
STATUTORY INSTRUMENTS

2016 No. 1154

The Environmental Permitting
(England and Wales) Regulations 2016

PART 1

General

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Environmental Permitting (England and Wales) Regulations 2016 and come into force 21 days after the day on which these Regulations are made.

(2) These Regulations extend to England and Wales only.

(3) They apply in relation to—

(a) England and the sea adjacent to England out as far as the seaward boundary of the territorial sea, and

(b) Wales, within the meaning given by section 158 of the Government of Wales Act 2006(1).

(4) In paragraph (3)(a), the sea adjacent to England is so much of the sea adjacent to Great Britain as—

(a) is not the sea adjacent to Scotland, and

(b) does not form part of Wales.

(5) In paragraph (4)(a), the sea adjacent to Scotland has the same meaning as the internal waters and territorial sea of the United Kingdom adjacent to Scotland has by virtue of section 126(2) of the Scotland Act 1998(2).

Interpretation: general

2.—(1) In these Regulations—

“the 1980 Act” means the Highways Act 1980(3);

“the 1990 Act” means the Environmental Protection Act 1990(4);

“the 1991 Act” means the Water Resources Act 1991(5);

“the 1993 Act” means the Radioactive Substances Act 1993(6);

(1) [2006 c.32](#). Section 158(1) defines “Wales” as including the sea adjacent to Wales out as far as the seaward boundary of the territorial sea. Section 158(3) makes provision for the determination of any boundary between waters which are to be treated as parts of the sea adjacent to Wales and those which are not. The boundary between the sea adjacent to Wales and that adjacent to England is partly determined by article 6 of, and Schedule 3 to, [S.I. 1999/672](#). By virtue of paragraph 26 of Schedule 11 to the Government of Wales Act 2006, [S.I. 1999/672](#) continues to have effect.

(2) [1998 c. 46](#). The boundaries between waters which are to be treated as internal waters or territorial sea of the United Kingdom adjacent to Scotland and those which are not are set out in [S.I. 1999/1126](#).

(3) [1980 c. 66](#).

(4) [1990 c. 43](#).

(5) [1991 c. 57](#).

(6) [1993 c. 12](#).

“the 1995 Act” means the Environment Act 1995(7);

“the 2007 Regulations” means the Environmental Permitting (England and Wales) Regulations 2007(8);

“the 2010 Regulations” means the Environmental Permitting (England and Wales) Regulations 2010(9);

“the Agency” means the Environment Agency;

“agricultural waste” means waste from premises used for agriculture within the meaning of the Agriculture Act 1947(10);

“appropriate agency” means—

- (a) in relation to England, the Agency, and
- (b) in relation to Wales, the NRBW,

and references to the “area” of an appropriate agency are to be construed accordingly;

“appropriate authority” means—

- (a) in relation to England, the Secretary of State, and
- (b) in relation to Wales, the Welsh Ministers;

“Category A mining waste facility” means a mining waste facility that is classified as Category A under Article 9 of the Mining Waste Directive;

“class”, in relation to a regulated facility, is to be construed in accordance with regulation 8;

“coastal waters” has the meaning given in section 104 of the 1991 Act;

“confidential information” means information that is commercially or industrially confidential in relation to any person;

“culvert” has the meaning given in paragraph 3(3) of Part 1 of Schedule 25;

“disposal”—

- (a) except in relation to a radioactive substances activity, has the meaning given in paragraph 2 of Part 1 of Schedule 9;
- (b) in relation to a radioactive substances activity, has the meaning given in paragraph 1 of Part 2 of Schedule 23;

“drainage” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25;

“effluent” has the same meaning as in the 1991 Act;

“emission” means—

- (a) in relation to a Part A installation, the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into the air, water or land;
- (b) in relation to a Part B installation, the direct release of substances or heat from individual or diffuse sources in the installation into the air;
- (c) in relation to a solvent emission activity, the direct or indirect release of substances from individual or diffuse sources in the regulated facility into the air;

(7) 1995 c. 25.

(8) S.I. 2007/3538, amended by S.I. 2009/1307, 1799, 3381, 2010/22, 490, 675, 2011/988 and 2012/811.

(9) S.I. 2010/675, amended by paragraph 30 of Part 2 of Schedule 12 to the Energy Act 2013 (c. 32) and by S.I. 2010/676, 2172, 2011/600 (W. 88), 988, 2043, 2933, 2012/630, 811, 2013/390, 755 (W. 90), 766, 2952, 2014/255, 517 (W. 60), 2852, 2015/324, 664, 918, 934, 1360, 1417 (W. 141), 1756, 1973, 2016/58 (W. 28), 149, 475, 691 (W. 189) and 738.

(10) 1947 c. 48.

- (d) in relation to Part B mobile plant, the direct release of substances or heat from the mobile plant into the air;
- (e) in relation to a 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;
- (f) in relation to 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;
- (g) in relation to a radioactive substances activity, the direct or indirect release of radioactive material or radioactive waste;
- (h) in relation to a small waste incineration plant, the direct or indirect release of substances from individual or diffuse sources in the regulated facility into the air or water;

“enforcement notice” means a notice served under regulation 36;

“enforcement undertaking” has the meaning given in paragraph 1(3) of Schedule 26;

“environmental permit” has the meaning given in regulation 13(1);

“environmental permit condition” means a condition of an environmental permit;

“establishment” has the same meaning as in the Waste Framework Directive;

“excluded flood risk activity” has the meaning given in paragraph 4 of Part 1 of Schedule 25;

“excluded waste operation” means any part of a waste operation not carried on at an installation or by means of Part B mobile plant—

- (a) that—
 - (i) requires a marine licence under the Marine and Coastal Access Act 2009⁽¹¹⁾, or
 - (ii) does not require such a licence by virtue of any provision made by or under section 74, 75⁽¹²⁾ or 77 of that Act and does not involve the dismantling of a ship that is waste, or
- (b) that relates to waste described in regulation 3(2) of the Controlled Waste (England and Wales) Regulations 2012⁽¹³⁾;

“exempt facility” has the meaning given in regulation 5;

“exempt flood risk activity” has the meaning given in regulation 5;

“exempt groundwater activity” has the meaning given in regulation 5;

“exempt waste operation” has the meaning given in regulation 5;

“exempt water discharge activity” has the meaning given in regulation 5;

“exemption authority” has the meaning given in paragraph 2 of Schedule 2;

“exemption registration authority” has the meaning given in paragraph 2 of Schedule 2;

“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);

“flood defence structure” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25;

“flood risk activity” has the meaning given in paragraph 3 of Part 1 of Schedule 25;

⁽¹¹⁾ 2009 c. 23; Part 4 of that Act concerns marine licensing.

⁽¹²⁾ Section 75 was amended by S.I. 2011/405 and 2016/738.

⁽¹³⁾ S.I. 2012/811, to which there are amendments not relevant to these Regulations.

“flood risk activity emergency works notice” means a notice served under paragraph 7 of Part 1 of Schedule 25;

“flood risk activity notice of intent” means a notice served under paragraph 9(2) of Part 1 of Schedule 25;

“flood risk activity remediation notice” means a notice served under paragraph 8 of Part 1 of Schedule 25;

“groundwater” means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

“groundwater activity” has the meaning given in paragraph 3 of Schedule 22;

“hazardous substance” has the meaning given in paragraph 4 of Schedule 22;

“hazardous waste”, subject to paragraph (7)—

(a) in relation to England, has the meaning given in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005⁽¹⁴⁾;

(b) in relation to Wales, has the meaning given in regulation 6 of the Hazardous Waste (Wales) Regulations 2005⁽¹⁵⁾;

“highway drain” means a drain which a highway authority or other person is entitled to keep open by virtue of section 100 of the 1980 Act⁽¹⁶⁾;

“household waste” has the meaning given in section 75(5) of the 1990 Act;

“inland freshwaters” has the meaning given in section 104 of the 1991 Act;

“installation” has the meaning given in paragraph 1(1) of Part 1 of Schedule 1;

“lake or pond” and “waters of any lake or pond” have the same meaning as in section 104 of the 1991 Act;

“landfill” has the meaning given in paragraph 2(1)(d) of Schedule 10;

“landfill closure notice” means a closure notice served under paragraph 10 of Schedule 10;

“local authority” has the meaning given in regulation 6;

“main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25;

“mining waste facility” has the meaning given in paragraph 2(1) of Schedule 20;

“mining waste facility closure notice” means a closure notice served under paragraph 10 of Schedule 20;

“mining waste operation” has the meaning given in paragraph 2(1) of Schedule 20;

“mobile plant” means either of the following—

(a) Part B mobile plant;

(b) waste mobile plant;

“mobile radioactive apparatus” has the meaning given in paragraph 1 of Part 2 of Schedule 23;

“the NRBW” means the Natural Resources Body for Wales;

“net rated thermal input” has the meaning given in paragraph 1(1) of Part 1 of Schedule 1;

“non-hazardous waste”, subject to paragraph (7), means waste which is not hazardous waste;

“non-tidal main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25;

(14) S.I. 2005/894, to which there are amendments not relevant to these Regulations.

(15) S.I. 2005/1806 (W. 138), amended by S.I. 2015/1417 (W. 141); there are other amending instruments but none is relevant.

(16) Section 100 was amended by paragraph 21 of Schedule 4 to the Local Government Act 1985 (c. 51), paragraph 62 of Schedule 25 to the Water Act 1989 (c. 15), paragraph 36(1) of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c. 60) and paragraph 9 of Schedule 7 to the Local Government (Wales) Act 1994 (c. 19).

“nuclear site”, in relation to a radioactive substances activity, has the meaning given in paragraph 1 of Part 2 of Schedule 23;

“operate a regulated facility” and “operator” have the meaning given in regulation 7;

“Part A(1) activity” means an activity falling within Part A(1) of any Section in Part 2 of Schedule 1;

“Part A(2) activity” means an activity falling within Part A(2) of any Section in Part 2 of Schedule 1;

“Part A installation” means a Part A(1) installation or a Part A(2) installation;

“Part A(1) installation” means an installation where a Part A(1) activity is carried on either alone or in combination with any or all of the following—

- (a) a Part A(2) activity;
- (b) a Part B activity;
- (c) the operation of a small waste incineration plant;
- (d) a solvent emission activity;

“Part A(2) installation” means an installation where a Part A(2) activity is carried on either alone or in combination with any or all of the following—

- (a) a Part B activity;
- (b) the operation of a small waste incineration plant;
- (c) a solvent emission activity;

“Part B activity” means an activity falling within Part B of any Section in Part 2 of Schedule 1;

“Part B installation” means, subject to Sections 2.2, 5.1 and 6.4 in Part 2 of Schedule 1, an installation, not being a Part A installation, where a Part B activity is carried on either alone or in combination with either or both of the following—

- (a) the operation of a small waste incineration plant;
- (b) a solvent emission activity;

“Part B mobile plant” means plant that is designed to move or be moved whether on roads or other land and that is used to carry on a Part B activity;

“pollutant” means any substance liable to cause pollution;

“pollution”, in relation to a water discharge activity or groundwater activity, means the direct or indirect introduction, as a result of human activity, of substances or heat into the air, water or land which may—

- (a) be harmful to human health or the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems,
- (b) result in damage to material property, or
- (c) impair or interfere with amenities or other legitimate uses of the environment;

“pollution”, other than in relation to a water discharge activity or groundwater activity, means any emission as a result of human activity which may—

- (a) be harmful to human health or the quality of the environment,
- (b) cause offence to a human sense,
- (c) result in damage to material property, or
- (d) impair or interfere with amenities or other legitimate uses of the environment;

“prescribed statutory provision” means—

- (a) Part 4 of the Marine and Coastal Access Act 2009⁽¹⁷⁾,
 - (b) section 163 of the 1991 Act⁽¹⁸⁾,
 - (c) section 165 of the Water Industry Act 1991⁽¹⁹⁾, or
 - (d) any local statutory provision (within the meaning given in section 221 of the 1991 Act) or statutory order which expressly confers power to discharge effluent into water;
- “prohibition notice” means a notice served under paragraph 9 of Schedule 22;
- “proposed transferee” means the person to whom an operator or a regulator proposes to transfer an environmental permit in whole or in part;
- “public participation provisions” means regulations 26, 29 and 60, and paragraphs 6 and 8 of Part 1 of Schedule 5;
- “public register” has the meaning given in regulation 46(1);
- “radioactive material” has the meaning given in paragraph 3 of Part 2 of Schedule 23;
- “radioactive substances activity” has the meaning given in paragraph 11 of Part 2 of Schedule 23;
- “radioactive substances exemption” means an exemption under Part 6 of Schedule 23 from the requirement for an environmental permit in respect of a radioactive substances activity;
- “radioactive waste” has the meaning given in paragraph 3 of Part 2 of Schedule 23;
- “recovery” has the meaning given in paragraph 2 of Part 1 of Schedule 9;
- “register” and “registered”, in relation to an exempt facility, have the meanings given in paragraph 1(1) of Schedule 2;
- “regulated facility” has the meaning given in regulation 8;
- “regulator” means the authority on whom functions are conferred by regulation 32, or by a direction under regulation 33;
- “regulator-initiated variation” means the variation of an environmental permit on the initiative of the regulator under regulation 20(1);
- “relevant function” has the meaning given in regulation 9;
- “relevant territorial waters” has the meaning given in section 104(1) of the 1991 Act;
- “remote defence” has the meaning given in paragraph 3(3) of Part 1 of Schedule 25;
- “revocation notice” means a notice served under regulation 22(3);
- “river control works” has the meaning given in paragraph 3(3) of Part 1 of Schedule 25;
- “rule-making authority” means—
- (a) in relation to a regulated facility for which a local authority is the regulator, the appropriate authority, and
 - (b) in relation to any other regulated facility, the appropriate agency;
- “sea defence” has the meaning given in paragraph 3(3) of Part 1 of Schedule 25;
- “sewage effluent” has the meaning given in section 221 of the 1991 Act;
- “sewer” has the same meaning as in the 1991 Act;

⁽¹⁷⁾ Part 4 was amended by section 76(2) of the Energy Act 2016 (c. 20) and by S.I. 2011/405, 1043, 1210, 2015/374, 664 and 2016/738. It is prospectively amended by sections 76 to 80 of the Environment (Wales) Act 2016 (anaw. 3) from a date to be appointed.

⁽¹⁸⁾ Section 163 was amended by S.I. 2003/1615 and 2013/755 (W. 90).

⁽¹⁹⁾ 1991 c. 56.

“small waste incineration plant” means a waste incineration plant or waste co-incineration plant with a capacity less than or equal to 10 tonnes per day for hazardous waste or 3 tonnes per hour for non-hazardous waste;

“solvent emission activity” means an activity to which Chapter V of the Industrial Emissions Directive applies;

“standard facility” means a regulated facility described in standard rules published under regulation 26(5);

“stand-alone flood risk activity” means a flood risk activity that is not carried on as part of the operation of a regulated facility of another class;

“stand-alone groundwater activity” means a groundwater activity that is not carried on as part of the operation of a regulated facility of another class;

“stand-alone water discharge activity” means a water discharge activity that is not carried on as part of the operation of a regulated facility of another class;

“suspension notice” means a notice served under regulation 37;

“tidal main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25;

“trade effluent” has the meaning given in section 221 of the 1991 Act;

“undertaking”, except in relation to a radioactive substances activity, has the same meaning as in the Waste Framework Directive;

“vessel”, except in Section 2.2 of Chapter 2 of Part 2 of Schedule 1 and in paragraph 14 of Part 2 of Schedule 23, has the same meaning as in the 1991 Act;

“waste”, subject to paragraph (6), and except where otherwise defined—

- (a) in relation to Chapter 5 of Part 2 of Schedule 1 and Schedules 13 to 15, 17 and 19, means anything that—
 - (i) is waste within the meaning of Article 3(1) of the Waste Framework Directive, and
 - (ii) is not excluded from the scope of that Directive by Article 2(1)(d) of that Directive;
- (b) in any other case means anything that—
 - (i) is waste within the meaning of Article 3(1) of the Waste Framework Directive, and
 - (ii) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;

“waste battery” and “accumulator” have the meaning given in Article 3(7) of the Batteries Directive, but do not include any waste which is excluded from the scope of that Directive by Article 2(2);

“waste co-incineration plant” means a stationary or mobile technical unit whose main purpose is the generation of energy or production of material products and which uses waste as a regular or additional fuel or in which waste is thermally treated for the purpose of disposal through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated;

“waste incineration plant” means a stationary or mobile technical unit and equipment dedicated to the thermal treatment of waste, with or without recovery of the combustion heat generated, through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated;

“waste mobile plant” means plant that is—

- (a) designed to move or be moved whether on roads or other land,

- (b) used to carry on a waste operation, and
- (c) not an installation or Part B mobile plant;

“waste oil” means mineral-based lubricating or industrial oil which has become unfit for the use for which it was originally intended and, in particular, used combustion engine oil, gearbox oil, mineral lubricating oil, oil for turbines and hydraulic oil;

“waste operation” means recovery or disposal of waste;

“watercourse” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25;

“water discharge activity” has the meaning given in paragraph 3 of Schedule 21;

“WEEE” has the meaning given in Article 3(1)(e) of the WEEE Directive;

“working day” means a day other than—

- (a) a Saturday or a Sunday,
- (b) Good Friday or Christmas Day, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽²⁰⁾.

(2) In paragraph (1), “statutory order” means any order, byelaw, scheme or award made under any enactment, including an order or scheme confirmed by Parliament or the National Assembly for Wales, or brought into operation in accordance with special parliamentary procedure or special procedure in the Assembly.

(3) For the purpose of calculating a period of time from one event to another event, that period—

- (a) starts at the beginning of the day on which the first event occurs, and
- (b) ends at the end of the day on which the second event occurs.

(4) In these Regulations, a power to give a direction includes a power to vary or revoke it.

(5) Paragraph (6) applies where a person (“A”)—

- (a) carries on a radioactive substances activity described in paragraph 11(2)(b) or (c) or (4) of Part 2 of Schedule 23 in respect of radioactive waste,
- (b) is exempt under regulation 12(3) from the requirement for an environmental permit in respect of that activity and that waste (“the relevant exemption”), and
- (c) the waste (“the applicable radioactive waste”) is—
 - (i) NORM waste (as that term is defined in paragraph 2 of Part 6 of Schedule 23), or
 - (ii) the waste described in the first, second or sixth row of column 1 of Table 6 in Part 6 of Schedule 23.

(6) Where this paragraph applies, for so long as the relevant exemption applies to A, the applicable radioactive waste must be treated for the purposes of these Regulations as if it were waste other than radioactive waste.

(7) In relation to an activity that falls within Chapter 5 of Part 2 of Schedule 1 or Schedule 13, hazardous waste means waste which displays any of the characteristics listed in Annex III to the Waste Framework Directive.

Interpretation: Directives

3. In these Regulations—

“the Asbestos Directive” means Council Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos⁽²¹⁾;

⁽²⁰⁾ 1971 c. 80.

⁽²¹⁾ OJ No L 85, 28.3.1987, p 40, as last amended by Council Regulation (EC) No 807/2003 (OJ No L 122, 16.5.2003, p 36).

“the Basic Safety Standards Directive” means Council Directive 96/29/Euratom laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation(22);

“the Batteries Directive” means Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators(23);

“the End-of-Life Vehicles Directive” means Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles(24);

“the Energy Efficiency Directive” means Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency(25);

“the Groundwater Directive” means Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration(26);

“the HASS Directive” means Council Directive 2003/122/Euratom on the control of high-activity sealed radioactive sources and orphan sources(27);

“the Industrial Emissions Directive” means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control)(28);

“the Landfill Directive” means Council Directive 1999/31/EC on the landfill of waste(29), as read with Council Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of, and Annex II to, Directive 1999/31/EC(30);

“the Mining Waste Directive” means Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries(31);

“PVR I” means European Parliament and Council Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations(32);

“PVR II” means Directive 2009/126/EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations(33);

“the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste(34);

“the Water Framework Directive” means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(35);

“the WEEE Directive” means Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE)(36).

(22) OJ No L 159, 29.6.1996, p 1, as corrected by a corrigendum (OJ No L 314, 4.12.1996, p 20). The Directive is prospectively repealed from 6th February 2018 by Council Directive 2013/59/Euratom (OJ No L 13, 17.1.2014, p 1).

(23) OJ No L 266, 26.9.2006, p 1, as last amended by Directive 2013/56/EU (OJ No L 329, 10.12.2013, p 5).

(24) OJ No L 269, 21.10.2000, p 34, as last amended by Commission Directive (EU) 2016/774 (OJ No L 128, 19.5.2016, p 4).

(25) OJ No L 315, 14.11.2012, p 1, as last amended by Council Directive 2013/12/EU (OJ No L 141, 28.5.2013, p 28).

(26) OJ No L 372, 27.12.2006, p 19, as last amended by Commission Directive 2014/80/EU (OJ No L 182, 21.6.2014, p 52).

(27) OJ No L 346, 31.12.2003, p 57. The Directive is prospectively repealed from 6th February 2018 by Council Directive 2013/59/Euratom (OJ No L 13, 17.1.2014, p 1).

(28) OJ No L 334, 17.12.2010, p 17, as corrected by a corrigendum (OJ No L 158, 19.6.2012, p 25).

(29) OJ No L 182, 16.7.1999, p 1, as last amended by Council Directive 2011/97/EU (OJ No L 328, 10.12.2011, p 49).

(30) OJ No L 11, 16.1.2003, p 27.

(31) OJ No L 102, 11.4.2006, p 15, as last amended by Regulation (EC) No 596/2009 (OJ No L 188, 18.7.2009, p 14).

(32) OJ No L 365, 31.12.1994, p 24, as last amended by Regulation (EC) No 1137/2008 (OJ No L 311, 21.11.2008, p 1).

(33) OJ No L 285, 31.10.2009, p 36, as amended by Commission Directive 2014/99/EU (OJ No L 304, 23.10.2014, p 89).

(34) OJ No L 312, 22.11.2008, p 3, as last amended by Commission Directive (EU) 2015/1127 (OJ No L 184, 11.7.2015, p 13).

(35) OJ No L 327, 22.12.2000, p 1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p 32).

(36) OJ No L 197, 24.7.2012, p 38.

Exempt facilities and the application of section 33(1)(a) of the 1990 Act

4.—(1) Schedule 2 (exempt facilities: general) has effect.

(2) Schedule 3 (exempt facilities and waste operations to which section 33(1)(a) of the 1990 Act does not apply: descriptions and conditions) has effect.

(3) Section 33(1)(a) of the 1990 Act⁽³⁷⁾—

(a) does not apply to an operation which—

(i) falls within a description in Part 5 of Schedule 3, and

(ii) meets the conditions specified in that Part for that description, and

(b) does not apply to extractive waste at any time before the requirement for an environmental permit under regulation 12 applies in respect of the deposit of that waste.

Interpretation: exempt facilities

5. In these Regulations—

“exempt facility” means—

(a) an exempt waste operation,

(b) an exempt water discharge activity,

(c) an exempt groundwater activity, or

(d) an exempt flood risk activity;

“exempt flood risk activity” means a flood risk activity that meets the requirements of paragraph 9 of Schedule 2;

“exempt groundwater activity” means—

(a) a stand-alone groundwater activity that meets the requirements of—

(i) in relation to Wales only, paragraph 7 of Schedule 2;

(ii) in relation to England only, paragraph 8 of Schedule 2, or

(b) a groundwater activity that—

(i) is a groundwater tracer test as defined in paragraph 1 of Part 3 of Schedule 3,

(ii) is also a radioactive substances activity by virtue of the using of radioactive material as a part of that test, and

(iii) meets the requirements of—

(aa) in relation to Wales only, paragraph 7 of Schedule 2;

(bb) in relation to England only, paragraph 8 of Schedule 2;

“exempt waste operation” means a waste operation—

(a) that is not carried on at an installation, and

(b) that meets the requirements of paragraph 4(1) of Schedule 2;

“exempt water discharge activity” means a stand-alone water discharge activity that meets the requirements of—

(a) in relation to Wales only, paragraph 5 of Schedule 2;

(b) in relation to England only, paragraph 6 of Schedule 2.

⁽³⁷⁾ Section 33(1)(a) was amended by [S.I. 2007/3538](#) and [2009/1799](#).

Interpretation: local authority

6.—(1) In these Regulations, “local authority” means—

- (a) in England outside Greater London—
 - (i) a district council,
 - (ii) where there is a county council but no district council, the county council, or
 - (iii) the Council of the Isles of Scilly;
- (b) in Greater London—
 - (i) the council of a London borough,
 - (ii) the Common Council of the City of London,
 - (iii) the Sub-Treasurer of the Inner Temple, or
 - (iv) the Under-Treasurer of the Middle Temple;
- (c) in Wales—
 - (i) a county council, or
 - (ii) a county borough council.

(2) Where a port health authority has been constituted for a port health district by an order under section 2 of the Public Health (Control of Disease) Act 1984(38) that authority is the local authority for the area covered by that district in relation to a Part B installation, a small waste incineration plant or a solvent emission activity.

Interpretation: operate a regulated facility and operator

7. In these Regulations—

“operate a regulated facility” means—

- (a) operate an installation or mobile plant, or
- (b) carry on a waste operation, mining waste operation, radioactive substances activity, water discharge activity, groundwater activity, small waste incineration plant operation, solvent emission activity or flood risk activity;

“operator”, in relation to a regulated facility, means—

- (a) the person who has control over the operation of the regulated facility,
- (b) if the regulated facility has not yet been put into operation, the person who will have control over the regulated facility when it is put into operation, or
- (c) if a regulated facility authorised by an environmental permit ceases to be in operation, the person who holds the environmental permit.

Interpretation: regulated facility and class of regulated facility

8.—(1) In these Regulations, “regulated facility” means any of the following—

- (a) an installation;
- (b) mobile plant;
- (c) a waste operation;
- (d) a mining waste operation;
- (e) a radioactive substances activity;

- (f) a water discharge activity;
 - (g) a groundwater activity;
 - (h) a small waste incineration plant;
 - (i) a solvent emission activity;
 - (j) a flood risk activity.
- (2) But the following are not regulated facilities—
- (a) an exempt facility;
 - (b) an excluded waste operation;
 - (c) the disposal or recovery of household waste from a domestic property within the curtilage of that property by a person other than an establishment or undertaking;
 - (d) an excluded flood risk activity.
- (3) In these Regulations, a reference to a class of regulated facility is a reference to a class in paragraph (1).
- (4) A regulated facility of any of the following classes may be carried on as part of the operation of a regulated facility of another class—
- (a) a waste operation;
 - (b) a mining waste operation;
 - (c) a water discharge activity;
 - (d) a groundwater activity;
 - (e) a small waste incineration plant;
 - (f) a solvent emission activity;
 - (g) a flood risk activity.

Interpretation: relevant function

9. In these Regulations, “relevant function” means any of the following functions—
- (a) determining an application—
 - (i) for the grant of an environmental permit under regulation 13(1);
 - (ii) for the variation of an environmental permit under regulation 20(1);
 - (iii) for the transfer of an environmental permit in whole or in part under regulation 21(1);
 - (iv) for the surrender of an environmental permit in whole or in part under regulation 25(2);
 - (b) varying an environmental permit—
 - (i) on the initiative of the regulator under regulation 20(1);
 - (ii) in relation to a transfer in whole or in part under regulation 21(1) or (3);
 - (iii) in relation to a partial revocation under regulation 22(1);
 - (iv) in relation to a partial surrender under regulation 24(2) or 25(2);
 - (c) revoking an environmental permit in whole or in part under regulation 22(1);
 - (d) exercising the power to serve a notice under Schedule 21 or 25 requiring a person to hold an environmental permit;
 - (e) exercising the following powers or duty—
 - (i) any power in relation to standard rules in Chapter 4 of Part 2;

- (ii) the duty to vary an environmental permit after revocation of standard rules in regulation 30(3);
- (f) exercising any of the following powers relating to enforcement—
 - (i) the power to serve an enforcement notice;
 - (ii) the power to serve a suspension notice;
 - (iii) the power to serve a prohibition notice;
 - (iv) the power to serve a landfill closure notice;
 - (v) the power to serve a mining waste facility closure notice;
- (g) exercising the power to serve a flood risk activity emergency works notice, a flood risk activity notice of intent or a flood risk activity remediation notice;
- (h) exercising the power to take steps under paragraph 9(1) of Part 1 of Schedule 25.

Giving notices, notifications and directions, and the submission of forms

10.—(1) In this regulation, “instrument” means a notice, notification, certificate, direction or form under these Regulations.

- (2) An instrument must be in writing.
- (3) An instrument may be served on or given to a person by—
 - (a) personal delivery,
 - (b) leaving it at the person’s proper address, or
 - (c) sending it by post or electronic means to the person’s proper address.
- (4) In the case of a body corporate, an instrument may be served on or given to a director of that body or the secretary or clerk.
- (5) In the case of a partnership, an instrument may be served on or given to a partner or a person having control or management of the partnership business.
- (6) In paragraph (3), “proper address” means—
 - (a) in the case of a body corporate, a director of the body or the secretary or clerk—
 - (i) the registered or principal office of that body, or
 - (ii) the email address of the director, secretary or clerk;
 - (b) in the case of a partnership or a partner or person having control or management of the partnership business—
 - (i) the principal office of the partnership, or
 - (ii) the email address of a partner or a person having that control or management;
 - (c) in any other case, a person’s last known address, which includes an email address.
- (7) For the purposes of paragraph (6), the principal office of a company registered outside the United Kingdom or of a partnership established outside the United Kingdom is their principal office in the United Kingdom.
- (8) A form provided by the regulator which specifies an electronic address for submission may be submitted electronically to that address.
- (9) A form provided by the regulator for completion and submission through a website may be submitted through that site.

PART 2

Environmental permits

CHAPTER 1

Application to the Crown and requirement for an environmental permit

Application to the Crown

11. Schedule 4 (application of these Regulations to the Crown) has effect.

Requirement for an environmental permit

12.—(1) A person must not, except under and to the extent authorised by an environmental permit—

- (a) operate a regulated facility, or
- (b) cause or knowingly permit a water discharge activity or groundwater activity.

(2) Paragraph (1)(b) does not apply if the water discharge activity or groundwater activity is an exempt facility.

(3) In respect of a radioactive substances activity, paragraph (1) does not apply to a person to whom a radioactive substances exemption applies for that activity.

(4) Paragraph (5) applies to a person (“A”) who—

- (a) receives radioactive waste from another person (“B”) for the purposes of A disposing of that waste, and
- (b) subsequently disposes of that waste.

(5) Where this paragraph applies, A does not require an environmental permit—

- (a) for the receipt of waste from B, where B holds an environmental permit which allows B to dispose of the waste to A, or
- (b) for the subsequent disposal of that waste by A, where the waste is disposed of in accordance with the permit held by B.

CHAPTER 2

Grant of an environmental permit

Grant of an environmental permit

13.—(1) On the application of an operator, the regulator may grant the operator a permit (an “environmental permit”) authorising—

- (a) the operation of a regulated facility, and
- (b) that operator as the person authorised to operate that regulated facility.

(2) Regulation 17 applies in relation to the grant of a single permit authorising the operation of more than one regulated facility by the same operator.

(3) Part 1 of Schedule 5 applies in relation to an application for the grant of an environmental permit.

Content and form of an environmental permit

14.—(1) An environmental permit must specify—

- (a) the regulated facility whose operation it authorises, and
 - (b) the operator of that regulated facility.
- (2) An environmental permit that authorises the operation of a regulated facility (“regulated facility A”) need not specify any regulated facility of another class that is carried on as part of the operation of regulated facility A.
- (3) An environmental permit may be in electronic form.
- (4) An environmental permit must include a map, plan or other description of the site showing the geographical extent of the site of the regulated facility.
- (5) But if there is more than one regulated facility on the site, the map, plan or other description need show only the combined extent of all the facilities.
- (6) Paragraphs (4) and (5) do not apply to an environmental permit authorising—
- (a) the operation of mobile plant, or
 - (b) the carrying on of a radioactive substances activity described in paragraph 11(5) of Part 2 of Schedule 23.

Conditions in relation to certain land

15.—(1) Conditions in an environmental permit may require the operator to carry out works or do other things in relation to land which the operator is not entitled to do or carry out without obtaining the consent of another person.

(2) If an environmental permit contains such a condition, the person whose consent is required must grant the operator such rights as are necessary to enable the operator to comply with the condition.

(3) Part 2 of Schedule 5 (compensation) applies where such rights are granted.

(4) Conditions in an environmental permit authorising the carrying on of a flood risk activity have effect as a local land charge where those conditions—

- (a) in accordance with the power in paragraph 6 of Part 1 of Schedule 25, relate to—
 - (i) the operation or maintenance of any structure or works, or
 - (ii) access to any structure, works or watercourse by the regulator, and
- (b) are expressed to apply from time to time.

(5) Where the Agency proposes to grant an application in relation to a flood risk activity in England subject to a condition which has effect in accordance with paragraph (4), the regulator must give notice of the proposed condition and the period within which representations on the proposed condition are to be made (which period must not expire less than 20 days after the day on which the notice is served) to—

- (a) the landowner, lessee and occupier, where none is the applicant;
- (b) the landowner and lessee, where the occupier is the applicant;
- (c) the landowner and occupier, where the lessee is the applicant;
- (d) the lessee and occupier, where the landowner is the applicant.

(6) Where the NRBW proposes to grant an application in relation to a flood risk activity in Wales subject to a condition which has effect in accordance with paragraph (4), the regulator must not issue the relevant permit unless the applicant has demonstrated to the satisfaction of the regulator that consent for that permit to be issued subject to such a condition has been given by—

- (a) the landowner, lessee and occupier, where none is the applicant;
- (b) the landowner and lessee, where the occupier is the applicant;

- (c) the landowner and occupier, where the lessee is the applicant;
- (d) the lessee and occupier, where the landowner is the applicant.

(7) In paragraphs (5) and (6), “landowner” means the person, other than a mortgagee not in possession, who—

- (a) is receiving the rack rent of the land, whether on the person’s own account or as agent or trustee for another person, or
- (b) would receive the rack rent if the land were let at a rack rent.

Mobile plant operating on the site of another regulated facility: conflict of permit conditions

16. If—

- (a) an environmental permit (“permit A”) authorises the operation of mobile plant on the site of another regulated facility the operation of which is authorised under a separate environmental permit (“permit B”), and
- (b) there is an inconsistency between the requirements imposed by permit A and those imposed by permit B,

the requirements imposed by permit B prevail.

Single site permits etc.

17.—(1) Except as otherwise provided by this regulation, a regulator may not authorise the operation of more than one regulated facility under a single environmental permit.

(2) The regulator may authorise, under a single environmental permit, the operation by the same operator—

- (a) of more than one mobile plant,
- (b) of more than one radioactive substances activity described in paragraph 11(5) of Part 2 of Schedule 23,
- (c) of more than one regulated facility on the same site,
- (d) of more than one standard facility on more than one site,
- (e) of more than one flood risk activity on more than one site, or
- (f) of more than one radioactive substances activity described in paragraph 11(6) of Part 2 of Schedule 23 on more than one site, where all such activities are in respect of the use or potential use of the same premises for underground disposal (within the meaning of paragraph 11(7) of that Schedule).

(3) But if a groundwater activity is carried on as part of a radioactive substances activity by the same operator on the same site, the regulator must authorise the carrying on of the groundwater activity under the same environmental permit that authorises the carrying on of the radioactive substances activity.

Consolidation of an environmental permit

18.—(1) Paragraph (2) applies if the same operator is authorised by more than one environmental permit to operate—

- (a) more than one mobile plant,
- (b) more than one flood risk activity on the same site or on more than one site,
- (c) more than one standard facility, or
- (d) more than one regulated facility on the same site.

(2) The regulator may replace the environmental permits (“old permits”) with a consolidated environmental permit—

- (a) applying to the same regulated facilities, and
- (b) subject to the same conditions that applied to the old permits, but varied as the regulator thinks fit.

(3) The regulator may replace a consolidated environmental permit (“old permit”) with two or more environmental permits (“new permits”).

(4) Each of the new permits is subject to whichever conditions of the old permit are relevant, varied as the regulator thinks fit.

(5) The regulator may replace a single environmental permit (“old permit”) which has been varied with a consolidated environmental permit subject to the same conditions that applied to the old permit.

(6) A variation made by a regulator under this regulation—

- (a) is taken to be a regulator-initiated variation under regulation 20(1), and
- (b) may only be made in accordance with regulation 20.

(7) Paragraphs 17 to 19 of Part 1 of Schedule 5 apply in relation to the decision to make a regulator-initiated variation and the notification of such a decision.

Subsistence of an environmental permit

19. Once granted, an environmental permit continues in force until—

- (a) it is revoked in whole in accordance with regulation 22,
- (b) it is surrendered in whole in accordance with—
 - (i) regulation 24, or
 - (ii) regulation 25 and Part 1 of Schedule 5,
- (c) it is replaced with a consolidated permit in accordance with any of the following—
 - (i) regulation 18(2);
 - (ii) regulation 22(5);
 - (iii) paragraph 19(2) of Part 1 of Schedule 5, or
- (d) it ceases to have effect in accordance with regulation 71(3) or (4).

CHAPTER 3

Variation, transfer, revocation and surrender of an environmental permit

Variation of an environmental permit

20.—(1) The regulator may vary an environmental permit on the application of the operator or on its own initiative.

(2) A variation under this regulation must not reduce the extent of the site of a regulated facility.

(3) Paragraph (2) does not apply if the variation relates to any part of an environmental permit (or if applicable, the whole permit) that authorises the operation of a regulated facility of the following description—

- (a) a Part B installation, except to the extent that it relates to a waste operation;
- (b) a stand-alone water discharge activity or stand-alone groundwater activity.

(4) With respect to any part of an environmental permit (or if applicable, the whole permit) that authorises the carrying on of a stand-alone water discharge activity, a regulator must not, without the agreement of the operator, on its own initiative—

- (a) within 4 years after the grant of the permit, vary any condition of the permit that relates to the water discharge activity, or
- (b) within 4 years after the variation of a condition of the permit that relates to the water discharge activity, further vary that condition.

(5) Paragraph (4) does not apply if—

- (a) the regulated facility is a standard facility,
- (b) the regulator, on its own initiative, varies an environmental permit, or any condition of a permit, in order to comply with—
 - (i) an obligation of the United Kingdom under the EU Treaties, or
 - (ii) a direction given by the appropriate authority under regulation 62, or
- (c) the regulator, on its own initiative, varies an environmental permit, or any condition of a permit, in consequence of a transfer or partial transfer of an environmental permit under regulation 21.

(6) Part 1 of Schedule 5 applies in relation to an application for the variation of an environmental permit or a proposal to vary an environmental permit on the initiative of the regulator under paragraph (1).

(7) With respect to any part of an environmental permit (or if applicable, the whole permit) that authorises the carrying on of a stand-alone flood risk activity, the regulator must not, without the agreement of the operator, of its own initiative vary any condition of the permit that relates to the flood risk activity unless—

- (a) in the opinion of the regulator, the circumstances in which the activity is or is to be carried on have changed such that any of the objectives in paragraph 5 of Part 1 of Schedule 25 would no longer be met, and
- (b) in the case of a variation that relates to an activity that involves any construction or works, the variation relates to aspects of the construction or works which have not yet been completed.

(8) Paragraph (7) does not apply if the regulator, of its own initiative, varies an environmental permit, or any condition of a permit, in order to comply with—

- (a) an obligation of the United Kingdom under the EU Treaties, or
- (b) a direction given by the appropriate authority under regulation 62.

Transfer of an environmental permit

21.—(1) The regulator may transfer to a proposed transferee an environmental permit or any part of an environmental permit—

- (a) if the operator is one individual (A) and the regulator is satisfied that A cannot be found, on the application of the proposed transferee only,
- (b) if the operator is two or more individuals (A and B) and the regulator is satisfied that A cannot be found, on the joint application of B and the proposed transferee, or
- (c) otherwise, on the joint application of the operator and the proposed transferee.

(2) Part 1 of Schedule 5 applies in relation to an application for the transfer of an environmental permit in whole or in part.

(3) Paragraph (1) does not apply to an environmental permit (or any part of a permit) that authorises the carrying on of a stand-alone water discharge activity, stand-alone groundwater activity or a stand-alone flood risk activity.

(4) The regulator may transfer to a proposed transferee an environmental permit to which paragraph (1) does not apply, or any part of that permit—

- (a) if the operator is one individual (A) and the regulator is satisfied that A cannot be found, on the notification of the proposed transferee only,
- (b) unless sub-paragraph (c) applies, if the operator is two or more individuals (A and B) and the regulator is satisfied that A cannot be found, on the joint notification of B and the proposed transferee,
- (c) if the operator is two or more individuals (A and B) and the proposed transferee is two or more individuals (B and C), where B is both an operator and a proposed transferee—
 - (i) on the joint notification of A and C, or
 - (ii) if the regulator is satisfied that A cannot be found, on the notification of C only, or
- (d) otherwise, on the joint notification of the operator and the proposed transferee.

(5) A notification must—

- (a) be made on the form provided by the regulator,
- (b) include such information as is specified on the form, and
- (c) specify a date on which the transfer is to take place, which must be not less than 20 working days after the date on which the notification is given.

(6) A transfer following a notification takes effect on the date specified in the notification.

(7) In the case of a partial transfer following a notification, the regulator must grant a new environmental permit to the transferee subject to the same conditions as the original permit, varied in consequence of the partial transfer.

(8) If—

- (a) an enforcement notice or a suspension notice is in force in respect of an environmental permit, and
- (b) the permit is transferred to another person, either in whole or in part,

the duty to comply with the enforcement notice or, as the case may be, the suspension notice is also transferred to the other person to the extent that it relates to the permit or part transferred.

(9) Unless a proposed transferee makes a joint application or gives a joint notification, the regulator may not transfer to the proposed transferee an environmental permit or any part of an environmental permit in respect of a regulated facility that ceased to be in operation more than 6 months before the proposed date of transfer.

Revocation of an environmental permit: general

22.—(1) The regulator may revoke an environmental permit in whole or in part.

(2) If the regulator revokes an environmental permit in part, it may vary the permit conditions to the extent that it considers necessary to take account of the revocation.

(3) Where the regulator decides to revoke an environmental permit it must serve a notice on the operator specifying—

- (a) the reasons for the revocation,
- (b) in the case of a partial revocation—
 - (i) the extent to which the environmental permit is being revoked, and

- (ii) any variation to the conditions of the environmental permit, and
 - (c) the date on which the revocation will take place, which must not be less than 20 working days after the date on which the notice is served.
- (4) Unless the regulator withdraws a revocation notice, an environmental permit ceases to have effect on the date specified in the notice—
- (a) in the case of a revocation in whole, entirely,
 - (b) in the case of a partial revocation, to the extent of the part revoked.
- (5) In the case of a partial revocation, the regulator may replace the environmental permit with a consolidated environmental permit reflecting the variation.
- (6) Any variation made by a regulator under this regulation—
- (a) is taken to be a regulator-initiated variation under regulation 20(1), and
 - (b) may only be made in accordance with regulation 20.
- (7) Paragraphs 17 to 19 of Part 1 of Schedule 5 apply in relation to the decision to make a regulator-initiated variation and the notification of such a decision.
- (8) Where an environmental permit authorises in whole or in part an operation which becomes an exempt operation, that part of the permit which authorises the exempt operation is revoked on the date that the operation is registered as an exempt operation.
- (9) In paragraph (8), “operation” means a waste operation, stand-alone water discharge activity or stand-alone groundwater activity.

Revocation of an environmental permit: steps to be taken after the revocation takes effect

- 23.—(1) This regulation applies where the regulator has decided to revoke an environmental permit, or part of a permit, and the regulator considers that, after the revocation takes effect, it is appropriate for the operator to take steps—
- (a) to avoid a pollution risk resulting from the operation of the regulated facility, or
 - (b) to return the site of the regulated facility to a satisfactory state, having regard to the state of the site before the facility was put into operation.
- (2) But this regulation does not apply if the revocation relates to any part of an environmental permit (or if applicable, the whole permit) that authorises the operation of a regulated facility of the following description—
- (a) a Part B installation, except to the extent that it relates to a waste operation;
 - (b) mobile plant;
 - (c) a stand-alone water discharge activity or stand-alone groundwater activity.
- (3) If the operator is already required to take the steps mentioned in paragraph (1) under the environmental permit, the revocation notice must specify the regulator’s view under paragraph (1) and state that paragraph (4) applies.
- (4) The environmental permit continues to have effect to the extent that it requires the steps to be taken until the regulator issues a certificate stating that it is satisfied that all the steps have been taken.
- (5) If the operator is not already required to take the steps mentioned in paragraph (1) under the environmental permit, the revocation notice must specify the regulator’s view under paragraph (1) and the steps to be taken.
- (6) If paragraph (5) applies, unless the regulator issues a certificate stating that it is satisfied that all the steps have been taken, the steps must be treated as if they were conditions of an environmental permit for the purposes of—

- (a) regulation 20,
- (b) regulation 36, and
- (c) the offence in regulation 38(2).

Notification of the surrender of an environmental permit

24.—(1) This regulation applies to any part of an environmental permit (or if applicable, the whole permit) that authorises the operation of a regulated facility of the following description or class—

- (a) a Part B installation, except to the extent that it relates to a waste operation;
- (b) mobile plant;
- (c) a solvent emission activity;
- (d) a stand-alone water discharge activity or stand-alone groundwater activity;
- (e) a stand-alone flood risk activity, except where the environmental permit has been granted subject to a condition that is to operate beyond the time when the activity is complete.

(2) By notification to the regulator, the operator may surrender that part of an environmental permit (or if applicable, the whole permit) to which this regulation applies.

(3) A notification must—

- (a) be made on the form provided by the regulator,
- (b) include such information as is specified in the form, and
- (c) specify the date on which the surrender is to take place, which—
 - (i) in all cases, must not be less than 20 working days after the date on which the notification is given, and
 - (ii) in the case of a stand-alone flood risk activity where the regulator has specified in the environmental permit a date by which the activity must be completed, must not be earlier than the day after that date.

(4) Subject to paragraph (7), the environmental permit ceases to have effect on the date specified in the notification to the extent specified there.

(5) Paragraphs (6) and (7) apply to a partial surrender if the regulator considers it necessary to vary the environmental permit conditions to take account of that surrender.

(6) The regulator must serve a notice on the operator specifying—

- (a) the regulator's view under paragraph (5),
- (b) the variation, and
- (c) the date the variation takes effect.

(7) If the date specified in the notice under paragraph (6)(c) is later than the date specified in the notification under paragraph (3)(c), the variation and partial surrender both take effect on the later date.

Application for the surrender of an environmental permit

25.—(1) This regulation applies to an environmental permit, or any part of a permit, to which regulation 24 does not apply.

(2) By application to the regulator, an operator may surrender an environmental permit, or that part of a permit, to which this regulation applies.

(3) Part 1 of Schedule 5 applies in relation to an application for the surrender of an environmental permit in whole or in part.

CHAPTER 4

Standard rules

Preparation and revision of standard rules

26.—(1) A rule-making authority may prepare standard rules for such regulated facilities as are described in those rules.

(2) In preparing or revising standard rules the authority must consult—

(a) such persons as it considers are representative of the interests of communities likely to be affected by, or persons operating, the regulated facilities described in the rules, and

(b) such other persons as it considers are likely to be affected by or have an interest in the rules.

(3) But the duty in paragraph (2) does not apply in relation to revisions which comprise only minor administrative changes.

(4) The authority must keep under review all standard rules published by it under this regulation and revise those rules when it considers necessary.

(5) The authority must publish on its website all standard rules prepared or revised by it under this regulation.

(6) The duty in paragraph (2) may be satisfied by a consultation carried out partially or wholly before the coming into force of these Regulations.

Standard rules as conditions of an environmental permit

27.—(1) This regulation applies where a rule-making authority has published standard rules under regulation 26(5).

(2) At the request of the operator of a standard facility the regulator may include in the environmental permit authorising the operation of the facility a term providing that the relevant rules are conditions of the permit.

(3) If the regulator includes such a term, the relevant rules are conditions of the permit for the purposes of these Regulations, but there is no right of appeal under regulation 31 in relation to such a condition or the relevant rules.

(4) In this regulation, “relevant rules” means the standard rules which apply to the standard facility.

Notification of revisions of standard rules

28.—(1) This regulation applies where the rule-making authority proposes to revise standard rules under regulation 26(4).

(2) Before the rule-making authority complies with regulation 26(5), the regulator must notify any operator who holds a relevant environmental permit—

(a) of the proposed revisions,

(b) of the date when the revised rules will be published and when they take effect (in accordance with paragraph (3)), and

(c) that on the date the revised rules take effect they will become conditions of the environmental permit.

(3) The revised rules take effect—

(a) in relation to a relevant environmental permit, 3 months after the date when the revised rules are published under regulation 26(5), except where the revisions comprise only minor administrative changes (in which case they take effect in accordance with subparagraph (b));

(b) in any other case, when published under regulation 26(5).

(4) In this regulation, “relevant environmental permit” means an environmental permit which will be affected by the proposed revisions.

Revocation of standard rules

29. The rule-making authority may revoke standard rules, but before doing so must consult the persons referred to in regulation 26(2).

Variation of an environmental permit: revocation of standard rules

30.—(1) This regulation applies to an environmental permit which includes a standard rules term if the standard rules applying by virtue of that term are revoked by the regulator.

(2) The revoked rules continue to have effect until the regulator varies the permit under paragraph (3).

(3) As soon as reasonably practicable after the revocation of the rules, the regulator must vary the permit so as to—

(a) remove the standard rules term, and

(b) include such alternative conditions as it considers appropriate.

(4) In this regulation, “standard rules term” means a term of the type mentioned in regulation 27(2).

CHAPTER 5

Appeals in relation to environmental permits

Appeals to an appropriate authority

31.—(1) Subject to paragraphs (2) and (3), the following persons may appeal to the appropriate authority—

(a) a person whose application is refused;

(b) a person who is aggrieved by a decision to impose an environmental permit condition following that person’s application;

(c) a person who is aggrieved by a decision to impose a condition on an environmental permit held by that person—

(i) as a result of a regulator-initiated variation, or

(ii) to take account of the partial transfer, partial revocation or partial surrender of that environmental permit;

(d) a person who is aggrieved by the deemed withdrawal under paragraph 4(2) of Part 1 of Schedule 5 of that person’s duly-made application;

(e) a person who is aggrieved by a decision relating to an environmental permit held by that person 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;
 - (f) a person on whom an enforcement notice, a revocation notice, suspension notice, prohibition notice, landfill closure notice, mining waste facility closure notice, flood risk activity emergency works notice, flood risk activity notice of intent or flood risk activity remediation notice is served.
- (2) Paragraph (1) does not apply where—
- (a) the relevant decision or notice implements a direction of the appropriate authority given under—
 - (i) regulation 62(1),
 - (ii) regulation 63(1) or (6), or
 - (iii) paragraph (6) of this regulation, or
 - (b) 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 20.
- (3) Paragraph (1)(f) does not apply to the extent that a revocation notice or suspension notice is served because of a failure to pay a charge prescribed in a scheme made under regulation 66(1) in respect of the subsistence of an environmental permit.
- (4) On the determination of an appeal in respect of a notice, the appropriate authority—
- (a) may quash or affirm the notice, and
 - (b) if it affirms the notice, may affirm it with or without modifications.
- (5) When determining an appeal in respect of a decision, the appropriate authority has the same powers as the regulator had when making the decision.
- (6) On the determination of an appeal in respect of a decision, unless the appropriate authority affirms the decision the authority must direct the regulator to give effect to its determination when sending a copy of it to the regulator under paragraph 6(2)(a) of Schedule 6.
- (7) Except as otherwise provided by this regulation—
- (a) an appeal does not have the effect of suspending a decision or notice; but
 - (b) if an appeal is brought against a revocation notice, the notice does not take effect until the final determination or the withdrawal of the appeal.
- (8) Subject to paragraph (11), paragraph (7)(b) does not apply if the revocation notice—
- (a) relates to any part of an environmental permit (or if applicable, the whole permit) that authorises the carrying on of a stand-alone water discharge activity, and
 - (b) states that, in the opinion of the regulator, the revocation is necessary for the purpose of preventing or, where that is not practicable, minimising, pollution.
- (9) If an appeal is brought under paragraph (1)(c)(i) in respect of a decision to impose a condition on an environmental permit in relation to a stand-alone water discharge activity, the imposition of the environmental permit condition does not take effect, subject to paragraphs (10) and (11), until the final determination or the withdrawal of the appeal.
- (10) Paragraph (9) does not apply if the notice effecting the decision includes a statement that, in the opinion of the regulator, the imposition of the condition is necessary for the purpose of preventing or, where that is not practicable, minimising, pollution.
- (11) If the appropriate authority, on the application of the appellant, determines that the regulator acted unreasonably in excluding the application of paragraph (7)(b) or (9), then—

- (a) if the appeal is still pending at the end of the day on which the determination is made, paragraph (7)(b) or (9) applies to the decision or notice from the end of that day,
 - (b) the appellant is entitled to recover compensation from the regulator in respect of any loss suffered in consequence of that exclusion, and
 - (c) any dispute as to a person's entitlement to such compensation or as to the amount of it is to be determined by a single arbitrator appointed—
 - (i) by agreement between the parties to the dispute, or
 - (ii) in the absence of agreement, by the appropriate authority.
- (12) Schedule 6 (appeals to the appropriate authority) has effect in relation to the making and determination of appeals under this regulation.
- (13) In this regulation—
- “application” has the meaning given in paragraph 1 of Part 1 of Schedule 5;
 - “person” includes a person to whom an environmental permit is transferred after—
 - (a) an application or a decision mentioned in paragraph (1) is made, or
 - (b) a notice mentioned in that paragraph is served.

PART 3

Discharge of functions in relation to a regulated facility

Discharge of functions

- 32.—(1) Subject to paragraphs (2) to (7), and paragraph 12 of Part 2 of Schedule 23—
- (a) functions in relation to a regulated facility that is or will be operated in England are exercisable by the Agency;
 - (b) functions in relation to a regulated facility that is or will be operated in Wales are exercisable by the NRBW.
- (2) Subject to paragraph (4), in relation to waste mobile plant—
- (a) if the principal place of business of the operator is in England, functions are exercisable by the Agency;
 - (b) if the principal place of business of the operator is in Wales, functions are exercisable by the NRBW;
 - (c) if the principal place of business of the operator is not in England or in Wales, functions are exercisable by—
 - (i) the appropriate agency that granted the environmental permit authorising the operation of that waste mobile plant, or
 - (ii) if no permit has been granted, the appropriate agency in whose area waste mobile plant is first intended to be operated.
- (3) Paragraph (4) applies—
- (a) where by virtue of paragraph (2) functions in relation to waste mobile plant are exercisable by the Agency, and that waste mobile plant is operated at a site in Wales, or
 - (b) where by virtue of paragraph (2) functions in relation to waste mobile plant are exercisable by the NRBW, and that waste mobile plant is operated at a site in England.

(4) Where this paragraph applies, functions under regulations 36, 37 and 57 and paragraph 9 of Schedule 23 are exercisable in relation to the waste mobile plant referred to in paragraph (3) by both the Agency and the NRBW.

(5) Functions in relation to a regulated facility of the following description or class are exercisable by the local authority in whose area the regulated facility is or will be operated—

- (a) a Part A(2) installation;
- (b) a Part B installation or Part B mobile plant, but not in respect of any of the following regulated facilities carried on at the installation or by means of mobile plant—
 - (i) a waste operation that is not itself a Part B activity;
 - (ii) a mining waste operation;
 - (iii) a water discharge activity;
 - (iv) a groundwater activity;
- (c) a small waste incineration plant;
- (d) a solvent emission activity.

(6) If the principal place of business of the operator of Part B mobile plant is in England or in Wales, functions in relation to that regulated facility are exercisable by the local authority in whose area the place of business is.

(7) If the principal place of business of the operator of Part B mobile plant is not in England or in Wales, functions in relation to that regulated facility are exercisable by—

- (a) the local authority which granted the environmental permit authorising the operation of the regulated facility, or
- (b) if no permit has been granted, the local authority in whose area the regulated facility is first operated, or is intended to be first operated.

(8) In this regulation, “functions” includes relevant functions.

Direction to a regulator: discharge of functions by a different regulator

33.—(1) An appropriate authority may direct—

- (a) the appropriate agency to exercise such local authority functions as are, and for such period as is, specified in the direction, or
- (b) a local authority to exercise such appropriate agency functions as are, and for such period as is, specified in the direction.

(2) A direction under this regulation may include such saving and transitional provisions as the appropriate authority considers necessary or expedient.

(3) A direction under this regulation may be made in respect of a description or class of regulated facility or a specific regulated facility.

(4) A direction under paragraph (1)(b) may only be made in respect of—

- (a) an installation, but not in respect of a mining waste operation carried on at an installation, or
- (b) mobile plant.

(5) When giving a direction under this regulation the appropriate authority must notify the persons in paragraph (6) of the direction and publish the direction on its website.

(6) The persons are—

- (a) where the appropriate authority is the Secretary of State, the Agency,
- (b) where the appropriate authority is the Welsh Ministers, the NRBW, and

- (c) any local authority or other person whom the appropriate authority considers is affected by the direction.
- (7) An appropriate authority must not comply with a duty under paragraph (5) in a case where the authority considers that to do so would be contrary to the interests of national security.
- (8) In paragraph (1) (ignoring any direction under this regulation)—
 - “appropriate agency functions” means functions which are exercisable by the appropriate agency by virtue of regulation 32 or paragraph 2 of Schedule 2;
 - “local authority functions” means functions which are exercisable by a local authority by virtue of regulation 32 or paragraph 2 of Schedule 2.

Review of environmental permits and inspection of regulated facilities

- 34.—(1) The regulator must periodically review environmental permits.
- (2) The regulator must make appropriate periodic inspections of regulated facilities.

Specific provisions applying to environmental permits

- 35.—(1) Schedules 7 to 25 have effect.
- (2) To the extent that the operation of a regulated facility of a description or class mentioned in any of Schedules 7 to 25 requires an environmental permit, the requirements of that Schedule apply in relation to that regulated facility.

PART 4

Enforcement and offences

Enforcement notices

- 36.—(1) If the regulator considers that an operator has contravened, is contravening, or is likely to contravene an environmental permit condition, the regulator may serve a notice on the operator.
- (2) The notice must—
 - (a) state the regulator’s view under paragraph (1),
 - (b) specify the matters constituting the contravention or making a contravention likely,
 - (c) specify the steps that must be taken to remedy the contravention or to ensure that the likely contravention does not occur, and
 - (d) specify the period within which those steps must be taken.
- (3) Steps that may be specified in the notice include steps—
 - (a) to make the operation of a regulated facility comply with the environmental permit conditions, and
 - (b) to remedy the environmental effects caused by the contravention.
- (4) In paragraph (3)(b) “environmental effects” means—
 - (a) in relation to a flood risk activity—
 - (i) flooding or risk of flooding;
 - (ii) detrimental impact on drainage or risk of detrimental impact on drainage;
 - (iii) harm to the environment or risk of harm to the environment;
 - (b) in relation to any other class of regulated facility, the effects of pollution.

(5) In the case of a regulated facility to which Schedule 7, 13 or 14 applies, if the regulator considers that an incident or accident significantly affecting the environment has occurred as the result of the operation of that regulated facility, the regulator may serve a notice on the operator of that facility.

(6) A notice served under paragraph (5) must—

- (a) specify the measures necessary to limit the environmental consequences of the incident or accident, and
- (b) specify the measures necessary to prevent further incidents or accidents.

(7) The regulator may withdraw a notice under this regulation at any time by further notice served on the operator.

Suspension notices

37.—(1) The regulator may suspend an environmental permit by serving a notice (a “suspension notice”) on the operator under this regulation.

(2) If the regulator considers that the operation of a regulated facility under an environmental permit involves a risk of serious pollution or, in the case of a flood risk activity, a risk specified in paragraph (3), it may serve a suspension notice on the operator.

(3) The following are risks specified for the purposes of paragraph (2)—

- (a) risk of serious flooding;
- (b) risk of serious detrimental impact on drainage;
- (c) risk of serious harm to the environment.

(4) Paragraph (2) applies whether or not the manner of operating the regulated facility which involves the risk is subject to or contravenes an environmental permit condition.

(5) If the regulator considers that the manner of operating a regulated facility contravenes an environmental permit condition, and that such contravention involves a risk of pollution or, in the case of a flood risk activity, a risk specified in paragraph (6), it may serve a suspension notice on the operator.

(6) The following are risks specified for the purposes of paragraph (5)—

- (a) risk of flooding;
- (b) risk of detrimental impact on drainage;
- (c) risk of harm to the environment.

(7) A suspension notice served for the purpose of paragraph (2) or (5) must—

- (a) specify—
 - (i) the risk mentioned in paragraph (2) or (5),
 - (ii) the steps that must be taken to remove that risk,
 - (iii) in a case where paragraph (5) applies, the matters constituting the contravention mentioned in that paragraph,
 - (iv) in a case where paragraph (5) applies, the steps that must be taken to remedy that contravention, and
 - (v) the period within which the steps mentioned in paragraph (ii) or (iv) must be taken,
- (b) state that the environmental permit ceases to have effect to the extent specified in the notice until the notice is withdrawn, and

- (c) if the environmental permit continues to authorise the operation of a regulated facility, state any steps (in addition to those already required to be taken by the environmental permit conditions) that are to be taken when operating that regulated facility.
- (8) The regulator may suspend an environmental permit under regulation 66(5) by serving a suspension notice on the operator.
- (9) A suspension notice served for the purpose of paragraph (8) must—
 - (a) specify the reason for the suspension,
 - (b) state the sum payable by the operator and the period within which it is to be paid, and
 - (c) state that the environmental permit ceases to have effect to the extent specified in the notice until the notice is withdrawn.
- (10) If a suspension notice is served, the environmental permit ceases to have effect to the extent stated in the notice.
- (11) Where a suspension notice has the effect of preventing waste of a specified description being accepted at a regulated facility, the notice may require the operator of that facility to display appropriate signs at such places as may be specified in the notice, informing the public that no further waste of a specified description may be accepted at that facility.
- (12) The regulator—
 - (a) may withdraw a suspension notice at any time by further notice served on the operator, and
 - (b) must withdraw a notice when satisfied that the steps specified in it have been taken.

Offences

- 38.**—(1) It is an offence for a person to—
- (a) contravene regulation 12(1), or
 - (b) knowingly cause or knowingly permit the contravention of regulation 12(1)(a).
- (2) It is an offence for a person to fail to comply with or to contravene an environmental permit condition.
- (3) It is an offence for a person to fail to comply with the requirements of an enforcement notice or of a prohibition notice, suspension notice, landfill closure notice, mining waste facility closure notice, flood risk activity emergency works notice or flood risk activity remediation notice.
- (4) It is an offence for a person—
- (a) to fail to comply with a notice under regulation 61(1) requiring the provision of information, without reasonable excuse;
 - (b) to make a statement which the person knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—
 - (i) in purported compliance with a requirement to provide information imposed by or under a provision of these Regulations,
 - (ii) for the purpose of obtaining the grant of an environmental permit to any person, or the variation, transfer in whole or in part, or surrender in whole or in part of an environmental permit, or
 - (iii) for the purpose of obtaining, renewing or amending the registration of an exempt facility;
 - (c) intentionally to make a false entry in a record required to be kept under an environmental permit condition;
 - (d) with intent to deceive—

- (i) to forge or use a document issued or authorised to be issued or required for any purpose under an environmental permit condition, or
 - (ii) to make or have in the person's possession a document so closely resembling such a document as to be likely to deceive.
- (5) It is an offence for an establishment or undertaking to—
- (a) fail to comply with paragraph 17(3) or (4) of Schedule 2, or
 - (b) intentionally make a false entry in a record required to be kept under that paragraph.
- (6) If an offence committed by a person under this regulation is due to the act or default of some other person, that other person is also guilty of the offence and liable to be proceeded against and punished accordingly, whether or not proceedings for the offence are taken against the first-mentioned person.

Penalties and enforcement undertakings

- 39.**—(1) Subject to paragraph (2), a person guilty of an offence under regulation 38(1), (2) or (3) is liable—
- (a) on summary conviction to a fine or imprisonment for a term not exceeding 12 months, or to both;
 - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years, or to both.
- (2) A person guilty of offence under regulation 38(1), (2) or (3) in respect of a flood risk activity is liable—
- (a) on summary conviction to a fine or imprisonment for a term not exceeding 12 months, or to both;
 - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years, or both.
- (3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003(39), paragraphs (1)(a) and (2)(a) have effect as if for “12 months” there were substituted “6 months”.
- (4) A person guilty of an offence under regulation 38(4) is liable—
- (a) on summary conviction to a fine;
 - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years, or to both.
- (5) An establishment or undertaking guilty of an offence under regulation 38(5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (6) Schedule 26 (enforcement undertakings) has effect.

Defences

- 40.**—(1) It is a defence for a person charged with an offence under regulation 38(1), (2) or (3) to prove that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—

(39) 2003 c. 44. The power to create penalties in section 2 of, and paragraph 25 of Schedule 1 to, the Pollution Prevention and Control Act 1999 (c. 24) is modified pending the commencement of section 154(1) of the Criminal Justice Act 2003 by section 105 of the Clean Neighbourhoods and Environment Act 2005 (c. 16), as amended by section 88(1) of the Climate Change Act 2008 (c. 27).

- (a) the person took all such steps as were reasonably practicable in the circumstances for minimising pollution, and
- (b) particulars of the acts were furnished to the regulator as soon as reasonably practicable after they were done.

(2) A person who knowingly permits a water discharge activity or groundwater activity where the discharge is water from an abandoned mine or an abandoned part of a mine is not guilty of an offence under regulation 38(1) unless—

- (a) the person is the owner or former operator of the mine or that part of it, and
- (b) the mine or the part of the mine was abandoned after 31st December 1999.

(3) In paragraph (2), “abandoned”, in relation to a mine, and “mine” have the meaning given in section 91A of the 1991 Act(40).

Offences by bodies corporate

41.—(1) If an offence committed under these Regulations by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on the part of an officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the body.

(3) In paragraph (1), “officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Enforcement by the High Court

42. The regulator may take proceedings in the High Court for the purpose of securing compliance with an enforcement notice, suspension notice, prohibition notice, landfill closure notice, mining waste facility closure notice, flood risk activity emergency works notice or flood risk activity remediation notice (whether or not it has taken other steps for that purpose).

Admissibility of evidence

43. Where, pursuant to an environmental permit granted by a local authority, an entry is required to be made in any record as to the observance of a condition of the environmental permit and the entry has not been made, that fact is admissible as evidence that the condition has not been observed.

Power of court to order cause of offence to be remedied

44.—(1) This regulation applies where a person is convicted of an offence under regulation 38(1), (2) or (3) in respect of a matter which appears to the court to be a matter which it is in the person’s power to remedy.

(2) In addition to or instead of a punishment imposed under regulation 39, the court may order the person to take such steps for remedying the matter within such period as may be specified in the order.

(40) Section 91A was inserted by section 58 of the 1995 Act.

(3) The period may be extended, or further extended, by order of the court on an application made before the end of the period or the extended period, as the case may be.

(4) If a person is ordered to remedy a matter, that person is not liable under regulation 38 in respect of that matter during the period or the extended period.

PART 5

Public registers

Interpretation of this Part

45. In this Part—

“final confidentiality decision” means—

- (a) a determination under regulation 50, or
- (b) the determination or withdrawal of an appeal in relation to a determination under regulation 50;

“the information subject” means the person to whom information relates;

“objection notice” means a notice given under regulation 48(1)(b).

Duty of the regulator to maintain a public register

46.—(1) Subject to regulations 47 and 48, the regulator must maintain a register (a “public register”) containing the information in paragraph 1 of Schedule 27 (public registers).

(2) Nothing in paragraph (1) requires a public register to contain information relating to criminal proceedings, or anything which is the subject matter of criminal proceedings, before those proceedings are finally disposed of.

(3) In paragraph (2), “criminal proceedings” includes prospective criminal proceedings.

(4) The regulator must enter information on its public register as soon as reasonably practicable after it comes within the regulator’s possession.

(5) Where information of any description is excluded from any public register under regulation 48, a statement must be entered on the register indicating the existence of information of that description.

(6) The regulator must—

- (a) make its public register available for public inspection at all reasonable times, free of charge, and
- (b) enable members of the public to obtain copies of entries on its public register on payment of a reasonable charge.

(7) A public register may be kept in any form.

Exclusion from public registers of information affecting national security

47.—(1) The appropriate authority may direct the regulator that in the interests of national security specified information or information of a specified description must be excluded from a public register.

(2) The regulator must notify the appropriate authority of any information (other than information relating to a radioactive substances activity) that it excludes from a public register pursuant to such a direction.

(3) The appropriate authority may direct the regulator that in the interests of national security information of a specified description—

- (a) must be referred to the authority for its determination as to whether or not the information may be included on a public register, and
- (b) must not be included on a public register unless the appropriate authority determines that it may be included.

(4) A person may give a notice to the appropriate authority stating that, in the person's opinion, the inclusion of information on a public register would be contrary to the interests of national security.

(5) A notice under paragraph (4) must specify the information and indicate its apparent nature.

(6) A person giving a notice under paragraph (4) must at the same time notify the regulator.

(7) The regulator must not include information notified under paragraph (4) on a public register unless the appropriate authority determines that it may be included.

Exclusion from public registers of confidential information

48.—(1) The regulator must exclude information from a public register, unless a condition in paragraph (2) is met, if it—

- (a) considers that the information may be confidential information, or
- (b) receives notice from the information subject which—
 - (i) states that the information subject considers the information is confidential information, and
 - (ii) gives reasons for that view.

(2) The conditions are that—

- (a) in relation to paragraph (1)(a), the regulator has given a notice under regulation 49(1) and the information subject has given notice of consent under regulation 49(2)(a);
- (b) in relation to paragraph (1)(a) or (b)—
 - (i) a final confidentiality decision that the information should be included on the register has been made, or
 - (ii) the appropriate authority has given a direction under regulation 56(1) which requires the information to be included on the register.

Procedure if the regulator considers that information may be confidential

49.—(1) If the regulator considers that information may be confidential information but has not received an objection notice, it must give notice of that view to the information subject.

(2) The information subject may within 15 working days after the date of the notice given by the regulator under paragraph (1)—

- (a) give notice to the regulator consenting to the regulator including the information on the register, or
- (b) give an objection notice to the regulator.

Duty to determine confidentiality

50. The regulator must determine whether information must be included on the public register, or excluded from the public register because it is confidential information, if—

- (a) having given notice under regulation 49(1), it does not receive notice of consent in accordance with regulation 49(2)(a), or

- (b) it receives an objection notice.

Determination of confidentiality

51.—(1) When making a determination under regulation 50, the regulator must comply with this regulation.

- (2) In making the determination, the regulator must—
 - (a) take any reasons given in an objection notice into account,
 - (b) apply a presumption in favour of including the information on the public register, and
 - (c) determine to exclude the information from the public register if it considers that—
 - (i) the information is commercial or industrial information,
 - (ii) its confidentiality is provided by law to protect a legitimate economic interest, and
 - (iii) in all the circumstances, the public interest in maintaining the confidentiality of the information outweighs the public interest in including it on the register.

(3) But, to the extent that information relates to emissions, the regulator must determine to include it on the public register.

(4) Nothing in this regulation authorises the exclusion from the public register of information contained in or otherwise held with other information excluded from the register unless the information is not reasonably capable of being separated for the purposes of inclusion on the register.

Procedure following a determination

52.—(1) The regulator must give notice of its determination, the reasons for it and the details of the appeals procedure to the information subject within—

- (a) a period of 20 working days beginning with the date its duty under regulation 50 arises, or
- (b) such longer period as it agrees with the information subject.

(2) If the regulator fails to give notice under paragraph (1) within the period required by that paragraph, the information subject may give notice to the regulator of that failure, and on such notice—

- (a) the regulator is deemed to have determined that the information must be included on the register, and
- (b) the deemed determination is subject to the right of appeal in regulation 53(1).

(3) If the regulator determines that the information must be included on the public register, it must not include the information before the expiry of the period of 15 working days after—

- (a) it has given notice of the determination, or
- (b) a notice under paragraph (2) resulting in a deemed determination is given,

but must include it after the expiry of that period if notice of appeal has not been given.

Appeals in relation to confidentiality

53.—(1) The information subject may give notice of appeal to the appropriate authority against a determination made under regulation 50 within 15 working days after the regulator has given notice of it.

- (2) A notice of appeal must—
 - (a) be in writing,
 - (b) include a statement of the grounds of appeal,

- (c) state whether the information subject wishes the appeal to be in the form of a hearing or to be disposed of through written representations, and
 - (d) be copied to the regulator.
- (3) If the information subject gives notice of appeal, the regulator must not include the information on the public register before the appeal is decided.
- (4) The appropriate authority—
- (a) may give the information subject and the regulator an opportunity of appearing before and being heard by a person appointed by it, and
 - (b) must do so in a case where the notice of appeal states that the information subject wishes the appeal to be in the form of a hearing.
- (5) A hearing under paragraph (4) is subject to paragraphs 5(2) to 5(6) and 6 of Schedule 6 (except paragraph 5(3)(c)) as if it were a hearing under paragraph 5(1) of that Schedule, save that “the appellant” is to be read as “the information subject”.

Consequences of an appeal

54.—(1) If the appropriate authority allows the appeal, the regulator must exclude the information from the public register.

(2) If the appropriate authority rejects the appeal or the appeal is withdrawn, the regulator must include the information on the public register.

Reconsideration of confidentiality

55.—(1) The regulator must cease to treat information as confidential information at the expiry of—

- (a) a period of 4 years after the final confidentiality decision, or
- (b) such shorter period as is specified in that decision.

(2) But if the person to whom the information relates gives notice to the regulator before the expiry of that period that the person considers that the information remains confidential information—

- (a) regulation 48 applies in respect of the information and the regulator must treat the notice as an objection notice, and
- (b) regulations 50 to 54 apply notwithstanding any previous compliance with those regulations in relation to the information.

Directions of the appropriate authority in relation to confidentiality

56.—(1) The appropriate authority may direct the regulator that specified information, or information of a specified description, must be included on the public register even though it is confidential information.

(2) The appropriate authority must not give a direction under paragraph (1) unless it considers that the public interest in including such information on the register outweighs the public interest in maintaining its confidentiality.

PART 6

Powers and functions of the regulator and the appropriate authority

Power of the regulator to prevent or remedy pollution

57.—(1) If the regulator considers that a risk of serious pollution exists as a result of the operation of a regulated facility or an exempt facility, it may arrange for steps to be taken to remove that risk.

(2) The regulator may arrange for steps to be taken to remedy the effects of pollution if—

- (a) the commission of an offence under regulation 38(1), (2) or (3) causes pollution, or
- (b) the regulator suspects that an offence under that regulation is being or has been committed and that pollution is being or has been caused as a result.

(3) If the regulator intends to arrange for steps to be taken under paragraph (2), it must notify the operator of the steps not less than 5 working days before they are taken.

(4) If the regulator arranges for steps to be taken under this regulation, it may recover the cost of taking those steps from the relevant person.

(5) But costs are not recoverable under paragraph (4)—

- (a) if the steps referred to in paragraph (1) are taken and the relevant person shows that there was no risk of serious pollution, or
- (b) to the extent that the relevant person shows that the costs were unnecessarily incurred by the regulator.

(6) In this regulation, “the relevant person” means—

- (a) an operator,
- (b) an establishment or undertaking carrying on an exempt waste operation, or
- (c) a person carrying on a water discharge activity or groundwater activity.

Power of the regulator to prevent or remedy effects of flood risk activities

58.—(1) If the regulator considers that the carrying on of an exempt flood risk activity or a flood risk activity under an environmental permit involves a risk specified in paragraph (2), it may arrange for steps to be taken to remove that risk.

(2) The following are risks specified for purposes of paragraph (1)—

- (a) risk of serious flooding;
- (b) risk of serious detrimental impact on drainage;
- (c) risk of serious harm to the environment.

(3) If the regulator arranges for steps to be taken under this regulation, it may recover the cost of taking those steps from the operator.

(4) But costs are not recoverable under paragraph (3)—

- (a) if the steps referred to in paragraph (1) are taken in relation to a risk specified in paragraph (2) and the operator shows there was no such risk, or
- (b) to the extent that the operator shows that the costs were unnecessarily incurred by the regulator.

Appropriate agency: notices in relation to emissions to water

59.—(1) This regulation applies to Part A installations for which a local authority is the regulator.

(2) At any time the appropriate agency may give notice to the local authority specifying the emission limit values or the conditions it considers appropriate for preventing or reducing emissions into water from the installation or mobile plant.

(3) If such a notice is issued, the local authority must exercise its functions under these Regulations to ensure the environmental permit for the installation or mobile plant includes—

- (a) the emission limit values or conditions specified in the notice, or
- (b) such stricter limit values or more onerous conditions as the authority thinks fit.

(4) In this regulation, “emission limit value” means the mass, expressed in terms of specific parameters, concentration or level of an emission, which must not be exceeded during a period of time.

Appropriate agency: public participation statement

60.—(1) The appropriate agency must prepare and publish a statement of its policies for complying with its public participation duties.

(2) In preparing or revising the statement the appropriate agency must consult such persons as it considers are affected by, are likely to be affected by, or have an interest in, the statement.

(3) The appropriate agency must—

- (a) keep the statement under review,
- (b) revise the statement when it considers necessary, and
- (c) publish any revised statement.

(4) The appropriate agency must comply with any published statement when exercising its functions under the public participation provisions.

(5) The duty in paragraph (2) may be satisfied by a consultation carried out partially or wholly before the coming into force of these Regulations.

(6) In this regulation, “public participation duties” means the duties in the following provisions—

- (a) regulation 26;
- (b) regulation 29;
- (c) paragraphs 6 and 8(2) of Part 1 of Schedule 5.

Power to require the provision of information

61.—(1) For the purposes of discharging its functions under these Regulations, an appropriate authority, regulator, exemption registration authority or exemption authority, by notice served on any person, may require that person to provide such information in such form and within such period as is specified in the notice.

(2) A notice under paragraph (1) may require a person to provide any information on emissions where that requirement is reasonable, including the provision of information—

- (a) not in the person’s possession, and
- (b) which would not usually come into the person’s possession.

(3) For the purposes of this regulation the discharge by the appropriate authority of—

- (a) an obligation of the United Kingdom under the EU Treaties, or
- (b) an international obligation of the United Kingdom,

must be treated as a function of the authority under these Regulations.

(4) For the purposes of this regulation the compilation of an inventory of emissions (whether or not from a regulated facility) must be treated as a function of the regulator under these Regulations.

Directions to regulators, exemption registration authorities and exemption authorities: general

62.—(1) An appropriate authority may give directions to a regulator, exemption registration authority or exemption authority of a general or specific character with respect to the carrying out of its functions under these Regulations.

(2) Without prejudice to the generality of the power in paragraph (1), a direction may direct the regulator, exemption registration authority or exemption authority to exercise or not to exercise—

- (a) specified powers,
- (b) its powers in specified circumstances, or
- (c) its powers in a specified manner.

(3) Except in an emergency, an appropriate authority may give a direction to the appropriate agency under paragraph (1) only after consultation with the appropriate agency.

(4) The regulator, exemption registration authority or exemption authority must comply with a direction given to it under these Regulations.

Reference of applications to an appropriate authority

63.—(1) An appropriate authority may give directions to a regulator requiring that a particular application or class of application be referred to it for determination.

(2) The regulator must—

- (a) inform the applicant of the fact that the application is being referred to the appropriate authority, and
- (b) forward to the appropriate authority any representations made in respect of the application.

(3) When an application is referred to an appropriate authority, the appropriate authority—

- (a) may afford the applicant and the regulator an opportunity of appearing before and being heard by a person appointed by the appropriate authority, and
- (b) must do so in any case where a request is duly made by the applicant or the regulator to be so heard.

(4) A request under paragraph (3)(b) must be made in writing within 15 working days after the day on which the applicant is informed that the application is being referred to the appropriate authority.

(5) A hearing under paragraph (3) is subject to paragraphs 5(2) to (6) and 6 of Schedule 6 (except paragraph 5(3)(c)) as if it were a hearing under paragraph 5(1) of that Schedule with the following modifications—

- (a) “the appellant” is to be read as “the applicant”;
- (b) “the appeal” is to be read as “the application”.

(6) On determining an application referred to it under this regulation the appropriate authority must give to the regulator a direction as to whether the regulator is to grant the application and, if so, the conditions that are to be attached to the environmental permit.

(7) In this regulation, “application” means an application—

- (a) for the grant of an environmental permit, or
- (b) for the variation of an environmental permit.

Directions to the appropriate agency: installations outside the United Kingdom

64.—(1) This regulation applies where an appropriate authority receives information pursuant to Article 26(1) of the Industrial Emissions Directive in relation to the operation of an installation outside the United Kingdom which is likely to have a significant negative effect on the environment of England or Wales.

(2) For the purpose of complying with Article 26(2) of the Industrial Emissions Directive, the appropriate authority must direct the appropriate agency to take such steps as it considers appropriate to—

- (a) bring the information to the attention of persons likely to be affected by the operation of the installation, and
- (b) provide them with an opportunity to comment on the information.

Guidance to regulators, exemption registration authorities and exemption authorities

65.—(1) An appropriate authority may issue guidance to a regulator, exemption registration authority or exemption authority with respect to the exercise of its functions under these Regulations.

(2) In the exercise of those functions the regulator, exemption registration authority or exemption authority must have regard to the guidance.

Fees and charges in relation to the exercise of regulator's functions by local authorities

66.—(1) An appropriate authority may make, and from time to time revise, a scheme prescribing—

- (a) fees payable to a regulator in respect of applications—
 - (i) for the grant of an environmental permit,
 - (ii) for the variation of an environmental permit,
 - (iii) for the transfer of an environmental permit in whole or in part,
 - (iv) for the surrender of an environmental permit in whole or in part,
 - (b) fees payable to a regulator in respect of a regulator-initiated variation, and
 - (c) charges payable to a regulator in respect of the subsistence of an environmental permit.
- (2) A scheme may in particular—
- (a) prescribe specific fees and charges or the methods by which they are to be calculated,
 - (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities,
 - (c) subject to the requirements of these Regulations, provide for the time when, and the manner in which, payments required by the scheme are to be made, and
 - (d) make such incidental, supplementary and transitional provision as appears necessary or expedient to the appropriate authority.
- (3) In making or revising a scheme, so far as practicable the appropriate authority must ensure that the fees and charges payable are sufficient to cover expenditure by a regulator—
- (a) in exercising its functions under these Regulations;
 - (b) in making payment to any person who prepares guidance in relation to an installation or mobile plant that is—
 - (i) mentioned in regulation 32(5), or
 - (ii) specified in a direction under regulation 33;

- (c) in making payment to the appropriate agency in relation to the exercise of the appropriate agency's functions under regulation 59.
- (4) A scheme must provide for the payment of sums by the regulator to the appropriate agency where those sums are related to expenditure by the appropriate agency under regulation 59 or in preparing guidance referred to in paragraph (3)(b).
- (5) If a regulator considers that an operator has failed to pay a charge specified in a scheme in respect of the subsistence of the operator's permit, the regulator may revoke or suspend the permit.
- (6) A revocation or suspension must be by way of notice served under regulation 22(3) or regulation 37.
- (7) In this regulation, "regulator" means a local authority on which functions are conferred by regulation 32 or by a direction under regulation 33.

Plans relating to emissions

- 67.**—(1) Subject to paragraph (3), an appropriate authority may make plans for—
- the setting of limits on the total amount, or the total amount in any period, of emissions from all or any description of source, or
 - the allocation of quotas relating to such emissions.
- (2) If the appropriate authority allocates a quota in a plan made under paragraph (1) it may also make a scheme for the trading or other transfer of that quota.
- (3) This regulation does not apply to an emission plan or to the Transitional National Plan.
- (4) In this regulation—
- “emission” means the direct or indirect release of any substance from individual or diffuse sources into the air, water or land;
- “emission plan” has the meaning given in the Large Combustion Plants (National Emission Reduction Plan) Regulations 2007 as those Regulations were in force on 31st March 2016(41);
- “Transitional National Plan” has the meaning given in regulation 2 of the Large Combustion Plants (Transitional National Plan) Regulations 2015(42).

Consultation in relation to works affecting flood and coastal erosion risks

- 68.**—(1) Before exercising a function relating to a flood risk activity which may affect a flood or coastal erosion risk (within the meaning of the Flood and Water Management Act 2010(43)) in Wales, the Agency must consult the NRBW.
- (2) Before exercising a function relating to a flood risk activity which may affect a flood or coastal erosion risk in England, the NRBW must consult the Agency.

Functions with respect to flood risk activities

- 69.** In exercising any function under these Regulations that relates to a flood risk activity, the appropriate agency must have due regard to the interests of fisheries, including sea fisheries.

(41) S.I. 2007/2325. The date of 31st March 2016 was the day before S.I. 2007/2325 was revoked by S.I. 2015/1973, with a saving provision in relation to where its provisions were referred to in connection with the definition of terms in other instruments.

(42) S.I. 2015/1973.

(43) 2010 c. 29.

PART 7

Miscellaneous provisions

CHAPTER 1

Interpretation

Interpretation of this Part

70. In this Part—

“existing” means in force at the relevant time;

“relevant time” means immediately before the coming into force of these Regulations.

CHAPTER 2

Death of sole operator

Death of sole operator

71.—(1) This regulation applies if—

(a) an environmental permit authorising the operation of a regulated facility is held by one individual (“A”), and

(b) A dies.

(2) On the death of A, the environmental permit—

(a) forms part of A’s personal estate,

(b) vests in A’s personal representatives,

(c) continues to have effect subject to the conditions that applied at the time of A’s death, and

(d) must be read as if it contained the following condition—

“As soon as is practicable after the death of the operator, the personal representatives of the operator must notify the regulator that the environmental permit has vested in them.”.

(3) The environmental permit ceases to have effect 6 months after the day on which A dies, unless, by that time—

(a) the permit has been transferred under regulation 21, or

(b) the regulator has received from A’s personal representatives a duly-made application under regulation 21(1) for the transfer of the permit, and the application has not been withdrawn or finally determined.

(4) If paragraph (3)(b) applies, the environmental permit continues in effect until the application—

(a) is withdrawn, or

(b) on determination, is refused.

CHAPTER 3

Repeal, revocations, saving and amendments

Repeal

72.—(1) The 1993 Act, except for the provisions referred to in paragraph (2), is repealed.

(2) Those provisions are—

- (a) paragraph 5 of Schedule 4,
- (b) section 49(1) so far as it relates to that paragraph, and
- (c) section 51.

Revocations

73.—(1) The instruments in Schedule 28 (revocations) are revoked to the extent specified.

(2) In provisions specified as not revoked in Schedule 28, any references to provisions of the 2007 Regulations or the 2010 Regulations are to be read as references to the equivalent provisions of these Regulations.

Saving

74.—(1) Despite the revocation of regulation 44 of the End-of-Life Vehicles Regulations 2003⁽⁴⁴⁾ by the 2007 Regulations, any modification to a waste management licence that continued in effect under the 2007 Regulations and had effect at the relevant time continues to have effect under these Regulations.

(2) In paragraph (1), “waste management licence” means a licence granted under section 35 of the 1990 Act.

Consequential amendments

75. Schedule 29 (consequential amendments) has effect.

Amendment of the Transfrontier Shipment of Waste Regulations 2007

76. For regulation 16 of the Transfrontier Shipment of Waste Regulations 2007⁽⁴⁵⁾, substitute—

“The Waste (England and Wales) Regulations 2011

16. The reference to a waste management plan in regulation 7 of the Waste (England and Wales) Regulations 2011⁽⁴⁶⁾ includes a waste management plan made under this Part.”.

CHAPTER 4

Transitional provisions

Transitional provisions: general

77.—(1) Anything being done under the 2010 Regulations at the relevant time is taken as being done under these Regulations.

(2) Anything done under the 2010 Regulations continues to have effect but is taken to have been done under these Regulations on the date on which it was done under the 2010 Regulations, including (but not limited to) the following—

- (a) an existing enforcement notice under the 2010 Regulations is taken to be an enforcement notice;
- (b) an existing suspension notice under the 2010 Regulations is taken to be a suspension notice;
- (c) an existing revocation notice under the 2010 Regulations is taken to be a revocation notice;

⁽⁴⁴⁾ S.I. 2003/2635, amended by S.I. 2007/3538; there are other amending instruments but none is relevant.

⁽⁴⁵⁾ S.I. 2007/1711, amended by S.I. 2010/675; there are other amending instruments but none is relevant.

⁽⁴⁶⁾ S.I. 2011/988, to which there are amendments not relevant to these Regulations.

- (d) an existing landfill closure notice under the 2010 Regulations is taken to be a landfill closure notice;
 - (e) an existing prohibition notice under the 2010 Regulations is taken to be a prohibition notice;
 - (f) an application for the grant, variation, transfer or surrender of an environmental permit made under the 2010 Regulations that has not been determined by the relevant time is taken to be made under these Regulations;
 - (g) a decision made, or deemed to have been made, by a regulator or appropriate authority under the 2010 Regulations is taken to be made under these Regulations;
 - (h) an existing direction given, or deemed to have been given, to a regulator by the appropriate authority under the 2010 Regulations is taken to be given under these Regulations;
 - (i) a notification given under the 2010 Regulations that has not taken effect by the relevant time is taken to be given under these Regulations;
 - (j) an appeal made under the 2010 Regulations that has not been determined by the relevant time is taken to be made under these Regulations, with the notice of appeal taken to be given on the date on which the appeal was made under the 2010 Regulations.
- (3) An environmental permit under the 2010 Regulations in force at the relevant time—
- (a) becomes an environmental permit authorising the operation of a regulated facility under these Regulations, with references to provisions of the 2007 Regulations or the 2010 Regulations taken to be references to the equivalent provisions of these Regulations, and
 - (b) has effect subject to any conditions that applied to it at the relevant time.
- (4) An appeal may be made under these Regulations against a notice mentioned in paragraph (2)(a) to (e) or a decision mentioned in paragraph (2)(g) if, by the relevant time, the time for making an appeal under the 2010 Regulations had not expired, with the applicable time limit for giving notice of appeal running from the date on which the notice was served, or the decision was made, under the 2010 Regulations.
- (5) Despite paragraphs (1) and (2), an exemption under paragraph 17 of Section 2 of Chapter 3 of Part 1 of Schedule 3 of the 2010 Regulations (crushing waste fluorescent tubes (T17)) ceases to have effect.

Public registers

78.—(1) Any information that, at the relevant time, was contained in a public register maintained by a regulator under the 2010 Regulations, or was deemed to be information kept on that register, is taken to be information contained in the public register maintained by the regulator under these Regulations.

(2) Any information that, at the relevant time, was within a regulator's possession for the purposes of regulation 46 of the 2010 Regulations but was not entered on a public register under those Regulations is taken to be in the regulator's possession for the purposes of these Regulations and must be entered on the register as soon as reasonably practicable.

(3) Any information excluded from a public register pursuant to an existing direction under regulation 47(1) of the 2010 Regulations is taken to be notified under regulation 47(2) of these Regulations.

Site plans not required for existing permits etc.

79. Regulation 14(4) does not apply in relation to a regulated facility to which, at the relevant time, regulation 70 of the 2010 Regulations applied.

CHAPTER 5

Review

Review: England

- 80.**—(1) The Secretary of State, in relation to England, must from time to time—
- (a) carry out a review of the regulatory provisions in these Regulations, and
 - (b) publish a report setting out the conclusions of the review.
- (2) In carrying out a review of any regulatory provision which implements an obligation in any of the following Directives, the Secretary of State must have regard to how the obligation is implemented in other member States—
- (a) the Asbestos Directive,
 - (b) the Basic Safety Standards Directive,
 - (c) the Batteries Directive,
 - (d) the End-of-Life Vehicles Directive,
 - (e) the Energy Efficiency Directive,
 - (f) the Groundwater Directive,
 - (g) the HASS Directive,
 - (h) the Industrial Emissions Directive,
 - (i) the Landfill Directive,
 - (j) the Mining Waste Directive,
 - (k) PVR I,
 - (l) PVR II,
 - (m) the Waste Framework Directive,
 - (n) the Water Framework Directive, and
 - (o) the WEEE Directive.
- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory provisions,
 - (b) assess the extent to which those objectives are achieved,
 - (c) assess whether those objectives remain appropriate, and
 - (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provisions.
- (4) The first report under this regulation must be published before the end of December 2019.
- (5) Subsequent reports under this regulation must be published at intervals not exceeding 5 years.
- (6) In this regulation, “regulatory provisions” has the meaning given in section 32(4) of the Small Business, Enterprise and Employment Act 2015(47).

11th December 2016

7th December 2016

Thérèse Coffey
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs
Lesley Griffiths
Cabinet Secretary for the Environment and Rural
Affairs One of the Welsh Ministers