st March 2005 either—

- (a) apply under section 11 of the 1990 Act for a variation of the conditions of the authorisation; or
- (b) make an application for a permit under regulation 10 of the 2000 Regulations.

(3) An application under paragraph (1) or (2) shall contain the information specified in paragraph 1B of Part 1 of Schedule 4 of the 2000 Regulations.

(4) Where a waste incineration installation would have fallen within paragraph (a), (b)(i) or (b)(ii) of the definition of existing waste incineration installation in regulation 2 had it been put into operation before the date specified in the applicable paragraph, it shall not thereafter be put into operation unless—

- (a) in the case of an installation which is already subject to a permit, the permit is varied pursuant to an application under regulation 17 of the 2000 Regulations; or
- (b) in any other case, a permit is granted in relation to the installation.

(5) Where an operator fails to comply with any of the requirements of this regulation the regulator shall serve a notice on the operator specifying the relevant requirement, requiring him to comply with that requirement and specifying the period within which it must be complied with.

(6) A notice served under paragraph (5) shall be treated as an enforcement notice served under regulation 24(1) of the 2000 Regulations.

Transitional provisions

4. Part 1 of Schedule 3 to the 2000 Regulations shall apply in relation to any installation or mobile plant which by virtue of these Regulations becomes a Part A installation or Part A mobile plant (but which would otherwise not have been an installation or mobile plant or would have been a Part B installation or Part B mobile plant) as if—

(a) S.I. 1994/1056; relevant amending instruments are S.I. 1995/288, 1996/634, 1996/972, 1998/606 and 2000/1973.

- (a) in paragraph 1 the prescribed date for a new Part A installation or new Part A mobile plant were 28th December 2002;
- (b) in paragraph 4—
 - (i) sub-paragraph (1) were omitted; and
 - (ii) in sub-paragraph (2) for “1st January 2001” there were substituted “28th December 2002”; and
- (c) in paragraph 6—
 - (i) for the definition of “existing” there were substituted—
 - ““existing” means, in relation to a Part A installation or a Part A mobile plant—
 - (a) an installation or mobile plant which is put into operation before 28th December 2002;
 - (b) an installation or mobile plant which is put into operation on or after that date if—
 - (i) its operation was authorised by the relevant authorisation before that date; or
 - (ii) an application for such authorisation was duly made before that date”;
 - (ii) in the definition of “new” for “31st October 1999” there were substituted “28th December 2002”; and
 - (iii) in the definition of “relevant authorisation” for “31st October 1999” (in both places where it occurs) there were substituted “28th December 2002”.

Amendments to the 2000 Regulations

- 5.—(1) The 2000 Regulations have effect subject to the following amendments.
- (2) In regulation 2 (interpretation: general)—
- (a) in paragraph (1), after the definition of “variation notice” insert—
 - ““waste incineration installation” means that part of an installation or mobile plant in which any of the following activities is carried out—
 - (a) the incineration of waste falling within Section 5.1A(1)(a), (b) or (c) or A(2) of Part 1 of Schedule 1; or
 - (b) any activity falling within any Section of that Part of that Schedule which is carried out in a co-incineration plant as defined in Section 5.1 of that Part of that Schedule”; and
 - (b) after paragraph (2A) insert—
 - “(2B) For the purposes of these Regulations a change in the operation of a waste incineration installation which involves incineration or co-incineration for the first time of hazardous waste shall be treated as a substantial change in operation, and for the purposes of this paragraph “co-incineration” and “hazardous waste” shall have the meanings given in Section 5.1 of Part I of Schedule 1.”
- (3) In regulation 19 (application to surrender a permit for a Part A installation or Part A mobile plant)—
- (a) in paragraph (1), delete “This regulation” and substitute “Subject to paragraph (1A) this regulation”; and
 - (b) after paragraph (1) insert—
 - “(1A) This regulation does not apply in relation to that part of any installation or mobile plant where an activity falling within Part A(2) of Section 5.1 of Part 1 of Schedule 1 is carried out.”
- (4) In regulation 20 (notification of surrender of a permit for a Part B installation or Part B mobile plant) after paragraph (1) insert—
- “(1A) This regulation also applies in relation to that part of any installation or mobile plant where an activity falling within Part A(2) of Section 5.1 of Part 1 of Schedule 1 is carried out.”
- (5) In Part 1 of Schedule 1 (Activities, Installations and Mobile Plant)—
- (a) delete Section 5.1 and substitute—

“SECTION 5.1—INCINERATION AND CO-INCINERATION OF WASTE

Part A(1)

- (a) The incineration of hazardous waste in an incineration plant.
- (b) Unless carried out as part of any other Part A(1) activity, the incineration of hazardous waste in a co-incineration plant.
- (c) The incineration of non-hazardous waste in an incineration plant with a capacity of 1 tonne or more per hour.
- (d) Unless carried out as part of any other activity in this Part, the incineration of hazardous waste in a plant which is not an incineration plant or a co-incineration plant.
- (e) Unless carried out as part of any other activity in this Part, the incineration of non-hazardous waste in a plant which is not an incineration plant or a co-incineration plant but which has a capacity of 1 tonne or more per hour.

Part A(2)

- (a) The incineration of non-hazardous waste in an incineration plant with a capacity of less than 1 tonne per hour.
- (b) Unless carried out as part of any other Part A activity, the incineration of non-hazardous waste in a co-incineration plant.

Part B

- (a) The incineration of non-hazardous waste in a plant which is not an incineration plant or a co-incineration plant but which has a capacity of 50 kilogrammes or more per hour but less than 1 tonne per hour.
- (b) The cremation of human remains.

Interpretation of Section 5.1

In this Section—

“co-incineration” means the use of wastes as a regular or additional fuel in a co-incineration plant or the thermal treatment of waste for the purpose of disposal in a co-incineration plant;

“co-incineration plant” means any stationary or mobile plant whose main purpose is the generation of energy or production of material products and:

- which uses wastes as a regular or additional fuel; or
- in which waste is thermally treated for the purpose of disposal.

If co-incineration takes place in such a way that the main purpose of the plant is not the generation of energy or production of material products but rather the thermal treatment of waste, the plant shall be regarded as an incineration plant.

This definition covers the site and the entire plant including all co-incineration lines, waste reception, storage, on site pre-treatment facilities, waste-, fuel- and air-supply systems, boiler, facilities for the treatment of exhaust gases, on-site facilities for treatment or storage of residues and waste water, stack devices and systems for controlling incineration operations, recording and monitoring incineration conditions; but does not cover co-incineration in an excluded plant;

“excluded plant” means—

- (a) a plant treating only the following wastes—
 - (i) vegetable waste from agriculture and forestry;
 - (ii) vegetable waste from the food processing industry, if the heat generated is recovered;
 - (iii) fibrous vegetable waste from virgin pulp production and from production of paper from pulp, if it is co-incinerated at the place of production and the heat generated is recovered;
 - (iv) wood waste with the exception of wood waste which may contain halogenated organic compounds or heavy metals as a result of treatment with wood-preservatives or coating, and which includes in particular such wood waste originating from construction and demolition waste;
 - (v) cork waste;
 - (vi) radioactive waste;
 - (vii) animal carcasses as regulated by Council Directive 90/667/EEC laying down

the veterinary rules for the disposal and processing of animal waste, for its placing on the market and for the prevention of pathogens in feedstuffs of animal or fish origin and amending Directive 90/425/EEC(a); or

(viii) waste resulting from the exploration for, and the exploitation of, oil and gas resources from off-shore installations and incinerated on board the installation; and

(b) an experimental plant used for research, development and testing in order to improve the incineration process and which treats less than 50 tonnes of waste per year;

“hazardous waste” means any solid or liquid waste as defined in Article 1(4) of Council Directive 91/689/EEC on hazardous waste(b) except for—

(a) combustible liquid wastes including waste oils as defined in Article 1 of Council Directive 75/439/EEC on the disposal of waste oils(c) provided that they meet the following criteria—

(i) the mass content of polychlorinated aromatic hydrocarbons, for example polychlorinated biphenyls or pentachlorinated phenol, amounts to concentrations not higher than those set out in the relevant Community legislation(d);

(ii) these wastes are not rendered hazardous by virtue of containing other constituents listed in Annex II to Council Directive 91/689/EEC on hazardous waste in quantities or in concentrations which are inconsistent with the achievement of the objectives set out in Article 4 of Council Directive 75/442/EEC on waste(e); and

(iii) the net calorific value amounts to at least 30 MJ per kilogramme;

(b) any combustible liquid wastes which cannot cause, in the flue gas directly resulting from their combustion, emissions other than those from gasoil as defined in Article 1(1) of Council Directive 93/12/EEC relating to the sulphur content of certain liquid fuels(f) or a higher concentration of emissions than those resulting from the combustion of gasoil as so defined;

“incineration plant” means any stationary or mobile technical unit and equipment dedicated to the thermal treatment of wastes with or without recovery of the combustion heat generated. This includes the incineration by oxidation of waste as well as other thermal treatment processes such as pyrolysis, gasification or plasma processes in so far as the substances resulting from the treatment are subsequently incinerated.

This definition covers the site and the entire incineration plant including all incineration lines, waste reception, storage, on site pre-treatment facilities, waste-fuel and air-supply systems, boiler, facilities for the treatment of exhaust gases, on-site facilities for treatment or storage of residues and waste water, stack, devices and systems for controlling incineration operations recording and monitoring incineration conditions; but does not cover incineration in an excluded plant;

“non-hazardous waste” means waste which is not hazardous waste;

“waste” means any solid or liquid waste as defined in Article 1(a) of Council Directive 75/442/EEC on waste”; and

(b) in Part A(1)(c) of Section 6.8 after “rendering” insert “or by incineration falling within Section 5.1 of this Part of this Schedule”.

(6) In Part 3 of Schedule 1 (interpretation of “Part A installation” etc.)—

(a) in paragraph 17(2)(a) after “this Schedule” insert “or the incineration of waste in a waste incineration installation”; and

(b) delete paragraph 18.

(a) OJ No. L363, 27.12.90, p.51.

(b) OJ No. L377, 31.12.91, p.20 amended by Council Directive 94/31/EC (OJ No. L168, 2.7.94, p.28).

(c) OJ No. L194, 25.7.75, p.23.

(d) See, in particular, Council Directive 96/59/EC (OJ No. L243, 24.9.96, p.31).

(e) OJ No. L194, 25.7.75, p.39 amended by Council Directives 91/156/EEC (OJ No. L78, 26.3.91, p.32) and 91/692/EEC (OJ No. L377, 31.12.91, p.48) and Commission Decision 96/350/EC (OJ No. L135, 6.6.96, p.32).

(f) OJ No. L74, 27.3.93, p.81 amended by Council Directive 99/32/EC (OJ No. L121, 11.5.99, p.13).

- (7) In Part 1 of Schedule 3 (prescribed date and transitional arrangements)—
- (a) in the table which follows paragraph 2(2) delete that part of the table which relates to activities falling within Section 5.1 and substitute—

“

Section 5.1 Part A(1) Paragraphs (a), (b), (c)	1st January to 31st March 2005
Part A(1) Paragraphs (d), (e)	1st June to 31st August 2005
Part A(2)	1st January to 31st March 2005

”

- (b) in the definition of “existing” in paragraph 6, in sub-paragraph (a) after “operation” insert “pursuant to a relevant authorisation granted”.
- (8) In Part 1 of Schedule 4 (applications for permits)—
- (a) in sub-paragraph (1)(d) after “Part A mobile plant” insert “(but excluding any part of such an application which relates to an activity falling within Part A(2) of Section 5.1 of Part 1 of Schedule 1)”;
- (b) after paragraph 1A insert—
- “1B—(1) Subject to sub-paragraph (2), an application for a permit to operate a waste incineration installation shall in addition contain a description of the measures which are envisaged to guarantee in respect of that installation that—
- (a) the plant is designed, equipped and will be operated in such a manner that the requirements of European Parliament and Council Directive 2000/76/EC on the incineration of waste^(a) are met, taking into account the categories of waste to be incinerated;
- (b) the heat generated during the incineration and co-incineration process is recovered as far as practicable, for example through combined heat and power, the generating of process steam or district heating;
- (c) the residues will be minimised in their amount and harmfulness and recycled where appropriate;
- (d) the disposal of the residues which cannot be prevented, reduced or recycled will be carried out in conformity with national and Community legislation;^(b) and
- (e) the proposed measurement techniques for emissions into the air comply with Annex III of European Parliament and Council Directive 2000/76/EC on the incineration of waste and, as regards water, comply with paragraphs 1 and 2 of that Annex.
- (2) Sub-paragraph (1) shall not apply in relation to an application which is duly made before 28 December 2002, or in the case of any installation which is a co-incineration plant as defined in Section 5.1 of Part 1 of Schedule 1, before 28 August 2004.”

- (9) In Part 1 of Schedule 7 (variation of conditions), after paragraph 1(f) insert—
- “(g) in the case of an application for the variation of the conditions of a permit in respect of a waste incineration installation the information specified in paragraph 1B of Schedule 4, or where such information has previously been included in an application made under these Regulations, a statement of any changes as respects the matters dealt with in paragraph 1B of Schedule 4 which would result if the proposed change in the operation of the installation or mobile plant requiring the variation were made”.
- (10) In Schedule 9 (registers) at the end of paragraph 1 insert—
- “(aa) a list which identifies all waste incineration installations which have a capacity of less

(a) OJ No. L332, 28.12.2000, p.91.

(b) See, for example, Council Directive 75/442/EEC on waste (OJ No. L194, 25.7.75, p.39), as amended by Council Directives 91/156/EEC (OJ No. L78, 26.3.91, p.32) and 91/692/EEC (OJ No. L377, 31.12.91, p.48) and Commission Decision 96/350/EC (OJ No. L135, 6.6.96, p.32), Part II of the Environmental Protection Act 1990 (c. 43) and the Waste Management Licensing Regulations 1994 (S.I. 1994/1056) to which there are amendments.

than two tonnes per hour and which are the subject of a permit or an authorisation granted under section 6 of the Environmental Protection Act 1990^(a) containing conditions which give effect to the provisions of European Parliament and Council Directive 2000/76/EC on the incineration of waste”.

Amendments to the Waste Management Licensing Regulations 1994

6.—(1) The Waste Management Licensing Regulations 1994^(b) have effect subject to the following amendments.

(2) In regulation 16 (exclusion from waste management licensing), at the end of subparagraph (ba) of paragraph (1) insert “or a Part A(2) installation which is a waste incineration installation within the meaning of the 2000 Regulations”.

(3) In Schedule 3 (exempt activities)—

(a) delete paragraphs 3(d) and (e); and

(b) in paragraph 29 delete “or an exempt incineration plant for the purposes of Section 5.1 of Part 1 of Schedule 1 to the 2000 Regulations”.

3rd December 2002

Michael Meacher,
Minister of State,
Department for Environment, Food and Rural Affairs

^(a) 1990 c. 43.

^(b) S.I. 1994/1056; relevant amending instruments are S.I. 1995/288, 1996/634, 1996/972, 1998/606 and 2000/1973.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2 of the Pollution Prevention and Control Act 1999 (1999 c.24). They partly implement in England and Wales the provisions of European Parliament and Council Directive 2000/76/EC on the incineration of waste (the Directive). The Secretary of State's proposed Directions to transpose the remaining provisions of the Directive were set out in the Consultation Paper on implementation of Council Directive 200/76/EC on the incineration of waste(a).

Regulation 3 requires applications to be made by the operators of certain existing waste incineration installations (as defined in regulation 2) within the period 1st January to 31st March 2005. The applications must be made under either the Pollution Prevention and Control Regulations 2000 (S.I. 2000/1973) (the PPC Regulations) or the Environmental Protection Act 1990 (1990 c.43) and must contain the information specified in regulation 5(8)(b). Regulation 3(4) prohibits certain waste incineration installations from being put into operation until the relevant application has been determined. Regulation 3(5) requires regulators under the PPC Regulations to serve a notice on any operator who fails to comply with any requirement of regulation 3. The notice must require the operator to comply with the relevant requirement within a specified period and is to be treated as an enforcement notice under regulation 24 of the PPC Regulations.

Regulation 4 contains transitional provisions for waste incineration installations which require a permit under the PPC Regulations as a result of these Regulations.

Regulation 5 makes a number of amendments to the PPC Regulations. These include: an extension to the definition of "substantial change" in regulation 2; a revision of Section 5.1 of Part 1 of Schedule 1 (which describes the waste incineration installations which are subject to the PPC Regulations); amendments to the transitional timetable in Schedule 3 and the requirements in Schedules 4 and 7 which apply to waste incineration installations; and an addition to the list of information in Schedule 9 which is required to be kept on the public register maintained under the Regulations.

Regulation 6 makes consequential amendments to the Waste Management Licensing Regulations 1994 (S.I. 1994/1056).

These Regulations extend to England and Wales.

A regulatory impact assessment and transposition note have been prepared and copies can be obtained from AEQ Division, Department for Environment, Food and Rural Affairs, Zone 4/H11, Ashdown House, 123 Victoria Street, London SW1E 6DE.

(a) Copies of the Consultation Paper are available from Defra Publications, Admail 6000, London SW1A 2XX, and may be found on the internet at www.defraweb/environment/consult/wasteincin/index.htm.

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