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Environmental Permitting

Environmental Permitting Core Guidance for the Environmental Permitting (England and Wales) Regulations 2010

Draft guidance for Consultation – May 2009



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Revision of the Guidance

This publication is updated from time to time with new or amended guidance. The table below is an index to these changes.

date of amendment	chapter/ paragraph where amendment can be found	nature of amendment - what paragraphs have been inserted, deleted, or amended - what subject matter is covered by the amendment
24 February 2009	3.13 Footnotes	Additional guidance Updated hyperlinks
<i>May 2009</i>	<i>(Changes made to reflect inclusion of Batteries & [expected] inclusion of Mining Waste in the EP Regime)</i>	
	<i>1.1</i>	<i>Footnote reference to amending Regulations</i>
	<i>1.14</i>	<i>Reference to new Schedules for mining waste operations and batteries</i>
	<i>1.16</i>	<i>Reference to new guidance for the Mining Waste and Batteries Directives</i>
	<i>2.1, 2.2, 2.3 and 2.6</i>	<i>Amendments for mining waste operations</i>
	<i>2.10, 2.16</i>	<i>Amendment for change to the definition of exempt waste operation</i>
	<i>2.26</i>	<i>Amendments for mining waste operations</i>
	<i>2.27</i>	<i>Amendment for change to the single permit provisions</i>
	<i>2.34</i>	<i>Amendment for change to the definition of exempt waste operation</i>
	<i>Fig 3</i>	<i>Amendment for mining waste operations</i>
	<i>3.1</i>	<i>Clarification</i>
	<i>3.2, 3.3</i>	<i>Amendment for mining waste operations and changes to the functions of the regulator</i>
	<i>3.15</i>	<i>Amendment for change to the single permit provisions</i>
	<i>4 – header, 4.9 and 4.15</i>	<i>Amendments for mining waste operations</i>
	<i>4.22, 4.28, 4.29</i>	<i>Amendments for changes to and clarification of the transitional provisions</i>
	<i>4.30, 4.31 4.32, 5.10, 5.11, 5.12</i>	<i>Amendments for mining waste operations</i>
	<i>5.43, 5.44 and 6.20</i>	<i>Amendment for change to the surrender notification provisions</i>
	<i>6.33 and footnote 38</i>	<i>Applying landfill policy on “satisfactory state” to equivalent mining waste operations</i>
	<i>7.13</i>	<i>Amendment for mining waste operations</i>
	<i>8.7, Box 2</i>	<i>Corrections and updating</i>
	<i>8.20, 9.5, 9.6, 12.1, 12.3, 12.8,</i>	<i>Amendments for mining waste operations</i>

DRAFT GUIDANCE FOR CONSULTATION

	<i>and the Annex</i>	
	<i>10.16</i>	<i>Corrections and updating</i>
	<i>10.33 and A1.24</i>	<i>Amendments for Groundwater Regulations 2009</i>
	<i>13.7</i>	<i>Amendment for change to public register provisions</i>

Contents

Contents	5
1. Introduction.....	7
About this guidance	7
What is environmental permitting?	7
The scope of the Regime	8
The legal framework	8
How European Environmental Directive and national policy requirements are delivered	9
2. What facilities require an Environmental Permit?	13
Regulated Facilities	13
Installations and waste operations – exempt waste operations	15
A single permit	18
Exempt facilities	19
3. The Regulator.....	21
The regulator	21
A single regulator for each site	22
4. Environmental Permit Applications	24
The operator	24
Pre-application discussions	25
Using existing data	25
Timing of applications	26
Novel applications	26
Planning and environmental permit applications	26
Transitional arrangements	27
Consolidation into a single permit	29
5. Application Procedures.....	30
Applications	30
Specific procedures for different types of applications	34
Determination by the Secretary of State or the Welsh Ministers	37
6. Determining Applications	38
Determination	38
Determining different application types	40
7. Standard Permits	44
Standard rules	44

Developing standard rules	44
Standard permits	44
Revision and revocation of standard rules	45
8. Operator Competence	47
Operator competence	47
Management systems	48
Technical competence	49
Convictions for relevant offences	50
Financial competence	51
Maintaining competence	51
9. Consultation and public participation.....	52
Consulting the public	52
10. Compliance Assessment, Enforcement and Review	54
Compliance assessment	54
Enforcement	55
Ongoing review	58
11. Charging	60
Charges for applications	60
Subsistence	60
12. Appeals	61
Appeal procedures	61
Appeal decisions	63
13. Public registers and information	65
Public registers	65
Other information legislation	69
14. Exempt waste operations facilities.....	71
Registration of exempt waste operations facilities	71
Record keeping	72
Transitional arrangements	72
Annex 1 Connections with other legislation.....	73
Regulators	73
Other Relevant Regimes	73
Permitting Considerations	76

1. Introduction

This chapter explains what the Environmental Permitting regime is and describes the regime's law and guidance.

About this guidance

- 1.1. This guidance aims to provide comprehensive help for those operating, regulating or interested in facilities¹ that are covered by the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No. [XXXX]) (“the Regulations”). It describes the main provisions of the Regulations and sets out the views of the Secretaries of State for Environment Food and Rural Affairs and for Energy and Climate Change and the Welsh Assembly Government on how the Regulations should be applied and how particular terms should be interpreted in England and Wales. It also explains where to go for more help.
- 1.2. For local authority-regulated facilities you should instead read the General Guidance Manual on Policy and Procedures for A2 and B Installations (“the Manual”)².
- 1.3. This guidance is freely available in Adobe Acrobat format. This can be searched for key terms for ease of navigation. The contents page of this guide should also help the reader to quickly find guidance on a wide range of issues. A printed copy of the guide is available on request³.
- 1.4. References in this guidance to exemptions do not apply in relation to radioactive substances activities, unless specifically indicated.

What is environmental permitting?

- 1.5. Some activities facilities could harm the environment or human health⁴ unless they are controlled. The Environmental Permitting Regime (“the Regime”) requires operators to obtain permits for some facilities, the registration of exemptions for other facilities and provides for ongoing supervision by regulators. The aim of the Regime is to:
 - protect the environment so that statutory and Government policy environmental targets and outcomes are achieved
 - deliver permitting and compliance with permits and certain environmental targets effectively and efficiently in a way that

¹ The term “facility” should be read to include activities and operations, unless otherwise stated, wherever it appears in the guidance.

² Available at www.defra.gov.uk/environment/ppc/localauth/pubs/guidance/manuals.htm

³ Available from: www.defra.gov.uk/environment/epp/guidance.htm

⁴ The term “protect the environment” should be read to include the environment and human health, wherever it occurs in the guidance.

provides increased clarity and minimises the administrative burden on both the regulator and the operators of facilities

- encourage regulators to promote best practice in the operation of facilities
- continue to fully implement European legislation.

The scope of the Regime

- 1.6. The Regime covers facilities previously regulated under the PPC Pollution Prevention and Control Regulations 2000⁵, and Waste Management Licensing and exemptions schemes⁶ (as superseded by the Environmental Permitting (England and Wales) Regulations 2007), the Water Resources Act 1991, the Radioactive Substances Act 1993 and the Groundwater Regulations 2009⁷.
- 1.7. The Regime extends to England and Wales. It also covers the adjacent sea as far as the seaward boundary of the territorial sea.

The legal framework

- 1.8. The Regime is set out in the Regulations and described in this accompanying guidance. This guidance explains the concepts used in the Regulations and gives guidance as to what is covered by the Regime and how it will work in practice. This guidance only explains the main provisions of the Regulations⁸. The Regulations set out the following:
- the facilities that need environmental permits or need to be registered as exempt
 - the process for registering exemptions, where applicable
 - how to apply for and determine permit applications
 - requirements that environmental permits contain conditions to protect the environment as required by Directives and, where applicable, national policy
 - how environmental permits can be changed and ultimately be surrendered
 - a simplified permitting system called standard rules
 - compliance obligations backed up by enforcement powers and offences

⁵ SI 2000/1973

⁶ see the Environmental Protection Act 1990, Part 2 and the Waste Management Licensing Regulations 1994, SI 1994/1056.

⁷ SI 2009 / [XXXX]

⁸ The Regulations can be downloaded free of charge from www.opsi.gov.uk/si/si200735 (see no. 3538)

- provisions for public participation in the permitting process
 - the powers and functions of regulators, the Secretaries of State and the Welsh Ministers
 - a simple transition to the new regime, and
 - provisions for appeals against permitting decisions.
- 1.9. The principal offences under the Regulations are operating without a permit or in contravention of permit conditions, causing pollution of controlled waters or the discharge of pollutants that might lead to the input of those pollutants into groundwater, and failing to comply with enforcement related notices.
- 1.10. Subject to legal requirements, the Secretaries of State and the Welsh Ministers expect regulators to apply the Regulations in proportion to the environmental risk⁹ presented by the regulated facility.
- 1.11. The nature and extent of the regulatory effort should be appropriate and proportionate to the risk posed by the operation of the facilities, the impact of those activities that operation and the operator's performance in mitigating the risks and impacts. The regulator's effort should be concentrated on achieving the desired environmental outcomes. This approach should make the most effective use of the regulator's resources.
- 1.12. Regulators should exercise their functions in an open and transparent manner.

How European Environmental Directive and national policy requirements are delivered

- 1.13. European Directives (Directives) contain a variety of requirements, some of which can be delivered through a permitting and compliance system and some of which are delivered in other ways. The majority of environmental quality and specific permitting standards and other related requirements for environmental and human health protection come from Directives. The Regulations ensure that those Directive and national policy requirements and outcomes that can be delivered through a permitting and compliance system are delivered by the Regime.
- 1.14. The Regulations place duties on regulators to exercise their permit-related functions to deliver the obligations and outcomes required by the relevant Directives and, in some cases, national policy. In practice, this means that the regulator will ensure, where a permit is granted, that permit conditions achieve the objectives and intended outcomes of any of the Directives or national policy which apply. The Regulations also give regulators powers in relation to their permit-related functions. Government policy in relation to these powers is contained in the guidance series described at paragraph 1.17.

⁹ The term risk should be read to include hazard, wherever it occurs in the guidance.

1.15. The Schedules to the Regulations generally identify precise particular requirements, (usually article by article, for each 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 legislation¹⁰. Each Directive or policy area covered by the Regime has a specific Schedule:

- Part A installations and Part A mobile plant (the Integrated Pollution Prevention and Control Directive) – Schedule 7
- Part B installations and Part B mobile plant – Schedule 8
- the Waste Framework Directive – Schedule 9
- the Landfill Directive – Schedule 10
- waste motor vehicles (the End of Life Vehicles Directive) – Schedule 11
- the Waste Electronic Electrical and Electronic Equipment Directive – Schedule 12
- the Waste Incineration Directive – Schedule 13
- the Solvents Emission Directive – Schedule 14
- the Large Combustion Plants Directive – Schedule 15
- the Asbestos Directive – Schedule 16
- the Titanium Dioxide Directive – Schedule 17
- the Petrol Vapour Recovery Directive – Schedule 18
- the Batteries Directive – Schedule 18A
- the Mining Waste Directive – Schedule [18B]
- Water discharge activities – Schedule 20
- the Groundwater Directives – Schedule 21
- Radioactive substances activities – Schedule 22.

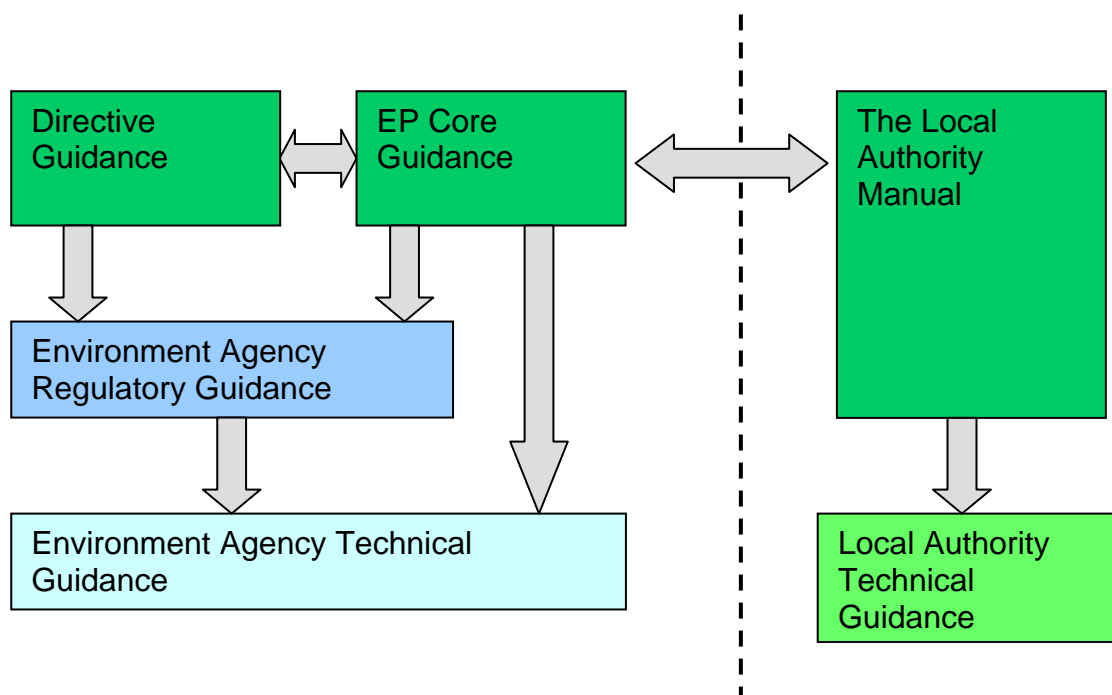
1.16. Where a facility falls under more than one Directive Schedule then each set of Directive Schedule requirements must be met. For example, a waste incinerator must meet the requirements of the IPPC, Waste Incineration and Waste Framework Directives contained in the relevant Schedules. This is because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

¹⁰ For example, the Water Environment (Water Framework Directive) Regulations 2003 SI No. 3242. For more information on this see the Guidance on Water Discharge Activities.

Guidance

- 1.17. More detailed guidance on the requirements of each Directive **or policy area**, including the text of each **Schedule and, where applicable**, Directive, can be found in the following documents.
- Guidance on Part A(1) Installations and Part A(1) Mobile Plant
 - Guidance on the Waste Framework Directive
 - Guidance on the Landfill Directive
 - Guidance on the End-of life Vehicles Directive
 - Guidance on the Waste Electrical and Electronic Equipment Directive
 - Guidance on the Waste Incineration Directive
 - Guidance on the Large Combustion Plant Directive
 - Guidance on the Batteries Directive
 - Guidance on the Mining Waste Directive
 - **Guidance on Water Discharge Activities**
 - **Guidance on the Groundwater Directives**
 - **Guidance on Radioactive Substances Regulation, and**
 - General Guidance Manual on Policy and Procedures for A2 and B Installations.
- 1.18. This guidance is underpinned by further regulatory and technical guidance explaining aspects of the Regime in more detail. This is illustrated in Figure 1.
- 1.19. The environmental permitting regime does not currently transpose all the European Directives relevant to **permitted activities regulated facilities**. Annex 1 to this document outlines the connections with other legislation.
- 1.20. A separate glossary of terms is available¹¹. The glossary briefly explains the meaning of many words, phrases and acronyms used in the Regulations and Directives.
- 1.21. Separate Government guidance is not being produced for the Asbestos, Petrol Vapour and Titanium Dioxide Directives. Guidance on the relevant requirements can be found in the General Guidance Manual for the Asbestos and Petrol Vapour Directives and in technical guidance produced by the Environment Agency for the Titanium Dioxide Directives.

¹¹ Available at www.defra.gov.uk/environment/epp/guidance.htm

Figure 1 Illustration of guidance relationships

- 1.22. The Environment Agency should continue to develop and maintain its regulatory and technical guidance. In so doing it should continue to work closely with Defra, **DECC** and the Welsh Assembly Government and others including:
- the Department for Communities and Local Government
 - the Department of Health
 - local authorities and, in particular, planning authorities
 - the Health and Safety Executive
 - **the Water Services Regulation Authority (Ofwat)**
 - appropriate industry and professional bodies.
- 1.23. The Environment Agency's guidance should be made widely available so that the Regime is implemented in an open and transparent way. Environment Agency guidance on the Regime can be found on its website at www.environment-agency.gov.uk/epr
- 1.24. For local authority-regulated facilities, guidance can be found on the Defra website at www.defra.gov.uk/environment/ppc/localauth/pubs/guidance/manuals.htm

2. What facilities require an Environmental Permit?

This chapter describes how the Regulations identify those facilities that require an Environmental Permit (and those that do not). It sets out the circumstances in which a single permit can cover a number of regulated facilities. The chapter sets out a definition for the area of land to which a permit applies

- 2.1. The Regulations specify which activities and waste operations facilities require an Environmental Permit and provide that some waste operations facilities can be exempt from those requirements. Certain waste operations covered by other legislation are excluded from permitting. The facilities that require a permit are described collectively as “regulated facilities”. There are eight different kinds of regulated facility and each is known as a “class” of regulated facility.
- 2.2. In relation to waste operations, certain operations regulated under other regimes, are described as “excluded waste operations” and these are not regulated facilities.
- 2.3. 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.
- 2.4. 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.

Regulated Facilities

- 2.5. An Environmental Permit is required for any of the following:
- an installation (which carries out the where activities listed in Schedule 1 to the Regulations, and any directly associated activities that are technically linked, are carried on – see Installations) (regulation 8(1)(a))
 - a waste operation not carried on at an installation or by means of mobile plant (see Waste operation) (regulation 8(1)(c))
 - a mobile plant (used to carry out either one of the Schedule 1 activities or a waste operation – see Mobile plant) (regulation 8(1)(b))

- a mining waste operation (see Mining waste operations) (regulation 8(1)(d))
- a radioactive substances activity (see Radioactive substances activities)
-) (regulation 8(1)(f))
- a water discharge activity not forming part of the operation of another class of regulated facility (“stand alone water discharge activity”) (see Water discharge activities)
-) (regulation 8(1)(g)), or
- a groundwater activity not forming part of the operation of another class of regulated facility (“stand alone groundwater activity”) (see Groundwater activities)
-) (regulation 8(1)(h)).

The collective term used in the Regulations for these installations, waste operations and mobile plant is “regulated facility”.

- 2.6. Further details in relation to the classes of regulated facility are given in paragraphs 2.11 to 2.38 below.
- 2.7. There may be more than one regulated facility on the same site. In such cases there are arrangements in the Regulations to allow all such facilities to be regulated by the same regulator (see A single regulator for each site) and to allow, in many cases, for a single permit (see A single permit).
- 2.8. It is an offence to operate a regulated facility without a permit.
- 2.9. For mining waste operations, the requirement for a permit is subject to a transitional provision. For information on this see the Guidance on the Mining Waste Directive.
- 2.10. Regulation 12 also sets out various types of radioactive substances activity that do not require a permit. These are described in the Guidance on Radioactive Substances Regulation (Chapter 2) [and in the Guidance on RSR exemptions – tbc].

Installations

- 2.11. Part 2 of Schedule 1 to the Regulations¹² provides a list of specified activities. Certain exclusions from the list and other rules for interpretation are contained in Part 1 of Schedule 1.
- 2.12. An installation is made up of any stationary technical unit ~~carrying out~~ where one or more activities listed in Schedule 1 and any directly associated activities are carried on (regulation 2).

¹² This largely reproduces Schedule 1 of the Pollution Prevention and Control Regulations 2000.

- 2.13. Further guidance on the meaning of “installation”, “stationary technical unit” and “directly associated activity” is provided, with detailed examples, in the guidance on Part A Installations and Mobile Plant¹³.

Waste operations

- 2.14. A waste operation is defined in regulation 2 by reference to the recovery and disposal operations in the Waste Framework Directive¹⁴. Any recovery or disposal of waste is a waste operation. Some of the larger waste operations are part of an installation and fall into this class of regulated facility (see Installations above). Further guidance on the meaning of waste operation is provided in the Waste Framework Guidance. Some waste operations not carried on at an installation, are excluded from the Regime because there is already appropriate environmental regulation under other regimes.
- 2.15. These excluded operations are those that are carried out under a FEPA permit¹⁵ or the disposal or recovery of sludges which are not to be treated as industrial or commercial waste under the Controlled Waste Regulations¹⁶.

Installations and waste operations – exempt waste operations

- 2.16. Some waste operations carried on at an installation and all waste operations not carried on at an installation, may be exempt waste operations. Exempt waste operations do not require an environmental permit (see the section on Exempt facilities
- 2.17. and Chapter 14).
- 2.18. The types of waste operation carried on at an installation that may be exempt waste operations are those falling within Section 5.3 or 5.4 of Part 2 of Schedule 1 of the Regulations and any activities which are directly associated with them.

Mobile plant

- 2.19. Mobile plant is defined in regulation 2 as Part A mobile plant, Part B mobile or waste mobile plant. plant which:
- Is not an installation
 - Is used to carry out any activity listed in Schedule 1 or any waste operation (see waste operations), and
 - Where not used to carry on a Part A activity, is designed to move or be moved whether on roads or other land.

¹³ Guidance on Part A Installations and Mobile Plant available at www.defra.gov.uk/environment/epp/guidance.htm

¹⁴ Directive 2006/12/EC on waste.

¹⁵ Food and Environmental Protection Act 1985.

¹⁶ Regulation 17(1) of the Controlled Waste Regulations 1992.

Mobile plant – Part A activities

- 2.20. It is only possible for plant **undertaking used to carry on** a Part A activity to fall within the definition of “mobile plant” if it is not an installation. The Regulations **mean make it clear** that an installation cannot be mobile plant.
- 2.21. A stationary technical unit forms the basis of an installation and must be, by definition, stationary.
- 2.22. EC Commission guidance explains the definition of installation¹⁷ and considers the meaning of “stationary”. The Commission guidance considers the question of whether plant that is designed to be moved periodically but which in practice operates from the same location for some time, should be considered to be “stationary”. Suggested tests include: the length of time the plant is expected to or does in fact, remain stationary; the nature of the activities and their environmental impact; and the degree of physical installation involved in moving and establishing the plant.
- 2.23. The Commission guidance also concludes that whilst the term “stationary” means that the installation as a whole should be stationary (in the sense described above), the installation may still include plant or equipment which is mobile. For example, if a directly associated activity is carried out by mobile plant, it must still be regulated as part of the installation.

Waste mobile plant

- 2.24. Waste mobile plant is defined in ~~regulation 8(4)~~ **regulation 2** as mobile plant which is used to carry on a waste operation **and is designed to move or be moved whether on roads on other land**. Part A and Part B mobile plant **and installations** are excluded from this definition.
- 2.25. Waste operations are described above. Any waste operation, other than those which are part of an installation, can theoretically be undertaken by mobile plant.

Part B mobile plant

- 2.26. Guidance on Part B mobile plant can be found in the General Guidance Manual on Policy and Procedures for A2 and B Installations¹⁸.

Designed to move

- 2.27. The Regulations require that to be mobile, plant (other than Part A **activities mobile plant**) must be designed to move or be moved. This movement can be by road, rail or water e.g. by canal.

Mining waste operations

- 2.28. A mining waste operation is the management of extractive waste, whether or not involving a mining waste facility, but excluding activities in Article 2(2)(c) of the Mining Waste Directive¹⁹. Further guidance on the meaning

¹⁷ ec.europa.eu/environment/ipcc/pdf/installation_guidance.pdf

¹⁸ Available at: www.defra.gov.uk/environment/ppc/localauth/pubs/guidance/manuals.htm

¹⁹ Directive 2004/21/EC on the management of waste from extractive industries.

of mining waste operation is provided in the Mining Waste Directive guidance.

Radioactive substances activities

2.29. A radioactive substances activity is one involving the keeping and use of radioactive substances (including mobile radioactive apparatus) or the accumulation and disposal of radioactive waste, and which is not excluded or exempted from regulation as a radioactive substances activity. Further guidance is available in the Guidance on Radioactive Substances Regulation (see Chapter 2)

Water discharge activities

2.30. A water discharge activity is, in summary:

- the discharge or entry to certain waters of any poisonous, noxious or polluting matter, waste matter or trade or sewage effluent
- the discharge from land through a pipe into the sea of any trade effluent or sewage effluent
- the removal of certain deposits from the bed of inland freshwaters; or
- cutting or uprooting substantial amounts of vegetation from inland freshwaters.

2.31. A water discharge activity does not include a discharge of trade effluent or sewage effluent from a vessel, certain types of discharge unless a notice has been served, or certain discharges made under statutory provisions.

2.32. Certain types of water discharge activity may be exempt water discharge activities (see the section on Exempt facilities

2.33. and Chapter 14).

2.34. Further guidance is available in the Guidance on Water Discharge Activities (see Chapter 2).

2.35. Sometimes a water discharge activity forms part of the operation of a regulated facility of another class (e.g. an installation). When it does not, it is referred to in this guidance as a “stand alone water discharge activity”. Some provisions of the Regulations (identified in this Guidance) apply only to stand alone water discharge activities.

Groundwater activities

2.36. A groundwater activity is, in summary:

- the discharge of a pollutant that would result in a direct input into groundwater
- any other discharge that might lead to an indirect input into groundwater

- an activity in respect of which a notice under Schedule 21 has been served.

2.37. A groundwater activity does not include certain small quantities, certain inputs resulting from accidents and certain inputs which could not be prevented.

2.38. Certain types of groundwater activity may be exempt groundwater activities (see the section on [Exempt facilities](#)

2.39. and Chapter 14).

2.40. Further guidance is available in the [Guidance on Groundwater Activities](#) (see Chapter 2).

2.41. Sometimes a groundwater activity forms part of the operation of a regulated facility of another class (e.g. an installation). When it does not, it is referred to in this guidance as a “stand alone groundwater activity”. Some provisions of the Regulations (identified in this Guidance) apply only to stand alone groundwater activities

A single permit

2.42. An Environmental Permit can cover more than one regulated facility (regulation 17).

When can a single permit be granted?

2.43. A single 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 (the exceptions to this are set out below)

2.44. Where the regulator and operator are the same, a single Environmental Permit can be granted to an operator for more than one mobile plant²⁰. Mobile plant do not have to be operating on the same site in order to be included in a single permit.

2.45. Where the regulator and operator are the same, a single Environmental Permit can be granted to an operator for more than one regulated facility to which standard rules apply (a "standard facility", see chapter 7 on [Standard Permits](#)). Standard facilities do not have to be on the same site in order to be included in a single permit. However standard facilities on different sites cannot be combined in a single permit where the IPPC Directive applies to any of the facilities.

²⁰ This allows a continuation of the Mobile Treatment Licence approach see: www.environment-agency.gov.uk/business/444304/444641/595811/1335408/

2.46. A permit which authorises the keeping or use of mobile radioactive apparatus may authorise its keeping or use on more than one site.

2.47. 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 mobile radioactive apparatus set out above). The regulator should consider the following factors in determining whether the facilities are operated on the same site:

- Proximity. There should however be no simple "cut off" distance since some industrial complexes cover very large areas but still can be regarded as one site for permitting purposes
- Coherence of a site. Some regulated facilities will be operated within a single fenced area or may share security or emergency systems
- Management systems. The extent to which the regulated facilities share a common management system is a relevant consideration

2.48. It is expected that a regulator will adopt a common sense approach to determining when facilities should be regulated under one permit. This consideration should be based on achieving protection of the environment in the most efficient regulatory manner.

When is it not possible to have a single permit?

2.49. A single Environmental Permit cannot cover regulated facilities with different regulators (see the chapter 3 section on A single regulator for each site). A separate permit is required covering the facilities for which each regulator is responsible.

2.50. A single permit cannot cover mobile plant combined with any other category class of regulated facility. Mobile plant are the only regulated facility type that 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 facility types.

Exempt facilities

2.51. An exempt facility means an exempt waste operation, exempt water discharge activity or exempt groundwater activity (regulation 5)²¹. Exempt facilities are not included in the definition of a regulated facility (regulation 8(2)(a) and do not require an Environmental Permit, but they are still subject to Directive requirements via the commitments that accompany registration as an exempt facility. Exempt facilities may include:

- a waste operation (including those listed in Section 5.3 and 5.4 of Part 2 of Schedule 1) or waste mobile plant

²¹ Nothing in this section on exempt facilities applies to radioactive substances activities.

- a stand alone water discharge activity, or
- a stand alone groundwater activity.

2.52. An exempt facility must meet the criteria in the relevant paragraph of Schedule 2 (regulation 5). In all cases the relevant criteria mean that a facility must be registered, must fall within a relevant description in Schedule 3 and must satisfy the relevant conditions for that description. In addition, an exempt waste operation must be consistent with the need to attain the objectives in Article 4 of the Waste Framework Directive²².

2.53. Chapter 14 on Exempt waste operations facilities provides brief guidance on the exemptions requirements. The permitting requirements set out in the following chapters of this guidance are not relevant to exempt facilities.

²² Available at www.defra.gov.uk/environment/epp/guidance.htm

3. The Regulator

This chapter identifies the regulator for different types of facility. It also describes how the regime enables regulation under one regulator.

The regulator

- 3.1. The regulator for each **category class** of regulated facility is identified in regulation 32 (subject to any direction under regulation 33; see paragraph 3.8 below).
- 3.2. The Environment Agency regulates²³:
- part A(1) installations
 - part A(1) mobile plant
 - waste mobile plant
 - waste operations, including those carried out at a Part B installation
 - mining waste operations
 - **radioactive substances activities**
 - **water discharge activities, including those carried out at a Part B installation**
 - **groundwater activities, including those carried out at a Part B installation.**
- 3.3. The relevant local authority²⁴ regulates:
- part A(2) installations
 - the “Part B” regime of Local Air Pollution Prevention and Control
 - part A(2) and Part B mobile plant
 - waste operations which are carried on as part of **a** Part A(2) installation or **by** Part A(2) mobile plant.
- 3.4. Local Air Pollution Prevention and Control focuses on controlling emissions to air only for Part B installations. Defra and the Welsh

²³ Unless the Agency is the operator in relation to one of these activities in which case the regulator is the Secretary of State or the Welsh Ministers.

²⁴ Regulation 6 provides a full interpretation of “local authority”.

Assembly Government (WAG) jointly provide guidance on local authority air pollution control²⁵.

- 3.5. Rules for determining whether an installation is Part A(1), Part A(2) or Part B can be found in Part 1 of Schedule 1 to the Regulations. Guidance on Part A(1) and Part A(2) installations can be found in the Guidance on Part A installations²⁶.

Working together

- 3.6. **Where both a the local authority and the Environment Agency exercise functions under the Regulations in relation to facilities at one site, they** should work together in the permitting process. There should be adequate consultation with the local authority where the Environment Agency is the regulator, and vice versa. Chapter 9 on **Consultation and public participation** sets out the requirements for consulting on applications.
- 3.7. The Environment Agency can set the minimum standard for releases to water for a permit regulated by a local authority (regulation 58).

A single regulator for each site

- 3.8. **The Secretary of State or the Welsh Ministers can issue a direction changing the regulator (regulation 33). This direction can be for a specific regulated facility or for a particular category class of regulated facility. A direction cannot however direct a local authority to exercise the Environment Agency's functions for a waste operation (unless that waste operation is part of an installation or a mobile plant). A direction can only direct a local authority to exercise the Environment Agency's functions in relation to an installation (including part of an installation that is a waste operation).**
- 3.9. Where the Secretary of State or the Welsh Ministers make (or withdraw) a direction under regulation 33, this must be published on the relevant website. The local authority and the Environment Agency must be notified as well as any other person who will be affected by the direction.
- 3.10. It is anticipated that this power would be used in a way that helps simpler regulation and any other relevant environmental and regulatory consideration. These directions are therefore likely to be used mainly where there are regulated facilities on the same site but with different regulators. It is not possible to have a single permit with more than one regulator (see the chapter 2 section on **A single permit**) so a direction to change regulators can allow a single permit for the site.
- 3.11. To simplify transition into the new regime, regulated facilities will remain regulated by their existing regulators in the absence of a direction (see the chapter 4 section on **Transitional arrangements**) but it is open to operators and/or regulators to apply for a direction to transfer regulatory control between regulators.

²⁵ Available at: www.defra.gov.uk/environment/ppc/localauth/pubs/guidance/manuals.htm

²⁶ Available at www.defra.gov.uk/environment/epp/guidance.htm

- 3.12. The operator or the regulators may make a written request to the Secretary of State or the Welsh Ministers for a direction in cases where facilities requiring both a local authority Environmental Permit and an Environment Agency Environmental Permit take place on the same site. This is most likely to arise where there is a waste operation **taking place as being carried out in** part of a Part A(2) or Part B installation.
- 3.13. The aim is to allocate regulatory responsibility to the regulator of the major activity on the site. The Secretary of State or the Welsh Ministers will consider each case on its merits having regard to the views of the parties, but will be guided by the following criteria:
- where both sets of regulators and the operator call for a direction, the Secretary of State or Welsh Assembly Government will issue it unless they are aware of any regulatory or environmental protection reason not to
 - where there is disagreement among the three parties:
 - if the disagreement is between the regulators, the Secretary of State or Welsh Ministers will need to be persuaded that there are sound regulatory or environmental protection reasons why regulation by a single regulator would be inappropriate
 - if the operator disagrees, the Secretary of State or Welsh Ministers will need to be persuaded that there are sound regulatory or environmental protection reasons why regulation by a single regulator would be appropriate.
 - the underlying principle will be to favour allocating regulatory responsibility based on which is the major activity on site and which is the regulator for that major activity.
- 3.14. This principle may, however, be influenced by the following:
- whether the “minor” activity has disproportionate potential environmental impacts
 - whether the “minor” activity gives rise to particular technical or other complexities
 - consistency with the way other similar sites in the sector are regulated
 - consistency with the way similar sites run by the same operator are regulated
 - the views of the parties on the above criteria.
- 3.15. Where a single regulator has been determined, this may result in a **whole-site single site** permit being drawn up (see the chapter 2 section on **A single permit**).

4. Environmental Permit Applications

This chapter sets out who should obtain an Environmental Permit and the transitional arrangements for existing PPC permits, waste management licences, mining waste operations, water discharge consents, groundwater authorisations and radioactive substance authorisations and registrations.

The operator

- 4.1. Only a the person who is in control of the has control over the operation of a regulated facility may obtain or hold an Environmental Permit. This person is the "operator" (regulation 7).

Box 1 – Definition of operator

“Operator”

"Operator" is defined in regulation 7 as the person who has control over the operation of a regulated facility.

Regulation 7(b) provides that a regulated facility need not be in operation for there to be an operator.

If a regulated facility has not been put into operation, the person who will have control over it when it is in operation is the operator.

If a regulated facility has ceased to be in operation, the person who holds the permit which authorised its operation is the operator.

Legal obligations may be imposed on an operator during the pre- and post-operational phases.

The operator must demonstrably have the authority and ability to ensure the Environmental Permit is complied with.

- 4.2. In most cases a single operator will have to obtain a single Environmental Permit for each regulated facility. However in some circumstances different operators run different parts of a regulated facility.
- 4.3. Where different operators run different parts of one facility that requires permitting, such as an installation, there will be as many regulated facilities as there are operators, and the number of regulated facilities will change over time, as the number of operators changes. This does not affect the regulator's determination of what actually constitutes the regulated facility extent of the facility that requires permitting e.g. the extent of the installation.
- 4.4. Where two or more operators run different parts of a single regulated facility that requires permitting, they will each need a separate Environmental Permit and be responsible for complying with their permit conditions. In such cases, there should be no ambiguity over which

operator has responsibility for which part of the regulated facility facility that requires permitting.

- 4.5. The requirement that the permit holder must be the operator of the facility is different from the previous systems. The transitional provisions therefore allow the holders of a waste management licence, water discharge consent, groundwater authorisation or radioactive substances authorisation or registration to be treated as the operator for the purposes of the Regulations (see regulation 69(2) regulation 68(2)). However, when permits are transferred over time they must be transferred to the person who will have control of the regulated facility.

Pre-application discussions

- 4.6. Pre-application discussions between operators and regulators can help in improving the quality of the formal application and are therefore encouraged. In order for such discussions to make the best use of time, the operator is expected to have read the relevant published guidance. The regulator should not be expected to provide advice that might prejudice its determination of an application.
- 4.7. Operators and regulators may use the discussions to clarify whether a permit is likely to be needed. The regulator may also give operators general advice on how to prepare their applications, focus on the key issues, and tell them what additional guidance is available. Other parties may be invited to join these discussions – for example, a public consultee (see chapter 9 on Consultation and public participation).
- 4.8. Operators should bear in mind that, especially for controversial cases, good engagement with local or national interested parties at the pre-application stage can be beneficial to all sides.

Using existing data

- 4.9. Operators may draw upon or attach other sources of information in their applications. These might include: such as extracts from:
- Environmental Impact Assessments (see paragraph 8.4)
 - documents relating to an installation's regulation under the Control of Major Accident Hazards (COMAH) Regulations²⁷
 - externally certified environmental management systems
 - site reports prepared for planning purposes, or
 - reports to meet Quarry Regulations.

²⁷ The Control of Major Accident Hazards Regulations 1999. (SI 1999 No.743)

They should make clear which parts of any attachments are relevant to their environmental permit applications and should demonstrate how they relate to the relevant requirements.

Timing of applications²⁸

- 4.10. **Where construction work is needed**, operators should normally make an application when they have drawn up full designs but before construction work commences (whether on a new regulated facility or when making changes to an existing one). Where facilities are not particularly complex or novel, the operator should usually be able to submit an application at the design stage containing all information the regulator needs. If, in the course of construction or commissioning, the operator wants to make any changes which mean that the permit conditions have to be varied, the operator may apply for this in the normal way (see chapter 5 on **Application Procedures**).
- 4.11. There is nothing in the Regulations to stop an operator from beginning construction before a permit has been issued. However, regulators may not agree with the design and infrastructure put in place. Therefore, to avoid any expensive delays and re-work, it is in the operator's interest to submit applications at the design stages. Any investment or construction work that an operator carries out before they have got an Environmental Permit will be at their own risk and will in no way affect the regulator's decision.

Novel applications

- 4.12. If an operator is planning an innovative process for which the regulator has not produced relevant guidance, the operator should, in consultation with the regulator, assemble details of the process, including the potential environmental impact, before making an application. When determining the application the regulator must consider the predicted environmental outcome rather than focussing on the novel nature of the process.
- 4.13. For some novel and complex installations, with long lead times and multiple design and construction phases, the regulator and the operator may agree to a staged application procedure²⁹.

Planning and environmental permit applications

- 4.14. If a regulated facility also needs planning permission, it is recommended that the operator should make both applications in parallel whenever possible. This will allow the pollution control regulator to start its formal consideration early on, thus allowing it to have a more informed input to the planning process.

²⁸ These paragraphs do not apply to radioactive substances activities consisting of intrusive investigation work.

²⁹ This procedure is not the same as the staged procedure described in the **Guidance on Radioactive Substances Regulation**.

- 4.15. For certain waste operations and all mining waste operations, where planning permission is required it must be in force before an Environmental Permit can be granted (paragraph 2 Schedule 9).

Transitional arrangements

Existing PPC permits waste management licences, authorisations, registrations and consents

- 4.16. The Regulations provide transitional arrangements for existing PPC permits and waste management licences forms of permission (“permissions”) so new applications for environmental permits are not required. These arrangements depend on the date the Regulations first applied to a particular class of regulated facility. This will be 6 April 2008 in the case of facilities previously regulated under PPC permits or waste management licences, or 6 April 2010 in all other cases.
- 4.17. The regulator for these permits remains the same and will not change unless there is a subsequent direction from the Secretary of State or the Welsh Ministers (see the chapter 3 section on A single regulator for each site).
- 4.18. Except where there is an outstanding application (see below) these existing permits and licences automatically become environmental permits from the date the relevant Regulations came in to force (regulation 69(1)).

Existing permits and licences permissions with an outstanding application to transfer, surrender, vary or modify

- 4.19. ~~PPC permits and waste management licences~~ Existing permissions do not become environmental permits on the date the Regulations come into force where there is an outstanding, duly-made, application in relation to the existing permit or licence. The relevant applications are those to transfer, surrender, vary or modify the existing permit or licence (regulation [70(1) (c) and (d)]).
- 4.20. The existing permit or licence will not become an Environmental Permit until the outstanding application has been determined and the appeal period has elapsed. The existing permit or licence permission will become an Environmental Permit the day after the last day that an appeal could be made against the regulator’s decision (regulation 70(2)(c)).
- 4.21. If an appeal is made against the regulator’s decision regarding the outstanding application, the existing permit or licence permission will become an Environmental Permit on the date the appeal is determined or withdrawn.
- 4.22. The savings provisions in regulation 72 ensure that regulation and enforcement of waste management licence or PPC permit existing permissions can continue under the original legislation.

Applications for a PPC permit or a waste management licence permission

- 4.23. Some facilities will be the subject of an outstanding application for a PPC permit or waste management licence permission on the date the Regulations come in to force (regulation 70(1)(a) and (b)). These applications will continue to be determined under the original regimes.
- 4.24. If granted, the PPC permit or waste management licence permission will become an Environmental Permit the day after the last day that an appeal could be made against the permit-permission conditions (regulation 70(2)(b) but see regulation 71 and paragraph 4.26 below for the exception to this).
- 4.25. On the day an appeal against the refusal to grant a permit or licence permission is determined, any permit or licence permission granted as a result of the appeal decision will become an environmental permit.
- 4.26. There is a special provision for those existing facilities installations that have not completed the process of moving into the PPC regime (regulation 71). An existing Part A installation or mobile plant would become an Environmental Permit on the day the PPC permit was granted.
- 4.27. If the application is refused, any existing waste management licence continues in force pending the outcome of any appeal made. If the permit is granted on appeal, it will immediately become an environmental permit. If the refusal is upheld then any existing waste management licence will cease to authorise the operation of the facility unless it is a landfill. In the case of landfills, the existing waste management licence will become an environmental permit, but only to the extent it authorises the closure and after-care of the landfill.

Appeals

- 4.28. Appeals should be made and should proceed under the legislation under which the decision under appeal was made. There could be cases where a decision (for example, to serve a variation notice) is made before the date the Regulations came into force, which an operator appeals on or after that date. In such circumstances, the appeal should still be made and proceed under the relevant legislation at the time the decision was made, even though that decision has been incorporated into the environmental permit under the Regulations.

Enforcement

- 4.29. Any outstanding enforcement action commenced before the coming into force of the Regulations will continue to be valid. Enforcement action in relation to breaches or incidents that occurred before the coming into force of the Regulations should be taken under the legislation that was in force at the time of the breach or incident.

Existing mining waste operations

- 4.30. The Regulations provide transitional arrangements for existing mining waste operations to enter into environmental permitting (regulation 71A).

Mining waste operations are “existing” where they are in operation on 1 May 2008.

- 4.31. The Regulations require that operators of existing mining waste operations involving mining waste facilities must apply for an environmental permit on or before 1 May 2011. If there is already an environmental permit authorising the operation of another **class of regulated** facility on the site, for which the Environment Agency is the regulator, the operator can apply to vary the permit to include the mining waste operation.
- 4.32. The Regulations require that operators of existing mining waste operations not involving a mining waste facility must apply for (or to vary) an environmental permit on or before 30 December 2010.

Consolidation into a single permit

- 4.33. The Regulations provide (regulation 18) that the regulator can replace environmental permits **for a number of regulated facilities** with a single permit covering the same facilities. This single permit would contain the same conditions as the permits which are replaced.
- 4.34. This consolidation can be done where there is more than one regulated facility with the same operator. However there are limits to the permits that can be combined (see the chapter 2 section on **A single permit**).
- 4.35. It is expected that the regulator will not normally exercise this power without the agreement of the operator.

5. Application Procedures

This chapter describes the process of making applications. It covers applications for environmental permits and also applications to vary, transfer and surrender permits.

Applications

- 5.1. The requirements for applications are set out in Schedule 5 to the Regulations. The application must:
- be made by the operator (though it may be made by an agent acting on behalf of the operator)
 - in the case of a transfer application, be made by the current operator and the future operator
 - be made on the form provided by the regulator
 - include the information required by the application form
 - include the relevant fee (see chapter 11 on [Charging](#)).

An applicant can withdraw an application at any time before it is determined but the regulator is not obliged to return any of the application fee.

Application forms

- 5.2. Operators must use the forms provided by regulators to make their applications.
- 5.3. Application forms should:
- be clear and simple to understand
 - identify any administrative and technical information required
 - require the information required by any relevant Directive(s)
 - require, where relevant, the assessment of the potential impact on the environment and human health
 - require, where relevant, a level of detail proportionate to the environmental risk, and
 - be sufficiently comprehensive to enable operators to submit complete applications.

Ensuring applications are complete and duly made

- 5.4. Applications should give all the information a regulator needs to make a determination. If an operator fails to do this then the application may not be “duly made”, which means that it cannot be determined. A regulator may conclude that an application is not duly made when, for instance:
- it has not been submitted on the correct form
 - it is for an activity that falls outside the scope of the Regulations
 - it has been sent to the wrong regulator
 - the necessary fee has not been paid, or
 - it has not adequately addressed a key point in the application form
- 5.5. Where there is more than one operator of an installation, all of the operators must make a permit application. The regulator cannot consider that the any application for the part of an installation is duly made unless it has received the applications from all of the operators of the installation.
- 5.6. Regulators should use normal standards of reasonableness and common sense to assess whether applications are duly made. The regulator should always tell the applicant why it considered that an application was not duly made.
- 5.7. The regulator should acknowledge duly-made applications, identifying the date it expects to determine the application. Acknowledgements should explain how, if the application is not determined on time, the applicant can notify the regulator that it considers the application to have been refused and so allow an appeal against that refusal (paragraph 17 Schedule 5 and see chapter 12 on Appeals).
- 5.8. A regulator may accept changes to a duly-made application where it considers it appropriate. This can include a proposed change in the operator of a new facility. Where the regulator considers the proposed change to be too significant, a new application would be required. The implications of changes to an application for the requirements of public participation should always be considered (see chapter 9 on Consultation and public participation) and might indicate either that a new application should be required or that there should be further consultation.
- Determination periods**
- 5.9. The determination period begins on the date the regulator receives an application which is subsequently determined to be duly made (paragraph 16 Schedule 5). A rare exception to this is where it is necessary to consult with other Member States (paragraph 10 of Schedule 5). This can only apply to an activity listed in Annex I of the IPPC Directive (see the

Guidance on Part A installations³⁰) and to a Category A mining waste facility (see the Guidance on the Mining Waste Directive³¹).

5.10. The periods for determining applications are:

- two months for an application to transfer a permit
- three months for an application
 - to surrender a permit
 - to vary a permit (other than where public participation is required)
 - **for in relation to** mobile plant, and
 - for a permit for a standard facility (other than a Part A installation – see chapter 7 **Standard Permits**)
 - for a permit for a mining waste operation not involving a mining waste facility to which Article of the Mining Waste Directive applies.
- four months for an application:
 - for the grant of an Environmental Permit (other than mobile plant, and the standard facilities and mining waste operations listed above)
 - to vary a permit where public participation is required.

5.11. No determination period applies to an application for the grant or transfer of a permit from a nuclear site licensee in relation to a radioactive substances activity; or where the regulator is the Secretary of State or the Welsh Ministers.

5.12. The determination period for an application for a permit for a Category A mining waste facility does not begin until the regulator is notified by the relevant emergency planner that it has the information necessary to enable it to draw up an external emergency plan.

5.13. It is always open to the regulator and the applicant to agree a longer period if this is necessary.

5.14. Where the regulator has not determined the application within the necessary time the applicant can notify the regulator that it considers the application to be refused. The applicant may then appeal the refusal of the regulator to grant the Environmental Permit (see chapter 12 on **Appeals**).

³⁰ Available at www.defra.gov.uk/environment/epp/guidance.htm

³¹ Ibid

- 5.15. The determination periods quoted above can lengthen where:
- decisions are required as to whether information is sensitive due to commercial or industrial confidentiality and/or national security, and/or
 - further information is required to determine the application.
- 5.16. The "clock stops" on the determination period where the regulator has served a notice requiring further information (paragraph 16(3)(a) Schedule 5). The clock starts again once the regulator has received all the information required by the notice.

Requests for more information

- 5.17. There may be circumstances where the regulator needs to serve a notice asking for more information it needs to determine the duly-made application (paragraph 4 Schedule 5).
- 5.18. The regulator should only require further information where that information is essential to allow the application to be determined. Any request for further information should meet at least one of the following criteria. The information must be necessary to:
- assess whether the proposal meets any Directive or other requirements, or
 - determine the appropriate permit conditions to impose.
- 5.19. This information might, for example, comprise:
- information to understand sufficiently the environmental impact or risk posed, or
 - information to understand sufficiently the proposed operations.
- 5.20. Any further information notice must be served as soon as possible in the determination process. The notice must clearly specify what information the regulator requires to determine the application, why it needs that information and when the information must be supplied. A reasonable period should be given for the applicant to provide the information.
- 5.21. The applicant must provide all the information specified in the notice. Omissions either in the range or detail of information may result in the regulator considering that the applicant has failed to provide the information.
- 5.22. The regulator can decide, if the applicant does not provide the further information, that the application should not be continued with. Where this occurs, the regulator must first review its decision to require further information and then may serve a notice stating that the application is deemed to have been withdrawn.

- 5.23. Where a regulator intends to take this step, it should normally offer the operator a final opportunity to supply the information and an opportunity for a face-to-face meeting. There is a right of appeal against the deemed withdrawal of the application (see chapter 12 on [Appeals](#)).

Duty to consider representations

- 5.24. The regulator has a duty to consider the representations made during the determination process (paragraph 11 Schedule 5). These representations may be received from:
- members of the public or interested bodies
 - persons with rights to land
 - other Member States.

- 5.25. Public participation is dealt with in chapter 9 on [Consultation and public participation](#).

Permit conditions requiring the consent of others

- 5.26. Regulators can impose permit conditions requiring operators to do things which they are not entitled to do without the consent of another person (regulation 15(1)). That person is required to grant **consent such rights as are necessary to enable the operator to comply with the condition**. However, the person granting **consent those rights** is entitled to compensation from the operator (Part 2 Schedule 5).

- 5.27. These conditions may for example be used where it is necessary to monitor the effects of an activity on another person's land.

- 5.28. The people who own or have the ability to grant rights to the land must be notified by the regulator (paragraph 9 Part 1 Schedule 5).

Notification of the determination

- 5.29. The regulator must notify the applicant of its decision and the reasons for making the decision (paragraph 17 Part 1 Schedule 5). The determination must also be published on the regulator's website. Applicants must be informed of their rights of appeal (see chapter 12 on [Appeals](#)).

- 5.30. Whenever it considers it necessary, the regulator should issue a new permit consolidating any changes brought about by the application (paragraph 19 Part 1 Schedule 5). This will provide clarity for both the regulator and the operator.

Specific procedures for different types of applications

Variation applications

- 5.31. Once an operator has an Environmental Permit, changes in the operation of the **regulated** facility may require the operator to apply to vary the permit³².

³² Specific provisions apply to Part A installations - see the Guidance on Part A installations

- 5.32. The operator must apply to the regulator to vary the permit conditions when proposing a change that would mean that a permit condition could no longer be complied with. Other aspects of the Environmental Permit may also require a variation application – for example, to change the name of the operator on the permit (though not the operator's identity which would require a transfer application).
- 5.33. A variation application may include an increase to the **area extent of the site** over which the regulated facility operates, **as covered by the permit**. Where this occurs, issues such as the protection of the land must be addressed.
- 5.34. However, a variation cannot reduce the **area extent of the site** covered by the Environmental Permit if the permit requires consideration of the condition of the land. Since this is not required for Part B activities (regulated for emissions to air only), **or for stand alone water discharge or groundwater activities**, this restriction does not apply to them (regulations 20(2) and 20(3)). Where the restriction does apply, an operator wishing to reduce the **area extent** of the site of the regulated facility must apply for partial surrender (see the section on **Surrender applications and notifications**).
- 5.35. For applications to vary **the an** Environmental Permit there are two basic situations: where public participation is required; and where it is not (paragraph 5 Part 1 Schedule 5).
- 5.36. Public participation is required where there is a substantial change **to the operation of an installation** (see guidance for Part A installations and Part A Mobile Plant³³). The regulator may also require consultation in cases **(whether or not relating to an installation)** that do not involve substantial changes. In these cases, the regulator will notify the operator of its decision and the consultation will proceed as if there were a substantial change (see chapter 9 on **Consultation and public participation**).

Transfer applications and notifications

- 5.37. The Regulations allow for permit transfers (regulation 21). A permit can be transferred:
- completely, or
 - partially, so that the **regulated facility becomes two regulated facilities with the original operator retaining control of some of the original facility which then becomes a separate facility** and another operator taking over the operation of the transferred part of the **original facility which then becomes a second separate facility**.
- 5.38. **Transfer by notification is only possible in the case of any part of a permit that relates to a stand alone water discharge or groundwater activity. In these cases joint notification must be made on a form provided by the**

³³ Available at www.defra.gov.uk/environment/epp/guidance.htm

regulator, include information specified on that form and specify an effective date.

- 5.39. In all other cases where an operator wants to transfer all, or part, of a permit to someone else, they must make a joint application. For a partial transfer, where the original operator retains part of the permit, the application must include a plan identifying which parts of the site and which regulated facility (or facilities) the operator proposes transferring.
- 5.40. Where the regulator grants an application to transfer the whole permit, it will issue a new permit to the new operator.
- 5.41. For partial permit transfers, the regulator will issue a new permit to the new operator. This will cover the parts of the operation that have been transferred. At the same time, the regulator will issue a new permit to the original operator, reflecting the extent of the transfer.
- 5.42. Regulators should vary permit conditions, where necessary, as a result of a transfer. For example, further conditions may become necessary to reflect the shared operation. This will ensure that operators continue to co-operate on control of the regulated facility—facility that requires permitting, as a whole.

Surrender applications and notifications

- 5.43. There are two separate methods for surrender. Some regulated facilities may simply notify the regulator but others must make an application to the regulator (regulations 24 and 25).
- 5.44. Surrender of the Environmental Permit by notifying the regulator is restricted to environmental permits for Part B installations (except to the extent they relate to a waste operation, water discharge activity or groundwater activity) and for mobile plant.
- 5.45. The pollution control measures for Part B installations, except for any parts relating to a waste operation, water discharge activity or groundwater activity, relate solely to emissions to air. There is therefore no requirement to consider the condition of the land prior to surrendering the permit.
- 5.46. For mobile plant the position is similar in that there is no geographical site associated with the environmental permit. There cannot therefore be a consideration of the condition of the land before a surrender takes place. It should be noted that, where relevant, the permit conditions for mobile plant should be in place to ensure the protection of the land on which they operate.
- 5.47. It is possible to surrender part of the an Environmental Permit for a regulated facility. This is the only method of reducing the extent of the site of the a regulated facility covered by the a permit. Where there is a partial surrender, the regulator may need to vary the permit conditions to reflect this.

Determination by the Secretary of State or the Welsh Ministers

5.48. The Secretary of State or the Welsh Ministers can require any application to be sent to them for determination (regulation 62). This would be an exceptional step and likely to be taken only if the application involves issues of more than local importance – for example, **though not exhaustive**, if the application:

- is of substantial regional or national significance
- is of substantial regional or national controversy, or
- may involve issues of national security or of foreign governments.

Any decision would be made solely on those grounds, with no consideration of the substantive merits of the application itself.

5.49. The Secretary of State or the Welsh Ministers will **try to** deal with these cases **promptly as soon as possible**. The regulator must consult as normal, but should send any representations to the Secretary of State or the Welsh Ministers. The Secretary of State or the Welsh Ministers may choose to arrange a hearing, and would normally do so if the regulator or the operator asks for one. The Secretary of State or the Welsh Ministers may then direct the regulator to:

- grant a permit, stating which conditions should be included, or
- refuse the permit.

6. Determining Applications

This chapter deals with the decision making of the regulator in determining applications. It also sets out the relevant criteria for the different categories of applications.

Determination

6.1. The regulator must decide whether to grant or refuse the proposal in an application and, where applicable, what permit conditions to impose.

6.2. For all applications made under the Regulations, the regulator must ensure that its determination delivers the relevant Directive **and other** requirements and provides the required level of protection to the environment.

Assessing environmental risk³⁴

6.3. The application to the regulator will, as relevant, include an assessment of the environmental risk of the proposals including the risk under both normal and abnormal operating conditions. The regulator should satisfy itself that the operator's assessment of the risk is sufficiently robust. In particular, any assumptions that the operator has made about its proposals must be clearly justified. The regulator should assess the application and the adequacy of the impact assessment including whether the control measures proposed by the operator are appropriate for mitigating the risks and their potential impact.

6.4. Guidance on environmental risk assessment has been produced and where appropriate regulators should make reference to this guidance³⁵.

The Directive requirements

6.5. European Directives set out most of the requirements to be met through environmental permitting. Schedules 7 to **18B 22** set out those Directive Articles that the regulator must take into account when permitting **regulated** facilities under the environmental permitting regime. Chapter 1 illustrates the way that various different Directive requirements may apply to a regulated facility and references guidance on the Directive specific requirements.

³⁴ Paragraphs 6.3 and 6.4 do not apply to radioactive substances activities: see instead the **Guidance on Radioactive Substances Regulation**.

³⁵ Department of the Environment, Transport & The Regions, Environment Agency & The Institute For Environment & Health (2000) *Guidelines for Environmental Risk Assessment and Management* – Revised Departmental Guidance.

Refusing an application

- 6.6. The regulator must refuse a permit application in certain circumstances (see the section on [Permit applications](#)).
- 6.7. The regulator may also decide to refuse an application in certain circumstances. Examples of cases where this might be appropriate are:
- the regulator has reason to believe that the operator is not competent to run the regulated facility in accordance with the permit (see chapter 8 on [Operator competence](#))
 - the environmental impact would be unacceptable. For instance, an operator might propose siting a new facility close to an extremely sensitive environment, but with no means of providing adequate control
 - the information provided by the operator does not provide a reasonable basis to determine the permit conditions, taking into account the operator's responses to requests for more information (see the chapter 5 section on [Requests for more information](#)), or
 - the requirements of relevant European Directives cannot be met.

Permit conditions

- 6.8. If the regulator grants a permit it can include any conditions it sees fit (paragraph 12 (2) Part 1 Schedule 5). It has a duty to impose conditions in order to secure the objectives that apply to the [category of class of regulated](#) facility (see [The Directive requirements](#)).
- 6.9. Where the regulator grants an application for the variation, transfer or partial surrender of an Environmental Permit and there are additional variations needed as a consequence of the application, the regulator should make those necessary variations to the Environmental Permit (paragraph 12(3)(a) Part 1 Schedule 5).
- 6.10. All permit conditions should be both necessary and enforceable. "Necessary" means that the regulator should be able to justify at appeal if necessary the permit conditions it attaches. To be enforceable, conditions should clearly state the objective, standard or desired outcome of the condition so that the operator can understand what is required. [Where appropriate, duplication with the requirements of other legislation should be avoided.](#)
- 6.11. Permit conditions may comprise some or all of the following:
- conditions stipulating objectives or outcomes
 - standards to mitigate a particular hazard / risk, or
 - conditions addressing particular legislative requirements.

- 6.12. The regulator can include conditions in the permit setting out steps to be taken during, prior to and after the operation of the regulated facility.

Determining different application types

- 6.13. The general considerations set out above should be applied to all application types. In addition to these, there are specific considerations for different application types. These are set out in the following sections.

Permit applications

- 6.14. The regulator is required to refuse a permit in two circumstances.
- The regulator must not grant the permit if it considers that the applicant will not be the operator of the regulated facility (see the chapter 5 section on [The operator](#))
 - **Except in the case of stand alone water discharge or groundwater activities**, the regulator must not grant a permit if it considers that the operator will not comply with its conditions (paragraph 13 Part 1 Schedule 5) – see chapter 8 on [Operator Competence](#).

Variation applications

- 6.15. A regulator does not have to accept an operator's proposals to vary a permit. If it does, it must impose conditions to secure compliance with the Regulations.
- 6.16. The regulator may decide that only some parts of the variation sought should be reflected in revised permit conditions. The regulator may also consider that it needs to impose conditions that go beyond the operator's proposals.

Transfer applications

- 6.17. The regulator must determine whether to allow the transfer. The transfer must be refused if the regulator considers that the proposed transferee will not be the operator or will not operate the facility in accordance with the Environmental Permit (paragraph 13 Part 1 Schedule 5). The primary consideration in transferring a permit is the proposed new operator's competence to operate the regulated facility. The operator competence provisions are described in chapter 8 on [Operator Competence](#). This is the same as for new permit applications and the regulator should consider the applications in the same way.

Surrender applications

- 6.18. An Environmental Permit remains in force until it is surrendered, revoked or consolidated and the operator therefore remains subject to its conditions until that time.

- 6.19. When a regulated facility **closes ceases to operate**³⁶, an operator should (but is not compelled to) seek surrender of the permit so as to end regulation under environmental permitting and the requirement to pay the associated annual charges.
- 6.20. Chapter 5 sets out the two methods of surrender: application and notification. This section deals with applications to surrender an Environmental Permit i.e. where the regulator must make a decision whether or not to accept the surrender. Operators of mobile plant, Part B installations (except to the extent they relate to a waste operation), **and stand alone water discharge or groundwater activities** need only notify the regulator of the surrender (regulation 24) and so this section is not relevant to these facilities.
- 6.21. The general requirements for permit surrender (paragraph 14 Schedule 5) are that the regulator must accept the surrender of the Environmental Permit if it is satisfied that the necessary measures have been taken:
- to avoid any pollution risk resulting from the operation of the regulated facility (paragraph 6.22 below), and
 - 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 (paragraphs 6.23 to 6.33 below).

These requirements do not apply to an application to surrender a permit authorising a radioactive substances activity at a nuclear site.

Avoiding pollution risk

- 6.22. The requirement to avoid any pollution risk must be interpreted in a proportionate way. In practical terms, operators should tackle the risks of any pollution that could occur, unless they are so small that further action is not justified. This might mean removal of tanks containing pollutants, as they could rust or get damaged, so releasing the pollutants.

The site of the regulated facility

- 6.23. The site of the regulated facility means all of the land on which any of the **activities or waste operations facilities** covered by an Environmental Permit may take place. The site is the “footprint” of the regulated facility. This includes any land that is integral to the satisfactory operation of the facility, for example, areas needed for the movement of materials by vehicles or other means, and the area around any associated pipe work.
- 6.24. Where there is more than one regulated facility located together and regulated under the same permit (see the section in chapter 2 on **A single permit**), the site is made up of the footprints of the individual regulated facilities.

³⁶ Landfill facilities and mining waste operations should not apply to surrender the permit until after the appropriate period of aftercare.

- 6.25. In many cases the site of the regulated facility can simply be defined by the perimeter fence of the facility. This is however less likely to be the case for regulated facilities situated within larger facilities.

The initial state of the site of the regulated facility

- 6.26. The regulator requires a point of reference for judging whether there has been any additional contamination of the site during operation of the regulated facility. The regulator should normally attribute any additional contamination to operation of the facility.
- 6.27. The regulator should hold the operator responsible for any contamination on the site unless the regulator is convinced that the operator cannot reasonably be held responsible for it. At some sites contamination may have resulted from activities other than the operation of the regulated facility.
- 6.28. The regulator should not hold the operator responsible for contamination on the site that the regulator is convinced was caused:
- before the Environmental Permit was issued under the Regulations for a new facility
 - before the PPC permit was issued for a facility previously regulated under the PPC Regulations, or
 - before the issue of a licence under the Environmental Protection Act 1990 or under Part I of the Control of Pollution Act 1974 for a facility previously regulated under a waste management licence (including where the licensed site subsequently entered the PPC regime)
- 6.29. For those sites that were previously regulated under a waste management licence (see paragraph 6.28 above) the consideration should be of contamination which results from the use of the land for the treatment, keeping or disposal of waste (whether or not in pursuance of the waste management licence).

Satisfactory state

- 6.30. The regulator must ensure that the necessary measures have been taken to return the site of the regulated facility to a satisfactory state. This can only be achieved if operators aim to restore sites to the condition before the facility was put into operation.
- 6.31. This may be significantly stricter than the “suitable for use” test of the contaminated land regime in Part 2A of the EPA 1990 and similar controls on redevelopment. While “suitable for use” is appropriate for pre-existing contamination, it is not the right test for the preventive environmental permitting regime. When applying to surrender a permit, applicants are advised to consider whether they might be required to carry out remediation under Part 2A and if so whether it would be more cost effective to undertake operations for both purposes at the same time.

- 6.32. Other than in exceptional circumstances operators should remove any contamination and return the site to the original condition³⁷ (see paragraphs 6.23 to 6.29 above). However, where an operator can robustly demonstrate that is unsustainable or not practical to do this, then the contamination should be removed as far as practicable.
- 6.33. The return of the site of the regulated facility to a satisfactory state should include:
- the removal of any residual waste deposits (though clearly not for landfills or mining waste operations for the permanent deposit of extractive waste)
 - removing as far as is practical any contamination to return the site to the original condition, and
 - where removal is not practical
 - treating or immobilising contamination
 - remedying any harm the contamination may have caused, and
 - mitigating the effects of any harm

Notification of surrender

- 6.34. If the operator satisfies the regulator that it has removed any pollution risks and has restored the site to a satisfactory state, then the regulator should accept the surrender and give the operator notice of its determination. The permit then ceases to have effect on the date specified in the notice of determination. If the regulator is not satisfied, it has to give notice of its determination stating that the application has been refused.

³⁷ For a landfill or mining waste operation for the permanent deposit of extractive waste, it is clearly not possible to return the site to the state that existed prior to the operation of the facility.

7. Standard Permits

This chapter describes standard rules and their use in standard permits.

Standard rules

- 7.1. The Secretary of State, the Welsh Ministers³⁸ and the Environment Agency can make standard rules (regulation 26).
- 7.2. These rules consist of requirements common to the **class type** of facilities subject to them (standard facilities – regulation 2) and can be used instead of site-specific permit conditions. Standard rules would be suitable for industry sectors where a number of regulated facilities share similar characteristics in relation to environmental hazards.
- 7.3. The standard rules must achieve the same high level of environmental protection as site-specific conditions.
- 7.4. The rules are the conditions of the standard permit for all purposes other than for appeals. The standard rules cannot be appealed (regulation 27 (3) since applying for a permit subject to the rules is voluntary (see below).

Developing standard rules

- 7.5. In preparing standard rules, it is necessary to consult widely with those who may be affected by or have an interest in the rules (regulation 26 (2)), including relevant statutory bodies. The standard nature of the facilities for which standard rules will be produced allows a general consideration of the requirements and standards for all such facilities.
- 7.6. It is expected that standard rules will be developed in consultation with the relevant industry.
- 7.7. Assessments of risk can be carried out nationally for common generic **activities facilities**. This understanding of the hazards and risks posed by these **activities facilities** would form the basis for the development of standard rules for standard facilities.

Standard permits

- 7.8. It is the operator's decision as to whether they wish to operate under standard rules. Where standard rules have been made, operators of standard facilities can, if they so wish, request that their facility be subject to the relevant rules. This request may be made in an application for a new permit or an application to vary an Environmental Permit.

³⁸ Defra, DECC and the Welsh Ministers do not currently intend to produce standard rules.

- 7.9. The generic assessments of risk for standard facilities should be made available to applicants to assist them in determining whether their activity is within the scope of the standard rules and, if they apply for a standard permit, in the adoption of suitable control measures to meet those rules.
- 7.10. One important difference from other regulated facilities is that any additional site-specific assessment of risk is not necessary for a standard facility. Regulated facilities that require a location specific assessment of impact and risk are not suitable for standard rules.
- 7.11. If the regulator's assessment of an application were to indicate that this is appropriate, it would state in the permit that the relevant rules are the conditions of the permit (regulation 27(2)). The operation of the facility covered by the rules would then be subject to the requirements in the rules rather than site-specific conditions. Where a permit covers only standard facilities subject to standard rules, it can be described as a "standard permit".
- 7.12. A standard permit can authorise the operation of more than one standard facility operated by the same operator (regulation 17(c)). It is also possible for a single environmental permit to authorise the operation of a standard facility (or facilities) and other regulated facilities run by the operator on the same site (see the section in chapter 2 on [A single permit](#)). This Environmental Permit would not however be a standard permit.
- 7.13. Public consultation on applications for individual standard facilities is not required (other than for Part A installations – see paragraph 5(1)(b) Part 1 Schedule 5). This reflects the fact that consultation in the development of the rules must have already taken place (see chapter 9 on [Public Consultation](#)).

Revision and revocation of standard rules

- 7.14. Standard rules can be revised, and there is a duty imposed by the Regulations to keep the rules under review (regulation 26(4)).
- 7.15. Where revisions are proposed, it is necessary for consultation to take place in the same way as for the original production of the rules. This consultation is not required for minor administrative changes to the rules (regulation 26(3)).
- 7.16. Where there is a proposal to revise the standard rules, operators with permits that would be affected must be notified. Where revised rules are proposed, regulators must normally give operators three months notice before the rules take effect (regulation 28). Operators not wishing to operate under the revised rules can apply for a variation to their permit before the rules take effect.
- 7.17. As well as being revised, standard rules can be revoked by the authority that made the rules. Again there must be a consultation process involving the same people as in the development of the rules (regulation 29).

- 7.18. Where such a revocation is to take place the regulator must vary the permit to include suitable alternative conditions. The revoked rules continue to be conditions of the environmental permit until the regulator varies the permit (regulation 30).

8. Operator Competence

This chapter describes the requirements for operator competence including the role of management systems.

Operator competence

- 8.1. Operator competence supports the objectives of permitting by examining and maintaining the operator's ability to ~~carry out the relevant activities~~ **operate a regulated facility** and fulfil the obligations of an operator (see the chapter 4 section on **The operator**).

~~The regulator must consider operator competence when assessing:~~

- ~~• an application for an Environmental Permit, and~~
- ~~• an application to transfer (or partially transfer) an Environmental Permit~~

~~The regulator can also consider operator competence when assessing, at any other time, the operator's ability to comply with the Environmental Permit.~~

- 8.2. Operator competence can be considered by the regulator at any time, whether as part of the determination of an application or as part of compliance assessment. The regulator may refuse an application, set permit conditions or take enforcement action, having regard to the principles of operator competence described in this Chapter.
- 8.3. ~~A regulator must not issue or transfer an environmental permit if~~ **Following an application for the grant or transfer of an environmental permit, there is also a specific duty on the regulator not to issue or transfer the permit if** it considers that the operator will not operate the facility in accordance with the permit (paragraph 13 Schedule 5)³⁹. In making this decision the regulator should consider whether the operator cannot or is unlikely to operate the facility in accordance with the permit. The regulator might doubt whether the operator could or is likely to comply with the permit conditions if for example:
- the operator's management system is inadequate
 - the operator's technical competence is inadequate
 - the operator has a poor record of compliance with previous regulatory requirements, or

³⁹ This requirement does not apply in relation to stand alone water discharge or groundwater activities, where for these classes, transfer to a new operator is by way of notification, not application (see paragraph 5.38).

- the operator's financial competence is inadequate

The following sections deal with each of these points in turn.

Management systems

- 8.4. In order to ensure a high level of environmental protection, operators should have effective management systems in place. The nature of the required management system depends upon the complexity of the regulated facility.
- 8.5. Complex regulated facilities are encouraged to put in place a formal environmental management system externally certified to the international standard ISO 14001 by a UKAS accredited certification body or other European equivalent and to register for the EU's Eco Management and Audit Scheme EMAS. These standards require that the management system include safeguards for legal compliance and a commitment to continuous improvement of environmental performance. Additionally EMAS requires organisations to produce an independently validated public report about their environmental performance and progress against targets and objectives. Where relevant the performance should be benchmarked against European legislation, e.g. Best available techniques under IPPC. EMAS and ISO 14001 are also recognised by the Environment Agency's risk rating scheme OPRA (Operator and Pollution Risk Appraisal scheme). OPRA scores are linked to fees and charges. Organisations which have implemented an EMS may achieve a better OPRA score and can pay lower fees and charges.
- 8.6. For simpler regulated facilities, externally certified schemes or a full EMS may be less appropriate but should still be carefully considered by operators and, where appropriate, encouraged by regulators. The step wise approach provided by BS8555 is particularly appropriate for smaller facilities and can make EMS implementation much simpler. Organisations can achieve UKAS accredited certification to one or more stages of BS 8555 under the IEMA Acorn, BSI Stems or Green Dragon schemes. The European Commission has also developed a simplified implementation tool, EMAS "easy", which aims to help SMEs achieve registration for EMAS. There is also specific guidance on management systems for some industry sectors on the website of the Institute of Environmental Management and Assessment.
- 8.7. Environmental management systems have relevance to other aspects of regulation, such as determining risk-based inspection frequencies (see section on chapter 10 on [Risk-based compliance assessment](#)). Recognised quality assurance schemes may also be relevant, and regulators may also take account of non-certified systems where these can be demonstrated to provide an equivalent role in safeguarding compliance and continual improvement of environmental performance.

Box 2 – Other sources of information on Environmental Management systems

- EMAS: www.ema.org.uk and <http://europa.eu.int/comm/environment/emas>
- EMAS Easy: <http://ec.europa.eu/environment/emas/toolkit/>
- ISO 14001: www.bsi-global.com
- UKAS: www.ukas.com
- Acorn: www.iema.net/acorn
- BSI Stems: www.bsi-global.com/en/Assessment-and-certification-services/management-systems/Standards-and-Schemes/BS-8555-STEMS/
- Green Dragon: www.greendragonems.com/

Technical competence

- 8.8. Operators should be technically competent to operate their facility. The operator's wider management system should contain mechanisms for assessing and maintaining technical competence. The competence of individuals should form part of those management systems.
- 8.9. The development of industry led competence schemes is strongly encouraged. Scheme providers should seek advice of the relevant Sector Skills Council when developing their scheme. All schemes should be based predominantly on qualifications accredited by the Qualifications and Curriculum Authority, based on vocational qualifications where these exist, and agreed with the regulator and Government.
- 8.10. Technical competence for operators of radioactive substances activities is covered in the Guidance on Radioactive Substances Regulation.

Relevant waste operations

- 8.11. For those waste operations covered by Certificates of Technical Competence (CoTCs), a relevant CoTC remains an appropriate means of demonstrating technical competence. Any schemes developed in addition must be:
- effective in developing and demonstrating technical competence across a sector or sectors and provide equivalent competence with other schemes approved for the sectors(s)
 - risk-based and proportionate
 - able to provide mechanisms for demonstration and assessment of both initial competence and continuing competence
 - based on good operational practice and appropriate legislative requirements

- based on individual competence and offer individuals and organisations choices in how they demonstrate and maintain competence
- based consistently on National Occupational Standards where these exist
- cater for the evolving complexity and diversity of the waste and resources management sector
- applicable to all relevant waste management **activities operations**, or where appropriate to all **activities operations** within the sectors for which the scheme is designed
- inclusive, and must not prevent new entrants from developing necessary competences in the workplace
- not perpetuate a reliance on deemed competence.

8.12. The Environment Agency will be required to make an assessment of the technical competence of operators who have made a permit application for a relevant waste operation that is outside the scope of the CoTCs and where there is no appropriate alternative scheme in place.

Convictions for relevant offences

8.13. In assessing operator competence the regulator may consider whether the operator or any other relevant person (see below) has been convicted of “relevant offences”. A relevant offence is any conviction for an offence relating to the environment or environmental regulation.

8.14. A “relevant person” in relation to a conviction for a relevant offence would include:

- the operator (i.e. the “legal person” holding or applying for the permit – a person, persons in a partnership, or a corporate body)
- a director, manager, secretary or other similar officer of an operator (when it is a corporate body) and a partner in a limited liability partnership (LLP), who has either been convicted of a relevant offence themselves, or who held a position in another corporate body or LLP when it was convicted of a relevant offence.

8.15. The regulator should not grant or transfer a permit to persons who have been convicted of a relevant offence if it believes that it would be undesirable for them to hold a permit.

8.16. Refusal would normally be appropriate for offences that demonstrate a deliberate disregard for the environment or for environmental regulation for example where there are repeated convictions, or deliberately making false or misleading statements.

- 8.17. The regulator must take into account the terms of the Rehabilitation of Offenders Act 1974. The Act applies only where an individual has been convicted of an offence. However, where the person convicted is a corporate body, the regulator should have regard to whether the conviction would have been spent if it had been committed by an individual and should normally treat the corporate body in the same way.
- 8.18. If it thinks it right to do so, the regulator may still decide to grant or transfer a permit, or to allow a permit to continue in force, even though a relevant person has been convicted of an offence.

Financial competence

- 8.19. The operator of any regulated facility should be financially capable of complying with the Environmental Permit.
- 8.20. Specific provisions apply to landfill facilities (see Guidance on the Landfill Directive), mining waste facilities (see Guidance on the Mining Waste Directive) and radioactive substances activities (see the Guidance on Radioactive Substances Regulation). For all other categories classes of facility, regulators should only consider financial solvency explicitly in cases where running costs are high relative to the profitability of the activity, or if they have any other reason to doubt the financial viability of the activity.

Maintaining competence

- 8.21. Operators must maintain the standards of their management systems and competence throughout the regulated facility's life. Regulators can impose permit conditions to ensure this.
- 8.22. In the event of non-compliance with permit conditions, the regulator may consider reassessing the competence of the operator. Regulators can reassess competence at any time and if not satisfied can revoke the permit (see the section in Chapter 10 on [Revocation](#)).

9. Consultation and public participation

This chapter covers the requirements for consultation with the public.

- 9.1. Consultation serves to inform the public (and other interested bodies) so that they can make informed comments to the regulator allowing the regulator to make better decisions.
- 9.2. Regulators must take into consideration any representations made by consultees during the allowed time periods.

Consulting the public

- 9.3. The Regulations require consultation with the public on environmental permit applications but do not prescribe the methods of consultation. This allows proportionate and flexible approaches to public participation to be developed by the regulators.
- 9.4. The meaning of “public consultee” is given in paragraph 1 of Schedule 5 to the Regulations and includes anyone who the regulator considers will be (or is likely to be) affected by the application and anyone who will have an interest in the application.
- 9.5. Public participation is provided for where there is an application for an Environmental Permit (paragraph 5 Part 1 Schedule 5). This requirement to consult does not apply to **permit** applications for:
 - mobile plant;
 - standard permits other than Part A installations;
 - certain small Part B installations,
 - a mining waste operation not involving a mining waste facility to which Article 7 of the Mining Waste Directive applies, or
 - **radioactive substances activities involving mobile radioactive apparatus.**
- 9.6. **Mobile plant and radioactive substances activities that involve mobile radioactive apparatus** can operate at different locations and therefore local involvement cannot be meaningfully provided at the application stage. The permitting requirements for standard rules have been set out **above (see chapter 7 on Standard Permits)**. These require that consultation takes place on the production (and review) of the rules rather than on individual applications. Public consultation is not required for applications for small waste oil burners, dry cleaners and some Part B activities associated with petrol unloading and motor vehicle refuelling (paragraph 5(4) Part 1

Schedule). For mining waste operations, public participation is only required where the Mining Waste Directive requires it.

- 9.7. Substantial changes to Part A installations must be consulted on (see the Guidance on Part A installations⁴⁰). The requirement to consult on a substantial change applies both to variation applications by the operator and variations initiated by the regulator (paragraph 5(2)(a) and 5(3)(a) Part 1 Schedule 5).
- 9.8. The regulator may decide that other variations to environmental permits should also be subject to public consultation (paragraph 5(2)(b) and 5(3)(b) Part 1 Schedule 5).
- 9.9. Any information that is to be excluded from the public register in the interests of national security or because it is commercially or industrially confidential (see chapter 13 on **Public registers and information**) must not form part of the public consultation.

The Environment Agency's public participation statement

- 9.10. The Environment Agency⁴¹ must prepare a statement of its policies on Public Participation (regulation 59)⁴². **These policies must relate to the Agency's duties in relation to determining applications and making standard rules.**
- 9.11. In preparing or revising the statement the Environment Agency must consult those people it considers will be or are likely to be affected by the statement and who will have an interest in the statement. This consultation will be in accordance with the Cabinet Office guidelines on consultation. The Environment Agency must review and revise the statement as appropriate.

⁴⁰ Available at www.opsi.gov.uk/si/si200735

⁴¹ The situation for Local Authority consultation can be found in the Manual www.defra.gov.uk/environment/ppc/localauth/pubs/guidance/manuals.htm

⁴² Working together: your role in our environmental permitting decision making www.environment-agency.gov.uk/epr

10. Compliance Assessment, Enforcement and Review

This chapter describes the powers and duties of the regulator (and the operator) in ensuring compliance with the regulations and permit conditions.

Compliance assessment

Risk-based compliance assessment

10.1. Risk-based compliance assessment should include:

- targeting those **activities facilities** that:
 - pose the greatest risk to the environment or human health
 - have poorer standards of operation
 - are failing to comply with the terms and conditions of the permit, or
 - are having a greater adverse impact
- reducing the regulatory burden on operators whose standard of operations are consistently high, and
- taking into account the different stages in the lifetime of a facility

10.2. The Environment Agency should maintain guidance on a risk-based approach to compliance assessment⁴³. This should take into account the operator's management of the facility.

Methods of compliance assessment

10.3. The operator is responsible for ensuring that its regulated facility does not cause pollution of the environment and harm to human health. Checking compliance with the terms and conditions of the permit is the principal way in which the operator's performance in relation to that responsibility should be assessed. **However In addition**, the regulator should also **assess audit** the operator's systems for the management and supervision of the facility.

10.4. The Regulations place a duty on regulators to undertake appropriate periodic inspections of regulated facilities (regulation 34(2)). There is also a duty on the exemption registration authority (see chapter 14 on **Exempt waste operations facilities**) to carry out periodic inspections of exempt waste operations (paragraph **13 12** Schedule 2).

⁴³ Available at www.environment-agency.gov.uk/business/1745440/444671/466170/411964/

- 10.5. This inspection process can include reviewing information from the operator as well as carrying out independent monitoring, site inspections, in-depth audits and other compliance-related work.
- 10.6. In its policies and procedures for the environmental permitting regime the regulator should have regard to the Recommendation of the European Parliament and of the Council (2001/331/EC) of 4 April 2001 on the minimum criteria for environmental inspection⁴⁴.
- 10.7. Operators may also have significant responsibility for monitoring under environmental permits. The permit conditions may require operators not just to provide basic data (for example, the actual results from monitoring equipment), but also to demonstrate whether they are meeting the conditions of the permit.

Enforcement

Enforcement notices

- 10.8. Regulation 36 of the Regulations allows the regulator to serve an “enforcement notice” if it believes an operator has contravened, is contravening, or is likely to contravene any permit conditions.
- 10.9. Enforcement notices will specify the steps required to remedy the problem and the timescale in which they must be taken. Enforcement notices may include steps to remedy the effects of any harm and to bring a regulated facility back into compliance.

Suspension notices

- 10.10. If the operation of a regulated facility involves a risk of serious pollution, the regulator may serve a “suspension notice” under regulation 37(2) of the Regulations. This applies whether or not the operator has breached a permit condition.
- 10.11. The suspension notice must describe the nature of the risk of pollution and the actions necessary to remove that risk. The notice must specify the deadline for taking actions.
- 10.12. When the regulator serves a suspension notice, the permit ceases to authorise the operation of the entire facility or specified activities depending upon what is specified in the notice.
- 10.13. A suspension notice should allow activities to continue unless their cessation is necessary to address the risk of pollution. While the suspension notice is in force, additional restrictions may be necessary for steps may need to be taken in relation to any activities that are allowed to continue. Where this is the case the suspension notice must set out these additional steps.

⁴⁴ Available at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_118/l_11820010427en00410046.pdf

10.14. When the operator has taken the remedial steps required by the notice, the regulator must withdraw the notice.

Prosecutions

- 10.15. If an operator has committed a criminal offence under the Regulations, regulators should consider a prosecution. Conviction in a magistrates' court carries a fine of up to £50,000 and up to twelve months' imprisonment for the most serious offences under the Regulations. Conviction in the Crown court for those offences may lead to an unlimited fine and imprisonment for up to five years.
- 10.16. Regulators have clear guidance on the factors to take into account when deciding whether to prosecute. Regulators should take account of the Regulators' Compliance Code⁴⁵ and Cabinet Office Enforcement Code⁴⁶ and the Attorney General's Code for Crown Prosecutors⁴⁷. These contain important safeguards for operators to ensure that the enforcement action taken by regulators is proportionate to the risks posed to the environment and to the seriousness of any breach of the law.
- 10.17. The Environment Agency's enforcement and prosecution policy sets out a range of possible enforcement actions⁴⁸. These range from warnings to formal cautions to prosecution depending upon the facts.
- 10.18. The Regulations also contain another important safeguard for operators, the emergency defence (regulation 40). This provides a defence where the operator shows that the acts are done in an emergency to avoid danger to human health, all reasonable steps are taken to minimise pollution and the regulator is informed promptly. Emergencies ought to be relatively rare occurrences.
- 10.19. Where an environmental permitting regulator and another enforcement body both have the power to prosecute in respect of the same subject matter, they should endeavour to liaise to avoid inconsistencies and make sure that any proceedings are for the most appropriate offence.
- 10.20. The regulator must place details of any conviction or formal caution on the public register.

⁴⁵ Available at

bre.berr.gov.uk/regulation/reform/enforcement_concordat/enforcement_background.asp

⁴⁶ *Ibid.*

⁴⁷ www.cps.gov.uk/publications/docs/code2004english.pdf

⁴⁸ Available at www.environment-agency.gov.uk/business/1745440/112913/?version=1&lang=e

Revocation

- 10.21. The regulator can revoke a permit, in whole or in part, by serving a “revocation notice” (regulation 22). The regulator may use revocation whenever appropriate. Revocation may be appropriate where exhaustive use of other enforcement tools has failed to protect the environment properly. Unlike other types of notice, if a revocation notice is appealed the revocation does not take effect until the appeal is determined or withdrawn (regulation 31(9)).
- 10.22. The permit ceases to authorise the operation of **the facility a facility, facilities** or part of a facility depending upon what is specified in the revocation notice. Any post-operation requirements, such as site restoration, may remain in force (regulation 22).
- 10.23. The revocation notice must specify any additional steps the operator must take to avoid any pollution risk or to return the site to a satisfactory state. Regulators may enforce the restoration requirements by issuing enforcement notices and if necessary they can use their powers to remedy harm and recover costs (see the section on **Remediation**).

Remediation⁴⁹

- 10.24. If a regulated facility gives rise to a risk of serious pollution, a regulator may arrange for the risk to be removed under regulation 57. If an operator commits an offence that causes pollution, the regulator may arrange for steps to be taken to remedy pollution at the operator’s expense.
- 10.25. Site protection must be addressed throughout the life of a permit. Restoration of the site at closure cannot justify letting the operator contaminate the site during the operation of the facility. It will not usually be desirable to wait until the regulated facility **closes ceases to operate** before removing any contamination or remedying any harm at the site.
- 10.26. Where an incident such as a spillage occurs, the operator should take all practical steps to address any contamination at the time of the incident. A record of the steps taken to return the site to a satisfactory state should be made available to the regulator.

Enforcement against the Crown

- 10.27. The Crown is bound by the Regulations, as are people who work for it. However, the Crown is not criminally liable even if it contravenes the Regulations. The regulator cannot take proceedings to the High Court if the Crown does not comply with an enforcement or suspension notice. However, the regulator may apply to the High Court to have something the Crown has done (or failed to do) declared unlawful if it contravenes the Regulations. These provisions are set out in Schedule 4 to the Regulations. **Special provisions apply in the case of radioactive substances activities (see the Guidance on Radioactive Substances Regulation).**

⁴⁹ special arrangements apply in the case of remediation on a nuclear site: see the Guidance on Radioactive Substances Regulation.

Ongoing review

Variation of conditions by the regulator

- 10.28. The regulator may vary permit conditions at any time, even if the operator has not requested this (regulation 20), **except in certain circumstances in the case of a stand alone water discharge activity⁵⁰**. It is most likely to do this in response to the findings of a permit review (see paragraphs 10.32 to 10.33), because additional conditions are needed to deal with new matters or where compliance assessment has identified a need to vary the conditions.
- 10.29. A variation may however be necessary for another reason, such as a new environmental quality standard (EQS). A local authority regulator will also need to vary the permit conditions on releases to water from a Part A installation regulated by the authority if the Environment Agency requests this under regulation 58 (see paragraph 3.7).
- 10.30. Where the regulator decides to vary permit conditions, it will serve a variation notice and may require the operator to pay a fee. **(Schedule 5, paragraph 8)**.
- 10.31. The regulator will consult on a proposed variation notice, in much the same way as when the operator **asks applies** for a variation (see chapter 9 on **Consultation and public participation**).

Permit reviews

- 10.32. Regulators are required to review permits periodically (regulation 34). Permit reviews are required to check whether permit conditions continue to reflect appropriate standards and remain adequate in light of experience and new knowledge. Reviews should guard against permits becoming obsolete as techniques develop.
- 10.33. Regulators should review permit conditions in the light of new information on environmental effects, best available techniques or other relevant issues.
- If a review shows that new or varied permit conditions are needed, the regulator determines them by the regulator initiated variation procedures above (**Variation of conditions by the regulator**).
 - The Regulations do not define when regulators should carry out permit reviews, **except in relation to groundwater activities, where relevant permits must be reviewed by 22 December 2012**. The Environment Agency will determine when to carry out reviews, having regard to its experience of regulating the various sectors. Local authorities may be guided in making their decisions by advice from the Secretary of State. Regulators should inform operators at the start of a review so that they are able to input into the review process.

⁵⁰ see the **Guidance on Water Discharge Activities**

- Some environmental permits will contain conditions that fulfil the requirements of the Groundwater Regulations. The regulator must review those permits conditions every four years. This need not be the full environmental permit review; however, regulators should consider carrying out full reviews for reasons of efficiency and integrated control. Regulators should also consider this for other regulatory requirements not incorporated into environmental permits, such as the review of safety reports under the COMAH Regulations.

11. Charging

This chapter describes the system of charging for environmental permits.

- 11.1. Two separate but related sets of charging arrangements apply to regulated facilities:
- for facilities where the Environment Agency is the regulator, under Section 41 of the Environment Act 1995 and approved by the Secretary of State, and
 - for facilities where the local authority is the regulator, set by the Secretary of State and the Welsh Ministers under regulation 65.
- 11.2. Within this overall arrangement, different charges are payable at different regulatory stages. They will also vary across installations and sectors. Further details are available from regulators or from Defra and the Welsh Assembly Government.

Charges for applications

- 11.3. Applications will normally incur charges. Where an operator must pay a charge when submitting an application, the regulator must receive this before the application can be considered duly made. If the regulator judges that an application accompanied by payment is not duly made, it would normally return the charge to the applicant.
- 11.4. Regulators must allow for different charges for different categories of variation application. This is to allow an approach that can reflect the:
- amount of effort that the regulator has to put into determining the application
 - the potential environmental impact or risk, and
 - the necessary degree of public participation.

Subsistence

- 11.5. Operators must pay subsistence charges to support the regulator's ongoing costs for such things as checking monitoring data or compliance assessment. If an operator fails to pay a subsistence charge, the regulator may revoke the permit.

12. Appeals

This chapter sets out when an appeal can be made and the procedures for making appeals.

Appeal procedures

When can an appeal be made?

12.1. ~~The operator~~ A person may appeal (regulation 31) when:

- the regulator has refused ~~an~~ their application for a permit
- the regulator has refused ~~an~~ their application for a variation of a permit
- the regulator has refused ~~an~~ their application to transfer or surrender the permit
- they disagree with the conditions imposed by the regulator in their permit
- an application is deemed to have been refused
- the regulator has deemed an application to be withdrawn
- the regulator has decided not to authorise the closure procedure mentioned in Article 13 of the Landfill Directive or Article 12 of the Mining Waste Directive
- the regulator has served a revocation, enforcement, suspension notice, landfill closure notice or mining waste closure notice ~~on~~ them
- the regulator has determined that certain information ~~in relation to their application or permit~~ must be included on the public register (regulation 53)

12.2. Time limits for making appeals vary according to the basis of the appeal (paragraph 3 Schedule 6). The Secretary of State or the Welsh Ministers have the power to extend some of the limits, but would only do so in the most compelling circumstances.

12.3. An appeal must be made:

- before a revocation notice takes effect
- within two months from the date of a suspension, enforcement, mining waste facility closure or landfill closure notice ~~and or~~ a regulator initiated variation

- no later than 15 working days after receiving notice that ~~the an~~ application is deemed to be withdrawn (paragraph 4(2) Schedule 5) or receiving notice that certain information must be included on the public register (regulation 53), or
- in all other cases within six months of the date of the decision or deemed decision.

Who should an appeal be made to?

- 12.4. ~~The operator must appeal to~~ Appeals must be made to the Secretary of State or the Welsh Ministers.
- 12.5. The Secretary of State and the Welsh Ministers may appoint the Planning Inspectorate (PINS) to ~~administer~~ determine appeals⁵¹. The Secretary of State or the Welsh Ministers can however recover any appeal. This would be an exceptional step and likely to be taken only if the appeal meets particular criteria ~~(see the section on Determination by the Secretary of State)~~ (see the Planning Inspectorate Appeal Procedure Guidance for Environmental Permits, Appendix 2.)
- 12.6. The Planning Inspectorate has produced separate guidance on appeals for environmental permitting⁵². A failure to follow the procedure set out in that guidance may lead to adverse costs implications.

While the appeal is being considered

- 12.7. If ~~an operator a person~~ appeals against a revocation notice, the revocation does not take effect until the appeal has been determined or withdrawn ~~(regulation 31(9) regulation 31(8))~~, except in certain circumstances in relation to stand alone water discharge activities⁵³.
- 12.8. If the appeal is against a permit condition, variation, enforcement, suspension, landfill closure or mining waste facility closure notice, then the notice or condition must be complied with until the appointed person or the Secretary of State or the Welsh Ministers has determined the appeal (regulation 31(8)), except in certain circumstances in relation to stand alone water discharge activities.

Who should be informed that an appeal has been made?

- 12.9. Following receipt of the notice of appeal (other than against a decision on commercial confidentiality), the regulator should contact anyone it thinks may be affected by or has a particular interest in the matter (paragraph 4 Schedule 6). The regulator should ensure that the relevant people are informed as to the nature of the appeal and are made aware that representations can be made in writing to the appointed person or the Secretary of State or the Welsh Ministers.
- 12.10. The regulator should tell the appointed person or the Secretary of State or the Welsh Ministers who it has notified of the appeal and when (paragraph 4 (3) Schedule 6).

⁵¹ Section 114 of the Environment Act 1995

⁵² Available at: www.planning-inspectorate.gov.uk/

⁵³ See the Guidance on Water Discharge Activities

Conducting an appeal

- 12.11. An appeal may be conducted by written representations, or through a hearing or inquiry under the control of the Secretary of State or the Welsh Ministers' appointee.
- 12.12. All parties have the right to request a hearing and one will also be held if the Secretary of State or the Welsh Ministers or their appointee decide one is necessary. Each appeal procedure will be conducted in the spirit of the rules and Regulations for planning appeals⁵⁴.

Withdrawing an appeal

- 12.13. ~~An operator~~ **An appellant** may withdraw an appeal at any time by giving notice in writing to the Secretary of State's or the Welsh Ministers' appointee, copied to the regulator.
- 12.14. The Secretary of State's or the Welsh Ministers' appointee should tell anyone with an interest in the appeal that it has been withdrawn.
- 12.15. The regulator should inform all the people it notified of the appeal (paragraph 4 (4) Schedule 6).

Costs

- 12.16. The ~~operator~~ **appellant** and regulator will normally be expected to pay their own expenses during an appeal. However where a hearing or inquiry is held, either the ~~operator~~ **appellant** or the regulator can apply for costs. There is no provision for costs to be awarded where appeals are dealt with by written representations.
- 12.17. Following an application for costs, the appointed person or the Secretary of State or the Welsh Ministers will act in the spirit of DOE Circular 8/93 (The Award of Costs in Planning and Other Proceedings)⁵⁵.
- 12.18. Applications for costs will only be allowed if the party claiming them can show that the other side behaved unreasonably and put them to unnecessary expense.

Appeal decisions

- 12.19. After the exchange of written representations has been completed or the hearing or inquiry held, the appointed person will either make a decision or report their conclusions and recommendations to the Secretary of State or the Welsh Ministers for determination.
- 12.20. The appointed person or the Secretary of State or the Welsh Ministers may dismiss the appeal or may uphold the appeal in total or in part. They

⁵⁴ The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000 (SI 2000 No. 1628); Town and Country Planning (Hearings Procedure) (England) Rules 2000 (S.I. 2000 No.1626); The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (SI 2000 No.1624) and The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI 2000 No.1625).

⁵⁵ paragraph 4(6) Part 4 Schedule 4 of the EP Regulations applies section 250 of the Local Government Act 1972 to hearings and inquiries

may quash or vary any notice. They may also direct the regulator on what permit conditions to impose.

- 12.21. If the appeal is dismissed, the original decision by the regulator continues in force. Where the original decision has been ineffective during the appeal (i.e. for a revocation notice), the regulator's decision becomes effective from the end of the day on which the appeal is dismissed or withdrawn.
- 12.22. If the appeal is upheld, either in total or in part, the regulator has a duty to give effect to that decision. Consequently, where the regulator grants a permit or issues a variation notice following an appeal, such a notice should include reference to the fact that the decision is giving effect to a determination by the appointed person or the Secretary of State or the Welsh Ministers.
- 12.23. The regulator should take into account relevant appeal decisions when reviewing and developing the conditions to be attached to permits.
- 12.24. Appeal decisions may be challenged by judicial review on a point of law.

13. Public registers and information

This chapter sets out the duty on the regulators to maintain public registers for environmental permits and makes reference to other sources of information on environmental permitting.

- 13.1. Information relevant to environmental permitting is available through public registers and under the Freedom of Information Act (FOIA)⁵⁶ and the Environmental Information Regulations (EIR)⁵⁷.
- 13.2. In order to ensure that information is readily and easily available for the purposes of public participation under the Regulations, regulators are required to maintain public registers of specified information on environmental permitting.
- 13.3. Under the FOIA, public authorities are required to maintain publication schemes and publish information they hold in accordance with those schemes. Under both FOIA and EIR there is a statutory duty to respond to requests for information and provide advice and assistance.
- 13.4. The following sections cover the specific requirements for public registers and the relevant aspects of other information legislation.

Public registers

Duty to maintain public registers

- 13.5. Regulators (or the Environment Agency in any case where the Secretary of State or the Welsh Ministers are the regulator) must maintain registers containing information on all the regulated facilities for which they are responsible (regulation 46).
- 13.6. Local authorities' registers must also include information on facilities in their areas regulated by the Environment Agency (other than mobile plant or stand alone water discharge or groundwater activities). The Environment Agency must provide this information to the relevant local authority (regulation 46(6)).
- 13.7. The registers must be available for inspection by the public (free of charge) at all reasonable times (regulation 46(8)(a) regulation 46(9)(a)). Copies of any entry on a register must be available to any member of the public on payment of a reasonable charge (regulation 48(9)(b) regulation 46(9)(b)). Where information is excluded from the register on grounds of confidentiality, a statement must be placed on the register indicating the existence of that information (regulation 46(8)).

⁵⁶ Freedom of Information Act 2000, ss.19,20.

⁵⁷ Environmental Information Regulations 2004 S.I. 2004/3391, Reg. 4.

Form and content of registers

- 13.8. The register can be of any form (regulation 46(9)), **that allows but should** allow proper public access. Regulators may choose, for example, to maintain computerised or internet based registers. If they do, they should make sure that they provide help for members of the public who are unfamiliar with the technology.
- 13.9. Registers must contain the information set out in paragraph 1 of Schedule 19 to the Regulations. This includes copies of permits, applications, enforcement notices and monitoring information.
- 13.10. The regulator is not required to place information relating to criminal proceedings on the register while **they the proceedings** are in progress (regulation 46(2)).

Withdrawal of information

- 13.11. Paragraph 2 of ~~Schedule 19~~ **Schedule 23** to the Regulations states that a regulator is not required to keep in its register any information which is no longer relevant for the purposes of public participation. This will enable the regulator to remove unnecessary information to make the register easier to consult.
- 13.12. It should be noted that although unnecessary information may have been removed from the public register, the information may still be available from the regulator either through the publication scheme or in response to information requests under the Freedom of Information Act or the Environmental Information Regulations (see the section on **Other information legislation**).

National security

- 13.13. No information should be included in a register if, in the opinion of the Secretary of State or the Welsh Ministers, the inclusion of that information in the register would be contrary to the interests of national security (see regulation 47).
- 13.14. For this to happen, the Secretary of State or the Welsh Ministers must determine that placing the information on the register would be against the national interest. The Secretary of State or the Welsh Ministers may direct the regulator to exclude specified information (or a specified description of information) from the register (regulation 47(1)).
- 13.15. The Secretary of State or the Welsh Ministers may direct the regulator to refer a specified description of information to him for his determination before its inclusion on the register (regulation 47(3)).
- 13.16. The operator (or any other person, including the regulator) may notify the Secretary of State or the Welsh Ministers that, in their opinion, the inclusion of information on a register would be contrary to the interests of national security (regulation 47(4)). The operator (or other notifying person) must let the regulator know that it has notified the Secretary of State or the Welsh Ministers. The operator must not however exclude that information from any submission to the regulator, such as a permit

application. The regulator must keep this information out of the register unless the Secretary of State or the Welsh Ministers determines that it should be included (regulation 47(7)).

Commercial and Industrial confidentiality

- 13.17. Information may be withheld from the public registers where the regulator judges that it may be commercially or industrially confidential (regulation 48). When this occurs a statement must be placed on the register indicating the existence of that information.
- 13.18. “Confidential information” is defined in ~~regulation 45~~ **regulation 2** as information that is commercially or industrially confidential in relation to any person.
- 13.19. The possible exclusion of information from the register can be triggered where:
- the regulator decides that the information may be commercially or industrially confidential (regulation 51), or
 - anyone objects (“the objector”)⁵⁸ to the inclusion of information on the grounds of commercial or industrial confidentiality. This is called an “objection notice”.
- 13.20. If an operator wants confidential information to be excluded from the register, it should make a request at the time the information is submitted, whether as part of an application, as monitoring information, or for any other purpose. The operator should provide clear justification for each item it wishes to be kept from the register. It will not be enough, for example, merely to assert commercial prejudice: they must provide substantiation that the confidentiality is provided by law to protect a legitimate economic interest.
- 13.21. The amount of information asked to be excluded from the register should be kept to the minimum necessary to safeguard the operator's commercial advantage.
- 13.22. The operator should make sure that any information which they consider confidential is readily identifiable. It may assist the regulator if the information the operator wishes to be excluded is submitted in a way which will allow it to be easily removed should the claim be granted: for example on separate pages, marked “claimed confidential”.

⁵⁸ The objector will invariably be the operator, but could be, for example, someone who supplies information to the operator. Whoever objects is referred to in Part 5 of the Regulations as “the information subject”, but for simplicity in the rest of this chapter it is assumed that it will be the operator.

13.23. The regulator must reach a decision on whether information must be withheld from the register within 20 working days (or such longer period as is agreed with the operator) of:

- the date when the operator requests information to be excluded under regulation 48(1)(b), or
- the date when the operator objects to information being included after a notification by the regulator under regulation 49(1), or
- the date 15 working days onward from when the regulation 49(1) notice is given if, by then, no response has been received to the 49(1) notice

13.24. The regulator may only determine requests based on the information provided to it. If the information provided does not clearly demonstrate that information should be legitimately protected, the regulator must determine that it is not confidential.

13.25. In reaching its decision, or “determination”, the regulator must apply the legal criteria and:

- take account of any reasons given by the operator in any objection notice
- apply a presumption in favour of putting the information on the register, and
- exclude only information that is commercial or industrial information; its confidentiality is provided by law to protect a legitimate economic interest; and taking account all circumstances, the public interest in maintaining the confidentiality of the information outweighs the public interest in including it on the register.

13.26. The Regulations enable other information to be withheld if it cannot reasonably be separated for the purposes of inclusion on the register (regulation 51(4)).

13.27. If a determination is made regarding the confidentiality of monitoring information and the information is to be withheld from the public register, paragraph 1(4) of ~~Schedule 19~~ **Schedule 23** to the Regulations requires a statement in the register indicating whether the operator has complied with permit conditions.

13.28. If the regulator fails to notify the operator of its determination within the 20 working days (or agreed longer period) referred to above, the operator may write to the regulator confirming that the request has not been determined. Such a notice automatically triggers a deemed decision to place the information on the register and the right of appeal against this decision. The operator may appeal within 15 working days of the date of the deemed decision (i.e. the notice).

- 13.29. Whether the regulator has actively determined that information is not confidential, or there has been a deemed determination, the information must be kept from the register for a further 15 working days. This is the period within which an appeal may be made to the Secretary of State or the Welsh Ministers (regulation 53). If no appeal has been made within that time, the information must be put on the register.
- 13.30. An appeal against the inclusion of information on the public register must be made to the Secretary of State or the Welsh Ministers (see chapter 12 on [Appeals](#)).
- 13.31. If an appeal is made to the Secretary of State or the Welsh Ministers, the information in question must not be placed on the public register before the appeal is decided (~~regulations 51(4) and 52(2)~~ regulation 53(3)).
- 13.32. The Regulations require that the regulator may only grant confidentiality for up to four years (regulation 55). The regulator can specify a shorter period when they make the original decision.
- 13.33. An operator must re-apply for commercial confidentiality before the end of the four years (or shorter period). If the operator does not do so, the regulator must place all previously commercially confidential information on the public register.
- 13.34. It is recommended that the regulator should write and inform operators that the end of the time period is approaching, allowing sufficient time for re-application. However operators should not rely on the regulator providing this service.

Other information legislation

- 13.35. The Freedom of Information Act (FOIA) and Environmental Information Regulations (EIR) provide a system of fully enforceable rights of access to information held by public authorities.
- 13.36. The FOIA gives a statutory right of access to all types of recorded information and data held by public authorities on request. It also places a duty on public authorities to make information available pro-actively through a publication scheme.
- 13.37. The EIR provide extra rights of access to environmental information, with a wide definition of what is environmental. Under the EIR there is duty to progressively make information available to the public by electronic means, organising information with a view to the active and systematic dissemination of the information to the public. Where an information request is for environmental information, there is an exemption under the FOIA so that the EIR apply. The EIR will apply to most of the information held by regulators.
- 13.38. There are several “exemptions” under the FOIA and “exceptions” under the EIR from rights of access (for example personal data and commercial confidentiality) that balance openness with confidentiality and privacy.

13.39. Further information on access to information can be found in the Defra, guidance EIR 2004 Detailed Guidance⁵⁹, from the Information Commissioner's Office⁶⁰ and from the Department for Constitutional Affairs⁶¹.

⁵⁹ Available at www.defra.gov.uk/corporate/opengov/eir/guidance/full-guidance/index.htm

⁶⁰ www.informationcommissioner.gov.uk/

⁶¹ www.dca.gov.uk/foi/index.htm

14. Exempt waste operations facilities

This chapter describes the general requirements for exempt waste operations facilities and the requirements for registering exemptions and keeping records. This chapter does not apply to radioactive substances activities. Further guidance on exempt waste operations is provided in [tbc].

- 14.1. Some waste operations facilities that pose a sufficiently low risk can be exempt from the need to hold a permit. However this can only be done where any applicable European Directive allows it. A waste operation, water discharge or groundwater activity must meet certain criteria in order to be exempt from requiring an Environmental Permit. This is set out in the Regulations (see the chapter 2 section on Exempt facilities **Error! Reference source not found.**).
- 14.2. An exemption is only effective if the waste operation meets the requirements of regulation 5. A facility can only be exempt if it meets the requirements of Schedule 2. In the case of waste operations, one of these requirements is that the activity operation must meet the objectives in Article 4 of the Waste Framework Directive⁶². These objectives state that an operation should be carried out without endangering human health and without using processes or methods likely to harm the environment (see Article 4 of the Waste Framework Directive and the introductory words of Annex IIA and IIB).
- 14.3. The compliance effort for exempt facilities that carry out exempt waste operations should follow the same principles as for regulated facilities (see chapter 10 on Compliance Assessment, Enforcement and Review).

Registration of exempt waste operations facilities

- 14.4. A waste operation can only be exempt from the need to hold a permit where an establishment or undertaking has been registered in relation to the operation (paragraph 3(1) Schedule 2). In the case of a water discharge activity, the occupier must register the activity. In the case of a groundwater activity either the occupier or operator must register, depending on the type of activity.
- 14.5. The exemption registration authority (i.e. the regulator) for each type of exempt waste operation facility is identified in paragraph 2 of Schedule 2 to the Regulations.
- 14.6. The regulator is required to maintain a register of establishments and undertakings carrying out exempt waste operations exempt facilities and relevant particulars (paragraph 4 paragraph 7 Schedule 2). This is only

⁶² Directive 2006/12/EC on waste available at www.defra.gov.uk/environment/waste/strategy/leg_dir.htm

required where the registration authority has been notified of the waste operation facility.

14.7. Some exemptions require a greater level of regulatory scrutiny where the level of environmental risk is higher. These are termed 'notifiable exemptions' and have specific registration requirements (paragraph 8 Schedule 2). These include requirements to provide the information in the form required by the regulator and to pay a fee.

14.8. If the activity is to continue for longer than a year, a renewal notice must be submitted before twelve months have past since the last notification (paragraph 10 Schedule 2).

14.9. The regulator can refuse to register a notifiable exemption. There is no right of appeal against this decision but the regulator must provide the reasons for the decision. The decision must be taken within 25 working days of receipt of notification although it is possible to agree a longer period (paragraph 11 Schedule 2).

14.10. There are specific registration requirements for activities falling within paragraphs 45(1) or 45(3) of Part 2 The recovery of scrap metal or the dismantling of motor vehicles (paragraph 6 Schedule 2).

Record keeping

14.11. Record keeping for all notifiable exemptions is explained in paragraph 12 of Schedule 2. The required records of waste types and quantities (and their origin and fate) must be kept for at least two years. During this time the records must be available to the regulator when they request it.

14.12. There are specific record keeping requirements for exempt activities falling within paragraph 47(1) of Schedule 3 (The treatment of land by the spreading of agricultural waste).

Transitional arrangements

14.13. Where an exemption is registered under the Waste Management Licensing Regulations it will automatically become a registered exemption under the Regulations (regulation 69(3)).

Annex 1 Connections with other legislation

A.1.1 Regulated facilities will need to comply with other pieces of environmental legislation. Some of this legislation should be addressed by the environmental permits (through permit conditions and/or the decisions of the regulator) and other legislation is in addition to the environmental permitting regime. This Annex explains the main connections between the environmental permitting regime and legislation relating to: the regulators (paragraph A.1.2); other relevant regimes (paragraphs A.1.3 to A.1.15) and permitting considerations (paragraphs A.1.18 to A.1.26), but it should not be regarded as covering all possible environmental legislation applicable in individual cases.

Regulators

Environment Agency

A.1.2 The Environment Act 1995 contains the legislation establishing the Environment Agency and conferring upon it various duties and powers. Sections of the Act notable in relation to environmental permitting are:

- Section 4, stating the principal aim and objectives of the Environment Agency in terms of environment protection and contributing to sustainable development⁶³
- Section 39, giving the Environment Agency the general duty to have regard to costs and benefits in exercising its powers
- sections 41 to 43 concerning financial charging, and
- sections 108 to 112, relevant to enforcement and prosecution.

Other Relevant Regimes

Contaminated Land⁶⁴

A.1.3 The local authority is responsible for the determination of “contaminated land” under Part 2A of the EPA 1990 (Part 2A)⁶⁵.

A.1.4 The local authority with a regulated facility in its area will receive a copy of the permit application for that facility, either as the regulator or as a public consultee. The information in the application may convince the local authority that the site could already meet the statutory definition of “contaminated land” under Part 2A.

⁶³ Statutory guidance from Ministers to the Environment Agency under section 4 of the Environment Act 1995 was published most recently in December 2002 and is available at www.defra.gov.uk/environment/ea/sustain/index.htm

⁶⁴ In relation to radioactive contaminated land see the [Guidance on Radioactive Substances Regulation](#)

⁶⁵ Statutory guidance on Contaminated Land is available at www.defra.gov.uk/environment/land/contaminated/pubs.htm

- A.1.5** If an operator believes that a site may meet the statutory definition of “contaminated land”, it may wish to discuss this with the local authority.
- A.1.6** If the regulator finds that the site of the regulated facility is polluted as a result of the regulated activities, it cannot seek remedial action under Part 2A if enforcement action under the **Environmental Permitting** Regulations is possible.
- A.1.7** After an environmental permit has been surrendered the regulator may consider further remediation under Part 2A. The environmental permitting regime’s requirements for site restoration will usually be of a higher standard than that required under Part 2A. However, if the site is polluted with material from operations pre-dating the reference point for contamination, then remediation under the Part 2A regime is possible.

Control of Major Accident Hazards

- A.1.8** The Control of Major Accident Hazards (**COMAH**) Regulations 1999⁶⁶ as amended in 2005 implement Directive 96/82/EC and 2003/105/EC on the control of major accident hazards involving dangerous substances. The **COMAH** Regulations aim to prevent major accidents and limit their consequences for people and the environment. They set out measures which apply to establishments that hold or use specified dangerous substances, or specified generic classes of dangerous substances above qualifying quantities listed in the Directive. The competent authority for the purposes of the **COMAH** Regulations in England and Wales is the Health and Safety Executive and the Environment Agency acting jointly.
- A.1.9** The Control of Major Accident Hazards Regulations, amongst other things:
- impose a duty on the operator of an establishment to take all measures necessary to prevent major accidents and limit their consequences for persons and the environment
 - require the operator to prepare an on-site emergency plan for specified purposes and containing specified information
 - require the operator to demonstrate to the competent authority that he has taken all measures necessary to comply with the Control of Major Accident Hazards Regulations, and
 - require the operator to notify major accidents to the competent authority.

Greenhouse gas emission trading

- A.1.10** The Greenhouse Gas Emissions Trading Scheme Regulations 2003⁶⁷ provide the framework for a greenhouse gas emissions trading scheme for the purpose of implementing Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the European

⁶⁶ SI 1999 No. 743.

⁶⁷ SI 2003 No. 3311.

Union. These Regulations control emissions of carbon dioxide from any of the activities listed in Schedule 1.

Groundwater Directive

A.1.11 The Groundwater Directive 2006/118/EC (Groundwater Daughter Directive) requires the setting of criteria for assessing groundwater chemical status of groundwater bodies including the establishment of threshold values; procedure for assessing chemical status of groundwater bodies; and identification of significant and sustained upward trends of pollutants. It is thus mainly concerned with the classification of groundwater bodies. However it also requires measures to prevent or limit the input of pollutants to groundwater. The Environmental Permitting Regulations are one of the mechanisms for meeting the requirements for such measures.

Health and Safety

A.1.12 The Health and Safety at Work Act 1974 provides the foundations for the protection of the workforce and the general public from health and safety hazards which industrial facilities variously present. The Health and Safety Executive and local authorities enforces those safety requirements. Regulators should take those requirements into account when setting permit conditions, and both parties should in particular ensure that environmental permitting and Health and Safety requirements do not impose conflicting obligations.

A.1.13 There is Health and Safety Legislation directly relevant to some mining waste operations, for example the Quarries Regulations 1999.

A.1.14 Specific guidance on interfaces with HSE in relation to radioactive substances activities is contained in the Guidance on Radioactive Substances Activities.

Land use Planning

A.1.15 The relationship between pollution control and planning is set out in PPS23 and PPS 10 and Tan21 for Wales.

A.1.16 The Major Accident Off-Site Emergency Plan (management of waste from extractive industries) (England and Wales) Regulations 2009⁶⁸ designate the appropriate emergency planning authority in respect of a Category A mining waste facility. That authority must draw up a plan which specifies the measures to be taken off-site in the event of a major accident and which meets the objectives set out in the Regulations.

Radioactive Substances

An activity may be controlled by both the Regulations and the Radioactive Substances Act (RSA) 1993. Regulators should ensure that the two regimes do not impose conflicting obligations.

⁶⁸ SI 2009 No. xxxx.

Statutory nuisance

A.1.17 Part III of the Environmental Protection Act 1990 is concerned with “statutory nuisances” and is regulated by local authorities. Unless the Secretary of State has granted consent, a local authority may not begin summary proceedings against a nuisance where proceedings can be brought under the environmental permitting regime. This is to avoid “double jeopardy” for operators. However, activities that are not covered by environmental permitting, even though they are on the sites of regulated facilities, may be regulated under the statutory nuisance provisions. The Regulations do not stop members of the public bringing private prosecutions under Section 82 of the EPA 1990. For Part B installations reference should be made to the local authority Manual.

Water discharge consenting

The Water Resources Act (WRA) 1991 enables the Environment Agency to grant consents for discharges of pollutants into “controlled waters”. It is an offence to make certain discharges without this consent. An Environmental Permit (other than for a Part B installation) will count as a consent for the purposes of the WRA. Therefore, once an installation comes within environmental permitting, operators will no longer have to apply for a separate WRA discharge consent. However, there may be cases where operators still need a discharge consent on the site of a regulated facility for an activity not covered by the Regulations.

Permitting Considerations⁶⁹**Air quality strategy**

A.1.18 Part IV of the Environment Act 1995 concerns air quality. Section 80 requires the Secretary of State to prepare a national air quality strategy, and Section 81 requires the Environment Agency to have regard to that strategy when discharging its pollution control functions.

Conservation

A.1.19 The Conservation (Natural Habitats &c.) Regulations 1994⁷⁰ implement Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive). They require sites which are important for either habitats or species (listed in Annexes I and II of the Habitats Directive respectively) to be designated as Special Areas of Conservation (SACs). These sites and Special Protection Areas (SPAs) classified under Council Directive 79/409/EEC on the Conservation of Wild Birds (the Birds Directive) form a network termed Natura 2000.

A.1.20 The Habitats Directive requires member states to take measures to maintain or restore the relevant natural habitats and wild species at a favourable conservation status. Accordingly, the Habitats Regulations provide that, when determining an environmental permit application which is likely to have a significant effect on a European site, either alone or in

⁶⁹ In relation to Part B facilities, the permitting considerations only apply insofar as they relate to the control of air emissions

⁷⁰ SI 1994 No. 2716.

combination with other plans or projects, the regulator must carry out an appropriate assessment of the implications for the site in view of that site's conservation objectives.

- A.1.21** These assessments should ascertain whether or not an application will have an adverse effect on the integrity of the site interest features. The assessment may therefore cause the permit application to be rejected, or to be granted subject to stringent conditions to protect the designated site.
- A.1.22** In carrying out the appropriate assessment, the regulator must consult the relevant statutory nature conservation body (Natural England in England and the Countryside Council for Wales in Wales) and have regard to any representation made by them. The Environment Agency will carry out this consultation in accordance with its public participation statement (see chapter 9).
- A.1.23** Part II of The Wildlife and Countryside Act 1981, as amended, provides protection to Sites of Special Scientific Interest (SSSIs) in England and Wales. The includes provisions which apply to owners and occupiers who wish to undertake notified operations likely to damage the special interest of the site, but more important in this context are the requirements that apply to public bodies such as local authorities and the Environment Agency. Section 28G places a duty on such bodies to take reasonable steps, consistent with the proper exercise of the authorities functions, to further the conservation and enhancement of special interest features of SSSIs. The Act also requires that they consult statutory nature conservation bodies before permitting (Section 28I) any operation likely to damage a SSSI (see chapter 9 on [Public Participation](#)).
- A.1.24** The environmental permitting regulator has a duty to have regard to the purpose of conserving biodiversity in the exercise of its functions. This duty is provided by Section 40 of the Natural Environment and Rural Communities Act (1 October 2006) which extends the pre-existing duty on Ministers of the Crown, government departments and the National Assembly for Wales to all public authorities (this replaces Section 74(1) of the Countryside and Rights of Way Act 2000).

Groundwater

The Groundwater Regulations 1998⁷¹ implement the Groundwater Directive (80/68/EEC). An environmental permit must include any conditions required by the Groundwater Regulations to prevent the introduction into groundwater of List I substances and limit the introduction of List II substance into groundwater to avoid pollution.

No application to make such a discharge may be granted without prior investigation. This must include examination of:

- the hydrogeological conditions of the area concerned
- the possible purifying powers of the soil and subsoil, and

⁷¹ SI 1998 No. 2746.

- the risk of pollution and alteration of the quality of the groundwater from the discharge

The investigation must also establish whether the discharge of substances into groundwater is a satisfactory solution from the point of view of the environment. In terms of assessing the impact of discharges an authorisation may only be granted if the regulator has checked that the groundwater (and in particular its quality) will undergo the required surveillance. The Environment Agency will need to review conditions relating to the Groundwater Regulations at least every four years.

Water Framework Directive

A.1.25 The Water Environment (Water Framework Directive) Regulations 2003⁷² make provision for the purpose of implementing in river basin districts within England and Wales Directive 2000/60/EC establishing a framework for Community action in the field of water policy. They require a new strategic planning process to be established for the purposes of managing, protecting and improving the quality of water resources. The Environment Agency is the competent authority and is to prepare river basin management plans for Secretary of State/ the Welsh Ministers approval. The plans are to set environmental objectives and to set out programmes of measures to fulfil the plans.

A.1.26 The first cycle of Plans had to be established produced by December 2009, and the programmes of measures have to be made operational by December 2012, to meet the objectives identified in the Plan by December 2015. All Protected Areas have to meet their objectives by then. A second Plan and programmes of measures are required for the following six years, and a third one for the six years thereafter. Along with other public bodies, the Agency is required to have regard to river basin management plans and to any supplementary plans in exercising their functions in relation to river basin districts. Their preparation and execution may influence regulation of activities under environmental permitting although it is too early to determine those influences. Further information about the implementation of the Water Framework Directive is available on the Defra web site⁷³.

⁷² SI 2003 No. 3242.

⁷³ At www.defra.gov.uk/environment/water/wfd/index.htm