

STATUTORY INSTRUMENTS

2011 No. 2043

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Environmental Permitting (England and Wales) (Amendment) Regulations 2011

Made - - - - 11th August 2011

Coming into force in accordance with regulation 1(b)

^{F1}These Regulations are made in exercise of the powers conferred by sections 2 and 7(9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999 ^{F2}.

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, have in accordance with section 2(4) of that Act consulted ^{F3}—

- (a) the Environment Agency;
- (b) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they consider appropriate; and
- (c) such other bodies or persons as they consider appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament and by the National Assembly for Wales pursuant to section 2(8) and (9)(d) and (e) of that Act ^{F4}.

Accordingly, the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales, make the following Regulations.

F1 Regulations revoked (except for regs. 1-5, 9, 16 and Sch. 2) (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)

F2 1999 c. 24. Paragraph 9A was inserted by S.I. 2005/925, **Schedule 6**, paragraph 2(2)(a). Paragraph 21A was inserted by section 38 of the [Waste and Emissions Trading Act 2003](#) (c. 33). Paragraph 24 was amended by S.I. 2005/925, Schedule 6, paragraph 2(2)(b). Paragraph 25 was amended by section 105(1)(a) and (b) of the [Clean Neighbourhoods and Environment Act 2005](#) (c. 16). Functions of the Secretary of State under section 2 (except in relation to offshore oil and gas exploration and exploitation), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 3 of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Those functions were then transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the [Government of Wales Act 2006](#) (c. 32).

Status: Point in time view as at 01/01/2017.

Changes to legislation: There are currently no known outstanding effects for the The Environmental Permitting (England and Wales) (Amendment) Regulations 2011. (See end of Document for details)

- F3** The requirement in that section to consult the bodies and persons mentioned was transferred from the National Assembly for Wales to the Welsh Ministers by paragraph 30 of Schedule 11 to the [Government of Wales Act 2006 \(c. 32\)](#). The consultation carried out by the National Assembly for Wales has effect as if it were carried out by the Welsh Ministers by virtue of paragraph 39(3) of that Schedule to that Act.
- F4** The reference in section 2(8) to approval by each House of Parliament has effect in relation to exercise of functions by the Welsh Ministers as if it were a reference to approval by the National Assembly for Wales by virtue of paragraph 33 of Schedule 11 to the [Government of Wales Act 2006 \(c. 32\)](#).

PART 1

General

Citation and commencement

1. These Regulations—
 - (a) may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2011; and
 - (b) come into force on 1st October 2011, except regulations 2, 3, 12 and 14 which come into force on the day after the day on which these Regulations are made.

Interpretation

2. In these Regulations—
 - (a) “the 2010 Regulations” means the Environmental Permitting (England and Wales) Regulations 2010 ^{F5}; and
 - (b) “the Act” means the Radioactive Substances Act 1993 ^{F6}.

F5 [S.I. 2010/675](#); relevant amendments by S.I. 2011/ 988.

F6 [1993 c.12](#); amended by [S.I. 2001/4005](#), [S.I. 2010/675](#), [1995 c. 25](#), [1993 c.11](#), [2009 c.23](#)

PART 2

Amendments to the 2010 Regulations

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

3. The 2010 Regulations are amended in accordance with regulations 4 to 15.

Amendment of regulation 2 (interpretation: general)

- 4.—(1) Paragraph (1) of regulation 2 (interpretation: general) is amended as follows.
 - (2) In the definition of “radioactive material”, for “paragraph 2” substitute “ paragraph 3 ”.
 - (3) In the definition of “radioactive substances activity”, for “paragraph 5” substitute “ paragraph 11 ”.
 - (4) After the definition of “radioactive substances activity”, insert—

““radioactive substances exemption” means an exemption under Part 7 of Schedule 23 from the requirement for an environmental permit in respect of a radioactive substances activity;”.

- (5) In the definition of “radioactive waste”, for “paragraph 4” substitute “ paragraph 3 ”.
- (6) In the definition of “waste”, for “paragraph (4)” substitute “ paragraph (5) where it applies ”.
- (7) For paragraph (4) substitute—
 - “(4) Paragraph (5) 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 Part 7 of Schedule 23); or
 - (ii) the waste described in the first, second or sixth row of column 1 of table 6 in Part 7 of Schedule 23.”.
- (8) After paragraph (4), insert—
 - “(5) 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.”.

Amendment of regulation 5 (interpretation: exempt facilities)

5. In paragraph (1) of regulation 5 (interpretation: exempt facilities), for the definition of “exempt groundwater activity”, substitute—

- ““exempt groundwater activity” means—
- (a) a stand-alone groundwater activity that meets the requirements of paragraph 5 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 paragraph 5 of Schedule 2.”.

Amendment of regulation 12 (requirement for an environmental permit)

^{F7}6.

F7 Regulations revoked (except for regs. 1-5, 9, 16 and Sch. 2) (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 14 (content and form of an environmental permit)

^{F7}7.

Status: Point in time view as at 01/01/2017.

Changes to legislation: There are currently no known outstanding effects for the The Environmental Permitting (England and Wales) (Amendment) Regulations 2011. (See end of Document for details)

F7 Regulations revoked (except for regs. 1-5, 9, 16 and Sch. 2) (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.)

F78.

F7 Regulations revoked (except for regs. 1-5, 9, 16 and Sch. 2) (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 67 (Interpretation of Part 7)

9.—(1) Regulation 67 is amended as follows.

(2) After the definition of “2007 transitional application”, insert the following definition—
““article” and “substance” have the meaning given to them in Schedule 23 to these Regulations.”.

(3) The definition of “radioactive substances exemption order” is revoked.

Revocation of regulation 72 (Radioactive substances exemption orders)

F710.

F7 Regulations revoked (except for regs. 1-5, 9, 16 and Sch. 2) (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 72A, 72B, 72C and 72D

F711.

F7 Regulations revoked (except for regs. 1-5, 9, 16 and Sch. 2) (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 to Schedule 1 (activities, installations and mobile plant)

F712.

F7 Regulations revoked (except for regs. 1-5, 9, 16 and Sch. 2) (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 to Schedule 5 (environmental permits)

F713.

F7 Regulations revoked (except for regs. 1-5, 9, 16 and Sch. 2) (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 to Schedule 22 (groundwater activities)

F7 14.

F7 Regulations revoked (except for regs. 1-5, 9, 16 and Sch. 2) (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)

Substitution of Schedule 23 (radioactive substances activities)

F7 15.

F7 Regulations revoked (except for regs. 1-5, 9, 16 and Sch. 2) (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)

PART 3

Consequential amendments, repeals, savings and revocation

Consequential amendments

16. Schedule 2 (consequential amendments) has effect.

Repeals

F7 17.

F7 Regulations revoked (except for regs. 1-5, 9, 16 and Sch. 2) (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)

Savings

F7 18.

F7 Regulations revoked (except for regs. 1-5, 9, 16 and Sch. 2) (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)

Revocation

F7 19.

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F7 Regulations revoked (except for regs. 1-5, 9, 16 and Sch. 2) (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)

Department of Energy and Climate Change

Charles Hendry
Minister of State,

one of the Welsh Ministers

John Griffiths
Minister for Environment and Sustainable
Development

^{F7}SCHEDULE 1

Regulation 15

New Schedule 23 to the 2010 Regulations

“SCHEDULE 23

Regulation 35(2)(q)

.....

SCHEDULE 2

Regulation 16

Consequential amendments

PART 1

Public General Acts

Continental Shelf Act 1964

1. In section 7 of the Continental Shelf Act 1964 (radioactive substances), omit—
 - (a) “for the purposes of the Radioactive Substances Act 1993 (and any orders and regulations made thereunder), or”, and
 - (b) “of that Act or”.

Control of Pollution Act 1974

2. In section 30(5)(b) of the Control of Pollution Act 1974 (power to apply Part 1 of that Act to radioactive waste) omit “the Radioactive Substances Act 1993,”.

PART 2

Subordinate legislation

The Civil Jurisdiction (Offshore Activities) Order 1987

1. In article 4 of the Civil Jurisdiction (Offshore Activities) Order 1987, (the title to which article becomes “ Application of the Wireless Telegraphy Act 1949 and the Environmental Permitting (England and Wales) Regulations 2010 ”), omit the words “the Radioactive Substances Act 1993, any regulations or orders under either of those Acts (subject, however, in the case of such regulations or orders made hereafter, to any contrary intention appearing therein) and”.

The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

- ^{F11}2. In Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ^{F12}, in paragraph 3(g) of the table, in column 2, for “paragraph 5(2)(b)” substitute “ paragraph 11(2)(b) ”.]

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- F11** Sch. 2 Pt. 2 para. 2 revoked (W.) (1.3.2016) by [The Town and Country Planning \(Environmental Impact Assessment\) \(Wales\) Regulations 2016](#) (S.I. 2016/58), reg. 1(2), **Sch. 8** (with regs. 59, 60(2))
- F12** [S.I. 1999/293](#).

The Hazardous Waste (England and Wales) Regulations 2005

3.—(1) The Hazardous Waste (England and Wales) Regulations 2005 are amended as follows.

(2) In regulation 5(1), insert the following definition after the definition of “radioactive substances activity”

““radioactive substances exemption” has the meaning given in regulation 2(1) of the Environmental Permitting Regulations;”.

(3) In regulation 15(1)(a), for “section 15 of the Radioactive Substances Act 1993”, substitute “a radioactive substances exemption”.

The Hazardous Waste (Wales) Regulations 2005

4. The Hazardous Waste (Wales) Regulations 2005 are amended as follows

(a) in regulation 5(1) (general interpretation), insert the following definition after the definition of “radioactive substances activity”

““radioactive substances exemption” has the meaning given in regulation 2(1) of the Environmental Permitting Regulations;” and

(b) in regulation 15(1)(a) (radioactive waste), for “section 15 of the Radioactive Substances Act 1993”, substitute “a radioactive substances exemption”.

The Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007

5. Regulation 6(2)(h) of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (duty of competent authorities) is omitted.

The Waste (England and Wales) Regulations 2011

6.—(1) Regulation 47 of the Waste (England and Wales) Regulations 2011 (radioactive waste) is amended as follows.

(2) For paragraph (1), substitute—

“(1) This regulation applies to radioactive waste—

(a) which is a specified waste; and

(b) in respect of which a person—

(i) is carrying on a radioactive substances activity described in paragraph 11(2) (b) or (c) or (4) of Part 2 of Schedule 23 to the Environmental Permitting (England and Wales) Regulations 2010; and

(ii) is exempt from the requirement for an environmental permit under regulation 12(3) of those Regulations for that activity.”.

(3) In paragraph (4)—

(a) in the definition of “radioactive waste” and “radioactive substances activity” for “paragraphs 4 and 5” substitute “paragraphs 3 and 11”;

(b) omit the definition of “specified order”;

(c) insert the following definitions in the appropriate place alphabetically—

““radioactive substances exemption” means an exemption under Part 7 of Schedule 23 to the Environmental Permitting (England and Wales) Regulations 2010 from the requirement for an environmental permit under regulation 12 of those regulations in respect of a radioactive substances activity;”

““specified waste” means—

- (a) NORM waste (as that term is defined in Part 7 of Schedule 23 to the Environmental Permitting (England and Wales) Regulations 2010; or
- (b) the waste described in the first, second or sixth row of column 1 of table 6 in Part 7 of Schedule 23 to the Environmental Permitting (England and Wales) Regulations 2010.”.

^{F7}SCHEDULE 3

Regulation 18

Exemption orders

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) (“the Environmental Permitting Regulations”) by substituting a Schedule 23 to provide a modernised and transparent framework for the regulation of radioactive substances and to demonstrate clearer compliance with 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 ionizing radiation (OJ No L 159, 29.6.1996, p 1).

The amendments also implement amendments which have been made, in respect of carbon capture and storage, to Directive [2008/1/EC](#) of the European Parliament and of the Council concerning integrated pollution prevention and control (OJ No L 24, 29.01.2008, p 8) and to Directive [2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (OJ No L 327, 22.12.2000, p 1), 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.)

Regulations 4, 7, 8 and 13 amend the Environmental Permitting Regulations in consequence of the insertion of the new Schedule 23 by these Regulations.

Regulation 5 makes an amendment to extend the provisions in the Environmental Permitting Regulations relating to groundwater activities to allow a tracer test involving a radioactive substance to fall within the exemption.

Regulation 6 is a technical amendment to clarify the scope of an exception from the requirement to hold an environmental permit which applies to particular persons who dispose of radioactive waste.

Regulations 9 to 11 insert transitional arrangements into the Environmental Permitting Regulations which apply to existing users of radioactive substances (or substances which become radioactive substances by virtue of these Regulations) who are affected by the amendments made

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by these Regulations. Where a person requires an environmental permit for an activity because of the change to the definitions of radioactive material or waste, that person has until 1st April 2012 to apply for a permit or to comply with a new exemption (if applicable). A person who was exempt but is no longer exempt has until 1st April 2012 to apply for an environmental permit. Until 1st April 2012, a person who, as a consequence of these Regulations, no longer requires a permit in part or whole may, by use of the procedure under regulation 24 of the Environmental Permitting Regulations, surrender that permit or part thereof by notification to the regulator. Regulation 12 inserts a new regulated activity into Schedule 1 (activities, installations and mobile plant) of the Environmental Permitting Regulations relating to the capture of carbon dioxide. Regulation 14 inserts into Schedule 22 (groundwater activities) of the Environmental Permitting Regulations a new activity for which the regulator is able to grant a permit, in relation to the geological injection of carbon dioxide.

Regulation 15 replaces Schedule 23 of the Environmental Permitting Regulations with a consolidated version which includes additions and amendments. In particular, the definitions of radioactive material and radioactive waste are amended. Part 7 is inserted into Schedule 23 to provide conditional exemptions from the requirement to hold an environmental permit in respect of certain radioactive substances. Part 8 is inserted to re-enact section 40 of the Radioactive Substances Act 1993.

Three documents are referred to in the tables in the substituted Schedule 23. The document referred to in Table 2 in Part 3 of that Schedule (Radiation Protection 122: Practical use of the concepts of clearance and exemption, Part 1) is available on the European Commission's website (www.ec.europa.eu/energy/nuclear/radiation_protection/doc/publication/122_part1.pdf). The document referred to in Table 5 of Part 7 of that Schedule (Exempt Concentrations and Quantities for Radionuclides not Included in the European Basic Safety Standards Directive) is available to order from the Health Protection Agency (www.hpa.org.uk). The document referred to in Table 7 in Part 7 of that Schedule (Derivation of Liquid Exclusion or Exemption Levels to Support the RSA93 Exemption Order Review) is available on the website of the Health Protection Agency (www.hpa.org.uk/web/HPAwebFile/HPAweb_C/1281952965539).

Regulation 16 makes consequential amendments to other legislation as a consequence of the amendments made to the Environmental Permitting Regulations and the repeal of the Radioactive Substances Act 1993.

Regulations 17 to 19 repeal the majority of the remainder of the Radioactive Substances Act 1993 in England and Wales, and the single exemption order that was not made or deemed to be made under that Act, as well as making savings for the purposes of the transitional arrangements.

The effect of these Regulations is that the Environmental Permitting Regulations regulate, and include exemptions from regulation of, activities in respect of radioactive substances and replace the system which previously existed under the Radioactive Substances Act 1993.

A transposition note and a full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

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