

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT)
REGULATIONS 2012

2012 No. 630

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument amends the Environmental Permitting (England and Wales) Regulations 2010 (“the 2010 Regulations”). The amendments do the following:

- reduce regulatory requirements for those who operate certain anaerobic digestion installations or mobile plant and for those who burn waste-derived fuel that has ceased to be waste;
- make it easier to transfer permits in certain situations;
- provide for the vesting of an environmental permit in the personal representative of a deceased operator;
- make relatively minor changes to certain exempt waste operations;
- make minor amendments relating to radioactive substances activities;
- make minor amendments to the Environmental Damage (Prevention and Remediation) Regulations 2009 and the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 to clarify the enforcement position of the Environment Agency; and
- make consequential amendments to the 2010 Regulations and to other legislation.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Prior to the coming into force of the 2010 Regulations on 6 April 2010, the environmental permitting regime was set out in the Environmental Permitting (England and Wales) Regulations 2007 (S.I 2007/3538) (“the 2007 Regulations”). The 2007 Regulations created a single regulatory framework in England and Wales for waste management licensing and pollution, prevention and control activities. These Regulations transposed the provisions of 11 EU Directives which impose obligations required to be delivered through permits or capable of being delivered through permits. The 2007 Regulations were amended in 2009 to transpose the permitting and compliance requirements of the Mining Waste Directive (Directive 2006/21/EC) and the Batteries

Directives (Directive 2006/66/EC) and to revise the provisions relating to exempt waste operations. The amending instruments were SI 2009/890, 2009/1799 and 2009/3381.

4.2 On 6 April 2010, the 2007 Regulations were revoked, subject to some savings and exceptions, and made as the 2010 Regulations with the addition of permitting regimes covering water discharge consenting, groundwater authorisations and radioactive substances regulation.

5. Territorial Extent and Application

5.1 The instrument extends to England and Wales. It applies to the sea adjacent to England and Wales out as far as the seaward boundary of the territorial sea.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The environmental permitting framework has rationalised various permitting regimes that control pollution from business and domestic activity into a common framework that is easier to understand and use than the previous consenting regimes. For example, it allows businesses that would otherwise require several permits for activities falling under the regulations on a single site to have just one permit; and it enables regulators to focus resources on higher risk activities. It cuts administrative red tape without affecting environmental standards.

7.2 The phased approach to regulation, as described in section 4 above, has led to a streamlined, flexible, risk-based framework. It enables both an easier transposition of future EU Directives that include permitting requirements and additional suitable consenting regimes to be incorporated into it. For further policy background on the EP framework, see the Explanatory Memoranda on the EP Regulations 2007 at: http://www.opsi.gov.uk/si/si2007/em/uksiem_20073538_en.pdf; and on the EP Regulations 2010 at: http://www.legislation.gov.uk/uk/uksi/2010/675/pdfs/uksiem_20100675_en.pdf

7.3 A number of Government reports have welcomed the environmental permitting programme and its modernisation of the application process and permit types, most latterly in the Penfold review of non-planning consents. This included a recommendation that the principles applied to streamlining environmental permits should be applied to other types of linked consenting regimes. See <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/p/10-1027-penfold-review-final-report.pdf>

7.4 The instrument makes a number of amendments to the Environmental Permitting framework. A first consultation on the instrument sought views on:

- introducing new civil sanction enforcement powers for the Environment Agency in the form of Fixed Monetary Penalties (FMP), Variable Monetary Penalties (VMP), and Enforcement Undertakings (EU) in respect of existing offences in the 2010 Regulations;
- introducing a common approach to keeping a permit in force if an individual who is a sole operator should die;
- making it easier to transfer a permit if an individual permit holder cannot be found;
- removing certain obligations relating to traffic travelling to and from permitted waste sites, like landfills, from the Environment Agency. These have been implemented via separate Regulations transposing the revised Waste Framework Directive which came into force on 29 March 2011;
- reducing the burden of regulation on waste-derived fuel where it has ceased to be waste before being burned as a fuel;
- changing some of the waste descriptions and codes for exempt waste operations and amending the scope of some of the exemptions; and
- clarifying the interface between permitting under the EP Regulations and licensing under the Marine and Coastal Access Act 2009 in respect of waste operations in the marine environment, including ship dismantling.

7.5 A second consultation extended the scope of the instrument seeking views on:

- transposing two Articles in the CCS Directive that impact on the permitting framework, one requiring the carbon capture element to be subject to integrated pollution prevention and control (IPPC) under the eponymous Directive; and the second excluding carbon dioxide injection, into certain geological formations from prohibition under the Water Framework Directive. These have since been taken forward by DECC in Regulations that implemented the outcome of a review of radioactive substances exemption orders – the Environmental Permitting (England and Wales) (Amendment) Regulation 2011 (SI 2001/2043) – that came into force on 1 October 2011;
- clarifying the interface between permitting under the EP Regulations and that under the Offshore Combustion Regulations to avoid double regulation of offshore CCS activities; and
- removing IPPC permit requirements in the 2010 Regulations for anaerobic digestion installations or mobile plant that do not burn the resultant biogas on-site where they (a) treat non-waste biodegradable materials or (b) treat biodegradable waste materials where the installation has a waste treatment capacity not exceeding 100 tonnes per day. The treatment of waste by an anaerobic digestion installation or plant will continue to be regulated under the 2010 Regulations as a waste operation.

8. Consultation outcome

8.1 The instrument is put forward following public consultation in two phases as described above. The first consultation ran from 30 July 2010 to 24 September 2010 and sought responses to proposals covered by paragraph 7.5 above. The second consultation on proposals covered by paragraph 7.6 ran from 3 September 2010 to 26 November 2010.

8.2 The consultation documents and the summary of responses to them can be found at <http://ww2.defra.gov.uk/environment/quality/permitting/>.

8.3 Overall, respondents were supportive of the proposals contained in the two consultation documents and welcomed the additional flexibilities contained within them. A number of points of detail were raised; these have either been reflected by subsequent revisions to the instrument or will be addressed through guidance.

8.4 Two proposals forming part of the consultation process are not being taken forward at this stage through this instrument. Those are the proposal to introduce civil sanction enforcement powers and the clarification of the interface between permitting under the EP Regulations and licensing under the Marine and Coastal Access Act 2009.

9. Guidance

9.1 There is one overarching guidance document (the Core Guidance) which provides advice on the 2010 Regulations and compliance with them, underpinned by separate Government guidance on each regime within the permitting framework. These will be amended to reflect the changes brought about by the 2010 Regulations and will be published before the amending Regulations come into force on 6 April 2012.

10. Impact

10.1 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk. The impact on business, charities or voluntary bodies is as described in the Impact Assessment.

10.2 There is no impact on the public sector beyond the simplification of certain processes associated with permitting. These savings to the regulator are described in the Impact Assessment.

11. Regulating small business

11.1 The instrument applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is one of reduction of administrative burdens and simplification of regulation.

11.3 The cost to small business was considered as part of the Impact Assessment. Proposals to reduce administrative burdens should particularly help small firms as they generally have less time to spend on red tape. As the instrument introduces further simplification measures, it will apply to micro-businesses and start-ups

12. Monitoring & review

12.1 A post-implementation review of the 2007 Regulations was undertaken in Autumn 2009 and published in February 2011) – see <http://archive.defra.gov.uk/environment/policy/permits/documents/ep2007pir-summary.pdf> . The overall finding was that there was support for the principles and aims of the environmental permitting programme. Respondents, both business and regulator, welcomed the increased flexibility and streamlining enabled by the 2007 Regulations and with the way in which the Environment Agency was approaching putting these into practice, recognising that further improvements could be made to processes and procedures.

12.2 The instrument includes provisions requiring periodic review by the Secretary of State of the continuing effectiveness of the 2010 Regulations, as amended, within every five years, reporting to Parliament.

13. Contact

Eddie Bailey at the Department for Environment, Food and Rural Affairs Tel: 020 7238 6294 or email: eddie.bailey@defra.gsi.gov.uk can answer any queries regarding the instrument.