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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

**The Environmental Permitting  
(England and Wales) Regulations 2010**

**PART 1**

**General**

**Citation, commencement, extent and application**

1.—(1) These Regulations—

- (a) may be cited as the Environmental Permitting (England and Wales) Regulations 2010;
- (b) come into force on 6th April 2010, immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009(1); and
- (c) extend to England and Wales only.

(2) These Regulations apply to the sea adjacent to England and Wales out as far as the seaward boundary of the territorial sea; and for that purpose—

- (a) the sea adjacent to England is so much of the sea adjacent to Great Britain as is not the sea adjacent to Wales or the sea adjacent to Scotland;
- (b) the sea adjacent to Wales has the same meaning as it has by virtue of section 158(3) or (4) of the Government of Wales Act 2006(2); and
- (c) 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(3).

**Interpretation: general**

2.—(1) In these Regulations—

- “the 1980 Act” means the Highways Act 1980(4);
- “the 1990 Act” means the Environmental Protection Act 1990(5);
- “the 1991 Act” means the Water Resources Act 1991(6);

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(1) [S.I. 2009/3381](#).

(2) [2006 c. 32](#); the boundary between the sea adjacent to Wales and that adjacent to England is described by article 6 and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999 ([S.I. 1999/672](#)). By virtue of section 162 of and paragraph 26 of Schedule 11 to the 2006 Act, [S.I. 1999/672](#) continues to have effect.

(3) [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 the Scottish Adjacent Waters Boundaries Order 1999 ([S.I. 1999/1126](#)).

(4) [1980 c. 66](#).

(5) [1990 c. 43](#).

(6) [1991 c. 57](#).

- “the 1993 Act” means the Radioactive Substances Act 1993(7);
- “the 1995 Act” means the Environment Act 1995(8);
- “the 2007 Regulations” means the Environmental Permitting (England and Wales) Regulations 2007(9);
- “the 2009 Regulations” means the Groundwater (England and Wales) Regulations 2009(10);
- “the Agency” means the Environment Agency;
- “agricultural waste” means waste from premises used for agriculture within the meaning of the Agriculture Act 1947;
- “the Animal By-Products Regulations” means—
- (a) in relation to England, the Animal By-Products Regulations 2005(11),
  - (b) in relation to Wales, the Animal By-Products (Wales) Regulations 2006(12);
- “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;
- “date of registration” has the meaning given in paragraph 1 of Schedule 2;
- “directly associated activity”—
- (a) in relation to a SED activity, has the meaning given in paragraph 2 of Schedule 14,
  - (b) in relation to any other activity falling within Part 2 of Schedule 1, has the meaning given in paragraph 1 of Part 1 of that Schedule;
- “disposal”—
- (a) except in relation to a radioactive substances activity, has the meaning given in paragraph 2 of Schedule 9,
  - (b) in relation to a radioactive substances activity, has the meaning given in paragraph 1 of Part 2 of Schedule 23;
- “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,

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(7) 1993 c. 12.

(8) 1995 c. 25.

(9) S.I. 2007/3538, amended by section 88(2) of the Climate Change Act 2008 (c. 28), S.I. 2009/890, S.I. 2009/1799 and S.I. 2009/3381.

(10) S.I. 2009/2902.

(11) S.I. 2005/2347 to which there are amendments not relevant to these Regulations.

(12) S.I. 2006/1293 (W.127).

- (c) in relation to Part A mobile plant, the direct or indirect release of substances, vibrations, heat or noise from the mobile plant into the air, water or land,
- (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, and
- (g) in relation to a radioactive substances activity, the direct or indirect release of radioactive material or radioactive waste;

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

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

- (a) is the subject of a licence under Part 2 of the Food and Environment Protection Act 1985<sup>(13)</sup> or does not require such a licence by virtue of an order under section 7 of that Act, or
- (b) relates to waste described in regulation 7(1) of the Controlled Waste Regulations 1992<sup>(14)</sup>;

“exempt facility” 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 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);

“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”, except in Section 5.1 of Part 2 of Schedule 1—

- (a) in relation to England, has the meaning given in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005<sup>(15)</sup>,

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<sup>(13)</sup> 1985 c. 48.

<sup>(14)</sup> S.I. 1992/558; relevant amending instruments are S.I. 1993/556, 1994/1056, 1995/228 and 2006/937.

<sup>(15)</sup> S.I. 2005/894.

- (b) in relation to Wales, has the meaning given in regulation 6 of the Hazardous Waste (Wales) Regulations 2005(16);
- “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;
- “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 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;
- “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 any of the following—
- (a) Part A mobile plant,
  - (b) Part B mobile plant,
  - (c) waste mobile plant;
- “mobile radioactive apparatus” has the meaning given in paragraph 1 of Part 2 of Schedule 23;
- “net rated thermal input” has the meaning given in paragraph 1 of Part 1 of Schedule 1;
- “non-hazardous waste”, except in Section 5.1 of Part 2 of Schedule 1, means waste which is not hazardous waste;
- “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 activity” and “Part B activity” have the meaning given in paragraph 1 of Part 1 of Schedule 1;
- “Part A installation”, “Part A(1) installation”, “Part A(2) installation” and “Part B installation” have the meaning given in paragraph 1 of Part 1 of Schedule 1;
- “Part A mobile plant”, “Part A(1) mobile plant”, “Part A(2) mobile plant” and “Part B mobile plant” have the meaning given in paragraph 1 of Part 1 of Schedule 1;
- “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 2 of the Food and Environment Protection Act 1985,
- (b) section 163 of the 1991 Act,
- (c) section 165 of the Water Industry Act 1991(17), 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 proposes to transfer an environmental permit in whole or in part;

“public participation provisions” means regulations 26, 29 and 59, 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 2 of Part 2 of Schedule 23;

“radioactive substances activity” has the meaning given in paragraph 5 of Part 2 of Schedule 23;

“radioactive waste” has the meaning given in paragraph 4 of Part 2 of Schedule 23;

“recovery” has the meaning given in paragraph 2 of Schedule 9;

“register” and “registered”, in relation to an exempt facility, have the meaning given in paragraph 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;

“revocation notice” means a notice served under regulation 22(3);

“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 Agency;

“SED activity” means an activity falling within Section 7 of Part 2 of Schedule 1;

“SED installation” has the meaning given in Schedule 14;

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

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

- “standard facility” means a regulated facility described in standard rules published under regulation 26(5);
- “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;
- “statutory order” means any order, byelaw, scheme or award made under any enactment, including an order or scheme confirmed by Parliament or brought into operation in accordance with special parliamentary procedure;
- “suspension notice” means a notice served under regulation 37;
- “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 Schedule 1, Part 2, Chapter 2, Section 2.2 and in Schedule 23, Part 2, paragraph 7, has the same meaning as in the 1991 Act;
- “waste”, except where otherwise defined, means anything that—
- (a) is waste for the purposes of the Waste Framework Directive, and
  - (b) is not excluded from the scope of that Directive by Article 2(1) of that Directive;
- “waste battery or accumulator” has the meaning given in Article 3(7) of the Batteries Directive, but does not include any waste which is excluded from the scope of that Directive by Article 2(2);
- “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, Part A mobile plant 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;
- “water discharge activity” has the meaning given in paragraph 3 of Schedule 21;
- “WEEE” has the meaning given in Article 3(b) of the WEEE Directive; and
- “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(18).
- (2) For the purpose of calculating a period of time from one event to another event, that period—
- (a) starts on the day on which the first event occurs; and
  - (b) ends on the day on which the second event occurs.
- (3) In these Regulations, a power to give a direction includes a power to vary or revoke it.

## Interpretation: Directives

### 3. In these Regulations—

“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 and repealing Directive [91/157/EEC](#)(**19**);

“the End-of-Life Vehicles Directive” means Directive [2000/53/EC](#) of the European Parliament and of the Council on end-of-life vehicles(**20**);

“the IPPC Directive” means Directive [2008/1/EC](#) of the European Parliament and of the Council concerning integrated pollution prevention and control(**21**);

“the Landfill Directive” means Council Directive [1999/31/EC](#) on the landfill of waste(**22**), as read with Council Decision [2003/33/EC](#)(**23**) establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of, and Annex II to, Directive [1999/31/EC](#);

“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 and amending Directive [2004/35/EC](#)(**24**);

“the Waste Framework Directive” means Directive [2006/12/EC](#) of the European Parliament and of the Council on waste(**25**);

“the Waste Incineration Directive” means Directive [2000/76/EC](#) of the European Parliament and of the Council on the incineration of waste(**26**);

“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(**27**); and

“the WEEE Directive” means Directive [2002/96/EC](#) of the European Parliament and of the Council on waste electrical and electronic equipment(**28**).

## Exempt facilities

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

## Interpretation: exempt facilities

### 5.—(1) In these Regulations—

“exempt facility” means—

- (a) an exempt waste operation,

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(19) OJ No L 266, 26.9.2006, p 1, as last amended by Directive [2008/103/EC](#) of the European Parliament and of the Council (OJ No L 327, 5.12.2008, p 7). There is a relevant corrigendum, OJ No L 311, 10.11.2006, p 58.

(20) OJ No L 269, 21.10.2000, p 34, as last amended by Commission Decision [2008/689/EC](#) (OJ No L 225, 23.8.2008, p 10).

(21) OJ No L 24, 29.1.2008, p 8.

(22) OJ No L 182, 16.7.1999, p 1, as last amended by Directive [2008/98/EC](#) of the European Parliament and of the Council (OJ No L 312, 22.11.2008, p 3).

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

(24) OJ No L 102, 11.4.2006, p 15, as amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ No L 188, 18.7.2009, p 14).

(25) OJ No L 114, 27.4.2006, p 9, as last amended by Directive [2009/31/EC](#) of the European Parliament and of the Council (OJ No L 140, 5.6.2009, p 114).

(26) OJ No L 332, 28.12.2000, p 91, as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council (OJ No L 311, 21.11.2008, p 1). There is a relevant corrigendum, OJ No L 145, 31.5.2001, p 52.

(27) O.J. No L 327, 22.12.2000, p 1, as last amended by Directive [2009/31/EC](#) of the European Parliament and of the Council on the geological storage of carbon dioxide (OJ No L 140, 5.6.2009, p 114).

(28) OJ No L 37, 13.2.2003, p 24, as last amended by Directive [2008/112/EC](#) of the European Parliament and of the Council (OJ No L 345, 23.12.2008, p 68).



- (b) an exempt water discharge activity, or
- (c) an exempt groundwater activity;

“exempt groundwater activity” means a stand-alone groundwater activity that meets the requirements of paragraph 5 of Schedule 2;

“exempt waste operation” means a waste operation—

- (a) that—
  - (i) is not carried on at an installation, or
  - (ii) is an activity that falls within Section 5.3 or Section 5.4 of Part 2 of Schedule 1 and is carried on at an installation, and
- (b) that meets the requirements of paragraph 3(1) of Schedule 2; and

“exempt water discharge activity” means a stand-alone water discharge activity that meets the requirements of paragraph 4 of Schedule 2.

(2) In these Regulations, in relation to an exempt waste operation, a reference to any of paragraphs U1 to U16, T1 to T33, D1 to D8 or S1 to S3 has the meaning given in paragraph 1(8) of Chapter 1 of Part 1 of Schedule 3.

#### **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<sup>(29)</sup> that authority is the local authority for the area covered by that district in relation to a Part B installation.

#### **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 or groundwater activity; and

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(29) 1984 c. 22.



“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.

(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.

(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) waste operation;
- (b) mining waste operation;
- (c) water discharge activity;
- (d) groundwater 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 22 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.

#### **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 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) For the purposes of this regulation, “proper address” means—
  - (a) in the case of a body corporate or their secretary or clerk—
    - (i) the registered or principal office of that body, or
    - (ii) the email address of the 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.