
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 3538 of 2007) (“the EP Regulations”) for the purposes of transposing the requirements of Directive [2006/21/EC](#) of the European Parliament and of the Council on the management of waste from the extractive industries and amending Directive [2004/35/EC](#) (“the Mining Waste Directive”) (but excluding certain requirements in Article 6 of that Directive which will be transposed through separate regulations). They also make certain amendments to the EP Regulations relating to environmental permitting.

Regulation 3 amends regulation 2 (interpretation: general) of the EP Regulations by adding definitions relating to the Mining Waste Directive and replacing the definition of the previous IPPC Directive (Council Directive [96/61/EC](#) concerning integrated pollution prevention and control) with the codified version of that Directive ([2008/1/EC](#)). It also amends the definition of “landfill” to exclude operations which fall outside the scope of the Landfill Directive (Council Directive [1999/31/EC](#) on the landfill of waste).

Regulation 4 amends regulation 8 (interpretation: regulated facility) of the EP Regulations by adding mining waste operations, whether or not involving a mining waste facility, to the list of regulated facilities, and amending the provision which specifies when an exempt waste operation is not a regulated facility.

Regulation 5 amends regulation 12 (requirement for an environmental permit) of the EP Regulations to make compliance with the duty to hold a permit for a regulated facility subject to the transitional provisions applicable to mining waste operations. The transitional provisions are inserted into the EP Regulations by regulation 17.

Regulations 6 and 7 make minor corrections to regulations 17 (single site permits etc.) and paragraph (1)(b) of regulation 24 (notification of the surrender of an environmental permit) of the EP Regulations.

Regulation 8(1) amends regulation 31 (appeals to an appropriate authority) of the EP Regulations to include decisions regarding closures of mining waste facilities. A related amendment is made to paragraph 3(1)(c) of Schedule 6 (appeals to an appropriate authority) to the EP Regulations by regulation 22. Regulation 8(3) amends regulation 31(2) and provides a further circumstance where regulation 31(1) (which sets out appeal rights) does not apply. This further circumstance is the refusal of an application relating to a Category A mining waste facility that is an existing mining waste facility under paragraph 14(2) of Schedule 18B.

Regulation 9 amends regulation 32 (discharge of functions) and provides that functions relating to mining waste operations are exercisable by the Environment Agency. It also inserts a provision for the discharge of functions in relation to waste operations carried out at a Part B installation.

Regulation 10 amends the power to make directions in regulation 33 (direction to a regulator: discharge of functions by a different regulator). It provides that a direction cannot be made requiring Local Authorities to exercise any of the Environment Agency's functions relating to mining waste operations.

Regulations 11 and 25 insert and give effect to new Schedule 18B (provision in relation to mining waste operations) to the EP Regulations.

Regulations 12 and 13 add mining waste facility closure notices into the offence and enforcement provision in regulations 38 (offence) and 42 (enforcement by the High Court) respectively of the EP Regulations.

Regulation 14 adds a new paragraph to regulation 46 (duty of the regulator to maintain a public register) of the EP Regulations requiring that the public register required under the EP Regulations

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contains a statement relating to the existence of any information that has been excluded from the register under regulation 48.

Regulations 15, 20(4)(a), 22(3) and 23(3) update references to provisions in the previous IPPC Directive (Council Directive [96/61/EC](#) concerning integrated pollution prevention and control) to correspond to provisions in the codified version of that Directive ([2008/1/EC](#)).

Regulation 16(1) to (4) amends the transitional provision in regulation 71 (transitional provision: conversion of PPC permits resulting from applications in relation to existing Part A installations and mobile plant) of the EP Regulations so as to cover the situation where an application relating to a landfill site fails on appeal to obtain a PPC permit. The existing permit conditions that deal with closure and after-care of the site, together with any regulator initiated variation following the appeal relating to such closure, will be deemed to be an EP permit. Regulation 16(5) inserts a new regulation 71A into the EP Regulations containing transitional provisions for existing mining waste operations. Under the transitional provisions, existing mining waste operations involving existing mining waste facilities have until 1st May 2011 to apply for an environmental permit and other existing mining waste operations have until 30th December 2010 to apply.

Regulation 17 amends paragraph (1) of regulation 72 (savings) of the EP Regulations to rectify the omission of the Landfill (England and Wales) Regulations 2002 from the list of legislation which has effect for certain purposes despite being repealed or revoked.

Regulation 18 amends paragraph 5 of the “Interpretation and application of Part A(1)”, in Section 1.1 (combustion activities), Part 2 of Schedule 1 (activities) to the EP Regulations in order to correct an error.

Regulation 19 amends paragraphs 5 and 29 of Schedule 3 (descriptions: exempt waste operations and other operations to which section 33(1)(a) of the 1990 Act does not apply) to the EP Regulations in order to correct certain omissions relating to the application of the Waste Incineration Directive ([2000/76/EC](#)).

Regulation 20 amends paragraph 5(1) of Schedule 5 (environmental permits) which relates to public participation. It disapplies the public participation provisions set out in paragraph 6 of that Schedule to mining waste operations not involving a mining waste facility to which Article 7 of the Mining Waste Directive applies. It amends paragraph 10 of that Schedule to include references to the Mining Waste Directive. It also amends the period for calculating the time limits for determining environmental permit applications relating to Category A mining waste facilities. Regulation 21 makes a correction to paragraph 3 of Schedule 6 (appeals to the appropriate authority).

Paragraphs (2) and (3) of Regulation 22 make corrections to paragraph 2(d) of Schedule 7 (provision in relation to Part A installations and Part A mobile plant).

Regulation 24 amends paragraph 1 of Schedule 10 (provision in relation to landfill), which describes the scope of the Schedule. The amendment should be read with the amendment to the definition of “landfill” in regulation 3.

Regulation 26 amends paragraph 1 of Schedule 19 (public registers) of the EP Regulations so as to require any mining waste facility closure notices and the inventory of closed mining waste facilities (required under Article 20 of the Mining Waste Directive) to be included on the public register.

Regulation 27 amends Schedule 20 (further provision relating to waste) of the EP Regulations by imposing duties on the mineral planning authority relating to Articles 7(3)(b) and 11(2)(a) of the Mining Waste Directive when granting a planning permission for any mining waste facility to which Article 7 of the Mining Waste Directive applies.

Regulation 28 gives effect to the consequential amendments in Schedule 2.

Schedule 1 contains the new Schedule 18B to be inserted into the EP Regulations which applies in relation to every mining waste operation. Paragraph 2 provides definitions for the purposes of the new Schedule. Paragraph 3 specifies the particular requirements for applications for environmental permits for mining waste operations. Paragraph 4 sets out the circumstances under which the regulator must periodically review environmental permits relating to mining waste facilities. Paragraph 5 sets out the regulator's duties in relation to classification of mining

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waste facilities. Paragraph 6 sets out the regulator's duties relating to inspection of mining waste facilities. Paragraph 7 requires the regulator to exercise its relevant functions, defined in regulation 9 (interpretation: relevant functions) of the EP Regulations, so as to ensure compliance with the requirements of the Mining Waste Directive set out in sub-paragraphs (a) to (l). Paragraph 8 sets out the regulator's duties in relation to public participation requirements for mining waste facilities. Paragraph 9 sets out the requirements of the Mining Waste Directive which the regulator must waive. Paragraph 10 sets out the requirements for notices from the regulator regarding closure of a mining waste facility. Paragraph 11 sets out the regulator's duty to maintain and make available an inventory of closed mining waste facilities. Paragraph 12 requires the regulator to ensure it is informed of developments in best available techniques when carrying out functions relating to mining waste operations. Paragraph 13 prevents the regulator from issuing an environmental permit in relation to a mining waste facility to which Article 7 of the Mining Waste Directive applies unless planning permission has previously been granted in relation to the facility. It also provides that in the event of an inconsistency between a planning condition and an environmental permit condition, the environmental permit condition prevails. Paragraph 14 imposes duties on the regulator as regards the granting of an environmental permit relating to a Category A mining waste facility.

Schedule 2 contains consequential amendments to the Environmental Protection Act 1990 ("1990 Act"), the Water Resources Act 1991 ("1991 Act") and the Clean Air Act 1993 ("1993 Act"). In the 1990 Act, the term "extractive waste" is added to certain provisions which contain references to "controlled waste". Section 34 of that Act is amended by imposing a new duty of care on persons responsible for the management of extractive waste. Section 85(7) of the 1991 Act is amended to include waste within the scope of the Mining Waste Directive in the definition of "waste matter". Section 41(4) of the 1993 Act is amended to add mining waste operations to the definition of an activity for the purposes of that section.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Waste Management Division, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London, SW1P 2AL and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).

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