

## Department of Environment, Food and Rural Affairs

March 2012

### Industrial Emissions Directive

#### Proposed amendments to Environmental Permitting (England and Wales) Regulations 2010: - main regulations and Schedules 2, 3 and 9

The Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No.675) are at <http://www.legislation.gov.uk/uksi/2010/675/contents/made>.

This document shows extracts of the main Regulations and of certain Schedules as they would be with the proposed amendment Regulations in force. Inserted material is in **bold red italics**; deleted material is in **highlighted strikethrough**. Schedule 1 is treated in the same way in a separate document.

Please note that the proposed amendment Regulations would completely replace the current Schedules 7, 8, 13 and 14 with new versions. The new Schedules 8, 13 and 14 would come into force from 7 January 2013. The new Schedule 7 would come into force from the same date, but only for new installations: existing installations would remain subject to the current Schedule 7 until the new version enters force for them from 7 January 2014.

Please note also that the proposed amendment Regulations would add a new Schedule 15A which would come into force from 7 January 2013 for new combustion plants and from 1 January 2016 for existing combustion plants.

Please see the separate document "Industrial emissions Directive – key points to note" for further details.

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#### Interpretation: general

2.—(1) In these Regulations—.....

“date of registration” has the meaning given in paragraph 1 of Schedule 2;

***“directly associated activity”***, in relation to an activity, means an operation which—

- (a) has a technical connection with that activity,***
- (b) is carried on on the same site as that activity, and***
- (c) could have an effect on pollution***

***“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”.....

Extracts of EPR regulations and Schedules as they would be with the amendments proposed in February 2012.

“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,
- (c) in relation to a solvent emission activity, the direct release of substances into the air from individual or diffuse sources forming part of that activity.***

~~(e) 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;

***“(h) In relation to waste incineration plants and waste co-incineration plants, the direct or indirect release of substances into the air”***

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

“hazardous waste”, ***subject to paragraph (6)*** ~~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( ),
- (b) in relation to Wales, has the meaning given in regulation 6 of the Hazardous Waste (Wales) Regulations 2005( );.....

“mobile plant” means any of the following—

~~(a) Part A mobile plant,~~

(b) Part B mobile plant,

(c) waste mobile plant;.....

“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;~~

***Part B mobile plant has the meaning given in paragraph 1 of Part 1 of Schedule 1***

“pollutant” means any substance liable to cause pollution;.....

“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;

***“solvent emission activity” means any activity listed in paragraph 2 of Part 1 of Schedule 14.***

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~~“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”, subject to paragraph (5) where it applies, and except where otherwise defined, means anything that—***

***(a) in relation to an activity that falls within—***

- (i) Chapter 5 of Part 2 of Schedule 1,***
- (ii) Schedule 13,***
- (iii) Schedule 14,***
- (iv) Schedule 15, or***
- (v) Schedule 17,***

***is waste within the meaning of Article 3(1) of the Waste Framework Directive; and***

***(b) in any other case—***

- (i) is waste within the meaning of Article 3(1) of the Waste Framework Directive; and***

(ii) *is not excluded from the scope of that Directive by Article 2(1), (2) or (3) 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 incineration and co-incineration plant” means any plant to which Schedule 13 applies;*

“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;

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#### **Interpretation: exempt facilities**

5.—(1) In these Regulations—

“exempt facility” means—

- (a) an exempt waste operation,
- (b) an exempt water discharge activity, or
- (c) an exempt groundwater activity;
- (d) *an exempt solvent emission activity.”*

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

*“exempt solvent emission activity” means any solvent emission activity to which Part 3 of Schedule 14 applies and which meets the requirements of that Part.*

“exempt waste operation” means a waste operation—

- (a) that *is not carried on at an installation, and* —
- ~~(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.

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### **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, groundwater activity, *waste incineration plant, co-incineration plant or solvent emission activity*; and

“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.

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### **Requirement for environmental permit**

12.—(1) A person must not, except under and to the extent authorised by an environmental permit—

- (a) operate a regulated facility; or
- (b) cause or knowingly permit a water discharge activity or groundwater activity.

(2) Paragraph (1)(b) does not apply if the water discharge activity or groundwater activity is an exempt facility.

(3) Where a person (“A”) would, except for this paragraph, require an environmental permit to receive radioactive waste from another person (“B”) for the purpose of disposing of that waste, A does not require a permit for that receipt where—

- (a) B holds an environmental permit which allows B to dispose of the waste to A; and
- (b) the waste is disposed of by A in accordance with that permit.

*(4) Paragraph (1)(a) does not apply in relation to installations referred to in paragraph (5) until 7<sup>th</sup> July 2015.*

*(5) The installations to which this paragraph refers are those which are in operation before 7<sup>th</sup> January 2013 and which are carrying on an activity listed in the following paragraphs of Part 2 of Schedule 1—*

- (a) Section 1.2 Part A(1)(d) in relation to gasification of fuels other than coal;*
- (b) Sections 4.1 to 4.4 and 4.6 in relation to biological processing of chemicals;*
- (c) Section 5.1 in relation to waste incineration or co-incineration above the relevant thresholds if not already requiring a permit;*
- (d) Section 5.3 Part A(1) (a)(i) to (iv) and (xi) in relation to stationary technical units carrying out only one or more of the following treatments of hazardous waste—*
  - (i) biological treatment;*
  - (ii) physico-chemical treatment;*
  - (iii) blending, mixing or repackaging prior to submission to any of the other activities listed in Section 5.3 Part A(1)(a) or Section 5.1 Part A(1);*
  - (iv) surface impoundment.*
- (e) Section 5.4 Part A(1)(a)(iii) to (v) in relation to disposal of non-hazardous waste, pre-treatment of waste for incineration or co-incineration, treatment of slags and ashes and treatment in shredders of metal waste.*
- (f) Section 5.4 Part A(1)(b) in relation to recovery or a mix of recovery and disposal of non-hazardous waste with a capacity exceeding 75 tonnes per day (or 100 tonnes per day if the only waste treatment activity is anaerobic digestion) involving one or more of the following activities and excluding activities covered by of 21 May 1991 concerning urban waste-water treatment Directive 91/271/EC—*
  - (i) biological treatment;*
  - (ii) pre-treatment of waste for incineration or co-incineration;*
  - (iii) treatment of slags and ashes*
  - (iv) treatment in shredders of metal waste.*
- (g) Section 5.5 Part A(1)(b) (temporary storage of hazardous waste with a capacity above 50 tonnes, excluding on the site where the waste is generated);*
- (h) Section 5.5 Part A(1)(b) (underground storage of hazardous waste with a total capacity exceeding 50 tonnes);*
- (i) Section 5.6 Part A(1)(a) (independently operated treatment of waste water not covered by Directive 91/271/EEC and discharged by an installation carrying out any other Part A(1) or A(2) activity;*
- (j) Section 6.1 Part A(2) in relation to the manufacture of board if not already requiring a permit;*
- (k) Section 6.6 Part A(2) (preservation of wood and wood products with chemicals with a production capacity exceeding 75m<sup>3</sup> per day other than exclusively treating against sapstain);*

*(1) Section 6.8 Part A(1)(d)(iii) in relation to food production from mixed animal and vegetable materials if not already requiring a permit.*

#### **Content and form of an environmental permit**

**14.—**(1) An environmental permit must specify—

- (a) the regulated facility whose operation it authorises; and
- (b) the operator of that regulated facility.

(2) An environmental permit that authorises the operation of a regulated facility (“regulated facility A”) need not specify any regulated facility of another class that is carried on as part of the operation of regulated facility A.

(3) An environmental permit may be in electronic form.

(4) An environmental permit must include a map, plan or other description of the site showing the geographical extent of the site of the regulated facility.

(5) But if there is more than one regulated facility on the site, the map, plan or other description need show only the combined extent of all the facilities.

(6) Paragraphs (4) and (5) do not apply to an environmental permit authorising—

- (a) the operation of mobile plant; or
- (b) the carrying on of a radioactive substances activity described in paragraph 5(5) of Part 2 of Schedule 23.

*(7) Every environmental permit to which Schedules 7, 13 and 14 apply is deemed to contain the following conditions, unless such conditions are included in the permit—*

*(a) in the event that the operation of a regulated facility gives rise to an incident or accident which significantly affects the environment, the operator of that regulated facility must immediately—*

- (i) inform the regulator, and*
- (ii) take the measures necessary to limit the environmental consequences of such an incident or accident, and*
- (iii) take the measures necessary to prevent further possible incidents or accidents.*

*(b) in the event of a breach of any permit condition the operator of a regulated facility must immediately—*

- (i) inform the regulator,*
- (ii) take the measures necessary to ensure that compliance is restored within the shortest possible time*

*(c) in the event of a breach of permit condition which poses an immediate danger to human health or threatens to cause an immediate significant adverse effect on the environment, the operator of a regulated facility must immediately suspend the operation of the regulated facility or the relevant part of it until compliance with the permit conditions has been restored.*

### **Enforcement notices**

**36.**—(1) If the regulator considers that an operator has contravened, is contravening, or is likely to contravene an environmental permit condition, the regulator may serve a notice (an “enforcement notice”) on the operator under this regulation.

(2) An enforcement notice must—

- (a) state the regulator’s view under paragraph (1);
- (b) specify the matters constituting the contravention or making a contravention likely;
- (c) specify the steps that must be taken to remedy the contravention or to ensure that the likely contravention does not occur; and
- (d) specify the period within which those steps must be taken.

(3) Steps that may be specified in an enforcement notice include steps—

- (a) to make the operation of a regulated facility comply with the environmental permit conditions; and
- (b) to remedy the effects of pollution caused by the contravention.

(4) The regulator may withdraw an enforcement notice at any time by further notice served on the operator.

*(5) In the case of a regulated facility to which Schedule 7, 13 or 14 applies, if the regulator considers that an incident or accident significantly affecting the environment has occurred as the result of the operation of that regulated facility, the regulator may serve a notice on the operator of that facility.*

*(6) Where a notice is served under paragraph (5), it must—*

*(a) specify the measures necessary to limit the environmental consequences of the incident or accident, and*

*(b) specify the measures necessary to prevent further possible incidents or accidents.*

### **Defences**

**40.**—(2) It is a defence for a person charged with an offence under regulation 38(1), (2) or (3) to prove that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—

- (a) the person took all such steps as were reasonably practicable in the circumstances for minimising pollution; and
- (b) particulars of the acts were furnished to the regulator as soon as reasonably practicable after they were done.



(3) A person who knowingly permits a water discharge activity or groundwater activity where the discharge is water from an abandoned mine or an abandoned part of a mine is not guilty of an offence under regulation 38(1) unless—

- (a) the person is the owner or former operator of the mine or that part of it; and
- (b) the mine or the part of the mine was abandoned after 31st December 1999.

(4) In paragraph (2), “abandoned”, in relation to a mine, and “mine” have the meaning given in section 91A of the 1991 Act.

***(4) It is a defence for a person charged with an offence under regulation 38(1) in relation to an installation referred to in regulation 12(5) to prove that a duly-made application for a permit was submitted by 24th November 2014.***

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## SCHEDULE 2

### Exempt facilities: general

Interpretation: general

1.—(1) In this Schedule—

“applicable fee” means—

- (a) a fee imposed by the Agency under paragraph 11 until such date as it is superseded by a charging scheme referred to in that paragraph, or
- (b) on and after that date, the fee prescribed under such a scheme;

“date of registration” means the date on which the relevant particulars first appear on the register;

“occupier” means a person who is or has been the occupier of the land on which an exempt water discharge activity or exempt groundwater activity is carried on;

“operator” means the person carrying on a water discharge activity, ***a solvent emission activity*** or groundwater activity;

“register” means the register which the exemption registration authority is required to establish and maintain under paragraph 7(1);

“registered” means—

- (a) in relation to a waste operation, that the relevant particulars appear on the register during a valid registration period,
- (b) in relation to a water discharge activity, ***a solvent emission activity*** or groundwater activity, that the relevant particulars appear on the register,

and “registration” is to be construed accordingly;.....

### Interpretation: exemption registration authority

Extracts of EPR regulations and Schedules as they would be with the amendments proposed in February 2012.

2.—(1) Subject to sub-paragraphs (2) and (3), the exemption registration authority in relation to a waste operation falling within a description in Part 1 of Schedule 3 is the Agency.

(2) The exemption registration authority in relation to a waste operation falling within a description in paragraph T3 or T7 is—

(a) for a waste operation carried on by waste mobile plant by an establishment or undertaking whose principal place of business is in England and Wales, the local authority in whose area it has its principal place of business;

(b) for a waste operation carried on by waste mobile plant by an establishment or undertaking whose principal place of business is not in England and Wales, the local authority in whose area the operation is first carried on;

(c) for a waste operation not carried on by waste mobile plant, the local authority in whose area the operation is carried on.

(3) The exemption registration authority in relation to a waste operation falling within a description in paragraph T22 is the authority responsible for granting an authorisation under regulation 27 of the Animal By-Products Regulations.

(4) The exemption registration authority in relation to a water discharge activity falling within a description in Part 2 of Schedule 3 is the Agency.

(5) The exemption registration authority in relation to a groundwater activity falling within a description in Part 3 of Schedule 3 is the Agency.

***(6) The exemption registration authority in relation to an exempt solvent emission activity is the Local Authority in whose area the activity is carried on***

### **Exempt waste operations**

3.—(1) .....

#### ***Exempt solvent emission activities***

***3A. For the purposes of the definition of “exempt solvent emission activity” the requirements are—***

***(a) that a solvent emission activity—***

***(i) falls within a description and operates above a solvent consumption threshold set out in Table 1 of Schedule 14, and***

***(ii) complies with the requirements of paragraphs 2 to 7 of Part 3 of Schedule 14.***

***(b) that the solvent emission activity is registered and an operator is registered in relation to it.***

***(c) that the operator of the solvent emission activity notifies the registration authority of any substantial change to the operation of the activity.***

.....

**Procedure for registering an exempt facility**

6.—(1) An establishment or undertaking seeking to be registered in relation to *a solvent emission activity*, a waste operation described in Part 1 of Schedule 3, or seeking to renew such a registration, must notify the exemption registration authority of—

- (a) the relevant particulars; and
- (b) the information specified in sub-paragraph (4).

(2) An occupier or operator seeking to be registered in relation to a water discharge activity described in Part 2 of Schedule 3 or a groundwater activity described in Part 3 of that Schedule must notify the exemption registration authority of the relevant particulars.

(3) The relevant particulars are—

- (a) the name and address of—
  - (i) for a waste operation, the establishment or undertaking, or
  - (ii) for a water discharge activity or groundwater activity, the occupier or operator;
- (b) a description of the waste operation, water discharge activity or groundwater activity;
- (c) the place where the waste operation, water discharge activity or groundwater activity is carried on, including—
  - (i) the post code (if applicable), or
  - (ii) the Ordnance Survey National Grid reference point; and
- (d) if the waste operation is a WEEE operation, the type and quantity of waste subject to the operation.

*(3A) In relation to a solvent emission activity, the relevant particulars are—*

- (a) the full address including post code of the place where the solvent emission activity will take place;*
- (b) the name and address of the operator of the solvent emission activity;*
- (c) a description of the solvent emission activity;*
- (d) whether or not the operator of the solvent emission activity intends to operate a solvent reduction scheme.*

.....

***Record keeping for exempt solvent emission activities***

***14A. An operator who carries on an exempt solvent emission activity must—***

- (a) keep records of the quantity and nature of the solvents used in the course of the operation of that activity,***

- (b) retain any records made in accordance with paragraph (a) for 2 years, and*
- (c) during that period make all such records available to the exemption registration authority on request.*

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### **SCHEDULE 3**

#### **Exempt facilities: descriptions and conditions**

#### **PART 1**

#### **Exempt waste operations: descriptions and conditions (specific and general)**

#### **CHAPTER 2**

#### **Use of waste**

#### **SECTION 1**

#### **Introductory**

1. The descriptions in this Chapter—

- (a) are set out in the first sub-paragraph of paragraphs U1 to U16; and
- (b) include associated storage.

2. The specific conditions for each description in this Chapter are set out in the third sub-paragraph of paragraphs U1 to U16.

3. The general conditions for all descriptions in this Chapter are as follows—

- (a) the operation is for the purposes of recovering or reusing the waste, unless otherwise stated in the specific conditions;
- (b) the waste used is suitable for the purposes of the operation;
- (c) no more waste is used than is necessary to carry on the operation.

*(d) the operation is not an activity that falls within Chapter 5 of Part 2 of Schedule 1*

### **SCHEDULE 9 Regulation 35(2)(c)**

#### **Waste operations**

#### **Application**

1. This Schedule applies in relation to every waste operation.

#### **Interpretation**

Extracts of EPR regulations and Schedules as they would be with the amendments proposed in February 2012.

2. In this Schedule—

“disposal” has the same meaning as in the Waste Framework Directive and related terms are to be construed accordingly; and

“recovery” has the same meaning as in the Waste Framework Directive and related terms are to be construed accordingly.

Grant of an environmental permit for a relevant waste operation: requirement for prior planning permission

3.—(1) Following an application under regulation 13(1), the regulator must not grant an environmental permit that relates to a relevant waste operation if—

- (a) use of the site for carrying on the relevant waste operation requires planning permission or development consent under the Planning Act 2008( ); and
- (b) no such permission or consent is in force.

(2) In this paragraph—

“planning permission” means planning permission under the Town and Country Planning Act 1990( ) and includes—

- (a) a certificate under section 191 of that Act( ), and
- (b) an established use certificate under section 192 of that Act, as originally enacted, which continues to have effect for the purposes of subsection (4) of that section; and

“relevant waste operation” means—

- (a) a waste operation that is not carried on at an installation or by means of Part A mobile plant or Part B mobile plant, or
- (b) a specified waste management activity.

(3) In sub-paragraph (2)(b), “specified waste management activity” means one of the following activities—

- (a) the disposal of waste in a landfill falling within Section 5.2 of Part 2 of Schedule 1;
- (b) the disposal of waste falling within **Section 5.3 Part A(1)(a) of Section 5.3 or Part A(1)(a) (i) and (ii) of Section 5.4** of Part 2 of Schedule 1;
- (c) the recovery of waste falling within **Part A(1)(c)(i), (ii), (v) or (vii) of Section 5.4 Part A(1) (a) (ii),(v),(viii) or (x) of Section 5.3** of Part 2 of Schedule 1.

(4) But “specified waste management activity” does not include any activity specified in sub-paragraph (3)(b) or (c) if that activity—

- (a) is carried on at the same installation as a Part A(1) activity not specified in sub-paragraph (3); and
- (b) is not the activity which constitutes the primary purpose for operating the installation **or**  
**(c) meets a description in Part 1 of Schedule 3 of an exempt waste operation.**