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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

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

**PART 7**

Miscellaneous provisions

Chapter 3

Transitional provisions - former enactments

**Existing permits**

- 69.** On the coming into force of these Regulations an existing permit—
- (a) becomes an environmental permit authorising the operation of a regulated facility under these Regulations; and
  - (b) has effect subject to any conditions that applied to it at the relevant time.

**Site plans not required for existing permits**

- 70.** Regulation 14(4) does not apply in relation to a regulated facility—
- (a) authorised by an environmental permit by virtue of regulation 69(a); or
  - (b) authorised by an environmental permit granted on the determination of—
    - (i) a transitional application, or
    - (ii) an outstanding appeal.

**Review of existing groundwater permits**

**71.—(1)** Any environmental permit that, at the relevant time, was a permit within the meaning of the 2009 Regulations and was granted before the coming into force of those Regulations must be reviewed before 22nd December 2012.

(2) The regulator must on review assess compliance with the conditions of the permit.

(3) If the operator fails to comply with any condition of the permit, the regulator must take appropriate steps to ensure compliance.

**Radioactive substances exemption orders**

**72.** On the coming into force of these Regulations, the following become exemptions from the requirement for an environmental permit—

- (a) an exemption from registration under an existing radioactive substances exemption order;
- (b) an exclusion from the requirement for an authorisation under an existing radioactive substances exemption order.

### **Exempt water discharge activities**

**73.**—(1) In this regulation, “small sewage effluent water discharge activity” means the discharge from a sewage treatment plant of 5 cubic metres per day or less of sewage effluent into inland freshwaters, coastal waters or relevant territorial waters.

(2) On the coming into force of these Regulations, a small sewage effluent water discharge activity authorised by an existing permit is taken to be an exempt facility.

### **Exempt groundwater activities**

**74.**—(1) In this regulation, “small sewage effluent groundwater activity” means the discharge from a septic tank or sewage treatment plant of 2 cubic metres per day or less of sewage effluent that results in the input of pollutants to groundwater.

(2) On the coming into force of these Regulations, a small sewage effluent groundwater activity authorised by an existing permit is taken to be an exempt facility.

(3) From the coming into force of these Regulations until 1st January 2012, a person carrying on a groundwater activity taken to be an exempt facility under paragraph (2) does not require an environmental permit unless a notice is served on that person under paragraph 10 of Schedule 22 and has taken effect.

(4) From the coming into force of these Regulations until 1st January 2012, a small sewage effluent groundwater activity that, at the relevant time, was not authorised by an existing permit does not need to be authorised by an environmental permit or registered as an exempt facility unless—

- (a) a notice was served under the 2009 Regulations prohibiting the carrying on of the activity and that notice continues in effect under these Regulations; or
- (b) a notice under paragraph 10 of Schedule 22 is served on the person carrying on the activity and the notice has taken effect.

(5) A small sewage effluent groundwater activity that is begun after the coming into force of these Regulations does not need to be authorised by an environmental permit or registered as an exempt facility until 1st January 2012 unless a notice under paragraph 10 of Schedule 22 is served on the person carrying on the activity and the notice has taken effect.

(6) On and after 1st January 2012, a person must not carry on a small sewage effluent groundwater activity unless it is—

- (a) authorised by an environmental permit; or
- (b) registered as an exempt facility.

### **Transitional applications**

**75.**—(1) On the coming into force of these Regulations, a transitional application is taken to be an application for the grant, variation, transfer or surrender of an environmental permit.

(2) The application is taken to be made on the date the transitional application was made.

(3) Anything done under a former enactment in relation to a transitional application before the coming into force of these Regulations is taken to be done under these Regulations.

(4) The public participation provisions apply to a transitional application under a former enactment unless—

- (a) the transitional application relates to a radioactive substances activity; or
- (b) under the former enactment there was no requirement for public participation in the application process.

### **Transfer notices under former enactments**

**76.**—(1) On the coming into force of these Regulations, a transfer notice is taken to be a joint notification under regulation 21(4).

(2) The joint notification is taken to be made on the date the transfer notice was made.

(3) Anything done under a former enactment in relation to a transfer notice before the coming into force of these Regulations is taken to be done under these Regulations.

### **Existing notices under former enactments**

**77.** On the coming into force of these Regulations—

- (a) an existing notice given under section 86(1)(b) of the 1991 Act in relation to a discharge from a highway drain or a discharge into the waters of any lake or pond which are not inland freshwaters becomes an environmental permit and has effect subject to any conditions that applied to it at the relevant time;
- (b) any requirements imposed under an existing notice served under section 20 of the 1993 Act in relation to an existing authorisation or registration which becomes an environmental permit by virtue of regulation 69(a) are taken to be conditions of the environmental permit;
- (c) an existing notice served under section 90B of the 1991 Act<sup>(1)</sup> or section 21 of the 1993 Act is taken to be an enforcement notice served under these Regulations;
- (d) an existing notice served under section 22 of the 1993 Act is taken to be a suspension notice served under these Regulations;
- (e) an existing notice served under regulation 18 of the 2009 Regulations prohibiting a course of action is taken to be a prohibition notice served under these Regulations; and
- (f) each of the following existing notices is taken to be a revocation notice served under these Regulations—
  - (i) an existing notice served under paragraph 7(2)(a) of Schedule 10 to the 1991 Act (discharge consents),
  - (ii) an existing notice served under regulation 16(5) of the 2009 Regulations (groundwater permits),
  - (iii) an existing notice given under section 12(2)(a) of the 1993 Act (registrations) in relation to the cancellation of a registration,
  - (iv) an existing notice given under section 17(3)(a) of the 1993 Act (authorisations) in relation to the revocation of an authorisation.

### **Outstanding appeals against existing notices**

**78.**—(1) Any outstanding appeal made under a former enactment against an existing notice is taken to be made under these Regulations.

(2) A notice of appeal under Schedule 6 is taken to be given on the date the outstanding appeal was made under the former enactment.

(3) Anything done under the former enactment in relation to the outstanding appeal is taken to be done under these Regulations.

(4) The time limits in Schedule 6 for doing anything in relation to an appeal apply in relation to the outstanding appeal unless, in any case, a longer time limit applied under the former enactment, in which case that time limit applies.

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(1) Section 90B was inserted by the Environment Act 1995, section 120 and Schedule 22, paragraph 142.

### **Appeals under these Regulations against existing notices**

**79.**—(1) An appeal may be made under these Regulations against an existing notice if, by the relevant time, the time for making an appeal under the former enactment had not expired.

(2) If an appeal is made under these Regulations against an existing notice, the applicable time limit for giving notice of appeal runs from the date the existing notice was served under the former enactment.

(3) In this regulation, the applicable time limit is—

- (a) the time limit in paragraph 3 of Schedule 6; or
- (b) if a longer time limit applied under the former enactment, that time limit.

### **Decisions under former enactments**

**80.** A decision by a regulator or appropriate authority under a former enactment is taken to be made under these Regulations.

### **Outstanding appeals against decisions under former enactments**

**81.**—(1) Any outstanding appeal made under a former enactment against a decision under that enactment is taken to be made under these Regulations.

(2) A notice of appeal under Schedule 6 is taken to be given on the date the outstanding appeal was made under the former enactment.

(3) Anything done under the former enactment in relation to the outstanding appeal is taken to be done under these Regulations.

(4) The time limits in Schedule 6 for doing anything in relation to an appeal apply in relation to the outstanding appeal unless, in any case, a longer time limit applied under the former enactment, in which case that time limit applies.

### **Appeals under these Regulations against decisions under former enactments**

**82.**—(1) An appeal may be made under these Regulations against a decision under a former enactment if, by the relevant time, the time for making an appeal under the former enactment had not expired.

(2) If an appeal is made under these Regulations against a decision made under a former enactment, the applicable time limit for giving notice of appeal runs from the date the decision under the former enactment was made.

(3) In this regulation, the applicable time limit is—

- (a) the time limit in paragraph 3 of Schedule 6; or
- (b) if a longer time limit applied under the former enactment, that time limit.

### **Existing directions under former enactments**

**83.** On the coming into force of these Regulations—

- (a) an existing direction given to the Agency by the Secretary of State under section 23(1) of the 1993 Act is taken to be given under regulation 61; and
- (b) an existing direction given to the Agency by the Secretary of State under section 24(1) of the 1993 Act is taken to be given under regulation 62.

### Public registers under former enactments

**84.**—(1) On the coming into force of these Regulations, the following information is taken to be information contained on a public register under these Regulations—

- (a) any information that, at the relevant time—
  - (i) was kept under section 39 of the 1993 Act, and
  - (ii) was publicly available;
- (b) any information in relation to discharge consents or groundwater permits that, at the relevant time, was kept under section 190 of the 1991 Act.

(2) The following decisions are taken to be final confidentiality decisions for the purposes of Part 5—

- (a) a decision by the Agency under section 191B of the 1991 Act<sup>(2)</sup> that information is commercially confidential in relation to any person;
- (b) a decision by the Agency under section 39(1) of the 1993 Act not to disclose information relating to any relevant process or trade secret.

(3) For the purposes of regulation 55, a final confidentiality decision by virtue of paragraph (2) is taken to be made on the coming into force of these Regulations.

(4) The following directions are taken to be given under regulation 47(1)—

- (a) a direction given under section 191A of the 1991 Act<sup>(3)</sup>;
- (b) a direction given under section 25 of the 1993 Act.

(5) A notification by the Agency under section 191A(3) of the 1991 Act is taken to be a notification under regulation 47(2).

### Recovery of expenses for disposal of radioactive waste

**85.**—(1) If, before the coming into force of these Regulations, the regulator disposed of radioactive waste in the exercise of its powers under section 30 of the 1993 Act but did not recover all expenses reasonably incurred by it under that section, the regulator may recover expenses under paragraph 4(2) of Part 3 of Schedule 23 to these Regulations.

(2) If, before the coming into force of these Regulations, the regulator disposed of radioactive waste in the exercise of its powers under section 30A of the 1993 Act<sup>(4)</sup> but did not recover all expenses reasonably incurred by it under that section, the regulator may recover expenses under paragraph 8(2) of Part 4 of Schedule 23 to these Regulations.

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(2) Section 191B was inserted by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 170.

(3) Section 191A was inserted by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 170.

(4) Section 30A was inserted by S.I. 2005/2686.