
STATUTORY INSTRUMENTS

2009 No. 1799

The Environmental Permitting (England and Wales) (Amendment) Regulations 2009

Citation, commencement and extent

1. These Regulations—
 - (a) may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2009;
 - (b) come into force on 7th July 2009; and
 - (c) extend to England and Wales only.

Amendment of the Environmental Permitting (England and Wales) Regulations 2007

2. The Environmental Permitting (England and Wales) Regulations 2007 ^{M1} are amended in accordance with regulations 3 to 27.

Marginal Citations

M1 [S.I. 2007/3538](#) as amended by [S.I. 2009/890](#).

Amendment of regulation 2 (interpretation: general)

- 3.—(1) Paragraph (1) of regulation 2 (interpretation: general) is amended as follows.
 - (2) After the definition of “appropriate authority”, insert—

““Category A mining waste facility” means a mining waste facility that is classified as Category A under Article 9 of the Mining Waste Directive;”.
 - (3) For paragraph (e) of the definition of “emission”, substitute—

“(e) in relation to—
 - (i) a waste operation not falling within paragraph (a) to (d), or
 - (ii) a mining waste operation,the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources related to the operation into the air, water or land;”.
 - (4) After the definition “exemption registration authority”, insert—

““existing mining waste facility” means a mining waste facility in operation on 1st May 2008; “extractive waste” means waste within the meaning of Article 2(1) of the Mining Waste Directive, except where it is excluded from the scope of that Directive by Article 2(2)(a) and (b);”.
 - (5) For the definition of “the IPPC Directive”, substitute—

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“the IPPC Directive” means Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control ^{M2}.”

(6) At the end of the definition of “landfill”, insert—

“, but does not include any operation excluded from the scope of that Directive by Article 3(2)”.

(7) After the definition of “local authority”, insert—

“the Mining Waste Directive” means Directive 2006/21/EC^{M3} of the European Parliament and of the Council on the management of waste from extractive industries and amending Directive 2004/35/EC;

“mining waste facility” means a “waste facility” as defined in Article 3(15) of the Mining Waste Directive but excludes those facilities mentioned in Article 24(2) or in the first paragraph of Article 24(4) of that Directive;

“mining waste facility closure notice” means a closure notice served under paragraph 10 of Schedule 18B to these Regulations;

“mining waste operation” means the management of extractive waste, whether or not involving a mining waste facility, but does not include the activities in Article 2(2)(c) of the Mining Waste Directive;”

(8) After the definition of “regulator”, insert—

“regulator initiated variation” means the variation of an environmental permit on the initiative of the regulator under regulation 20(1);”.

Marginal Citations

M2 OJ No L 24, 29.1.2008, p8.

M3 OJ No L 102, 11.4.2006, p15.

Amendment of regulation 8 (interpretation: regulated facility)

4.—(1) Regulation 8 (interpretation: regulated facility) is amended as follows.

(1A) In paragraph (1), after “paragraphs (2)” insert “, (2A)”.

(2) After paragraph (1)(d), add—

“,

(e) a mining waste operation”.

(3) Omit paragraph (2) and substitute—

“(2) An exempt waste operation is not a regulated facility within paragraph (1)(a) where it is an activity falling within section 5.3 or section 5.4 of Chapter 5 of Part 2 of Schedule 1 or a directly associated activity of that activity.

(2A) An exempt waste operation is not a regulated facility within paragraph (1)(b) to (d).”.

Amendment of regulation 12 (requirement for an environmental permit)

5. For regulation 12 (requirement for an environmental permit), substitute—

“12.—(1) No person may operate a regulated facility except under and to the extent authorised by an environmental permit.

(2) Paragraph (1) is subject to the transitional provisions in regulation 71A.”.

Amendment of regulation 17 (single site permits etc.)

6. For regulation 17 (single site permits etc.), substitute—

“17. The regulator may authorise under a single environmental permit, the operation by the same operator—

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

but may not otherwise authorise the operation of more than one regulated facility under a single environmental permit.”

Amendment of regulation 24 (notification of the surrender of an environmental permit)

7. In paragraph (1)(b) of regulation 24 (notification of the surrender of an environmental permit), after “installation”, insert “, except to the extent that it relates to a waste operation”.

Amendment of regulation 31 (appeals to an appropriate authority)

8.—(1) Regulation 31 (appeals to an appropriate authority) is amended as follows.

(2) In paragraph (1)—

(a) for sub-paragraph (d), substitute—

“(d) a person who is aggrieved by a decision 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;”

(b) in sub-paragraph (e), after “suspension notice” insert “, mining waste facility closure notice.

(3) For paragraph (2) substitute—

“(2) Paragraph (1) does not apply—

(a) where the relevant decision or notice implements a direction of the appropriate authority given under—

- (i) regulation 61(1),
- (ii) regulation 62(1),
- (iii) regulation 62(6), or
- (iv) paragraph (4); or

(b) where 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 18B.”

Amendment of regulation 32 (discharge of functions)

9.—(1) Regulation 32 (discharge of functions) is amended as follows.

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- (2) At the start of paragraph (2), insert “ Subject to paragraph 2A, ”.
- (3) After paragraph (2), insert—
 - “(2A) Functions in relation to a waste operation carried out at a Part B installation are exercisable by the Agency.”.
- (4) After paragraph (5), add—
 - “(6) Functions in relation to a mining waste operation are exercisable by the Agency.”.

Amendment of regulation 33 (direction to a regulator: discharge of functions by a different regulator)

10.—(1) Regulation 33 (direction to a regulator: discharge of functions by a different regulator) is amended as follows.

- (2) For paragraph (4), substitute—
 - “(4) A direction under paragraph (1)(b) may not be made in relation to—
 - (i) a waste operation carried out other than at an installation or by means of mobile plant,
 - (ii) a mining waste operation.”.

Amendment of regulation 35 (provision in relation to types of regulated facility)

- 11.** At the end of regulation 35 (provision in relation to types of regulated facility), add—
- “;
- (n) Schedule 18B (provision in relation to mining waste operations)”.

Amendment of regulation 38 (offences)

12. In paragraph (1)(c) of regulation 38 (offences), after “suspension notice” insert “ , a mining waste facility closure notice ”.

Amendment of regulation 42 (enforcement by the High Court)

13. In regulation 42 (enforcement by the High Court), after “suspension notice” insert “ , mining waste facility closure notice ”.

Amendment of regulation 46 (duty of the regulator to maintain a public register)

- 14.** After paragraph (7) of regulation 46 (duty of the regulator to maintain a public register), insert—
- “(7A) Where information of any description is excluded from any public register under regulation 48, a statement must be entered in the register indicating the existence of information of that description.”.

Amendment of regulation 63 (directions to the Agency: installations outside the United Kingdom)

- 15.**—(1) Regulation 63 (directions to the Agency: installations outside the United Kingdom) is amended as follows.
- (2) In paragraph (1), for “Article 17(1)”, substitute “ Article 18(1) ”.
 - (3) In paragraph (2), for “Article 17(2)”, substitute “ Article 18(2) ”.

Amendment of regulation 71 (transitional provision: conversion of PPC permits resulting from applications in relation to existing Part A installations and mobile plant)

16.—(1) Regulation 71 (transitional provision: conversion of PPC permits resulting from applications in relation to existing Part A installations and mobile plant) is amended as follows.

(2) For the cross heading “Transitional provision: conversion of PPC permits resulting from applications in relation to existing Part A installations and mobile plant”, substitute— “ Transitional provision: conversion of PPC permits, disposal licences or waste management licences resulting from applications in relation to existing Part A installations and mobile plant ”

(3) After paragraph (3), insert—

“(3A) If an application to which this regulation applies relates to the operation of a landfill and the determination date for that application falls within sub-paragraphs (b) or (c) of paragraph 6 of Schedule 3 to the 2000 Regulations and occurs on or after 7th July 2009, paragraph (3B) applies.

(3B) On the determination date the disposal licence or waste management licence which authorised the operation of the landfill immediately before that date is deemed to be an environmental permit granted under regulation 13(1) to the extent that it contains closure and after-care obligations.”.

(4) For paragraph (4), substitute—

“(4) In this regulation—

(a) “existing” and “determination date” have the meanings given at the relevant time by paragraph 6 of Schedule 3 to the 2000 Regulations; and

(b) “closure and after-care obligations” means—

(i) any condition which implements Article 13 of the Landfill Directive, or

(ii) any condition which is otherwise related to closure and after-care of the landfill site or to ensuring it does not cause pollution, and includes any such condition inserted following a variation under regulation 20 after the determination date.”.

(5) After regulation 71, insert—

“Transitional provision: existing mining waste operations

71A.—(1) Regulation 12(1) does not apply to an existing mining waste operation involving an existing mining waste facility until the date referred to in paragraph (2).

(2) The date referred to in this paragraph is—

(a) if an application for the grant or variation of an environmental permit is made on or before 1st May 2011—

(i) if the application is granted, the date of the grant,

(ii) if the application is refused, and the applicant appeals against the refusal in accordance with regulation 31(1), the date the appeal is determined or withdrawn,

(iii) if the application is refused, and the applicant is entitled to appeal against the refusal in accordance with regulation 31(1) but does not do so, the day after the last day on which an appeal could have been brought, determined in accordance with paragraph 3(1) of Schedule 6, or

(iv) if the application is for the grant or variation of an environmental permit in relation to a Category A mining waste facility that is an existing mining

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waste facility and the application is refused pursuant to paragraph 14(2) of Schedule 18B, the date of the refusal;

or

(b) if no such application is made, 1st May 2011.

(3) Where an existing mining waste operation is not covered by paragraph (1), regulation 12(1) does not apply to that operation until the date referred to in paragraph (4).

(4) The date referred to in this paragraph is—

(a) if an application for the grant or variation of an environmental permit is made on or before 30th December 2010—

(i) if the application is granted, the date of the grant,

(ii) if the application is refused, and the applicant appeals against the refusal in accordance with regulation 31(1), the date the appeal is determined or withdrawn, or

(iii) if the application is refused, and the applicant does not appeal against the refusal, the day after the last day on which an appeal could have been brought, determined in accordance with paragraph 3(1) of Schedule 6;

or

(b) if no such application is made, 30th December 2010.

(5) In this regulation, “existing mining waste operation” means a mining waste operation subsisting on 1st May 2008.”.

Amendment of regulation 72 (savings)

17. In regulation 72, for paragraph (1) substitute—

“(1) Notwithstanding their repeal or revocation by these Regulations, the provisions of the 1990 Act, the 1994 Regulations, the 2000 Regulations and the Landfill (England and Wales) Regulations 2002 ^{M4} have effect for the purposes of—

(a) determining an application for the grant of a PPC permit or a waste management licence which was outstanding at the relevant time;

(b) giving effect to a notice served before the coming into force of these Regulations;

(c) determining an appeal brought before the coming into force of these Regulations; and

(d) bringing and determining an appeal, after the coming into force of these Regulations, in respect of—

(i) the determination of an application made, or

(ii) a notice served,

under any of those provisions.”.

Marginal Citations

M4 S.I. 2002/1559.

Amendment of Schedule 1 (activities)

18.—(1) Schedule 1 (activities) is amended as follows.

(2) In section 1.1 of Part 2 of Schedule 1, under the heading “Interpretation and application of Part A(1), in paragraph 5, for the words “these Regulations”, substitute “ regulation 8(1)(a) ”.

Amendment of Schedule 3 (descriptions: exempt waste operations and other operations to which section 33(1)(a) of the 1990 Act does not apply)

19.—(1) Schedule 3 (descriptions: exempt waste operations and other operations to which section 33(1)(a) of the 1990 Act does not apply) is amended as follows.

(2) After paragraph 5(1)(b), add—

“, and the appliance is only used to treat the waste listed in the definition of “excluded plant” in paragraph 1 of section 5.1 of Part 2 of Schedule 1.”.

(3) For paragraph 29(1), substitute—

“(1) Burning waste at the place where it is produced by the person producing it in an excluded plant within the meaning of section 5.1 of Part 2 of Schedule 1 with a capacity of less than 50kg per hour.”.

Amendment of Schedule 5 (environmental permits)

20.—(1) Schedule 5 (environmental permits) is amended as follows.

(2) In paragraph 1, omit the definition of “regulator initiated variation”.

(3) For paragraph 5(1), substitute—

“(1) Paragraph 6 applies to every application for the grant of an environmental permit except an application in relation to—

(a) mobile plant;

(b) a standard facility, unless the facility is a Part A installation; or

(c) a mining waste operation not involving a mining waste facility to which Article 7 of the Mining Waste Directive applies.”.

(4) In paragraph 10(2)—

(a) in sub-paragraph (a), for “Article 17 of the IPPC Directive” substitute “ the relevant Directive Article ”;

(b) in sub-paragraph (b), for “relevant matters”, substitute “ relevant information ”.

(5) For paragraph 10(4), substitute—

“(4) In this paragraph—

“member State” includes Iceland, Liechtenstein and Norway but only to the extent that there is a relevant application or regulator initiated variation which relates to the carrying on at an installation of an activity listed in the IPPC Directive;

“relevant application” means an application—

(a) for the grant of an environmental permit; or

(b) to vary an environmental permit,

in relation to an installation described in sub-paragraph (5) or a Category A mining waste facility;

“relevant Directive Article” means —

(a) in the case of an application in relation to an installation described in sub-paragraph (5), Article 18 of the IPPC Directive;

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- (b) in the case of an application in relation to a Category A mining waste facility, Article 16 of the Mining Waste Directive;
 - “relevant information” means—
 - (a) where the relevant application or regulator initiated variation relates to an installation described in sub-paragraph (5), a matter in paragraph 1 of Annex V of the IPPC Directive;
 - (b) where it relates to a Category A mining waste facility, the information required under Article 16 of the Mining Waste Directive.”
- (6) After paragraph 10(4), add—
 - “(5) The description in this sub-paragraph is an installation at which there is carried on an activity listed in Annex 1 of the IPPC Directive.”
- (7) For paragraph 16(2), substitute—
 - “(2) The period starts—
 - (a) in the case of an application for the grant or variation of an environmental permit in relation to a Category A mining waste facility, on the day the regulator is notified by the relevant emergency planner of the matters referred to in paragraph 14(1) of Schedule 18B and for these purposes “relevant emergency planner” has the meaning given in paragraph 2 of that Schedule, but if paragraph 10 of this Schedule applies, this does not have effect until the appropriate authority has complied with paragraph 10(3) of this Schedule;
 - (b) if paragraph 10 of this Schedule applies and the application is not one covered by sub-paragraph (a), on the day the appropriate authority complies with paragraph 10(3) of this Schedule;
 - (c) in all other cases, on the day the regulator receives a duly-made application.”

Amendment of Schedule 6 (appeals to the appropriate authority)

- 21.—(1) Paragraph 3 of Schedule 6 (appeals to the appropriate authority) is amended as follows.
- (2) For sub-paragraph (1)(c), substitute—
 - “(c) in relation to a regulator initiated variation, a suspension notice, an enforcement notice, a mining waste facility closure notice or a landfill closure notice, not later than 2 months from the date of the variation or notice;”
- (3) Omit sub-paragraph (3).

Amendment of Schedule 7 (provision in relation to Part A installations and Part A mobile plant)

- 22.—(1) Schedule 7 (provision in relation to Part A installations and Part A mobile plant) is amended as follows.
- (2) After paragraph 2(d), add—
 - “; and
 - (e) “substance” must be read as including, after the words “its compounds” in Article 2(1) of that Directive, the words “any biological entity or micro-organism””.
- (3) In paragraph 5(1)—
 - (a) in paragraph (a), after the words “provide that the competent authorities”, insert “contained in the first sentence of Article 3(1)”;

- (b) in paragraph (e), for the words “second indent”, substitute “ point (b) ”;
- (c) in paragraph (f), for the words “Article 18(2)”, substitute “ Article 19(2) ”.
- (4) In paragraph 8(2), for the words “Article 2(11)”, substitute “ Article 2(12) ”.

Amendment of Schedule 8 (provision in relation to Part B installations and Part B mobile plant)

23.—(1) Schedule 8 (provision in relation to Part B installations and Part B mobile plant) is amended as follows.

- (2) After paragraph 2(e), add—
“; and
 - (f) “substance” must be read as including, after the words “its compounds” in Article 2(1) of that Directive, the words “any biological entity or micro-organism”.
- (3) In paragraph 4(2)—
 - (a) in paragraph (a), for the words “the second, fourth and seventh indents”, substitute “ points (b), (d) and (g) ”;
 - (b) in paragraph (b), for the words “the third and fifth indents”, substitute “ points (c) and (e) ”;
 - (c) in paragraph (c), for the words “the fifth indent”, substitute “ point (e) ”;
 - (d) in paragraph (d), for the words “the sixth indent”, substitute “ point (f) ”;
 - (e) in paragraph (e) —
 - (i) for the words “the eighth indent”, substitute “ point (h) ”, and
 - (ii) for the words “Article 3(a) and (b)”, substitute “ Article 3(1)(a) and (1)(b) ”.
- (4) In paragraph 5(1)—
 - (a) in paragraph (a), for the words “Article 3(a) and (b)”, substitute “ Article 3(1)(a) and (1)(b) ”;
 - (b) in paragraph (e), for the words “Article 18(2)”, substitute “ Article 19(2) ”;
- (5) In paragraph 5(2)—
 - (a) in paragraph (a), after the words “in Article 3”, insert “ (l) ”;
 - (b) in paragraph (b)(i), for the words “Article 3(a) and (b)”, substitute “ Article 3(1)(a) and (1)(b) ”.
- (6) In paragraph 7(2), for the words “Article 2(11)”, substitute “ Article 2(12) ”.

Amendment of Schedule 10 (provision in relation to landfill)

- 24.** Omit sub-paragraph (a) of paragraph (1) of Schedule 10 (provision in relation to landfill).

Insertion of new Schedule 18B (provision in relation to mining waste operations)

25. After Schedule 18A ^{M5} (provision in relation to waste batteries and accumulators), insert Schedule 18B as set out in Schedule 1 to these Regulations.

Marginal Citations

- M5** [Schedule 18A](#) was inserted by paragraph 2(6) of Schedule 8 to the [Waste Batteries and Accumulators Regulations 2009 \(S.I. 2009/890\)](#).

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Amendment of Schedule 19 (public registers)

26.—(1) Paragraph 1 of Schedule 19 (public registers) is amended as follows.

(2) In sub-paragraph (1)(f), after “landfill closure notice”, insert “, mining waste facility closure notice”.

(3) In sub-paragraph (1)(i)(iv), omit “or”.

(4) After sub-paragraph (1)(i)(v), add—

“, or

(vi) a mining waste facility closure notice”.

(5) After sub-paragraph (2)(a), insert—

“(aa) an inventory of closed mining waste facilities as required under Article 20 of the Mining Waste Directive;”.

Amendment of Schedule 20 (further provision relating to waste)

27.—(1) Schedule 20 (further provision relating to waste) is amended as follows.

(2) In paragraph 1(a), after the definition of “local planning authority”, insert—
“mineral planning authority” has the same meaning as in section 1 of the Town and Country Planning Act 1990 ^{M6};”.

(3) At the end of paragraph 6, insert—

“(3) A mineral planning authority must not grant planning permission for a mining waste facility to which Article 7 of the Mining Waste Directive applies unless it is satisfied that—

(a) the operator of that facility will meet the requirements of Article 11(2)(a) of that Directive; and

(b) the management of waste at that facility will not conflict directly or otherwise interfere with the implementation of the plan or plans referred to in Article 7(3) (b) of that Directive.”.

Marginal Citations

M6 1990 c. 8. Section 1 was amended by the Local Government (Wales) Act 1994, section 18(3) and (4), c.19.

Consequential amendments

28.—(1) Schedule 2 (consequential amendments) has effect.

(2) Section 33(1)(a) of the 1990 Act, as amended by paragraph 1(3) of Schedule 2 to these Regulations, does not apply to extractive waste at any time before an environmental permit authorising the deposit of the waste is required.

one of the Welsh Ministers
3rd July 2009

Jane Davidson
Minister for Environment, Sustainability and
Housing

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Department for Environment, Food and Rural
Affairs
2nd July 2009

Dan Norris
Parliamentary Under Secretary

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