
STATUTORY INSTRUMENTS

2016 No. 1154

**The Environmental Permitting
(England and Wales) Regulations 2016**

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—

- (a) 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
- (b) 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(1);

"Transitional National Plan" has the meaning given in regulation 2 of the Large Combustion Plants (Transitional National Plan) Regulations 2015(2).

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(3)) 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.

(1) 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.

(2) S.I. 2015/1973.

(3) 2010 c. 29.

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.