
STATUTORY INSTRUMENTS

2016 No. 475

The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016

Citation, commencement, extent, application and interpretation

1.—(1) These Regulations may be cited as the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016.

(2) These Regulations come into force on 6th April 2016.

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

(4) These Regulations do not apply in relation to the Isles of Scilly.

(5) In these Regulations, “the 1991 Act” means the Water Resources Act 1991⁽¹⁾.

Amendment of the Environmental Permitting (England and Wales) Regulations 2010

2. The Environmental Permitting (England and Wales) Regulations 2010⁽²⁾ (referred to in these Regulations as “the principal Regulations”) are amended in accordance with regulations 3 to 28.

Amendment of regulation 2 (interpretation: general)

3. In regulation 2(1)—

(a) after the definition of “confidential information” insert—

““culvert” has the meaning given in paragraph 3 of Part 1 of Schedule 23ZA;”;

(b) after the definition of “disposal” insert—

““drainage” has the meaning given in paragraph 2 of Part 1 of Schedule 23ZA;”;

(c) after the definition of “establishment” insert—

““excluded flood risk activity” has the meaning given in paragraph 4 of Part 1 of Schedule 23ZA;”;

(d) after the definition of “exempt facility” insert—

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

(e) after the definition of “extractive waste” insert—

““flood defence structure” has the meaning given in paragraph 2 of Part 1 of Schedule 23ZA;

“flood risk activity” has the meaning given in paragraph 3 of Part 1 of Schedule 23ZA;

“flood risk activity emergency works notice” means a notice served under paragraph 7 of Part 1 of Schedule 23ZA;

(1) 1991 c. 57.

(2) S.I. 2010/675; relevant amending instruments are S.I. 2012/630, 2013/390, 2015/664 and 1756.

“flood risk activity notice of intent” means a notice served under paragraph 9(2) of Part 1 of Schedule 23ZA;

“flood risk activity remediation notice” means a notice served under paragraph 8 of Part 1 of Schedule 23ZA;”;

(f) after the definition of “local authority” insert—

““main river” has the meaning given in paragraph 2 of Part 1 of Schedule 23ZA;”;

(g) after the definition of “non-hazardous waste” insert—

““non-tidal main river” has the meaning given in paragraph 2 of Part 1 of Schedule 23ZA;”;

(h) after the definition of “relevant territorial waters” insert—

““remote defence” has the meaning given in paragraph 3 of Part 1 of Schedule 23ZA;”;

(i) after the definition of “revocation notice” insert—

““river control works” has the meaning given in paragraph 3 of Part 1 of Schedule 23ZA;”;

(j) after the definition of “rule-making authority” insert—

““sea defence” has the meaning given in paragraph 3 of Part 1 of Schedule 23ZA;”;

(k) after the definition of “standard facility” insert—

““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;”

(l) after the definition of “suspension notice” insert—

““tidal main river” has the meaning given in paragraph 2 of Part 1 of Schedule 23ZA;”;

(m) after the definition of “waste operation” insert—

““watercourse” has the meaning given in paragraph 2 of Part 1 of Schedule 23ZA;”.

Amendment of regulation 5 (interpretation: exempt facilities)

4. Regulation 5(1) is amended as follows—

(a) in the definition of “exempt facility”—

(i) omit the word “or” immediately preceding paragraph (b);

(ii) at the end, add—

“, or

(d) an exempt flood risk activity”;

(b) after the definition of “exempt facility” insert—

““exempt flood risk activity” means a flood risk activity that meets the requirements of paragraph 5B of Schedule 2;”.

Amendment of regulation 7 (interpretation: operate a regulated facility and operator)

5. In regulation 7, in paragraph (b) of the definition of “operate a regulated facility”(3), for “or solvent emission activity” substitute “, solvent emission activity or flood risk activity”.

(3) Paragraph (b) of this definition was amended by [S.I. 2013/390](#).

Amendment of regulation 8 (interpretation: regulated facility and class of regulated facility)

- 6.—(1) In regulation 8(1)(4), at the end of sub-paragraph (i) add—
“**(j)** a flood risk activity”.
- (2) In regulation 8(2), at the end of sub-paragraph (c) add—
“**(d)** an excluded flood risk activity”.
- (3) In regulation 8(4)(5), at the end of sub-paragraph (f) add—
“**(g)** a flood risk activity”.

Amendment of regulation 9 (interpretation: relevant function)

- 7. At the end of regulation 9 add—
 - “**(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 23ZA”.

Substitution of regulation 15

^{F1}8.

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of regulation 17 (single site permits etc.)

^{F1}9.

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of regulation 18 (consolidation of an environmental permit)

^{F1}10.

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of regulation 20 (variation of an environmental permit)

^{F1}11.

(4) Regulation 8(1) was amended by [S.I. 2013/390](#).
(5) Regulation 8(4) was amended by [S.I. 2013/390](#).

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of regulation 21 (transfer of an environmental permit)

^{F1}**12.**

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

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

^{F1}**13.**

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of regulation 31 (appeals to an appropriate authority)

^{F1}**14.**

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of regulation 35 (specific provisions applying to environmental permits)

^{F1}**15.**

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of regulation 36 (enforcement notices)

^{F1}**16.**

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of regulation 37 (suspension notices)

F117.

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of regulation 38 (offences)

F118.

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of regulation 39 (penalties)

F119.

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of regulation 42 (enforcement by the High Court)

F120.

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Insertion of regulation 57A

F121.

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Insertion of regulations 66A and 66B

^{F1}**22.**

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of Schedule 2 (exempt facilities: general)

^{F1}**23.**

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of Schedule 3 (exempt facilities: descriptions and conditions)

^{F1}**24.**

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of Schedule 5 (environmental permits)

^{F1}**25.**

Textual Amendments

F1 Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of Schedule 6 (appeals to the appropriate authority)

^{F1}**26.**

Textual Amendments

- F1** Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Insertion of new Schedule 23ZA (flood risk activities)

F127.

Textual Amendments

- F1** Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Amendment of Schedule 23A (enforcement undertakings)

F128.

Textual Amendments

- F1** Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Consequential amendments etc.

29. Schedule 3 has effect.

Repeals

F130.

Textual Amendments

- F1** Regulations revoked in part (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 28** (with regs. 1(3), 77-79, Sch. 4)

Transitional provision: existing consents

31.—(1) On the coming into force of these Regulations and subject to paragraph (2), an existing consent relating to a flood risk activity (as defined in the principal Regulations)—

- (a) becomes an environmental permit under the principal Regulations, and
- (b) that permit has effect subject to any conditions that applied to the existing consent immediately before the coming into force of these Regulations.

(2) Where an existing consent relates to an excluded or exempt flood risk activity (as defined in the principal Regulations)—

- (a) the existing consent does not become an environmental permit and ceases to have effect;
- (b) the conditions in paragraph 5B(b) of Schedule 2 to the principal Regulations as to registration do not apply; and

- (c) the duties in respect of an exempt flood risk activity in paragraph 7 of Schedule 2 to the principal Regulations do not apply.
- (3) In this regulation, “existing consent” means a consent which—
- (a) is issued under section 109 of the 1991 Act or under any byelaw made by the regulator under section 210(1) of, and paragraph 5 of Schedule 25 to, that Act⁽⁶⁾; and
 - (b) is in force immediately before the coming into force of these Regulations.

Transitional provision: applications for consent under the 1991 Act

32.—(1) Where an existing application in respect of a flood risk activity (as defined in the principal Regulations) has not been determined under the 1991 Act before the coming into force of these Regulations and the activity is not an exempt or excluded flood risk activity (as defined in the principal Regulations), the application is taken to have been made under the principal Regulations and paragraphs (2) and (3) apply in respect of the application.

(2) The application is taken to have been made on the date on which the application was made under the 1991 Act.

(3) Anything done under the 1991 Act in relation to the determination of the application before the coming into force of these Regulations is taken to have been done under the principal Regulations.

(4) Where an existing application in respect of a flood risk activity has not been determined under the 1991 Act and the activity is an exempt or excluded flood risk activity (as defined in the principal Regulations), the application is to be disregarded on the coming into force of these Regulations.

(5) For the purposes of this regulation, an “existing application” means an application for consent made before the coming into force of these Regulations under section 109 of the 1991 Act or under any byelaw made by the regulator under section 210(1) of, and paragraph 5 of Schedule 25 to, that Act.

Transitional provision: existing notices

33.—(1) A notice served under a byelaw before the coming into force of these Regulations is taken to be an enforcement notice under the principal Regulations.

- (2) For the purposes of paragraph (1), “byelaw” means a byelaw—
- (a) made by the regulator under section 210(1) of and paragraph 5 of Schedule 25 to the 1991 Act; and
 - (b) under which a consent may be issued to an applicant.

Saving provision: arbitration

34. Section 110(4) of the 1991 Act⁽⁷⁾ continues to apply in respect of any question referred under that provision to arbitration or to the Secretary of State or the Welsh Ministers⁽⁸⁾ before the coming into force of these Regulations.

(6) Section 210(1) was amended by [S.I. 2013/755](#). Paragraph 5 of Schedule 25 was amended by the Natural Environment and Rural Communities Act 2006 ([c.16](#)), section 100(1) and (2), the Marine and Coastal Access Act 2009, section 84 and Schedule 11, paragraph 3, the Flood and Water Management Act 2010 ([c.29](#)), Schedule 2, paragraph 49 and [S.I. 2013/755](#).

(7) Section 110(4) was amended by the Environment Act 1995 ([c.25](#)), Schedule 22, paragraphs 128 and 147(1) and (2).

(8) The functions of the Secretary of State under section 110(4) of the 1991 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2(a) and Schedule 1. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by the Government of Wales Act 2006 ([c.32](#)), Schedule 11, paragraph 30.

Changes to legislation: *There are currently no known outstanding effects for the The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016. (See end of Document for details)*

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Parliamentary Under Secretary of State
Department for Environment, Food and Rural
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Leslie Griffiths
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Signed on behalf of Minister for Natural
Resources, One of the Welsh Ministers

Changes to legislation:

There are currently no known outstanding effects for the The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016.