

2018 No. 1227

**ENVIRONMENTAL PROTECTION, ENGLAND AND
WALES**

**The Environmental Protection (Miscellaneous Amendments)
(England and Wales) Regulations 2018**

Made - - - - *22nd November 2018*

Laid before Parliament *26th November 2018*

Laid before the National Assembly for Wales *22nd November 2018*

Coming into force in accordance with regulation 2

The Secretary of State makes these Regulations in relation to the transfer of household waste in England in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(a).

The Secretary of State and the Welsh Ministers make these Regulations—

- (a) in relation to the regulation of waste operations and radioactive substances activities, in exercise of the powers conferred by sections 2 and 7(9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999^(b); and
- (b) in relation to the regulation of flood risk activities, in exercise of the powers conferred by section 61(1) of, and paragraphs 3 and 14 of Schedule 8 to, the Water Act 2014^(c).

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the environment^(d).

In accordance with section 2(4) of the Pollution Prevention and Control Act 1999 and section 61(5) of the Water Act 2014, the Secretary of State and the Welsh Ministers have consulted—

- (a) the Environment Agency;
- (b) the Natural Resources Body for Wales;

(a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(b) 1999 c. 24; section 2 was amended by section 62(13) of the Water Act 2014 (c. 21) and by S.I. 2013/755 (W.90). Schedule 1 has been amended as follows: paragraphs 3 and 20 were amended by S.I. 2011/1043; paragraph 9A was inserted by, and paragraph 24 amended by, S.I. 2005/925 and paragraph 9A was further amended by S.I. 2012/2788; paragraph 21A was inserted by section 38 of the Waste and Emissions Trading Act 2003 (c. 33), and paragraph 25 was amended by section 105(1) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and by S.I. 2015/664. Functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by virtue of article 3(1) of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(c) 2014 c. 21, to which there are amendments not relevant to these Regulations.

(d) S.I. 2008/301.

- (c) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small business as they consider appropriate; and
- (d) such other bodies or persons as they consider appropriate.

PART 1

Introductory

Citation

1. These Regulations may be cited as the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018.

Commencement

- 2.—(1) These Regulations (except regulation 4(2) and (5)) come into force on 7th January 2019.
(2) Regulation 4(2) and (5) comes into force on 7th April 2019.

PART 2

Amendments relating to household waste transfer: penalty notices in England

Amendments to EPA 1990

3.—(1) Part 2 of the Environmental Protection Act 1990 (waste on land)(a) is amended as follows.

- (2) After section 34 (duty of care etc. as respects waste)(b) insert—

“Fixed penalty notices: offences under section 34(6) relating to section 34(2A): England

34ZA.—(1) This section applies where it appears to an enforcement authority in England that a person has failed to comply with the duty relating to the transfer of household waste in section 34(2A) in England.

(2) The authority may give to that person a notice offering the opportunity of discharging any liability to conviction for an offence under section 34(6) by payment of a fixed penalty.

(3) An authority may not give a person a notice under subsection (2) if such a notice has already been given to that person (whether by the same or another authority) in respect of the same offence.

(4) Where a waste collection authority (A) gives a notice to a person under subsection (2), A must, at the time of giving the notice—

- (a) give the Environment Agency a copy of the notice; and
- (b) where it appears to A that the failure to comply with the duty in section 34(2A) took place in the area of another waste collection authority (B), give B a copy of the notice.

(5) Where the Environment Agency gives a notice to a person under subsection (2), the Agency must, at the time of giving the notice, give a copy of the notice to the waste

(a) 1990 c.43.

(b) Section 34 was amended by S.I. 2005/2900, 2006/123 (W. 16), 2007/3538, 2011/988. There are other amending instruments but none is relevant.

collection authority in whose area the failure to comply with the duty in section 34(2A) took place.

(6) Where a person is given a notice under subsection (2) in respect of an offence—

- (a) no proceedings may be instituted for that offence before the end of the period of 14 days following the date of the notice; and
- (b) the person may not be convicted of the offence if the fixed penalty is paid before the end of that period.

(7) The fixed penalty payable to an enforcement authority under this section is—

- (a) the amount specified by the authority in respect of the offence; or
- (b) if no amount is specified by the authority, £200.

(8) The amount specified by an authority in respect of the offence under subsection (7)(a) must not be less than £150 or more than £400.

(9) The enforcement authority to which a fixed penalty is payable under this section may make provision for treating it as having been paid if a lesser amount of not less than £120 is paid within the period of 10 days following the date on which notice is given under this section.

(10) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(11) A notice under this section must also—

- (a) state the period during which, by virtue of subsection (6)(a), proceedings will not be instituted for the offence under section 34(6);
- (b) state the period during which, by virtue of subsection (6)(b), payment of the fixed penalty will discharge any liability to conviction for the offence;
- (c) state the amount of the fixed penalty;
- (d) state any lesser amount payment of which, by virtue of subsection (9), is treated as payment of the fixed penalty, and the period for payment of the lesser amount;
- (e) state the permissible methods of payment;
- (f) explain that—
 - (i) the notice contains an offer to discharge liability to conviction for the offence by payment of a fixed penalty and that the person is not required to accept that offer; and
 - (ii) the person is entitled to make representations to the authority about the allegations contained in the notice;
- (g) state the address to which the person may send any representations;
- (h) explain that, by virtue of subsection (3), an authority may not give a person a notice under this section if such a notice has already been given to that person (whether by the same or another authority) in respect of the same offence;
- (i) state which other enforcement authorities the authority has sent a copy of the notice to in accordance with subsections (4) and (5).

(12) An enforcement authority may authorise in writing a person (an “authorised officer”) to give a notice under this section on its behalf.

(13) An authorised officer may require an occupier of domestic property to give the occupier’s name and address if the officer proposes to give the occupier a fixed penalty notice.

(14) A person commits an offence if the person—

- (a) fails to give a name or address when required to do so under subsection (13), or
- (b) gives a false or inaccurate name or address in response to a requirement under that subsection.

(15) A person guilty of an offence under subsection (14) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(16) In any proceedings a certificate which—

(a) purports to be signed on behalf of the chief finance officer of the enforcement authority; and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(17) In this section—

“chief finance officer”, in relation to an enforcement authority, means the person having responsibility for the financial affairs of the authority;

“enforcement authority in England” means the Environment Agency or a waste collection authority in England.”.

(3) In section 73A (use of fixed penalty receipts)(a)—

(a) in subsection (1), after “section” insert “34ZA or”;

(b) in subsection (2), after “33ZB,” insert “34ZA,”.

PART 3

Amendments relating to environmental permitting

Amendments to EPR 2016

4.—(1) The Environmental Permitting (England and Wales) Regulations 2016(b) are amended as follows.

(2) In regulation 38 (offences), after paragraph (2) insert—

“(2A) But it is not an offence for a person to fail to comply with the environmental permit conditions in Part 3 of Schedule 9 (waste operations: management and technical competence conditions).”.

(3) In Schedule 3 (exempt facilities and waste operations to which section 33(1)(a) of the 1990 Act does not apply: descriptions and conditions), in Part 4, in paragraph 20—

(a) for the heading, substitute “Notches”;

(b) in sub-paragraph (1), omit “fish passage”.

(4) In Schedule 5 (environmental permits), in Part 1, in paragraph 10(2)(c), for “(b) and (c)” substitute “(a) and (b)”.

(5) In Schedule 9 (waste operations and materials facilities), after Part 2 insert—

“PART 3

Waste operations: management and technical competence conditions

Written management system conditions

1.—(1) An environmental permit which meets each of the following criteria is subject to conditions A and B—

(a) the permit was granted before 6th April 2008;

(a) Section 73A was inserted by section 52 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

(b) S.I. 2016/1154, amended by S.I. 2018/428. There are other amending instruments but none is relevant.

- (b) the permit does not authorise a waste operation carried on at an installation or by means of a Part B mobile plant; and
- (c) the permit does not, immediately before 7th April 2019, contain a condition referring to a management system recorded in writing relating to risks relating to pollution.

(2) Condition A is that the operator must manage and operate the waste operation in accordance with a system (a “written management system”), described in a document or documents, which identifies and minimises the risks of pollution arising from the waste operation, including (but not limited to) those—

- (a) arising from operations (including maintenance);
- (b) arising from an accident or other incident;
- (c) arising from a failure to comply with or from a contravention of the environmental permit in question;
- (d) identified following a complaint; or
- (e) arising from the closure of the operation.

(3) Condition B is that the operator must—

- (a) from time to time, review the written management system and keep it up to date; and
- (b) keep a written record of—
 - (i) activities carried out in accordance with the written management system; and
 - (ii) any review or update under paragraph (a).

(4) If the regulator varies an environmental permit which meets the criteria in paragraph (1) so as to include a condition referring to a management system recorded in writing relating to risks relating to pollution, this paragraph ceases to apply to that environmental permit.

Technical competence: notification condition

2.—(1) An environmental permit is subject to the condition in sub-paragraph (6) if it meets one or both of the following criteria.

(2) The first criterion is that the permit authorises a waste operation which is not carried on at an installation or by means of a Part B mobile plant.

(3) The second criterion is that the permit authorises a specified waste management activity.

(4) Each of the following activities is a specified waste management activity—

- (a) the disposal of waste in a landfill falling within Section 5.2 of Part 2 of Schedule 1;
- (b) the disposal of hazardous waste falling within Section 5.3 of Part 2 of Schedule 1;
- (c) the recovery of hazardous waste falling within Part A(1)(a)(i), (ii), (iii), (iv), (v), (viii) or (x) of Section 5.3 of Part 2 of Schedule 1;
- (d) the disposal of non-hazardous waste falling within Part A(1)(a) of Section 5.4 of Part 2 of Schedule 1;
- (e) the recovery or a mix of recovery and disposal of non-hazardous waste falling within of Part A(1)(b) of Section 5.4 of Part 2 of Schedule 1;
- (f) the temporary or underground storage of hazardous waste falling within Section 5.6 of Part 2 of Schedule 1.

(5) But an activity falling within sub-paragraph (4)(b) to (f) is not a specified waste management activity if that activity—

- (a) is carried on at the same installation as a Part A(1) activity not mentioned in sub-paragraph (4); and

- (b) is not the activity which constitutes the primary purpose for operating the installation.
- (6) The condition is that the operator must periodically give to the regulator—
- (a) information demonstrating the operator’s compliance with one of the following standards during the relevant period; or
 - (b) if the operator did not comply with one of the following standards during the relevant period, information to that effect.
- (7) The first standard is the CIWM/WAMITAB Operator Competence Scheme, Version 9, September 2018, published by WAMITAB(a).
- (8) The second standard is the Competence Management System: Requirements, Version 4, April 2015, published by Energy and Utility Skills(b).
- (9) In sub-paragraph (6)—
- (a) the reference to giving information periodically is a reference to giving information in each quarterly or annual return (as the case may be) for giving information about waste acceptance or removal in accordance with the environmental permit in question;
 - (b) “relevant period” means—
 - (i) in relation to the first period, the period beginning with 7th April 2019 and ending with the end of the period to which the first return relates;
 - (ii) in relation to each subsequent period, the quarter or year (as the case may be) to which the return relates.
- (10) The regulator may amend the form for giving information about waste acceptance or removal in accordance with an environmental permit so as to enable information to be given in accordance with this paragraph.”
- (6) In Schedule 23 (radioactive substances activities), in Part 4, in paragraph 7—
- (a) after sub-paragraph (1) insert—

“(1A) Paragraph (1)(d) does not apply in relation to waste that is a sealed source.”;
 - (b) for sub-paragraph (2) substitute—

“(2) In this paragraph—

“radioactive waste adviser” means an individual, or group of individuals, with the knowledge, training and experience needed to give radioactive waste management and environmental radiation protection advice in relation to radioactive waste in order to ensure the effective protection of members of the public, and whose competence in that respect is recognised by the regulator;

“sealed source” has the same meaning as in the Basic Safety Standards Directive(c).”.
- (7) In Schedule 25 (flood risk activities and excluded flood risk activities), in Part 2, in paragraph 5—
- (a) for the heading, substitute “Ladders, scaffold towers and other similar apparatus”;

(a) A copy of the document can be seen at <https://wamitab.org.uk/wp-content/uploads/2018/09/CIWM-WAMITAB-Operator-Competence-Scheme-Version-9-Final.pdf> or obtained by writing to WAMITAB, Peterbridge House, 3 The Lakes, Northampton, NN4 7HETBC.

(b) A copy of the document can be seen at <https://www.euskills.co.uk/wp-content/uploads/2018/11/Competence-Management-System-Requirements-Version-4-April-2015.pdf> or obtained by writing to Energy and Utility Skills, Friars Gate, 1011 Stratford Road, Shirley, Solihull, B90 4BN.

(c) Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom. OJ No L 13, 17.01.2014, p. 1.

- (b) in sub-paragraph (1), for “and scaffold towers” substitute “, scaffold towers and other similar apparatus used for access, maintenance or repair”.

22nd November 2018

Thérèse Coffey
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

22nd November 2018

Hannah Blythyn
Minister for Environment, under authority of the Cabinet Secretary for
Energy, Planning and Rural Affairs, one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Environmental Protection Act 1990 (c. 43) and the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154).

Part 2 amends Part 2 of the Environmental Protection Act 1990 by inserting provisions conferring power on certain authorities in England to give notices offering a person the opportunity of discharging any liability to conviction for the offence of failing to comply with section 34(2A) of that Act (duty to take measures to secure that transfer of household waste is only to certain authorised persons).

Part 3 amends various provisions of the Environmental Permitting (England and Wales) Regulations 2016. In summary—

- (a) regulation 4(2) and (5) contains amendments relating to new conditions for environmental permits authorising certain waste operations;
- (b) regulation 4(3) and (7) contains amendments relating to flood risk activities;
- (c) regulation 4(6) contains an amendment relating to radioactive substances activities.

A full impact assessment of the effect that regulation 4(2) and (5) will have on the costs of business, the voluntary sector and the public sector is available from Waste Regulation and Crime, Department for Environment, Food and Rural Affairs, Seacole Building, 2 Marsham Street, London, SW1P 4DF or at www.legislation.gov.uk.

A full impact assessment has not been produced for the remainder of this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen in relation to the remainder of this instrument.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment in relation to Wales has been prepared as to the likely costs and benefits of complying with regulations 4(2) and (5) of these Regulations. A copy is available from Waste & Resource Efficiency Division of the Economy, Skills and Natural Resource Group, Welsh Government, Cathays Park, Cardiff, CF10 3NQ or at www.assembly.wales. It was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with the remainder of these Regulations.

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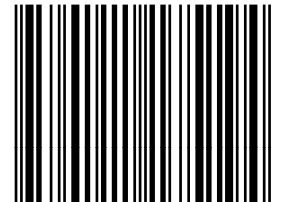
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