

Explanatory Memorandum to the Environmental Permitting (England and Wales) Regulations 2016

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Environmental Permitting (England and Wales) Regulations 2016.

Lesley Griffiths AM

Cabinet Secretary for Environment and Rural Affairs

10 October 2016

1. Description

The Environmental Permitting (England and Wales) Regulations 2016 (“the 2016 Regulations”) consolidate the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) (“the 2010 Regulations”) and a number of subsequent amendments into a single set of regulations. The 2016 Regulations maintain the established environmental permitting and compliance regime that applies to various activities and industries.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These composite regulations will apply to England and Wales and are subject to affirmative resolution procedure in the National Assembly for Wales and in both Houses of the UK Parliament. Because the 2016 Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

Part 2 of Schedule 29 to the 2016 Regulations contains consequential amendments to subordinate legislation. Paragraphs 17 and 24 of that Part contain amendments to Wales-only statutory instruments (the Hazardous Waste (Wales) Regulations 2005 and the Contaminated Land (Wales) Regulations 2006). There are substantively different amendments made to the English and Welsh texts of these instruments. This is necessary in order to ensure consistency between the English and Welsh texts of the amended provisions. Previous amending instruments had caused a disparity between the Welsh and English texts by making English-only amendments to those provisions.

3. Legislative background

Prior to the coming into force of the 2010 Regulations on 6 April 2010, the environmental permitting regime was set out in the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538) (“the 2007 Regulations”). The 2007 Regulations created a single regulatory framework in England and Wales for waste management licensing and pollution, prevention and control activities. They transposed the provisions of 11 EU Directives which impose obligations required to be delivered through permits or capable of being delivered through permits. The 2007 Regulations were amended in 2009 to transpose the permitting and compliance requirements of the Mining Waste Directive (Directive 2006/21/EC) and the Batteries Directives (Directive 2006/66/EC) and to revise the provisions relating to exempt waste operations. On 6 April 2010 the 2007 Regulations were revoked, subject to some savings and transitional provision, and were re-made as the 2010 Regulations with the addition of permitting regimes covering water discharge consenting, groundwater authorisations and radioactive substances regulation.

The power to make the Environmental Permitting (England and Wales) Regulations 2010 and the majority of subsequent amendments is contained in section 2 of the Pollution Prevention and Control Act 1999 (“the 1999 Act”). That power was, in relation to Wales, transferred to the National Assembly for Wales, except in relation to offshore oil and gas exploration and exploitation, by the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Those functions are

now exercisable by the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006. In accordance with section 2(8) and (9) of the 1999 Act, the Environmental Permitting (England and Wales) Regulations 2016 are subject to the affirmative procedure.

4. Purpose & intended effect of the legislation

Since the making of the 2010 Regulations there have been 15 sets of amendment regulations, including amending provisions relating to radioactive substances, carbon capture and storage, petrol vapour recovery, the storage of metallic mercury, and discharges of sewage effluent. In addition, major amendments were made in 2013 to transpose the provisions of the Industrial Emissions Directive (Directive 2010/75/EU) and the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 W.90) made amendments transferring the exercise of functions in Wales from the Environment Agency to NRW.

In 2016, further significant amendments were made in order to extend the environmental permitting regime to apply to flood risk activities. That amending instrument (S.I. 2016/475) was made in exercise of the powers contained in sections 61 and 90 of, and Schedule 8 to, the Water Act 2014. Those functions are exercisable by the Welsh Ministers in relation to Wales.

The 2016 Regulations will consolidate the 2010 Regulations and all subsequent amendments into a single set of regulations, so as to provide an authoritative single set of consolidated requirements for regulators, regulated industry and the public. Given that the 2016 Regulations will have the effect of re-transposing a range of EU Directive provisions, a transposition note has been prepared by the Department for Environment, Food and Rural Affairs.

Annex A to this explanatory memorandum contains a correlation table to assist readers in identifying where provisions of the 2010 Regulations may be found in the 2016 Regulations.

There is an amendment to the current law under the 2010 Regulations, revising the rules for mobile crushing of lamps that contain mercury (Schedule 3, Part 1, Chapter 3, Section 2, paragraph 17 (“the T17 exemption)). This change will restrict those who are eligible to be able to crush lamps under the T17 exemption (and so do not require an environmental permit), and will reduce the number of lamps which can be crushed under that exemption. It will provide protection to human health and the environment whilst maintaining a proportionate approach to the regulation of the crushing of waste lamps. For administrative reasons, the 2016 Regulations provide that registrations of T17 exemptions made under the 2010 Regulations will cease to have effect. Anyone wishing to operate under the new T17 exemption, as set out in the 2016 Regulations, will have to re-register. Registration is very straight forward.

5. Consultation

A joint public consultation on the consolidation of the 2010 Regulations was published on 18 August 2015 and ended on 27 October 2015 (duration of 10 weeks). At that time, there had been 12 amending instruments. A draft of the 2016 Regulations was included with the consultation. This took account of amendments to the 2010 Regulations made by those amending instruments, as well as amendments made by other legislation, so as to reflect the up-to-date legal position. Since the consultation closed there have been three further amending instruments. Individual consultations were published on each of these.

A summary and response to the consultation on the consolidation was published on 10 December 2015, which can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/484024/epr-consolidation-consult-sum-resp.pdf

Six respondents submitted comments: the National Farmers Union (NFU), UK Environmental Law Association (UKELA), Dŵr Cymru Welsh Water, representatives from Serco and Sellafield Ltd and a group of Welsh Local Authorities.

Some comments were outside the scope of the consultation. Comments or queries (including specific drafting points) made by two industry representatives, NFU and the Local Authorities were taken on board or cleared by correspondence. UKELA welcomed the consolidation, noting that the 2016 Regulations continue the practice of referential drafting (drafting by reference to specific provisions of EU instruments). As a result of this comment, links have been provided in the transposition note to the EU Directives being re-transposed, so as to improve accessibility.

The amendments relating to the T17 exemption were also the subject of a public consultation, published on 14 December 2015 and ending on 8 February 2016. A summary and response to the consultation on the T17 exemption was published on 22 March 2016, which can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509604/lamp-crushing-consult-sum-resp.pdf

There were 30 respondents who submitted comments: 17 private businesses, 5 Local Authorities and public bodies, 2 consultants, 2 NGOs, 2 professional bodies, and 2 private individuals.

The consultation set out three options for changing the T17 exemption. Most respondents supported the changes proposed under all three options and over half expressed a preference for the option implemented through this instrument. The main reason given for preferring this option was that it will provide companies with flexibility regarding how they recycle their lamps, whilst addressing the hazards posed by mercury contained in the lamps. Some companies that compete with commercial mobile lamp crushers did not support the continuation of mobile lamp crushing in any form. This concern was addressed through a requirement for commercial mobile lamp crushers to operate under a permit.

6. Regulatory Impact Assessment (RIA)

The environmental permitting regime is a common framework for applying, receiving, varying, transferring and surrendering permits, along with compliance, enforcement and appeals arrangements. It rationalises the previous permitting and compliance regimes into a common framework that is easier to understand and simpler to use. A key component is that it allows applicants who would otherwise require several permits for activities falling under various regulations on a single site to complete a single application, and to be issued with one permit. The framework introduces different levels of control, based on risk:

- exemptions (lower risk activities which may be undertaken after registering)
- standard rules permits. Sets of standard conditions for certain activities which pose limited risk are made publicly available by the regulators. This means a prospective applicant can determine in advance whether they are able to meet the requirements of the rules set applicable to their proposed activity and avoid the need for a bespoke permit)
- bespoke permits (permits developed on a case-by-case basis for activities which are of higher risk).

Full Impact Assessments of the effect that the 2010 Regulations and its amending instruments where appropriate will have on the costs of business and the voluntary sector are available at www.legislation.gov.uk. A separate Impact Assessment has not been produced for this instrument as it is a consolidation.

ANNEX A – CORRELATION TABLE

Regulations

2010 Regulations	2016 Regulations
1-44	<i>1-44 (numbering unchanged)</i>
44A	39
45-57	<i>45-57 (numbering unchanged)</i>
57A	58
58-66	59-67
66A and 66B	68 and 69
67	70
67A	71
68	4
69	-
70	79
71-85	-
86-87	77
88-92	-
93-99	77
100	-
101	77 and 78
102	78
103-105	-
106	74
107	75
108	73 and 74
109	-
110	80

Schedules

2010 Regulations	2016 Regulations
1-6	<i>1-6 (numbering unchanged)</i>
7	-
7A	7
8	<i>8 (numbering unchanged)</i>
8A	24
9	9 Part 1
9A	9 Part 2
10-12	<i>10-12 (numbering unchanged)</i>
13	-
13A	13
14	<i>14 (numbering unchanged)</i>
15	-
15A	15
16	<i>16 (numbering unchanged)</i>
17	-
17A	17
18-23	<i>18-23 (numbering unchanged)</i>
23ZA	25
23A	26
24	27
25	3 Part 5
26	29
27	28
28	-