

Principal statutes and statutory instruments

Environmental Permitting (England and Wales) Regulations 2010 (SI 2010/675)

These Regulations are made in exercise of the powers conferred by section 2 and 7(9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999. They introduce the requirement for permitting for installations under the IPPC Directive. They also replace the system of waste management licensing in Part II of the Environmental Protection Act 1990 (c. 43) and the Waste Management Licensing Regulations 1994 (S.I. 1994/1056, as amended) with the system of environmental permitting in England and Wales. Recently, the environmental permitting system has also been extended to cover some parts of the Water Resources Act 1991, the Radioactive Substances Act 1993 and the Groundwater Regulations 2009.

The Regulations transpose the requirements of a wide range of EU Directives, largely through The Schedules to the Regulations which identify particular requirements, (usually article by article, in the case of directives), which must be delivered through the permitting system. In some cases requirements to be delivered through the permitting system are located in other legislation. Each directive or policy area covered by the Regime has a specific Schedule as follows:

- Integrated Pollution Prevention and Control Directive - Schedule 7 – Part A installations and Part A mobile plant
- Part B installations and Part B mobile plant - Schedule 8 – Part B installations and Part B mobile plant
- Waste Framework Directive - Schedule 9 – Waste operations
- Landfill Directive - Schedule 10 – Landfill
- End-of Life Vehicles Directive - Schedule 11 – Waste motor vehicles
- Waste Electrical and Electronic Equipment Directive - Schedule 12 – Waste electrical and electronic equipment
- Waste Incineration Directive - Schedule 13 – Waste incineration
- Solvent Emissions Directive - Schedule 14 – SED installations
- Large Combustion Plant Directive - Schedule 15 – Large combustion plants
- Asbestos Directive - Schedule 16 – Asbestos
- Titanium Dioxide Directive - Schedule 17 – Titanium dioxide
- Petrol Vapour Recovery Directive - Schedule 18 – Petrol vapour recovery
- Batteries Directive - Schedule 19 – Waste batteries and accumulators
- Mining Waste Directive - Schedule 20 – Mining waste operations
- Water discharge activities - Schedule 21 – Water discharge activities
- Groundwater Directive - Schedule 22 – Groundwater activities
- Radioactive substances activities - Schedule 23 – Radioactive substances activities.

Where a facility falls under more than one Schedule then each set of Schedule requirements must be met. For example, a waste incinerator must meet the requirements of the IPPC, Waste Incineration and Waste Framework Directives contained in Schedules 7, 13 and 9. This is because the subject matter of various European Directives and national policy areas overlaps to a certain extent.

The Regulations specify which facilities require an Environmental Permit and provide that some facilities can be exempt from those requirements. The facilities that require a permit are described collectively as 'regulated facilities'. There are seven different kinds of regulated facility and each is known as a 'class' of regulated facility.

In relation to waste operations, certain operations regulated under other regimes, are described as 'excluded waste operations' and these are not regulated facilities.

Some facilities may be exempt from the requirement for an environmental permit, subject to compliance with certain requirements including registration. When registered, these facilities are known as exempt facilities and are not then regulated facilities.

In relation to radioactive substances activities, certain activities do not require a permit even though they are not exempt facilities. The term 'exempt' is used differently in relation to radioactive substances activities, in that registration is not required.

The seven classes of regulated facility are:

- an installation (where activities listed in Schedule 1 to the Regulations, and any directly associated activities are carried on – see Installations) (see e key facts No.17)
- mobile plant (used to carry on either one of the Schedule 1 activities or a waste operation – see Mobile plant) (see e key facts No.17)
- a waste operation (see e key facts No.3)
- a mining waste operation
- a radioactive substances activity (see e key facts No.14)
- a water discharge activity (see e key facts No.6)
- a groundwater activity (see e key facts No.7)

Some regulated facilities may be 'carried on as part of the operation of a regulated facility of another class'. These are: waste operations, mining waste operations, water discharge activities and groundwater activities. There may be more than one regulated facility on the same site. This will be the case where a regulated facility is carried on as part of the operation of another regulated facility, but may also occur in other circumstances. In such cases there are arrangements in the Regulations to allow all such facilities to be regulated by the same regulator

The regulator must exercise its functions under these Regulations for the purpose of achieving a high level of protection of the environment taken as a whole by, in particular, preventing or, where that is not practicable, reducing emissions into the air, water and land for Part A activities. For Part B activities, the regulator must exercise its functions under these Regulations for the purpose of preventing or, where that is not practicable, reducing emissions into the air.

An Environmental Permit can cover more than one regulated facility.

Environmental Permit can only be granted for more than one regulated facility where:

- the regulator is the same for each facility
- the operator is the same for each facility, and
- all the facilities are on the same site.

Regulated facilities have to be operated on the same site in order to be covered by the same permit (with the exceptions of mobile plant, standard facilities and radioactive substances activities involving the keeping or use of mobile radioactive apparatus).

A single Environmental Permit cannot cover regulated facilities with different regulators. A separate permit is required covering the facilities for which each regulator is responsible. A single permit cannot cover mobile plant combined with any other class of regulated facility. Mobile plants are not associated with a particular geographical site. The differences in the requirements for mobile plant mean that a single permit cannot cover mobile plant and other classes of regulated facility.

The Environment Agency regulates:

- Part A(1) installations
- Part A(1) mobile plant
- waste mobile plant
- waste operations, including those carried on at a Part B installation or by Part B mobile plant (unless the waste operation is a Part B activity)
- mining waste operations, including any carried on at a Part B installation
- radioactive substances activities
- water discharge activities, including those carried on at a Part B installation
- groundwater activities, including those carried on at a Part B installation.

	<p>The relevant local authority regulates:</p> <ul style="list-style-type: none"> • Part A(2) installations and Part A(2) mobile plant including any waste operations, water discharge activities or groundwater activities carried on as part of the installation or mobile plant • Part B installations and Part B mobile plant (except as set out above). <p>Local Authority Air Pollution and Control focuses on controlling emissions to air only for Part B installations. It is an offence to operate a regulated facility without an environmental permit.</p>
Variation, transfer and revocation of permits	<p>Variation (Reg 18) The regulator may vary an environmental permit on the application of the operator or on its own initiative but the variation must not reduce the extent of the site of a regulated facility (except for Part B installations or stand-alone water discharge activity or stand-alone groundwater activity). Procedures are specified in Part 1 of Schedule 5.</p> <p>Transfer (Reg 21)</p> <p>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.</p> <p>Revocation (Reg 22 and 23)</p> <p>The regulator may revoke an environmental permit in whole or in part. 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.</p>
Surrender of a permit	<p>An operator may surrender an environmental permit to which this regulation applies, in whole or in part, by application to the regulator where the activity is (a) a Part B installation, except to the extent that it relates to a waste operation; (b) mobile plant; (c) a stand-alone water discharge activity or stand-alone groundwater activity.</p>
Standard rules	<p>The Regulator may make and revoke standard rules applying to specified activities. Standard rules may be included in permit conditions.</p>
Appeals	<p>There are rights of appeal specified under Reg 31.</p>
Reviews and inspections	<p>The Regulator must review permits periodically and undertake inspections of regulated facilities.</p>
Registers	<p>The Regulator must maintain a public register giving full details of permits and other related matters. Certain information can be excluded on the grounds of confidentiality or National Security.</p>
Fees and charges	<p>An appropriate authority may make, and from time to time revise, a scheme prescribing—</p> <ul style="list-style-type: none"> (a) fees payable in respect of applications— <ul style="list-style-type: none"> (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. <p>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.</p>

Enforcement and Criminal penalties

Enforcement notices	Under Reg 36 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 “enforcement notice”. An enforcement notice must— (a) state the regulator’s reasons; (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. The regulator may withdraw an enforcement notice at any time by further notice served on the operator.
Suspension notices	Under Reg 37 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 “suspension notice”. This applies whether or not the manner of operating the facility which involves the risk is subject to or contravenes an environmental permit condition. The regulator may withdraw a suspension notice at any time by further notice served on the operator; and must withdraw a notice when satisfied that the steps specified in it have been taken.
Offences	<p>Under Reg 38(1) It is an offence for a person to undertake or knowingly cause or permit the undertaking of a regulated activity without a permit; to fail to comply with or to contravene an environmental permit condition; to fail to comply with the requirements of an enforcement notice, a suspension notice, a landfill closure notice or mining waste facility closure notice; to fail to comply with a notice under regulation 60(1) requiring the provision of information, without reasonable excuse; 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; intentionally to make a false entry in a record required to be kept under an environmental permit condition; 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.</p> <p>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. 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.</p>
Penalties	<p>A person guilty of an offence under regulation 38 (offences in bold) 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.</p> <p>A person guilty of an offence under regulation 38 (4) (all except the offences listed in bold) 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.</p>
Defences	It is a defence for a person charged with an offence under regulation 38(1) (offences in bold) 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.
Power to remedy	<p>Under Reg 44 where a person is convicted of an offence under regulation 38(1) (offences in bold) in respect of a matter which appears to the court to be a matter which it is in his power to remedy, in addition to or instead of a punishment the court may order the person to take such steps for remedying the matter within such period as may be specified in the order.</p> <p>Under Reg 57, the Regulator may take steps to remedy pollution or reduce a risk of pollution. Costs may be recoverable from the person who caused such pollution or risk.</p>

What guidance is available on Environmental Permits?

DEFRA publishes Core Guidance publications covering the general regime and inter-relationships with other regimes. The Environment Agency publishes both Regulatory Guidance and Technical Guidance documents as listed below.

General Guidance Notes

Environmental Permitting Core Guidance – DEFRA (2008).
Getting the Basics Right (2008).
End of Life Vehicles Directive (March 2008)
Integrated Pollution Prevention and Control (IPPC) Directive, Part A(1) (including the Titanium Dioxide Directive) (March 2008)
Large Combustion Plant Directive
Solvent Emissions Directive (March 2008)
Waste Electrical and Electronic Equipment Directive (March 2008)
Waste Framework Directive (March 2008)
Waste Incineration Directive (March 2008)
Landfill Directive (March 2008)
Guidance on changes to hazardous waste exemptions contained in Schedule 3 to the Environmental Permitting (England and Wales) Regulations 2007

Horizontal Guidance Notes Series

H1 - Environmental Risk Assessment - Part 1 - Simple assessment of environmental risk for accidents, odour, noise and fugitive emissions.
H1 - Environmental Risk Assessment - Part 2 - Assessment of point source releases and cost-benefit analysis
H5 – Environmental Permitting – site condition reports – guidance and templates

Regulatory Guidance Series

EPR 1 Understanding the meaning of Operator
EPR 2 Understanding the meaning of regulated facility
EPR 3 Deciding applications are duly made and requests for further information
EPR 4 Setting standards for environmental protection
EPR 5 Operator competence
EPR 6 Determinations involving sites of high public interest
EPR 7 Appeals to Secretary of State or Welsh Ministers
EPR 8 Changes to operation
LFD 1 Understanding the Landfill Directive

Landfill Technical Guidance

TGN01: Hydrogeological Risk Assessment for landfill and the derivation of control and trigger levels.
TGN02: Monitoring landfill leachate, groundwater and surface water
TGN03: Guidance on the management of Landfill Gas
TGN04: Guidance on monitoring trace components in landfill gas
TGN05: Guidance for monitoring enclosed landfill gas flares
TGN06: Guidance on gas treatment technologies for landfill gas engines
TGN07: Guidance on monitoring landfill gas surface emissions
TGN08: Guidance for monitoring landfill gas engine
Guidance on landfill gas flaring

Local authority guidance

Environmental Permitting - General Guidance Manual on Policy and Procedures for A2 and B Installations, DEFRA (2008)
Process Guidance Notes – applying to Part B activities
Sector Guidance Notes – applying to Part A(2) activities