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STATUTORY INSTRUMENTS

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**2007 No. 3538**

**The Environmental Permitting  
(England and Wales) Regulations 2007**

**PART 1**

**General**

**Citation, commencement and extent**

1.—(1) These Regulations—

- (a) may be cited as the Environmental Permitting (England and Wales) Regulations 2007;
- (b) come into force on 6th April 2008; and
- (c) extend to England and Wales only.

(2) For the purposes of this regulation—

- (a) England and Wales includes the sea adjacent to England and Wales out as far as the seaward boundary of the territorial sea; and
- (b) the sea adjacent to Wales has the same meaning as in section 158 of the Government of Wales Act 2006(1).

**Interpretation: general**

2.—(1) Except where otherwise provided, in these Regulations—

- “the 1990 Act” means the Environmental Protection Act 1990(2);
- “the 1995 Act” means the Environment Act 1995(3);
- “the 1994 Regulations” means the Waste Management Licensing Regulations 1994(4);
- “the 2000 Regulations” means the Pollution Prevention and Control (England and Wales) Regulations 2000(5);
- “activity” means, subject to Part 1 of Schedule 1, an activity listed in Part 2 of that Schedule;
- “the Agency” means the Environment Agency;

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(1) 2006 c. 32; the boundary between the sea adjacent to Wales and that adjacent to England is described by article 6 and Schedule 3 of 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.

(2) 1990 c. 43.

(3) 1995 c. 25.

(4) S.I. 1994/1056, amended by S.I. 1995/288, 1995/1950, 1996/593, 1996/634, 1996/972, 1996/1279, 1997/2203, 1998/606, 1998/2746, 2000/1973, 2002/674, 2002/1087 (W. 114), 2002/1559, 2002/2980, 2003/595, 2003/780 (W. 91), 2003/2635, 2004/70 (W. 6), 2004/3276, 2005/894, 2005/1728, 2005/1806 (W. 138), 2005/2900, 2006/937, 2006/3315, 2007/1156, 2007/2596.

(5) S.I. 2000/1973, amended by S.I. 2001/503, 2002/275, 2002/1559, 2002/1702, 2002/2469, 2002/2688, 2002/2980, 2003/1699, 2003/3296, 2003/3311, 2004/107, 2004/434, 2004/1375, 2004/3276, 2005/894, 2005/1448, 2005/1806 (W. 138), 2005/2773, 2006/2311, 2006/2802 (W. 241), 2007/713, 2007/2325, 2007/2596.

“agricultural waste” means waste from premises used for agriculture within the meaning of the Agriculture Act 1947<sup>(6)</sup>;

“appropriate authority” means—

- (a) in relation to England, the Secretary of State, and
- (b) in relation to Wales, the Welsh Ministers;

“directly associated activity” means—

- (a) in relation to a SED activity, an operation which—
  - (i) has a technical connection with the SED activity,
  - (ii) is carried on on the same site as the SED activity, and
  - (iii) could have an effect on a discharge of volatile organic compounds into the environment;
- (b) in relation to any other activity, an operation which—
  - (i) has a technical connection with the activity,
  - (ii) is carried on on the same site as the activity, and
  - (iii) could have an effect on pollution;

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

“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 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, and
- (e) in relation to a waste operation not falling within paragraph (a) to (d), 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;

“the End-of-Life Vehicles Directive” means Directive [2000/53/EC](#) of the European Parliament and of the Council on end-of life vehicles<sup>(7)</sup>;

“enforcement notice” has the meaning given in regulation 36(1);

“environmental permit” has the meaning given in regulation 13(1);

“establishment” has the same meaning as in the Waste Framework Directive;

“excluded waste operation” has the meaning given in regulation 4;

“exempt waste operation” has the meaning given in regulation 5;

“exemption registration authority” has the meaning given in paragraph 2 of Schedule 2;

“hazardous waste”, except in Section 5.1 of Part 2 of Schedule 1, has the meaning given by—

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<sup>(6)</sup> 1947 c. 48.

<sup>(7)</sup> OJ No. L 269, 21.10.2000, p34.

(a) in England, regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005<sup>(8)</sup>,

(b) in Wales, regulation 6 of the Hazardous Waste (Wales) Regulations 2005<sup>(9)</sup>;

“installation” means (except where used in the definition of “excluded plant” in Section 5.1 of Part 2 of Schedule 1)—

(a) a stationary technical unit where one or more activities are carried on, and

(b) any other location on the same site where any other directly associated activities are carried on, and references to an installation include references to part of an installation;

“the IPPC Directive” means Council Directive [96/61/EC](#) concerning integrated pollution prevention and control<sup>(10)</sup>;

“landfill” has the meaning given in Article 2(g) of the Landfill Directive;

“landfill closure notice” means a closure notice served under paragraph 10 of Schedule 10;

“the Landfill Directive” means Council Directive [1999/31/EC](#) on the landfill of waste<sup>(11)</sup>, as read with Council Decision [2003/33/EC](#)<sup>(12)</sup> establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to Directive [1999/31/EC](#);

“local authority” has the meaning given in regulation 6;

“mobile plant” means plant which—

(a) is not an installation,

(b) is used to carry on an activity or waste operation, and

(c) where not used to carry on a Part A activity, is designed to move or be moved whether on roads or other land;

“non-hazardous waste”, except in Section 5.1 of Part 2 of Schedule 1, means waste which is not hazardous waste;

“operator” has the meaning given in regulation 7;

“Part A installation”, “Part A(1) installation”, “Part A(2) installation” and “Part B installation” have the meanings given in regulation 3(2);

“Part A mobile plant”, “Part A(1) mobile plant”, “Part A(2) mobile plant” and “Part B mobile plant” have the meanings given in regulation 3(3);

“pollution” 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 and other legitimate uses of the environment;

“public register” has the meaning given by regulation 46(1);

“recovery” has the same meaning as in the Waste Framework Directive and related terms must be construed accordingly;

“regulated facility” has the meaning given by regulation 8;

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<sup>(8)</sup> S.I. [2005/894](#).

<sup>(9)</sup> S.I. [2005/1806 \(W. 138\)](#).

<sup>(10)</sup> OJ No. L 257, 10.10.1996, p26, as last amended by Regulation [\(EC\) No. 1882/2003](#) of the European Parliament and of the Council (OJ No. L 284, 31.10.2003, p1).

<sup>(11)</sup> OJ No. L 182, 16.7.1999, p1, as amended by Regulation [\(EC\) No. 1882/2003](#) of the European Parliament and of the Council (OJ No. L 284, 31.10.2003, p1).

<sup>(12)</sup> OJ No. L11, 16.1.2003, p27.

“regulator” means the authority on whom functions are conferred by regulation 32, or by a direction under regulation 33;

“relevant function” has the meaning given by regulation 9;

“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;

“standard facility” means a regulated facility described in standard rules published under regulation 26(5);

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

“SED installation” means—

- (a) a stationary technical unit where one or more SED activities are carried on, and
- (b) any other location on the same site where any other directly associated activities are carried on;

“suspension notice” has the meaning given in regulation 37(1);

“undertaking” has the same meaning as in the Waste Framework Directive;

“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;

“the Waste Framework Directive” means Directive [2006/12/EC](#) of the European Parliament and of the Council on waste<sup>(13)</sup>;

“the Waste Incineration Directive” means Directive [2000/76/EC](#) of the European Parliament and of the Council on the incineration of waste<sup>(14)</sup>;

“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;

“WEEE” has the meaning given by Article 3(b) of the WEEE Directive;

“WEEE Directive” means Directive [2002/96/EC](#) of the European Parliament and of the Council on waste electrical and electronic equipment<sup>(15)</sup>; 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<sup>(16)</sup>.

(2) Where the duration of a period of time is expressed as being 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.

<sup>(13)</sup> OJ No. L 114, 27.4.2006, p9.

<sup>(14)</sup> OJ No. L 332, 28.12.2000, p91. There is a relevant corrigendum, OJ No. L 145, 31.5.2001, p52.

<sup>(15)</sup> OJ No. L 37, 13.2.2003, p24.

<sup>(16)</sup> [1971 c. 80](#).

- (3) In these Regulations, a power to give a direction includes a power to vary or revoke it.

### **Interpretation: activities, installations and mobile plant**

- 3.—(1) In these Regulations—

“Part A activity” means a Part A(1) activity or a Part A(2) activity;

“Part A(1) activity” means an activity falling within Part A(1) of any Section in Part 2 of Schedule 1;

“Part A(2) activity” means an activity falling within Part A(2) of any Section in Part 2 of Schedule 1; and

“Part B activity” means an activity falling within Part B of any Section in Part 2 of Schedule 1.

- (2) In these Regulations—

“Part A installation” means a Part A(1) installation or a Part A(2) installation;

“Part A(1) installation” means an installation where a Part A(1) activity is carried on, including an installation also carrying on a Part A(2) activity or a Part B activity;

“Part A(2) installation” means an installation where a Part A(2) activity is carried on, not being a Part A(1) installation but including an installation also carrying on a Part B activity; and

“Part B installation” means, subject to Sections 2.2, 5.1 and 6.4 of Part 2 of Schedule 1, an installation where a Part B activity is carried on, not being a Part A installation.

- (3) In these Regulations—

“Part A mobile plant” means Part A(1) mobile plant or Part A(2) mobile plant;

“Part A(1) mobile plant” means mobile plant used to carry on a Part A(1) activity, including plant also carrying on a Part A(2) activity or a Part B activity;

“Part A(2) mobile plant” means mobile plant used to carry on a Part A(2) activity, not being Part A(1) mobile plant but including plant also carrying on a Part B activity; and

“Part B mobile plant” means mobile plant used to carry out a Part B activity, not being Part A mobile plant.

### **Interpretation: excluded waste operation**

4. In these Regulations, “excluded waste operation” means—

- (a) a waste operation which is or forms part of an operation which—

(i) is the subject of a licence under Part II of the Food and Environment Protection Act 1985(17), or

(ii) by virtue of an order under section 7 of that Act, does not require such a licence;

- (b) the disposal of liquid waste under a consent under Chapter II of Part III of the Water Resources Act 1991(18);

- (c) the disposal of agricultural waste in or on land under an authorisation under regulation 18 of the Groundwater Regulations 1998(19);

- (d) the disposal or recovery of waste which is not to be treated as industrial waste or commercial waste by virtue of regulation 7(1) of the Controlled Waste Regulations 1992(20).

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(17) 1985 c. 48.

(18) 1991 c. 57.

(19) S.I. 1998/2746.

(20) S.I. 1992/588; relevant amending instruments are S.I. 1993/556, 1994/1056, 1995/288, 2006/937.

**Interpretation: exempt waste operation**

- 5.—(1) In these Regulations, a waste operation is an “exempt waste operation” if—
- (a) the requirements in paragraph 3(1) of Schedule 2 are met in respect of the waste operation;
  - (b) it falls within a description in Part 1 of Schedule 3; and
  - (c) the type and quantity of waste submitted to the waste operation, and the method of disposal or recovery, are consistent with the need to attain the objectives mentioned in Article 4(1) of the Waste Framework Directive.
- (2) But a waste operation is not an exempt waste operation to the extent that it involves hazardous waste or the storage or treatment of WEEE, unless otherwise indicated in Part 1 of Schedule 3.
- (3) Schedule 2 (exempt waste operations: general) has effect.

**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>(21)</sup> that authority is the local authority for the area covered by that district in relation to a Part B installation.

**Interpretation: operator**

7. In these Regulations “operator” means—
- (a) the person who has control over the operation of a regulated facility;
  - (b) if a regulated facility has not been put into operation, the person who will have control over the facility when it is put into operation; or
  - (c) if a regulated facility has ceased to be in operation, the person who holds the environmental permit which authorised the operation of the facility.

**Interpretation: regulated facility**

- 8.—(1) Subject to paragraphs (2) and (3), in these Regulations, “regulated facility” means any of the following—
- (a) an installation,

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(21) 1984 c. 22.

- (b) mobile plant other than waste mobile plant,
  - (c) waste mobile plant,
  - (d) a waste operation not carried on at an installation or by means of mobile plant.
- (2) An exempt waste operation is not a regulated facility.
- (3) The following are not regulated facilities within paragraph (1)(c) or (d)—
- (a) an excluded waste operation,
  - (b) 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.
- (4) In this regulation—
- “household waste” has the meaning given in section 75(5) of the 1990 Act; and
- “waste mobile plant” means mobile plant which—
- (a) is used to carry on a waste operation, and
  - (b) is not Part A mobile plant or Part B mobile plant.

#### **Interpretation: relevant function**

9. In these Regulations, “relevant function” means one of the following functions—
- (a) determining an application—
    - (i) for an environmental permit under regulation 13(1),
    - (ii) to vary an environmental permit under regulation 20(1),
    - (iii) to transfer an environmental permit in whole or in part under regulation 21(1),
    - (iv) to surrender 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),
    - (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 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);
  - (e) exercising any of the following powers relating to enforcement—
    - (i) the power to serve an enforcement notice, or
    - (ii) the power to serve a suspension 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) delivering it to him in person;

- (b) leaving it at his proper address, or
  - (c) sending it by post or electronic means to his proper address.
- (4) In the case of a body corporate, an instrument may be served on or given to the secretary or clerk of that body.
- (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) If a person to be served with or given an instrument has specified an address in the United Kingdom other than his proper address at which he or someone on his behalf will accept instruments of that description, that address must also be treated as his proper address.
- (7) 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.
- (8) For the purposes of paragraph (7), 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.
- (9) A form provided by the regulator which specifies an electronic address for submission may be submitted electronically to that address.
- (10) A form provided by the regulator for completion and submission through a website may be submitted through that site.

## PART 2

### Environmental Permits

#### CHAPTER 1

Application of these Regulations to the Crown and requirement for an environmental permit

#### **Application of these Regulations to the Crown**

**11.** Schedule 4 (application of these Regulations to the Crown) has effect.

#### **Requirement for an environmental permit**

**12.** No person may operate a regulated facility except under and to the extent authorised by an environmental permit.

## CHAPTER 2

### Grant of an environmental permit

#### **Grant of an environmental permit**

13.—(1) On the application of an operator, the regulator may grant to that operator a permit (in these Regulations, an “environmental permit”) authorising the operation of a regulated facility.

(2) Part 1 (grant, variation, transfer and surrender of environmental permits) of Schedule 5 applies in relation to an application for the grant of an environmental permit.

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

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

- (a) every regulated facility to which it relates, and
- (b) the person authorised to operate that regulated facility.

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

(3) An environmental permit authorising the operation of a regulated facility, other than mobile plant, must include a map, plan or other description of the site showing the geographical extent of the site of the facility.

(4) If there is more than one regulated facility on the site, the map, plan or other description may show only the combined extent of all the facilities.

#### **Conditions in relation to certain land**

15.—(1) Conditions in an environmental permit may require the operator to carry out works or do other things in relation to land which he is not entitled to do without obtaining the consent of another person.

(2) If an environmental permit contains such a condition, the person whose consent is required must grant the operator such rights as are necessary to enable the operator to comply with the condition.

(3) Part 2 (compensation in relation to conditions affecting certain interests in land) of Schedule 5 applies where such rights are granted.

#### **Mobile plant operating on the site of another regulated facility: conflict of permit conditions**

16. If—

- (a) an environmental permit (“permit A”) authorises the operation of mobile plant on the site of a regulated facility the operation of which is authorised by a separate environmental permit (“permit B”); and
- (b) there is an inconsistency between the requirements imposed by permit A and those imposed by permit B,

the requirements imposed by permit B prevail.

#### **Single site permits etc.**

17. An environmental permit may authorise the operation by the same operator—

- (a) on the same site of more than one regulated facility, other than a Part B installation or Part B mobile plant;
- (b) on the same site of more than one Part B installation;

- (c) of more than one mobile plant; or
- (d) of more than one standard facility (other than a standard facility to which the IPPC Directive applies),

but may not otherwise authorise the operation of more than one regulated facility.

#### **Consolidation of an environmental permit**

- 18.**—(1) Paragraph (2) applies if there is more than one environmental permit which authorises—
- (a) the operation of mobile plant by the same operator;
  - (b) the operation of standard facilities, not being standard facilities to which the IPPC Directive applies, by the same operator; or
  - (c) in any other case, the operation of regulated facilities on the same site by the same operator.
- (2) The regulator may replace the environmental permits with a consolidated environmental permit—
- (a) applying to the same regulated facilities; and
  - (b) subject to the same conditions as the permits being replaced.
- (3) The regulator may replace an environmental permit which has been varied with a consolidated environmental permit subject to the same conditions.

#### **Subsistence of an environmental permit**

- 19.** Once granted an environmental permit continues in force until—
- (a) it is revoked in whole in accordance with regulation 22;
  - (b) it is surrendered in whole in accordance with—
    - (i) regulation 24, or
    - (ii) regulation 25 and Part 1 of Schedule 5; or
  - (c) it is replaced with a consolidated permit in accordance with—
    - (i) regulation 18(2),
    - (ii) regulation 22(5),
    - (iii) paragraph 19(2) of Part 1 of Schedule 5.

### **CHAPTER 3**

#### Variation, transfer, revocation and surrender of an environmental permit

#### **Variation of an environmental permit**

- 20.**—(1) The regulator may vary an environmental permit on the application of the operator or on its own initiative.
- (2) But a variation made under paragraph (1) must not reduce the extent of the site of a regulated facility.
- (3) Paragraph (2) does not apply to Part B installations.
- (4) Part 1 (grant, variation, transfer and surrender of environmental permits) of Schedule 5 applies in relation to an application to vary an environmental permit or a proposal to vary an environmental permit on the initiative of the regulator under paragraph (1).

### **Transfer of an environmental permit**

**21.**—(1) The regulator may transfer an environmental permit in whole or in part from the operator to another person on the joint application of the operator and that other person.

(2) Part 1 (grant, variation, transfer and surrender of environmental permits) of Schedule 5 applies in relation to the transfer of an environmental permit in whole or in part.

- (a) an enforcement notice is in force in respect of an environmental permit; and
- (b) the permit is transferred to another person, either in whole or in part,

the duty to comply with the enforcement notice is also transferred to the other person to the extent that it relates to the permit or part transferred.

### **Revocation of an environmental permit: general**

**22.**—(1) The regulator may revoke an environmental permit in whole or in part.

(2) If the regulator revokes a permit in part, it may vary the permit conditions to the extent that it considers necessary to take account of the revocation.

(3) Where the regulator decides to revoke an environmental permit it must serve a notice on the operator specifying—

- (a) the reasons for the revocation;
- (b) in the case of a partial revocation—
  - (i) the extent to which the environmental permit is being revoked, and
  - (ii) any variation to the conditions of the environmental permit; and
- (c) the date on which the revocation will take place, which must not be less than 20 working days from the date on which the notice is served.

(4) Unless the regulator withdraws a revocation notice, an environmental permit ceases to have effect on the date specified in the notice—

- (a) in the case of a revocation in whole, entirely; or
- (b) in the case of a partial revocation, to the extent of the part revoked.

(5) In the case of a partial revocation, the regulator may replace the environmental permit with a consolidated environmental permit reflecting the change.

(6) If the regulator issues such a consolidated permit—

- (a) it must at the same time serve a notice on the operator specifying any variation to the permit conditions; and
- (b) only the variations specified are subject to the right of appeal in regulation 31(1)(b).

### **Revocation of an environmental permit: steps to be taken after the revocation takes effect**

**23.**—(1) This paragraph applies where the regulator has decided to revoke an environmental permit and it considers that, after the revocation takes effect, it is appropriate for the operator to take steps—

- (a) to avoid a pollution risk resulting from the operation of the regulated facility; or
- (b) to return the site of the regulated facility to a satisfactory state, having regard to the state of the site before the facility was put into operation.

(2) But this paragraph does not apply in relation to a Part B installation or Part B mobile plant.

(3) If the operator is already required to take the steps mentioned in paragraph (1) under the environmental permit, the revocation notice must specify the regulator's view under paragraph (1) and state that paragraph (4) applies.

(4) The environmental permit continues to have effect to the extent that it requires the steps to be taken until the regulator issues a certificate stating that it is satisfied that all the steps have been taken.

(5) If the operator is not already required to take the steps mentioned in paragraph (1) under the environmental permit, the revocation notice must specify the regulator's view under paragraph (1) and the steps to be taken.

(6) If paragraph (5) applies, unless the regulator issues a certificate stating that it is satisfied that all the steps have been taken, the steps must be treated as if they were conditions of an environmental permit for the purposes of—

- (a) regulation 20;
- (b) regulation 36; and
- (c) the offence of failing to comply with or contravening a condition in regulation 38(1)(b).

#### **Notification of the surrender of an environmental permit**

**24.**—(1) This regulation applies to—

- (a) an environmental permit for mobile plant;
- (b) an environmental permit for a Part B installation; and
- (c) any part of an environmental permit which relates to an activity falling within Part A(2) of section 5.1 of Part 2 of Schedule 1.

(2) An operator may surrender an environmental permit to which this regulation applies, in whole or in part, by notifying the regulator of the surrender.

(3) A notification must—

- (a) be made on the form provided by the regulator;
- (b) include such information as is specified in the form; and
- (c) specify the date on which the surrender is to take place, which must not be less than 20 working days from the date on which the notification is given.

(4) Subject to paragraph (7), the environmental permit ceases to have effect on the date specified in the notification to the extent specified there.

(5) Paragraphs (6) and (7) apply to a partial surrender if the regulator considers it necessary to vary the environmental permit conditions to take account of that surrender.

(6) The regulator must serve a notice on the operator specifying—

- (a) the regulator's view under paragraph (5);
- (b) the variation; and
- (c) the date the variation takes effect.

(7) If the date specified in the notice under paragraph (6)(c) is later than the date specified in the notification under paragraph (3), the variation and partial surrender both take effect on the later date.

#### **Application to surrender an environmental permit**

**25.**—(1) This regulation applies to the surrender of an environmental permit to which regulation 24 does not apply.

(2) An operator may surrender an environmental permit to which this regulation applies, in whole or in part, by application to the regulator.

(3) Part 1 (grant, variation, transfer and surrender of environmental permits) of Schedule 5 applies in relation to an application to surrender an environmental permit in whole or in part.

## CHAPTER 4

### Standard rules

#### **Preparation and revision of standard rules**

**26.**—(1) A rule-making authority may prepare standard rules for such regulated facilities as are described in those rules.

(2) In preparing or revising standard rules the authority must consult—

(a) such persons or bodies as it considers are representative of the interests of communities likely to be affected by, or persons operating, the regulated facilities described in the rules; and

(b) such other persons as it considers are likely to be affected by or have an interest in the rules.

(3) But the duty in paragraph (2) does not apply in relation to revisions which comprise only minor administrative changes.

(4) The authority must keep under review all standard rules published by it under this regulation and revise those rules when it considers necessary.

(5) The authority must publish on its website all standard rules prepared or revised by it under this regulation.

(6) The duty in paragraph (2) may be satisfied by a consultation carried out partially or wholly before the coming into force of these Regulations.

#### **Standard rules as conditions of an environmental permit**

**27.**—(1) This regulation applies where a rule-making authority has published standard rules under regulation 26(5).

(2) At the request of the operator of a standard facility the regulator may include in the environmental permit authorising the facility a term providing that the relevant rules are conditions of the permit.

(3) If the regulator includes such a term, the relevant rules are conditions of the permit for the purposes of these Regulations, but there is no right of appeal under regulation 31 in relation to such a condition or the relevant rules.

(4) In this regulation “relevant rules” means the standard rules which apply to the standard facility.

#### **Notification of revisions of standard rules**

**28.**—(1) This regulation applies where the rule-making authority proposes to revise standard rules under regulation 26(4).

(2) Before the rule-making authority complies with regulation 26(5), the regulator must notify any operator who holds a relevant environmental permit—

(a) of the proposed revisions;

(b) of the date when the revised rules will be published, which must not be less than 3 months from the date the notification is served; and

(c) that on this date the revised rules will become conditions of the environmental permit.

(3) But the authority may publish the revised rules before 3 months from the date the notification is served if the revisions comprise only minor administrative changes.

(4) The revised rules take effect when published under regulation 26(5).

(5) In this regulation “relevant environmental permit” means an environmental permit which will be affected by the proposed revisions.

#### **Revocation of standard rules**

**29.** The rule-making authority may revoke standard rules, but before doing so must consult the persons and bodies referred to in regulation 26(2).

#### **Variation of an environmental permit: revocation of standard rules**

**30.**—(1) This regulation applies to an environmental permit which includes a standard rules term if the standard rules applying by virtue of that term have been revoked by the regulator.

(2) The revoked rules continue to have effect until the regulator varies the permit under paragraph (3).

(3) As soon as reasonably practicable after the revocation of the rules, the regulator must vary the permit so as to—

- (a) remove the standard rules term; and
- (b) include such alternative conditions as it considers appropriate.

(4) In this regulation, “standard rules term” means a term of the type mentioned in regulation 27(2).

## CHAPTER 5

### Appeals in relation to environmental permits

#### **Appeals to an appropriate authority**

**31.**—(1) Subject to paragraphs (2) and (3), the following persons may appeal to the appropriate authority—

- (a) a person whose application—
  - (i) for the grant of an environmental permit,
  - (ii) to vary an environmental permit,
  - (iii) to transfer an environmental permit in whole or in part, or
  - (iv) to surrender an environmental permit in whole or in part,
 is refused;
- (b) a person who is aggrieved by an environmental permit condition imposed—
  - (i) following an application for the grant of an environmental permit,
  - (ii) following an application to vary an environmental permit,
  - (iii) pursuant to a regulator initiated variation, or
  - (iv) to take account of the transfer in whole or in part or the partial surrender of an environmental permit;
- (c) a person who is aggrieved by the deemed withdrawal of a duly-made application under paragraph 4(2) of Schedule 5;
- (d) a person who is aggrieved by a decision not to authorise the closure procedure mentioned in Article 13 of the Landfill Directive after a request referred to in Article 13(a)(ii) of that Directive;

- (e) a person on whom a revocation notice, enforcement notice, suspension notice or landfill closure notice is served.
- (2) Paragraph (1) does not apply where the relevant decision or notice implements a direction of the appropriate authority given under—
  - (a) regulation 61(1);
  - (b) regulation 62(1);
  - (c) regulation 62(6); or
  - (d) paragraph (4).
- (3) Paragraph (1)(e) does not apply to the extent that a revocation notice or suspension notice is served because of a failure to pay a charge prescribed in a scheme made under regulation 65(1) in respect of the subsistence of an environmental permit.
- (4) When determining an appeal in respect of a decision the appropriate authority has the same powers as the regulator had when making the decision.
- (5) Schedule 6 (appeals to the appropriate authority) has effect in relation to the making and determination of appeals under this regulation.
- (6) On determining an appeal under paragraph (1) in respect of a notice the appropriate authority—
  - (a) may quash or affirm the notice; and
  - (b) if it affirms, may do so in its original form or with such modifications as it thinks fit.
- (7) On the determination of an appeal against a decision, unless the appropriate authority affirms the decision the authority must direct the regulator to give effect to its determination when sending a copy of it to the regulator under paragraph 6(2) of Schedule 6.
- (8) An appeal under paragraph (1) does not have the effect of suspending the decision or notice in question.
- (9) But where an appeal is brought against a revocation notice, the revocation does not take effect until the final determination or the withdrawal of the appeal.

## PART 3

### Discharge of functions in relation to a regulated facility

#### **Discharge of functions**

- 32.**—(1) Functions in relation to a Part A(1) installation or Part A(1) mobile plant are exercisable by the Agency.
- (2) Functions in relation to a Part A(2) installation or a Part B installation are exercisable by the local authority in whose area the installation is or will be operated.
  - (3) If the operator of Part A(2) mobile plant or Part B mobile plant has his principal place of business in England and Wales, functions in relation to that plant are exercisable by the local authority in whose area the place of business is.
  - (4) If the operator of Part A(2) mobile plant or Part B mobile plant does not have his principal place of business in England and Wales, functions in relation to that plant are exercisable by—
    - (a) the local authority which granted the environmental permit authorising the operation of the plant; or
    - (b) if no permit has been granted, the local authority in whose area the plant is first operated, or is intended to be first operated.

(5) Functions in relation to a waste operation which is carried on other than at an installation, or by Part A mobile plant or Part B mobile plant, are exercisable by the Agency.

### **Direction to a regulator: discharge of functions by a different regulator**

**33.**—(1) An appropriate authority may direct—

- (a) the Agency to exercise such local authority functions as are, and for such period as is, specified in the direction; or
- (b) a local authority to exercise such Agency functions as are, and for such period as is, specified in the direction.

(2) A direction under this regulation may include such saving and transitional provisions as the appropriate authority considers necessary or expedient.

(3) A direction under this regulation may be made in respect of a description of regulated facility or a specific regulated facility.

(4) A direction under paragraph (1)(b) may not be made in relation to a waste operation carried on other than at an installation or by means of mobile plant.

(5) When giving a direction under this regulation the appropriate authority must notify the persons in paragraph (6) of the direction and publish the direction on its website.

(6) The persons are—

- (a) the Agency; and
- (b) any local authority or other person who in the appropriate authority's opinion are affected by the direction.

(7) An appropriate authority must not comply with a duty under paragraph (5) in a case where the authority considers that to do so would be contrary to the interests of national security.

(8) In this regulation—

“local authority functions” means functions which are exercisable by a local authority by virtue of regulation 32 or paragraph 2 of Schedule 2 (ignoring any direction under this regulation); and

“Agency functions” means functions which are exercisable by the Agency by virtue of regulation 32 or paragraph 2 of Schedule 2 (ignoring any direction under this regulation).

### **Review of environmental permits and inspection of regulated facilities**

**34.**—(1) The regulator must periodically review environmental permits.

(2) The regulator must make appropriate periodic inspections of regulated facilities.

### **Provision in relation to types of regulated facility**

**35.** The following Schedules, which contain provision in relation to types of regulated facility, have effect—

- (a) Schedule 7 (provision in relation to Part A installations and Part A mobile plant);
- (b) Schedule 8 (provision in relation to Part B installations and Part B mobile plant);
- (c) Schedule 9 (provision in relation to waste operations);
- (d) Schedule 10 (provision in relation to landfill);
- (e) Schedule 11 (provision in relation to waste motor vehicles);
- (f) Schedule 12 (provision in relation to waste electrical and electronic equipment);

- (g) Schedule 13 (provision in relation to waste incineration);
- (h) Schedule 14 (provision in relation to SED installations);
- (i) Schedule 15 (provision in relation to certain combustion plants);
- (j) Schedule 16 (provision in relation to asbestos);
- (k) Schedule 17 (provision in relation to titanium dioxide);
- (l) Schedule 18 (provision in relation to petrol vapour recovery).

## PART 4

### Enforcement and offences

#### **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 on him under this regulation (in these Regulations, an “enforcement notice”).

(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.

#### **Suspension notices**

**37.**—(1) If the regulator considers that the operation of a regulated facility under an environmental permit involves a risk of serious pollution, it may serve a notice on the operator under this regulation (in these Regulations, a “suspension notice”).

(2) Paragraph (1) applies whether or not the manner of operating the facility which involves the risk is subject to or contravenes an environmental permit condition.

(3) A suspension notice must—

- (a) state the regulator’s view under paragraph (1);
- (b) specify—
  - (i) the risk of serious pollution mentioned in that paragraph,
  - (ii) the steps that must be taken to remove that risk, and
  - (iii) the period within which the steps must be taken;
- (c) state that the environmental permit ceases to have effect to the extent specified in the notice until the notice is withdrawn; and

- (d) if the environmental permit continues to authorise an operation, state any steps (in addition to those already required to be taken by the environmental permit conditions) that are to be taken when carrying on that operation.
- (4) If a suspension notice is served the environmental permit ceases to have effect to the extent stated in the notice.
- (5) The regulator—
  - (a) may withdraw a suspension notice at any time by further notice served on the operator; and
  - (b) must withdraw a notice when satisfied that the steps specified in it have been taken.

### **Offences**

- 38.**—(1) It is an offence for a person—
- (a) to contravene, or knowingly cause or knowingly permit the contravention of, regulation 12;
  - (b) to fail to comply with or to contravene an environmental permit condition;
  - (c) to fail to comply with the requirements of an enforcement notice, a suspension notice or a landfill closure notice;
  - (d) to fail to comply with a notice under regulation 60(2) requiring the provision of information, without reasonable excuse;
  - (e) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—
    - (i) in purported compliance with a requirement to provide information imposed by or under a provision of these Regulations, or
    - (ii) for the purpose of obtaining the grant of an environmental permit to himself or another person, or the variation, transfer in whole or in part, or surrender in whole or in part of an environmental permit;
  - (f) intentionally to make a false entry in a record required to be kept under an environmental permit condition;
  - (g) with intent to deceive—
    - (i) to forge or use a document issued or authorised to be issued or required for any purpose under an environmental permit condition, or
    - (ii) to make or have in his possession a document so closely resembling such a document as to be likely to deceive.
- (2) It is an offence for an establishment or undertaking to—
- (a) fail to comply with paragraph 9 or 12(3) of Schedule 2; or
  - (b) intentionally make a false entry in a record required to be kept under paragraph 12(3) of Schedule 2.
- (3) If an offence committed by a person under this regulation is due to the act or default of some other person, that other person is also guilty of the offence and liable to be proceeded against and punished accordingly.

### **Penalties**

- 39.**—(1) A person guilty of an offence under regulation 38(1)(a), (b) or (c) is liable—

- (a) on summary conviction to a fine not exceeding £50,000 or imprisonment for a term not exceeding 12 months, or to both; or
  - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years, or to both.
- (2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003(22), paragraph (1)(a) has effect as if—
- (a) for “£50,000” there were substituted “£20,000”; and
  - (b) for “12 months” there were substituted “6 months”.
- (3) A person guilty of an offence under regulation 38(1)(d), (e), (f) or (g) is liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years, or to both.
- (4) An establishment or undertaking guilty of an offence under regulation 38(2) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

#### **Defence: acts done in an emergency**

**40.** It is a defence for a person charged with an offence under regulation 38(1)(a), (b) or (c) 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) he 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.

#### **Offences by bodies corporate**

**41.—**(1) If an offence committed under these Regulations by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) In this regulation, “officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

#### **Enforcement by the High Court**

**42.** If the regulator considers that proceedings against a person for an offence under regulation 38(1)(c) would afford an ineffectual remedy against the person, the regulator may take proceedings in the High Court for the purpose of securing compliance with the enforcement notice, suspension notice or landfill closure notice.

**Admissibility of evidence**

**43.** Where, pursuant to an environmental permit granted by a local authority, an entry is required to be made in any record as to the observance of a condition of the environmental permit and the entry has not been made, that fact is admissible as evidence that the condition has not been observed.

**Power of court to order cause of offence to be remedied**

**44.—**(1) This regulation applies where a person is convicted of an offence under regulation 38(1) (a), (b) or (c) in respect of a matter which appears to the court to be a matter which it is in his power to remedy.

(2) In addition to or instead of a punishment imposed under regulation 39 the court may order the person to take such steps for remedying the matter within such period as may be specified in the order.

(3) The period may be extended, or further extended, by order of the court on an application made before the end of the period or the extended period, as the case may be.

(4) If a person is ordered to remedy a matter, that person is not liable under regulation 38 in respect of that matter during the period or the extended period.

**PART 5****Public Registers****Interpretation of this Part**

**45.** In this Part—

“confidential information” means information that is commercially or industrially confidential in relation to any person;

“final confidentiality decision” means—

- (a) a determination made in accordance with regulation 51,
- (b) a determination under section 22(2) or 66(2) of the 1990 Act,
- (c) a determination under regulation 31(2) of the 2000 Regulations, or
- (d) the determination or withdrawal of an appeal in relation to a determination referred to in sub-paragraphs (a) to (c);

“the information subject” means the person to whom information relates;

“objection notice” means a notice given under regulation 48(1)(b).

**Duty of the regulator to maintain a public register**

**46.—**(1) Subject to regulations 47 and 48, the regulator must maintain a register containing the information in paragraph 1 of Schedule 19 (in these Regulations, a “public register”).

(2) But, nothing in paragraph (1) requires a public register to contain information relating to criminal proceedings, or anything which is the subject matter of criminal proceedings, before those proceedings are finally disposed of.

(3) In paragraph (2) “criminal proceedings” includes prospective criminal proceedings.

(4) A local authority must also include on its public register any information which is included on the Agency’s public register in respect of a regulated facility (other than mobile plant)—

- (a) for which the Agency is the regulator; and

- (b) which is in the area of the authority.
- (5) But—
  - (a) paragraph (4) does not apply to a port health authority; and
  - (b) every local authority whose area adjoins that of a port health authority must comply with paragraph (4) as if the port health authority had not been constituted.
- (6) The Agency must provide the local authority with the information necessary to comply with paragraph (4).
- (7) The regulator must enter information on its public register as soon as reasonably practicable after it comes within the regulator’s possession.
- (8) The regulator must—
  - (a) make its public register available for public inspection at all reasonable times, free of charge; and
  - (b) enable members of the public to obtain copies of entries on its public register on payment of a reasonable charge.
- (9) A public register may be kept in any form.

**Exclusion from public registers of information affecting national security**

- 47.**—(1) The appropriate authority may direct the regulator that in the interests of national security specified information or a specified description of information must be excluded from a public register.
- (2) The regulator must notify the appropriate authority of any information it excludes from a public register pursuant to such a direction.
- (3) The appropriate authority may direct the regulator that in the interests of national security a specified description of information must be referred to the authority for its determination before the information is included on a public register.
- (4) A person may give a notice to the appropriate authority stating that in his opinion the inclusion of information on a public register would be contrary to the interests of national security.
- (5) A notice under paragraph (4) must specify the information and indicate its apparent nature.
- (6) A person giving a notice under paragraph (4) must at the same time notify the regulator.
- (7) The regulator must not include information notified under paragraph (4) on a public register unless the appropriate authority determines that it may be included.

**Exclusion from public registers of confidential information**

- 48.**—(1) The regulator must exclude information from a public register, unless a condition in paragraph (2) is met, if it—
- (a) considers that the information may be confidential information; or
  - (b) receives notice from the information subject which—
    - (i) states that he considers the information is confidential information, and
    - (ii) gives reasons for that view.
- (2) The conditions are that—
- (a) in relation to paragraph (1)(a), the regulator has given a notice under regulation 49(1) and the information subject has given notice of consent under regulation 49(2)(a);
  - (b) in relation to paragraph (1)(a) or (b)—

- (i) a final confidentiality decision that the information should be included on the register has been made, or
- (ii) the appropriate authority has given a direction under regulation 56(1) which requires the information to be included on the register.

### **Procedure if the regulator considers that information may be confidential**

**49.**—(1) If the regulator considers that information may be confidential information but has not received an objection notice, it must give notice of that view to the information subject.

(2) The information subject may within 15 working days after the date of the notice given by the regulator under paragraph (1)—

- (a) give notice to the regulator consenting to the regulator including the information on the register; or
- (b) give an objection notice to the regulator.

### **Duty to determine confidentiality**

**50.** The regulator must determine whether information must be included on the public register, or excluded from the public register because it is confidential information, if—

- (a) having given notice under regulation 49(1), it does not receive notice of consent in accordance with regulation 49(2)(a); or
- (b) it receives an objection notice.

### **Determination of confidentiality**

**51.**—(1) When making a determination required by regulation 50, the regulator must comply with this regulation.

(2) In making the determination, the regulator must—

- (a) take any reasons given in an objection notice into account;
- (b) apply a presumption in favour of including the information on the public register; and
- (c) determine to exclude the information from the public register if it considers that—
  - (i) the information is commercial or industrial information,
  - (ii) its confidentiality is provided by law to protect a legitimate economic interest, and
  - (iii) in all the circumstances, the public interest in maintaining the confidentiality of the information outweighs the public interest in including it on the register.

(3) But, to the extent that information relates to emissions the regulator must determine to include it on the public register.

(4) Nothing in this regulation authorises the exclusion from the public register of information contained in or otherwise held with other information excluded from the register unless the information is not reasonably capable of being separated for the purposes of inclusion on the register.

### **Procedure following a determination**

**52.**—(1) The regulator must give notice of its determination, the reasons for it and the details of the appeals procedure to the information subject within—

- (a) a period of 20 working days beginning with the date its duty under regulation 50 arises; or
- (b) such longer period as it agrees with the information subject.

(2) If the regulator fails to give notice under paragraph (1) within the period required by that paragraph, the information subject may give notice to the regulator of that failure, and on such notice—

- (a) the regulator is deemed to have determined that the information must be included on the register; and
- (b) the deemed determination is subject to the right of appeal in regulation 53(1).

(3) If the regulator determines that the information must be included on the public register, it must not include the information before the expiry of the period of 15 working days after—

- (a) it has given notice of the determination; or
- (b) a notice under paragraph (2) resulting in a deemed determination is given,

but must include it after the expiry of that period if notice of appeal has not been given.

### **Appeals in relation to confidentiality**

**53.**—(1) The information subject may give notice of appeal to the appropriate authority against a determination under regulation 51 within 15 working days after the regulator has given notice of it.

(2) A notice of appeal must—

- (a) be in writing;
- (b) include a statement of the grounds of appeal;
- (c) state whether the information subject wishes the appeal to be in the form of a hearing or to be disposed of through written representations; and
- (d) be copied to the regulator.

(3) If the information subject gives notice of appeal, the regulator must not include the information on the public register before the appeal is decided.

(4) The appropriate authority—

- (a) may give the information subject and the regulator an opportunity of appearing before and being heard by a person appointed by it; and
- (b) must do so in a case where the notice of appeal states that the information subject wishes the appeal to be in the form of a hearing.

(5) A hearing under paragraph (4) is subject to paragraphs 5(2) to 5(6) and 6 (except paragraph 5(3)(c)) of Schedule 6 as if it was a hearing under paragraph 5(1) of that Schedule, save that “the appellant” must be read as “the information subject”.

### **Consequences of an appeal**

**54.**—(1) If the appropriate authority allows the appeal, the regulator must exclude the information from the public register.

(2) If the appropriate authority rejects the appeal or the appeal is withdrawn, the regulator must include the information on the public register.

### **Reconsideration of confidentiality**

**55.**—(1) The regulator must cease to treat information as confidential information at the expiry of—

- (a) a period of four years after the final confidentiality decision; or
- (b) such shorter period as is specified in that decision.

(2) But if the person to whom the information relates gives notice to the regulator before the expiry of that period that he considers that the information remains confidential information—

- (a) regulation 48 applies in respect of the information and the regulator must treat the notice as an objection notice; and
- (b) regulations 50 to 54 apply notwithstanding any previous compliance with those regulations in relation to the information.

### **Directions of the appropriate authority in relation to confidentiality**

**56.**—(1) The appropriate authority may direct the regulator that specified information, or a specified description of information, must be included on the public register even though it is confidential information.

(2) But, the appropriate authority must not give a direction under paragraph (1) unless it considers that the public interest in including such information on the register outweighs the public interest in maintaining its confidentiality.

## **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 the operation of a regulated facility under an environmental permit involves a risk of serious pollution, it may arrange for steps to be taken to remove that risk.

(2) If the commission of an offence under regulation 38(1)(a), (b) or (c) causes pollution, the regulator may arrange for steps to be taken to remedy the effects of that pollution.

(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 operator.

(5) But costs are not recoverable under paragraph (4)—

- (a) if the steps referred to in paragraph (1) are taken and the operator shows that there was no risk of serious pollution; or
- (b) to the extent that the operator shows that the costs were unnecessarily incurred by the regulator.

#### **Environment Agency: notices in relation to emissions to water**

**58.**—(1) This regulation applies to Part A installations and Part A mobile plant for which a local authority is the regulator.

(2) At any time the 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 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 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.

#### **Environment Agency: public participation statement**

**59.**—(1) The 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 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 Agency must—

- (a) keep the statement under review;
- (b) revise the statement when it considers necessary; and
- (c) publish any revised statement.

(4) The Agency must comply with any published statement when exercising its functions under regulations 26 and 29, and Schedules 2 and 3.

(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; and
- (c) paragraphs 6 and 8(2) of Schedule 5.

#### **Power to require the provision of information**

**60.**—(1) For the purposes of discharging its functions under these Regulations, an appropriate authority may, by notice served on a regulator, require the regulator to provide such information as is specified in the notice.

(2) For the purposes of discharging its functions under these Regulations, a regulator may, by notice served on any person, require that person to provide such information in such form and within such period as is specified in the notice.

(3) A notice under paragraph (2) 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.

(4) For the purposes of this regulation the discharge by the appropriate authority of—

- (a) an obligation of the United Kingdom under the Community Treaties; or
- (b) an international obligation of the United Kingdom,

must be treated as a function of the authority under these Regulations.

(5) 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 a regulator: general**

**61.**—(1) An appropriate authority may give directions to the regulator 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 to exercise or not to exercise—

- (a) specified powers;
- (b) its powers in specified circumstances; or
- (c) its powers in a specified manner.

(3) The regulator must comply with a direction given to it under these Regulations.

### **Reference of applications to an appropriate authority**

**62.**—(1) An appropriate authority may give directions to the 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 his 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 it, the appropriate authority—

- (a) may afford the applicant and the regulator an opportunity of appearing before and being heard by a person appointed by him, 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 of the day 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 5(6) and 6 (except paragraph 5(3)(c)) of Schedule 6 as if it was a hearing under paragraph 5(1) of that Part of that Schedule with the following modifications—

- (a) “the appellant” must be read as “the applicant”;
- (b) “the appeal” must be read as “the application”.

(6) On determining an application referred to it under this paragraph 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) to vary an environmental permit.

### **Directions to the Agency: installations outside the United Kingdom**

**63.**—(1) This regulation applies where an appropriate authority receives information pursuant to Article 17(1) of the IPPC 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 17(2) of the IPPC Directive, the appropriate authority must direct the 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 and exemption registration authorities**

**64.**—(1) An appropriate authority may issue guidance to a regulator or exemption registration authority with respect to the exercise of its functions under these Regulations.

(2) In the exercise of those functions the regulator or exemption registration authority must have regard to the guidance.

### **Fees and charges in relation to local authorities**

**65.**—(1) An appropriate authority may make, and from time to time revise, a scheme prescribing—

(a) fees payable in respect of applications—

(i) for the grant of an environmental permit,

(ii) to vary an environmental permit,

(iii) to transfer an environmental permit in whole or in part,

(iv) to surrender an environmental permit in whole or in part;

(b) fees payable in respect of a variation on the initiative of the regulator under regulation 20(1); and

(c) charges payable 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 local authorities—

(a) in exercising their functions under these Regulations;

(b) in making payment to the Agency in relation to the exercise of its functions under regulation 58;

(c) in making payment to any person who prepares guidance in relation to regulated facilities and regulated activities for which those authorities are the regulator.

(4) A scheme must provide for the payment of sums by a local authority to the Agency where those sums are related to expenditure by the Agency under regulation 58 or in preparing guidance referred to in paragraph (3)(c).

(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 the permit.

### **Plans relating to emissions**

**66.**—(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.

(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(23).

## PART 7

### Miscellaneous and transitional provision, savings, consequential amendments, revocations and repeals

#### Interpretation of this Part

67. In this Part—

“at the relevant time” means immediately before the coming into force of these Regulations;

“disposal licence” means a disposal licence issued under section 5 of the Control of Pollution Act 1974(24);

“PPC permit” means a permit granted under regulation 10 of the 2000 Regulations(25);

“transitional application” means an application mentioned in regulation 70(1)(c) or (d) or to which regulation 71 applies; and

“waste management licence” means a licence granted under section 35 of the 1990 Act(26).

#### Further provision in relation to waste

68.—(1) Section 33(1)(a) of the 1990 Act does not apply to an operation falling within a description in Part 2 of Schedule 3.

(2) But, paragraph (1) does not apply—

(a) to the extent that the operation involves hazardous waste, or the storage or treatment of WEEE, unless otherwise indicated in that Part;

(b) in relation to an operation falling within a description in paragraph 50, 51 or 52 of Schedule 3 unless the operation is carried on—

(i) by or with the consent of the occupier of the land where it is carried on, or

(ii) by a person who is otherwise entitled to do so on that land.

(3) Schedule 20 (further provision in relation to waste) has effect.

#### Transitional provision: general

69.—(1) Except where it is the subject of a transitional application, a disposal licence, PPC permit or waste management licence which was in force at the relevant time becomes an environmental

(23) S.I. 2007/2325.

(24) 1974 c. 40. Section 5 was repealed by section 162 and Schedule 16 of the Environmental Protection Act 1990 (c. 43), subject to the transitional and saving provision in section 77 of that Act.

(25) Regulation 10 was amended by S.I. 2002/1559, 2004/107.

(26) Section 35 was amended by the Environment Act 1995 (c. 25) and by S.I. 2000/1973.

permit on the coming into force of these Regulations and must be treated as if it was granted under regulation 13(1).

(2) The holder of a waste management licence which becomes an environmental permit under these Regulations must be treated as the operator under that permit for the purposes of these Regulations.

(3) An establishment or undertaking which at the relevant time was registered in relation to an exempt activity under regulation 18 of the 1994 Regulations<sup>(27)</sup> is deemed to be registered in relation to an exempt waste operation under Schedule 2 on the coming into force of these Regulations.

(4) The information on any register at the relevant time which was required to be kept by—

- (a) section 20(1) or 64(1) of the 1990 Act<sup>(28)</sup>; or
- (b) regulation 29(1) of the 2000 Regulations,

is deemed to become information kept on a public register under these Regulations on their coming into force, to the extent that such keeping is required.

(5) Paragraph (6) applies where—

- (a) a PPC permit authorising the operation of an installation becomes an environmental permit by virtue of these Regulations; and
- (b) the environmental permit does not contain a condition giving effect to Article 12(1) of the IPPC Directive.

(6) If this paragraph applies, the environmental permit must be read as if it contained the following condition—

“If the operator proposes to make a change in operation of the installation, he must, at least 14 days before making the change, notify the regulator in writing. The notification must contain a description of the proposed change in operation. It is not necessary to make such a notification if an application to vary this permit has been made and the application contains a description of the proposed change. In this condition “change in operation” means a change in the nature or functioning, or an extension, of the installation, which may have consequences for the environment.”.

### **Transitional provision: conversion of permits and licences subject to certain applications**

**70.**—(1) Each of the following becomes an environmental permit on the determination date and must be treated as if it was granted under regulation 13(1)—

- (a) a PPC permit which was the subject of an application for grant, outstanding at the relevant time, except an application to which regulation 71 applies;
- (b) a waste management licence which was the subject of an application for grant, outstanding at the relevant time;
- (c) a PPC permit which was the subject of an application, outstanding at the relevant time, for variation, transfer or surrender under, respectively, regulation 17, 18 or 19 of the 2000 Regulations;
- (d) a waste management licence which was the subject of an application, outstanding at the relevant time, for modification, surrender or transfer under, respectively, section 37, 39 or 40 of the 1990 Act.

(2) In this regulation, “determination date” means—

- (a) if an application is refused and the applicant appeals against that refusal, the date the appeal is determined or withdrawn;

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<sup>(27)</sup> Regulation 18 was amended by S.I. 1995/288, 1996/593, 1998/606, 2000/1973, 2003/2635, 2005/1728, 2006/937, 2006/3315.

<sup>(28)</sup> Section 64(1) was amended by the Environment Act 1995, section 120 and Schedule 24.

- (b) if an application is granted and the applicant appeals against the imposition of conditions, the date the appeal is determined or withdrawn;
- (c) in any other case, the day following the last day on which an appeal against—
  - (i) the refusal of an application, or
  - (ii) the imposition of conditions pursuant to an application,
 could be made, determined in accordance with the applicable provisions of the 1990 Act or the 2000 Regulations, as the case may be.

**Transitional provision: conversion of PPC permits resulting from applications in relation to existing Part A installations and mobile plant**

**71.**—(1) This regulation applies to an application for the grant of a PPC permit which falls within paragraph (2).

- (2) An application falls within this paragraph if—
  - (a) it was outstanding at the relevant time; and
  - (b) the operation to which the application relates is carried on at an installation or by means of mobile plant which was at the time of the application an existing Part A installation or mobile plant.

(3) A PPC permit granted on the determination of an application to which this regulation applies becomes an environmental permit on the determination date and must be treated as if it was granted under regulation 13(1).

(4) In this regulation, “existing” and “determination date” have the meanings given at the relevant time by paragraph 6 of Schedule 3 to the 2000 Regulations.

**Savings**

**72.**—(1) Notwithstanding their repeal or revocation by these Regulations, the provisions of the 1990 Act, the 2000 Regulations and the 1994 Regulations continue to have effect for the purposes of—

- (a) determining an application for the grant of a PPC permit or waste management licence which was outstanding at the relevant time;
- (b) giving effect to a notice served before the coming into force of these Regulations;
- (c) determining an appeal brought before the coming into force of these Regulations; and
- (d) bringing and determining an appeal, after the coming into force of these Regulations, in respect of—
  - (i) the determination of an application referred to in sub-paragraph (a), or
  - (ii) a notice served before the coming into force of these Regulations.

(2) The enactments repealed, revoked and amended by these Regulations continue to have effect until the determination date as if they had not been repealed, revoked or amended, for any purpose in connection with—

- (a) a transitional application; and
- (b) an operation to which such an application relates,

and these Regulations, other than this paragraph, do not apply for such a purpose until that date.

(3) Notwithstanding their repeal by these Regulations, the provisions of the 1990 Act continue to have effect for the purposes of paragraph 20 of Schedule 1 to the Pollution Prevention and Control Act 1999.

(4) Notwithstanding its revocation by these Regulations, paragraph 7 of Schedule 4 to the 1994 Regulations continues to have effect in relation to sections 12(3A), 31(3) and 36(3) of the Town and Country Planning Act 1990<sup>(29)</sup> to the extent that those provisions are saved by—

- (a) in England, article 4 of, and Schedule 2 to, the Planning and Compulsory Purchase Act 2004 (Commencement No. 2, Transitional Provisions and Savings) Order 2004<sup>(30)</sup>;
- (b) in Wales, article 3 of, and Schedule 2 to, the Planning and Compulsory Purchase Act 2004 (Commencement No. 6, Transitional Provisions and Savings) Order 2005<sup>(31)</sup>.

(5) Notwithstanding its revocation by these Regulations, regulation 3 of the 1994 Regulations continues to have effect for the purposes of Schedule 5 to those Regulations.

(6) Notwithstanding the revocation of regulation 12(10) of the 2000 Regulations by these Regulations, any condition implied in a permit by that regulation continues to have effect when the permit becomes an environmental permit.

(7) Notwithstanding the revocation of regulation 44 of the End-of-Life Vehicles Regulations 2003<sup>(32)</sup> by these Regulations, any modification to a waste management licence made by that regulation continues to have effect when the licence becomes an environmental permit.

(8) Notwithstanding the revocation of regulation 5(1) of the Pet Cemeteries (England and Wales) Regulations 2007 by these Regulations, that regulation continues to have effect when a waste management licence to which it applies becomes an environmental permit.

(9) Notwithstanding their revocation by these Regulations, the amendments to enactments and other instruments made by the 1994 Regulations and the 2000 Regulations continue to have effect.

(10) In this regulation, “determination date”, in relation to a transitional application, has the meaning given in regulation 70(2) or 71(4), as the case may be.

### **Consequential amendments**

73. Schedule 21 (consequential amendments) has effect.

### **Revocations and repeals**

74.—(1) The instruments specified in Schedule 22 (revocations) are revoked to the extent specified.

(2) The enactments specified in Schedule 23 (repeals) are repealed to the extent specified.

10th December 2007

*Jane Davidson*  
Minister for Environment, Sustainability and  
Housing, one of the Welsh Ministers

13th December 2007

*Joan Ruddock*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

<sup>(29)</sup> 1990, c. 8. Section 12(3A) was inserted by the Planning and Compensation Act 1991 (c. 34), section 27 and Schedule 4.

<sup>(30)</sup> S.I. 2004/2202. Article 4 was amended by S.I. 2005/2085.

<sup>(31)</sup> S.I. 2005/2847 (W. 118).

<sup>(32)</sup> S.I. 2003/2635, to which there are amendments not relevant to these Regulations.