Draft Regulations laid before Parliament and the National Assembly for Wales under section 2(8) and (9)(d) and (e) of the Pollution Prevention and Control Act 1999 for approval by resolution of each of House of Parliament and the Assembly.

DRAFT STATUTORY INSTRUMENTS

2009 No. [XXXX]

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2009

Made - - - -	***
Coming into force - -	*6th April 2010*

These Regulations are made in exercise of the powers conferred by section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999(**1**).

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, have in accordance with section 2(4) of that Act consulted—

(a) the Environment Agency;

(b) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they consider appropriate; and

(c) such other bodies or persons as they consider appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament and by the National Assembly for Wales pursuant to section 2(8) and (9)(d) and (e) of that Act.

Accordingly, the Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make the following Regulations.

Citation, commencement and extent

1.—(1) These Regulations—

(a) may be cited as the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2009;

(**1**) 1999 c. 24. Functions of the Secretary of State under section 2 (except in relation to offshore oil and gas exploration and exploitation), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 3 of S.I. 2005/1958. Those functions were then transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(b) come into force on 6th April 2010; 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(**2**).

Amendment of the Environmental Permitting (England and Wales) Regulations 2007

2. The Environmental Permitting (England and Wales) Regulations 2007(**3**) ("the 2007 Regulations") are amended in accordance with regulations 3 to 12.

Amendment of regulation 2 (interpretation: general)

3.—(1) Regulation 2 (interpretation: general) is amended as follows.

(2) After the definition of "agricultural waste", insert—

""the Animal By-Products Regulations" means—

(a) in relation to England, the Animal By-Products Regulations 2005(**4**),

(b) in relation to Wales, the Animal By-Products (Wales) Regulations 2006(**5**);".

Substitution of regulation 5 (interpretation: exempt waste operation)

4. For regulation 5 (interpretation: exempt waste operation), substitute—

"**Interpretation: exempt waste operation**

5.—(1) In these Regulations, a waste operation is an "exempt waste operation" if the requirements in paragraph 3(1) of Schedule 2 are met in respect of the waste operation.

(2) Schedule 2 (exempt waste operations: general) has effect.".

Amendment of regulation 22 (revocation of an environmental permit: general)

5.—(1) Regulation 22 (revocation of an environmental permit: general) is amended as follows.

(2) After paragraph (6), add—

"(7) Where an environmental permit authorises in whole or in part a waste operation which, on or after 6th April 2010, becomes an exempt waste operation, that part of the permit which authorises the exempt waste operation is revoked on the date that the operation becomes an exempt waste operation.".

Amendment of regulation 38 (offences)

6.—(1) Regulation 38 (offences) is amended as follows.

(2) In paragraph (2)(a)—

(**2**) 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.

(**3**) S.I. 2007/3538, amended by section 88(2) of the Climate Change Act 2008 (c. 28), S.I. 2009/890, S.I. 2009/1799.

(**4**) S.I. 2005/2347 to which there are amendments not relevant to these Regulations.

(**5**) S.I. 2006/1293 (W.127).

(a) omit "9 or";

(b) after "12(3)" insert "or (4)".

(3) In paragraph (2)(b), after "12(3)" insert "or (4)".

Substitution of regulation 68 (further provision in relation to waste)

7. For regulation 68 (further provision in relation to waste), substitute—

"**Further provision in relation to waste**

68.—(1) Section 33(1)(a)(**6**) of the 1990 Act does not apply to an operation which—

(a) falls within a description in Part 2 of Schedule 3A; and

(b) meets the conditions specified in that Part for an operation of that description.

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

Insertion of regulation 71B (transitional provision: exempt waste operations)

8. After regulation 71A(**7**) (transitional provision: existing mining waste operations), insert—

"**Transitional provision: exempt waste operations**

71B.—(1) This regulation applies to any establishment or undertaking which on 5th April 2010 was carrying on an exempt waste operation.

(2) The establishment or undertaking is deemed to carry on the exempt waste operation until—

(a) the date mentioned in paragraph (3); or

(b) if before that date the operation ceases to be an exempt waste operation within the meaning of regulation 5 (as that regulation had effect on 5th April 2010), the date on which it ceases to be such.

(3) The date referred to in paragraph (2)(a) is—

(a) if an application for the grant or variation of an environmental permit is made in relation to the operation on or before the date shown in the table set out below for the operation—

(i) if the application is granted, the date of the grant,

(ii) if the application is refused, and the applicant appeals against the refusal, the date on which the appeal is determined or withdrawn, or

(iii) if the application is refused, and the applicant does not appeal against the refusal, the day after the last day on which an appeal could have been brought, determined in accordance with paragraph 3(1) of Schedule 6; or

(b) if the establishment or undertaking seeks to be registered in relation to the waste operation as an exempt waste operation on or before the date shown in the table set out below for the operation, the date of first registration;

(c) otherwise, the date indicated in the second column of the table set out below for the operation.

(**6**) 1990 c. 43; section 33(1)(a) was amended by paragraph 4(2) of Part 1 of Schedule 21 to S.I. 2007/3538 and by paragraph 1(3)(a) of Schedule 2 to S.I. 2009/1799. Regulation 28(2) of S.I. 2009/1799 makes provision for the application of section 33(1)(a) in relation to extractive waste.

(**7**) Regulation 71A was inserted by regulation 16(5) of S.I. 2009/1799.

Waste operation	*Date*
A waste operation described in paragraph 9, 10, 12 or 19 of Part 1 of previous Schedule 3 that does not involve the disposal or recovery of agricultural waste on agricultural land	1st October 2011
A waste operation described in paragraph 13 or 21 of Part 1 of previous Schedule 3 that does not involve the disposal or recovery of agricultural waste on agricultural land	6th April 2012
A waste operation described in paragraph 7 of Part 1 of previous Schedule 3 that does not involve the disposal or recovery of agricultural waste on agricultural land	1st October 2012
A waste operation described in paragraph 4 to 6, 11, 14, 15, 17, 18, 20, 22, 23, 25, 29 to 32, 38, 40 to 42 or 46 of Part 1 of previous Schedule 3 that does not involve the disposal or recovery of waste on agricultural land	1st October 2012
A waste operation described in paragraph 2, 3, 8, 24, 43 to 45 of Part 1 of previous Schedule 3	1st October 2013
A waste operation described in paragraph 7, 9, 10, 12, 13, 16, 19, 21, 28, 36, 37 or 47 of Part 1 of previous Schedule 3 that involves the disposal or recovery of agricultural waste on agricultural land	1st October 2013
Any other waste operation described in Part 1 of previous Schedule 3 that involves the disposal or recovery of waste on agricultural land	1st October 2013

(4) In this regulation—

"agricultural land" means land used for agriculture within the meaning of section 109(3) of the Agriculture Act 1947(**8**);

"date of first registration" means, in relation to an establishment or undertaking, the date on which the relevant particulars (which means the information in paragraph 4(2) of Schedule 2) first appear on the register (as defined by paragraph 1 of that Schedule) but does not include any relevant particulars entered on the register before 6th April 2010;

"previous Schedule 3" means Schedule 3 to these Regulations as it had effect on 5th April 2010.".

Amendment of Schedule 1 (activities)

9.—(1) Schedule 1 (activities) is amended as follows.

(2) In paragraph 1 of Section 6.8 of Part 2 (activities), in the definition of "excluded activity", for paragraph (a) substitute—

"(a) any activity carried on on a farm or agricultural holding other than—

(i) the manufacture of goods for sale,

(ii) the production of compost for growing mushrooms,".

(**8**) 1947 c. 48.

Substitution of Schedule 2 (exempt waste operations: general)

10.—(1) Subject to paragraph (2), for Schedule 2 (exempt waste operations: general), substitute the schedule set out in Schedule 1 to these Regulations.

(2) Paragraph (1) does not apply for the purposes of the transitional provisions inserted by regulation 8 (referred to in these Regulations as "the transitional provisions"), except for the purposes of the references to Schedule 2 in regulation 8(4).

Substitution of Schedule 3 (descriptions: exempt waste operations and other operations to which section 33(1)(a) of the 1990 Act does not apply)

11. For Schedule 3 (descriptions: exempt waste operations and other operations to which section 33(1)(a) of the 1990 Act does not apply), except for the purposes of the transitional provisions, substitute the schedules set out in Schedule 2 to these Regulations.

Amendment of Schedule 19 (public registers)

12.—(1) Schedule 19 (public registers) is amended as follows.

(2) In paragraph 1(1) (matters to be included in a public register), for paragraph (k) substitute—

"(k) every direction given to the regulator or the exemption registration authority by an appropriate authority under these Regulations, other than a direction given under regulation 47 or paragraph 11 of Schedule 2.".

Amendments to the Environment Act 1995

13.—(1) The Environment Act 1995(**9**) is amended as follows.

(2) In section 41 (power to make charging schemes)—

(a) omit subsection (2A)(**10**); and

(b) in subsection (10)(**11**), omit the definition of "relevant environmental licence".

(3) In section 56(1) (interpretation)(**12**), in the definition of "environmental licence", for paragraph (j) substitute—

"(j) registration under Schedule 2 to the Environmental Permitting (England and Wales) Regulations 2007 of an establishment or undertaking in relation to a WEEE operation (as defined by paragraph 1 of Schedule 2 to those Regulations),".

Consequential amendment to the Waste Management (England and Wales) Regulations 2006

14. In the Waste Management (England and Wales) Regulations 2006(**13**), omit regulation 3 (amendment of the Environment Act 1995).

(**9**) 1995 c. 25.
(**10**) Subsection (2A) of section 41 was inserted in relation to England and Wales by regulation 3(2) of S.I. 2006/937.
(**11**) The definition of "relevant environmental licence" was inserted into subsection (10) of section 41 in relation to England and Wales by regulation 3(3) of S.I. 2006/937.
(**12**) The definition of "environmental licence" in sub-paragraph (j) of section 56(1) in relation to the Environment Agency was substituted in relation to England and Wales by paragraph 23(2)(c) in Part 1 of Schedule 21 to S.I. 2007/3538.
(**13**) S.I. 2006/937. Regulation 3 of that instrument amended the Environment Act 1995 by inserting subsection (2A) into section 41 and by inserting the definition of "relevant environmental licence" into that section as subsection (10) in relation to England and Wales.