



Department
for Environment
Food & Rural Affairs

Environmental permitting: Core guidance

For the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No 1154)

Last revised: March 2020



Llywodraeth Cymru
Welsh Government



© Crown copyright 2020

This information is licensed under the Open Government Licence v3.0. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/

This publication is available at <https://www.gov.uk/topic/environmental-management/environmental-permits> and <https://naturalresources.wales/permits-and-permissions/environmental-permits/?lang=en>

Any enquiries regarding this publication should be sent to us at:

Defra, Environmental Permitting Regulations, Seacole Building, 2 Marsham Street, London SW1P 4DF

www.gov.uk/defra

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
24/02/09	4.13 Footnotes	Additional guidance Updated hyperlinks
02/11/09	Throughout	General amendments and updates issued as version 2.0
05/03/10	Throughout	Updated to reflect EPR 2010
12/03/10	Throughout	Typographical amendments
Sep 2011	Changes to reflect the EO-RSR Exemptions.	
March 2012	Changes to reflect EPR amending Regulations 2011 and 2012 and other amendments.	
March 2013	Changes to reflect: EPR amending Regulations 2013 (transposition of the Industrial Emissions Directive); the establishment of Natural Resources Wales; and a commitment by the Environment Agency to determine permit applications within 13 weeks, subject to some exceptions.	
March 2020	Guidance moved to new template; update to Chapter 9; and minor updates to legislative references in rest of document. Deletion of Annex 2.	

Contents

1. Summary	6
About this Core Guidance	6
2. Introduction.....	8
What is Environmental Permitting?	8
The scope of EPR	8
The legal framework.....	9
How requirements from national policy and European Union Environmental Directives are delivered	10
Guidance	13
3. What facilities require an environmental permit?	14
The different classes of regulated facility and their related exempt facilities	16
A single permit.....	22
4. The regulator	25
The regulator	25
Working together	26
A single regulator for each site	26
5. Environmental permit applications.....	29
The operator.....	29
Pre-application discussions	30
Using existing data	30
Timing of applications.....	31
Novel applications	32
Planning and environmental permit applications	32
Consolidation into a single permit.....	32
6. Application procedures	34
Specific procedures for different types of applications	40
Determination by the Secretary of State or the Welsh Ministers	44
7. Determining applications	45
Determination	45
Determining different application types	47
8. Standard rules permits	52

Standard rules	52
Developing standard rules.....	52
Standard rules permits	53
Revision and revocation of standard rules	54
9. Operator competence.....	55
Operator competence.....	55
Management systems	56
Technical competence	57
Poor record of compliance and behaviour.....	59
Financial competence	60
Maintaining competence	61
10. Consultation and public participation.....	62
Consulting the public.....	62
11. Compliance assessment, enforcement and review	65
Compliance assessment	65
Enforcement.....	66
Ongoing review	71
12. Charging.....	73
Charges for applications.....	73
Subsistence.....	73
13. Appeals	74
Appeal procedures	74
Appeal decisions	77
14. Public registers and information	79
Public registers.....	79
Other information legislation.....	83
15. Exempt facilities	85
Registration of exempt facilities.....	85
Annex 1: Connections with other legislation.....	87
Regulators.....	87
Other relevant regimes.....	87
Permitting considerations	91

1. Summary

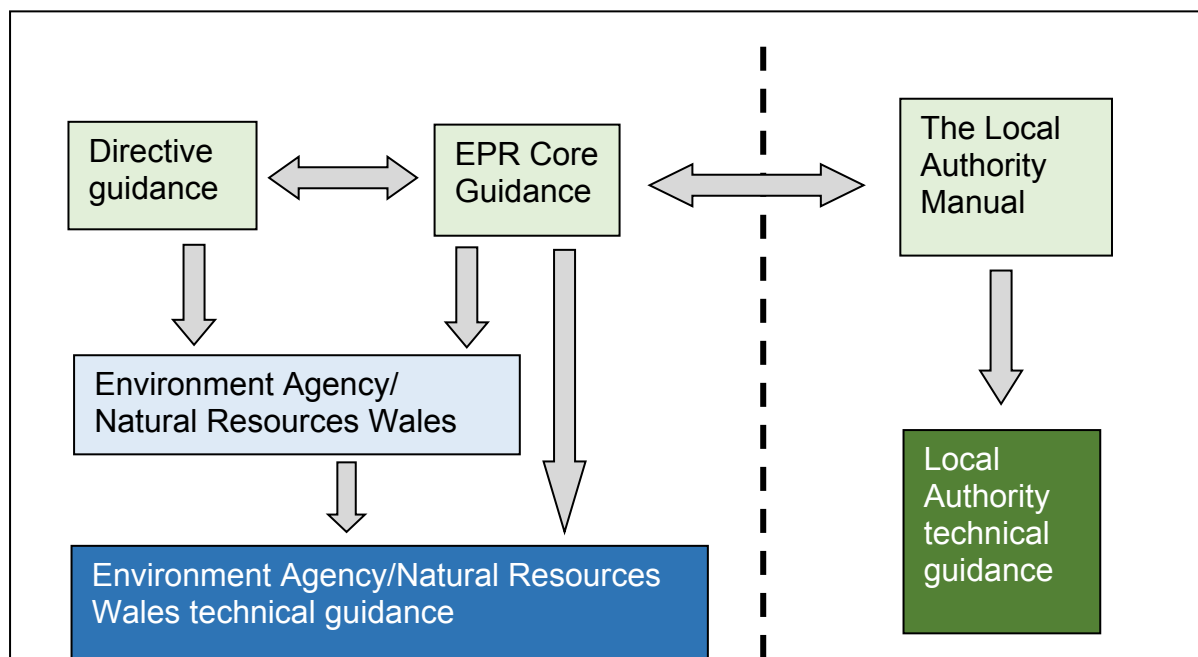
About this Core Guidance

- 1.1 This Core Guidance aims to provide comprehensive help for those operating, regulating or interested in “regulated facilities”¹ that are covered by the Environmental Permitting (England and Wales) Regulations 2016 SI 2016/1154² (“the EPR”). It describes the main provisions of the EPR and sets out the views of the Secretaries of State for Environment Food and Rural Affairs (Defra), for Business, Energy and Industrial Strategy (BEIS), and the Welsh Ministers 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 Unless stated explicitly otherwise, references in this Core Guidance to individual numbered regulations and Schedules are to the relevant parts of the EPR.
- 1.3 This guidance is available in Adobe Acrobat format, which enables searches for key terms for ease of navigation. The contents page of this document should also help the reader to find guidance on a wide range of issues.
- 1.4 This Core Guidance is complemented by a range of other government guidance documents relating to specific aspects of the EPR, which is available on gov.uk.
- 1.5 This Core Guidance is underpinned by further regulatory and technical guidance explaining aspects of the EPR regime in more detail, as illustrated in Figure 1.

¹ The term “regulated facilities” is explained in section 3.

² See: <http://www.legislation.gov.uk/uk/si/2016/1154/contents/made>. Note that these Regulations have been amended and a current version should be consulted.

Figure 1: Illustration of guidance relationships



- 1.6 The Environment Agency and Natural Resources Wales should continue to develop and maintain their regulatory and technical guidance. In so doing they should continue to work closely with Defra, BEIS, the Welsh Government and others.
- 1.7 The Environment Agency and Natural Resources Wales should make their guidance widely available, so that EPR is implemented openly and transparently. The Environment Agency and Natural Resources Wales publish their EPR guidance on their respective websites³.
- 1.8 For local authority-regulated facilities, the General Guidance Manual on Policy and Procedure for Part A(2) and B Installations ('the Manual') is on gov.uk⁴.
- 1.9 To ensure this Core Guidance is current and up-to-date, government updates it from time to time. The "Revision of Guidance" section at the front of this document contains a list of revisions.
- 1.10 This Core Guidance is compliant with the Regulators' Code⁵.

³ For England, see: <https://www.gov.uk/topic/environmental-management/environmental-permits>. For Wales see: <https://naturalresources.wales/permits-and-permissions/environmental-permits/?lang=en>.

⁴ <https://www.gov.uk/government/publications/local-authority-pollution-control-general-guidance-manual>.

⁵ <https://www.gov.uk/government/publications/regulators-code>.

2. Introduction

This chapter explains Environmental Permitting and describes its framework of legislation and guidance.

What is Environmental Permitting?

2.1 Some facilities could harm the environment or human health⁶ unless they are regulated. EPR requires operators of “regulated facilities” to obtain a permit or to register some activities, which would otherwise require permits, as “exempt facilities”. In this way EPR provides for ongoing supervision by regulators of activities which could harm the environment. 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 provides increased clarity and minimises the administrative burden on both the regulator and operators;
- encourage regulators to promote best practice in the operation of facilities; and
- continue to implement European legislation fully.

The scope of EPR

2.2 EPR covers facilities previously regulated under a range of other, separate legislation. It has also been used to transpose many EU Directives into domestic law. It brings these facilities together under a single, streamlined environmental permitting and compliance framework. This is easier, quicker and cheaper for businesses to understand and comply with, and for regulators to apply and ensure compliance with.

2.3 The EPR regime extends to England and Wales only⁷. It also covers the adjacent sea as far as the seaward boundary of the territorial sea.

⁶ The term ‘protect the environment’ should be read to include the environment and human health, wherever it occurs in this Core Guidance.

⁷ Scotland and Northern Ireland have their own regulatory frameworks.

The legal framework

2.4 The EPR regime is set out in the EPR and described in this accompanying Core Guidance (and other, related government guidance documents). This Core Guidance explains the concepts used in the EPR and gives guidance as to what is covered by the regime and how it will work in practice. This Core Guidance explains only the main provisions of the EPR. The EPR set out the following:

- the facilities that need environmental permits or need to be registered as exempt;
- the process for registering exempt facilities;
- 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;
- provisions for public participation in the permitting process;
- the powers and functions of regulators, the Secretary of State and the Welsh Ministers; and
- provisions for appeals against permitting decisions.

2.5 The principal offences under the EPR are:

- operating a regulated facility without a permit;
- causing or knowingly permitting a water discharge activity or groundwater activity without a permit; and
- failing to comply with a permit condition, flood risk activity emergency works notice, flood risk remediation notice or an enforcement-related notice.

- 2.6 Subject to legal requirements, the Secretary of State and the Welsh Ministers expect regulators to apply the EPR in proportion to the environmental risk⁸ presented by the operation of the regulated facility.
- 2.7 The nature and extent of the regulatory effort should be appropriate and proportionate to the risk posed by the operation of the regulated facilities, the impact of 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.
- 2.8 Regulators should exercise their functions in an open and transparent manner.

How requirements from national policy and European Union Environmental Directives are delivered

- 2.9 European Union Directives (Directives) and international agreements 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 EPR ensure that those Directives and national policy requirements, and outcomes that can be delivered through a permitting and compliance system are delivered by the EPR regime.
- 2.10 The EPR 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 EPR 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 2.13.
- 2.11 The Schedules to the EPR generally identify particular requirements (usually Article by Article, in the case of Directives) which must be delivered through the permitting system. In some cases, requirements to be delivered through

⁸ The term risk should be read to include hazard, wherever it occurs in the guidance.

the permitting system are located in other legislation⁹. Each Directive or policy area covered by the EPR regime has a specific Schedule:

Policy area	EPR Schedule
Chapter II Industrial Emissions Directive (Integrated Pollution Prevention and Control)	7 – Part A installations
Part B installations and Part B mobile plant	8 – Part B installations and Part B mobile plant
Waste Framework Directive	9 – Waste operations and materials facilities
Landfill Directive	10 - Landfill
End-of-life Vehicles Directive	11 – Waste motor vehicles
Waste Electrical and Electronic Equipment Directive	12 – Waste electrical and electronic equipment
Chapter IV Industrial Emissions Directive	13 – Waste incineration
Chapter V Industrial Emissions Directive	14 – Solvent emission activities
Chapter III Industrial Emissions Directive	15 – Large combustion plants
Asbestos Directive	16 – Asbestos
Chapter VI Industrial Emissions Directive	17 – Titanium dioxide
Petrol Vapour Recovery Directive	18 – Petrol vapour recovery

⁹ For example, the Water Environment (Water Framework Directive) Regulations 2017 SI No. 407. For more information on this see the Guidance on Water Discharge Activities at <https://www.gov.uk/government/publications/environmental-permitting-guidance-water-discharge-activities>.

Policy area	EPR Schedule
Batteries Directive	19 – Waste batteries and accumulators
Mining Waste Directive	20 – Mining waste operations
Water discharge activities	21 – Water discharge activities
Groundwater activities	22 – Groundwater activities
Basic Safety Standards Directive	23 – Radioactive substances activities
Energy Efficiency Directive	24 – Efficiency in heating and cooling energy
Flood risk activities and excluded flood risk activities	25 – Flood risk activities and excluded flood risk activities
Medium Combustion Plant Directive	25A – Medium combustion plants
Specified generators	25B – Specified generators

2.12 Where a regulated facility falls under more than one Schedule, permit conditions must ensure that each set of Schedule requirements is met. For example, in England, most¹⁰ waste incinerators (in Wales all incinerators) must meet the requirements of Chapters II (industrial pollution prevention and control) and IV (waste incineration) of the Industrial Emissions Directive, and of the Waste Framework Directive. Schedules 7, 13 and 21 contain these provisions.

¹⁰ The exceptions are those few with a capacity below the threshold for Chapter II of the Industrial Emissions Directive and so not subject to Schedule 7. They still need to comply with the requirements of Schedules 13 and 21.

Guidance

- 2.13 More detailed guidance on the requirements of most Directives or policy areas, including the text of each Schedule and, where applicable, Directive, can be found in the documents listed in the EPR list of guidance¹¹.
- 2.14 The EPR regime does not currently transpose all the Directives relevant to regulated facilities. Annex 1 outlines the connections with other legislation.
- 2.15 References in this Core Guidance to exemptions do not apply in relation to radioactive substances activities, unless specifically indicated.

¹¹ See: <https://www.gov.uk/topic/environmental-management/environmental-permits>.

3. What facilities require an environmental permit?

This chapter describes how the EPR identify those activities that require an environmental permit. It sets out the circumstances in which a single permit can cover more than one regulated facility.

- 3.1 The EPR specify which activities require an environmental permit. These are collectively described as “regulated facilities”. There are currently twelve different kinds, or “classes” of regulated facility (regulation 8): see paragraph 3.6 below.
- 3.2 Some activities do not require a permit because they are either “exempt facilities” or “excluded” activities.
- 3.3 Some activities that would otherwise be regulated facilities can be exempt from the requirement to obtain a permit. These currently include exempt waste operations, exempt water discharge activities, exempt groundwater activities and exempt flood risk activities (see regulation 5). These are collectively described as “exempt facilities”. An exempt facility is not a regulated facility.
- 3.4 Certain radioactive substances activities (see Schedule 23) do not require a permit, although they are not defined as “exempt facilities”.
- 3.5 Exemptions are usually provided for where general rules are laid down for each type of exempt activity. Their operation must in many cases also be registered with the relevant registration authority¹².
- 3.6 Certain waste operations regulated under other statutory regimes, and flood risk activities that satisfy certain conditions are completely excluded from the EPR. These are referred to (respectively) as “excluded waste operations” and “excluded flood risk activities” (see Schedule 25). They are not regulated facilities or exempt facilities: the EPR do not apply to them at all.
- 3.7 The twelve classes of regulated facility are:

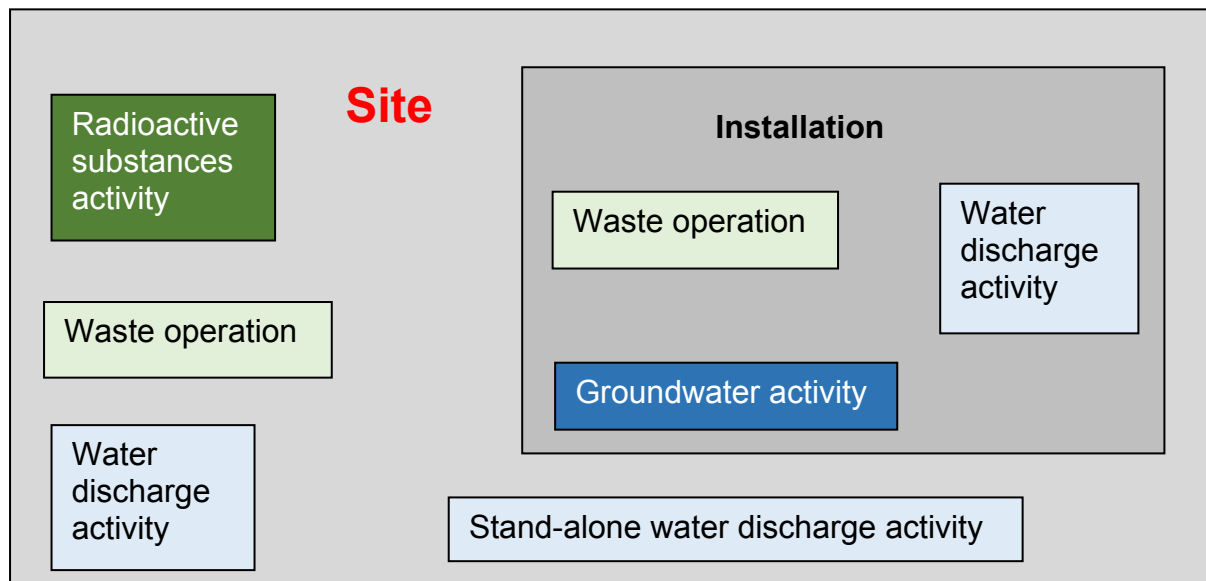
¹² Not all exempt activities need to be registered: for example, non-Waste Framework Directive exemptions (<https://www.gov.uk/government/collections/waste-exemptions-storing-waste>); some small sewage discharges in England (see paragraph 3 of Part 2, and paragraph 4 of Part 3 of Schedule 3); and radioactive substances activities exemptions.

- an installation (where activities listed in Schedule 1, and any directly associated activities are carried on – see [Installations](#)) (regulation 8(1)(a));
- mobile plant (used to carry on either one of the Schedule 1 activities or a waste operation – see [Mobile plant](#)) (regulation 8(1)(b));
- a waste operation (see [Waste operations](#)) (regulation 8(1)(c));
- a mining waste operation (see [Mining waste operations](#)) (regulation 8(1)(d));
- a radioactive substances activity (see [Radioactive substances activities](#)) (regulation 8(1)(e));
- a water discharge activity (see [Water discharge activities](#)) (regulation 8(1)(f));
- a groundwater activity (see [Groundwater activities](#)) (regulation 8(1)(g));
- a small waste incineration plant (see [Small waste incineration plant](#)) (regulation 8(1)(h));
- a solvent emission activity (see [Solvent emission activities](#)) (regulation 8(1)(i));
- a flood risk activity (see [Flood risk activities](#)) (regulation 8(1)(j));
- a medium combustion plant (see [Medium Combustion Plant](#)) (regulation 8(1)(k)); and
- a specified generator (see [Specified generators](#)) (regulation 8(1)(l)).

3.8 Some regulated facilities may be “carried on as part of the operation of a regulated facility of another class”¹³. Figure 2 illustrates a site containing a number of regulated facilities of different classes, some are shown as carried on as part of the operation of another, whilst others are “stand-alone”.

¹³ These are: waste operations, mining waste operations, water discharge activities, groundwater activities, small waste incineration plant, solvent emission activities, flood risk activities, medium combustion plant and specified generators (regulation 8(4)).

Figure 2: Example of regulated facilities carried on at a site



- 3.9 Some provisions of the EPR apply to these classes of regulated facility differently according to whether they are carried on as part of the operation of another regulated facility. For example, any part of a permit which authorises a stand-alone water discharge activity may be surrendered by notification, whereas any part of a permit which authorises a water discharge activity that is carried on as part of the operation of another regulated facility (such as an installation), can be surrendered only by application. Annex 2 illustrates the principal procedural differences applying to different classes and descriptions of regulated facility.
- 3.10 More detailed descriptions of the different classes of regulated facility are given in paragraphs 3.12 to 3.45 below.
- 3.11 There may be more than one regulated facility on the same site. This will be the case where a regulated facility is carried on as part of the operation of another regulated facility; but it may also occur in other circumstances. In such cases there are arrangements in the EPR 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](#)).

The different classes of regulated facility and their related exempt facilities

Installations

- 3.12 Part 2 of Schedule 1 provides a list of activities. Certain exclusions and other rules for interpretation are contained in Part 1 of Schedule 1.

- 3.13 An installation consists of any “stationary technical unit” where one or more activities listed in Part 2 of Schedule 1 are carried on; and any “directly associated activities” (defined in paragraph 1 of Part 1 of Schedule 1).
- 3.14 Further guidance on the meaning of “installation”, “stationary technical unit” and “directly associated activity” is provided, with detailed examples, in the Environment Agency’s guidance on Part A Installations¹⁴.

Waste operations

- 3.15 Regulation 2 defines “waste operation” by reference to the recovery and disposal operations in the Waste Framework Directive¹⁵. Any recovery or disposal of waste is a waste operation. Some larger waste operations are also installations in their own right (see [Installations](#) above). Further guidance on the meaning of waste operation is provided in the Waste Framework Directive guidance¹⁶. Some waste operations not carried on at an installation are excluded from the EPR regime, because there is already appropriate environmental regulation under other regimes (see paragraph 3.5 above).

Installations and waste operations – exempt waste operations

- 3.16 Waste operations not carried on at an installation are capable of being exempt waste operations (see regulation 5). Exempt waste operations do not require an environmental permit (see paragraphs 3.2-3.4 above) but need to comply with the general rules laid down for each type of exempt activity, and in most cases must be registered with the relevant registration authority.
- 3.17 No waste operation carried on at an installation, for example as a directly associated activity, is capable of being an exempt waste operation.

Mobile plant

- 3.18 Mobile plant is defined in regulation 2(1) as Part B mobile plant, waste mobile plant or mobile medium combustion plant. The EPR require that, to be mobile, plant must be designed to move or be moved. This movement can be by road, rail or water (for example by canal). The Environment Agency has published guidance on relevant factors to consider in assessing whether plant it

¹⁴ <https://www.gov.uk/government/publications/rgn-2-understanding-the-meaning-of-regulated-facility>.

¹⁵ Directive 2008/98/EC on waste.

¹⁶ <https://www.gov.uk/government/publications/environmental-permitting-guidance-the-waste-framework-directive>.

regulates is mobile, such as its environmental impact, degree of mobility and the intention of the operator¹⁷.

- 3.19 Plant that carries out a Part A activity will be regarded as stationary. A stationary technical unit forms the basis of an installation and must be, by definition, stationary.
- 3.20 European Commission guidance explains the definition of installation¹⁸ 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.
- 3.21 The Commission guidance also concludes that whilst the term “stationary” means that the installation as a whole should be stationary, it may still include plant or equipment which is mobile. For example, plant that is mobile, and which also meets the criteria for being a directly associated activity, will be regarded as part of the installation and will not be treated as mobile plant within the meaning of the EPR.

Mobile plant – Waste mobile plant

- 3.22 Waste mobile plant is defined in regulation 2(1) as: mobile plant which is used to carry on a waste operation; and which is designed to move or be moved whether on roads or on other land. Part B mobile plant and installations are excluded from this definition.
- 3.23 Waste operations are described above. Any waste operation, other than those which are part of an installation, can theoretically be carried on by mobile plant.

Mobile plant – Part B mobile plant

- 3.24 Guidance on Part B mobile plant can be found in the General Guidance Manual on Policy and Procedures for A2 and B Installations¹⁹.

¹⁷ <https://www.gov.uk/government/publications/rqn-2-understanding-the-meaning-of-regulated-facility>.

¹⁸ See: https://ec.europa.eu/environment/archives/air/stationary/ippc/pdf/installation_guidance.pdf.

¹⁹ See:

<http://archive.defra.gov.uk/environment/quality/pollution/ppc/localauth/pubs/guidance/manuals.htm#ep>

Mobile plant – mobile medium combustion plant

3.25 Mobile medium combustion plant is any medium combustion plant designed to move or be moved, whether on roads or other land. Part B mobile plant is excluded from the definition.

Mining waste operations

3.26 A mining waste operation is the management of extractive waste, whether involving a mining waste facility or not, but does not include activities in Article 2(2)(c) of the Mining Waste Directive²⁰. Further guidance on the meaning of mining waste operation is provided in the Mining Waste Directive guidance²¹.

Radioactive substances activities

3.27 A radioactive substances activity is one involving the keeping and use of radioactive material (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 Regulation²² (see Chapter 3) and the Guidance on the Scope of and Exemptions from the Radioactive Substances Legislation in the UK²³.

3.28 For nuclear site licensees, the keeping and use of radioactive material and accumulation of radioactive waste are regulated by the Office for Nuclear Regulation (ONR).

Water discharge activities

3.29 A water discharge activity is, in summary, the:

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

²⁰ Directive 2006/21/EC on the management of waste from extractive industries.

²¹ See: <https://www.gov.uk/government/publications/environmental-permitting-guidance-the-mining-waste-directive>.

²² See: <https://www.gov.uk/government/publications/radioactive-substance-regulations-rsr-guidance>.

²³ See: <https://www.gov.uk/government/publications/guidance-on-the-scope-of-and-exemptions-from-the-radioactive-substances-legislation-in-the-uk>

- cutting or uprooting of a substantial amount of vegetation in inland freshwaters and failure to take reasonable steps to remove the vegetation from the waters; and
 - operation of a highway drain or a discharge of trade or sewage effluent into lakes or ponds which are not inland freshwaters where a notice in relation to the activity has taken effect.
- 3.30 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 prescribed statutory provisions.
- 3.31 Certain types of water discharge activity are capable of being exempt water discharge activities (see the section on [Exempt facilities](#)).
- 3.32 Further guidance is available in the Guidance on Water Discharge Activities²⁴ (see Chapter 3).
- 3.33 Sometimes a water discharge activity forms part of the operation of a regulated facility of another class (such as an installation). When it does not, it is referred to in this guidance as a “stand-alone water discharge activity”. Some provisions of the EPR (identified in this Core Guidance) apply only to stand-alone water discharge activities.

Groundwater activities

- 3.34 A groundwater activity is, in summary, any of the following:
- the discharge of a pollutant that results in a direct input to groundwater;
 - the discharge of a pollutant in circumstances that might lead to an indirect input of that pollutant to groundwater;
 - any other discharge that might lead to a direct or indirect input of a pollutant to groundwater;
 - an activity in respect of which a notice under paragraph 10 of Schedule 22 has taken effect; or
 - an activity that might lead to a discharge mentioned above where that activity is carried on as part of the operation of a regulated facility of another class.

²⁴ <https://www.gov.uk/government/publications/environmental-permitting-guidance-water-discharge-activities>

- 3.35 The regulator may determine that a discharge (or an activity that might lead to a discharge) is not a groundwater activity if the input of the pollutant: (a) is the consequence of an accident or unforeseen natural event; (b) is of a quantity so small as to pose no risk to groundwater; or (c) cannot, for technical reasons and subject to conditions, be prevented or limited.
- 3.36 Certain types of groundwater activity are capable of being exempt groundwater activities (see paragraphs 3.2-3.4 above)
- 3.37 Further guidance is available in the Guidance on Groundwater Activities²⁵ (see Chapter 2).
- 3.38 Sometimes a groundwater activity forms part of the operation of a regulated facility of another class (such as an installation). When it does not, it is referred to in this guidance as a “stand-alone groundwater activity”. Some provisions of the EPR (identified in this Guidance) apply only to stand-alone groundwater activities.

Small waste incineration plant

- 3.39 A small waste incineration plant is one with a capacity below the relevant threshold in Section 5.1 of Part 2 of Schedule 1. As such, in England it will be subject only to the requirements of Schedule 13, unless it is exempt from those requirements because it burns only the wastes which are specified in Section 5.1 Part B(a). In Wales, small waste incinerators are, like their larger counterparts, subject to Chapters II and IV of the Industrial Emissions Directive and of the Waste Framework Directive (Schedules 8, 13 and 21).

Solvent emission activity

- 3.40 A solvent emission activity is one to which Chapter V of the Industrial Emissions Directive applies and is subject to Schedule 14. In Wales, solvent emission activities are subject to Schedule 8.

Flood risk activity

- 3.41 Activities that constitute a flood risk activity are set out in paragraph 3(1) of Part 1 of Schedule 25. These are activities which are liable to increase the risk of flooding from a main river. Examples include:
- erecting any structure (whether temporary or permanent) in, over or under a main river; and

²⁵ <https://www.gov.uk/government/publications/environmental-permitting-guidance-groundwater-activities>

- any activity which is likely to divert the direction of the flow of water into or out of a main river or alter the level of water in a main river.
- 3.42 Exceptions apply for certain activities which would otherwise constitute a flood risk activity, but which are carried out in the exercise of statutory functions. These are set out in paragraph 3(2) of Part 1 of Schedule 25.
- 3.43 Further guidance is available²⁶.

Medium combustion plants

3.44 A medium combustion plant is one that falls within the definition in paragraph 2(2) of Part 1 of Schedule 25A²⁷. Medium combustion plants are subject to the requirements of the Medium Combustion Plant Directive²⁸ and may also be subject to relevant requirements of other Schedules.

Specified generator

3.45 A specified generator is one that falls within the definition in paragraph 2(1) of Schedule 25B²⁹. A specified generator may also be a medium combustion plant and subject to the requirements of other Schedules.

A single permit

3.46 An environmental permit can cover more than one regulated facility (see regulation 17), but only in certain circumstances.

When can a single permit be granted?

3.47 Generally (see regulation 17), a single environmental permit can be granted for more than one regulated facility only where:

- the regulator is the same for each facility;
- the operator is the same for each facility; and

²⁶ For England see: <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>; for Wales see: <https://naturalresources.wales/permits-and-permissions/flood-risk-activities/?lang=en>.

²⁷ See <https://www.gov.uk/government/collections/medium-combustion-plant-and-specified-generator-regulations> for further information.

²⁸ Directive (EU) 2015/2193 on the limitation of emissions of certain pollutants into the air from medium combustion plants.

²⁹ See <https://www.gov.uk/government/collections/medium-combustion-plant-and-specified-generator-regulations> for further information.

- all the facilities are on the same site (the exceptions to this are set out below).
- 3.48 Where the regulator and operator are the same, a single environmental permit can be granted to an operator for more than one mobile plant. Mobile plant do not all have to be operating on the same site in order to be included in a single permit.
- 3.49 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 8 on [Standard Rules Permits](#)), or for more than one flood risk activity. Standard facilities and flood risk activities do not have to be on the same site in order to be included in a single permit.
- 3.50 A permit may authorise the following activities on more than one site:
- the keeping or use of mobile radioactive apparatus; or
 - intrusive investigation work to determine the suitability of the premises for underground disposal of radioactive waste.
- 3.51 With the exceptions outlined above, regulated facilities must be operated on the same site in order to be covered by the same permit. 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.
- 3.52 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?

- 3.53 A single environmental permit cannot cover regulated facilities with different regulators (but see also [A single regulator for each site](#)). A separate permit is required covering the facilities for which each regulator is responsible.

3.54 A single permit cannot cover mobile plant combined with any other class of regulated facility. Mobile plants are not associated with a particular geographical site. The differences in the requirements for mobile plant mean that a single permit cannot cover mobile plant and other classes of regulated facility.

4. The regulator

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

The regulator

- 4.1 The regulator for each class of regulated facility is identified in regulation 32 (subject to any direction under regulation 33; see paragraph 4.8 below).
- 4.2 The Environment Agency (in England) and Natural Resources Wales (in Wales) regulate:
- Part A(1) installations;
 - waste mobile plant;
 - mobile medium combustion plant;
 - waste operations, including those carried on at a Part B installation or by Part B mobile plant (unless the waste operation is a Part B activity);
 - mining waste operations, including any carried on at a Part B installation;
 - radioactive substances activities;
 - water discharge activities, including those carried on at a Part B installation;
 - groundwater activities, including those carried on at a Part B installation;
 - flood risk activities;
 - medium combustion plant, including those carried out at a Part A(2) or B installation or which are also small waste incineration plant; and
 - specified generators, including those carried out at a Part A(2) or Part B installation or which are small waste incineration plant.
- 4.3 The relevant local authority³⁰ regulates:
- Part A(2) installations including any waste operations, water discharge activities or groundwater activities carried on as part of the installation or mobile plant (except as set out above);
 - Part B installations and Part B mobile plant (except as set out above);

³⁰ Regulation 6 defines “local authority”.

- small waste incineration plants (except as set out above); and
 - solvent emission activities.
- 4.4 Defra and the Welsh Government jointly provide guidance on local authority air pollution control³¹. Guidance on Part A(1) and Part A(2) installations can be found in the Guidance on Part A installations³².

Working together

- 4.5 Where both a local authority and the Environment Agency or Natural Resources Wales exercise functions under the EPR in relation to regulated 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 or Natural Resources Wales is the regulator, and vice versa.
- 4.6 Chapter 10 on [Consultation and public participation](#) sets out the requirements for consulting on applications.
- 4.7 The Environment Agency and Natural Resources Wales can set the minimum standard for releases to water for a permit regulated by a local authority (see regulation 59).

A single regulator for each site

- 4.8 The Secretary of State or the Welsh Ministers can issue a direction changing the regulator (see regulation 33). This direction can be for:
- a specific regulated facility; or
 - a specified class of regulated facility
- 4.9 A direction can direct a local authority to exercise the Environment Agency's or Natural Resources Wales's functions only in relation to an installation (but not in relation to a mining waste operation carried on at an installation) or mobile plant.
- 4.10 Either the operator or the regulators may make a written request to the Secretary of State or Welsh Ministers for a direction.

³¹ <https://www.gov.uk/government/publications/local-authority-pollution-control-general-guidance-manual>

³² <https://www.gov.uk/government/publications/environmental-permitting-regulations-guidance-on-part-a-installations>

- 4.11 Where the Secretary of State or the Welsh Ministers makes (or withdraws) a direction, this must be published on the relevant website. The local authority and the Environment Agency or Natural Resources Wales must be notified, as well as any other person who will be affected by the direction.
- 4.12 This power should be used consistently and 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 more than one regulator. This is most likely to arise where there is a waste operation being carried on in part of a Part A(2) or Part B installation. It is not possible to have a single permit with more than one regulator (see [A single permit](#)) so a direction to change regulators can, where appropriate, allow a single permit for the site.
- 4.13 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 regulators and the operator agree that a direction is appropriate, the Secretary of State or Welsh Ministers will make it, unless there is any regulatory or environmental protection reason not to.
 - where the three parties do not agree:
 - 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.
- 4.14 It is therefore helpful for applicants for directions to state clearly whether all parties are agreed and, if not, between which there is disagreement.
- 4.15 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.
- 4.16 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

4.17 Where a single regulator has been determined, this may result in a single site permit being drawn up (see the section in chapter 3 on [A single permit](#)).

5. Environmental permit applications

This chapter sets out who is required to obtain an environmental permit.

The operator

- 5.1 Only the person who has control over the operation of a regulated facility may obtain or hold an environmental permit. This person is the “operator” (see regulation 7).

Box 1 – Definition of operator

“Operator” is defined in regulation 7 as the person who:

- has control over the operation of a regulated facility;
- will have control over a regulated facility, which has not yet been put into operation, when it is in operation; or
- holds the permit for a regulated facility that has ceased to operate.

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.

- 5.2 An operator will have to obtain one or more environmental permits for each regulated facility it operates.
- 5.3 For example, to understand the relationship between “operator”, “regulated facility” and “installation”:
- a “regulated facility” is a facility which falls within one of the classes listed in regulation 8
 - one of those classes is an “installation”
 - an “installation” can include one or more other regulated facilities (such as a waste operation or water discharge activity) but will require only one permit unless the next bullet applies
 - if different parts of a single installation are operated by different operators, each part of the installation with a separate operator constitutes a separate regulated facility

- if the number of operators operating different parts of the installation changes over time, the number of regulated facilities will therefore also change
- where there are different operators of different parts of one installation, each will be responsible for complying with their permit conditions. In such cases, regulators should ensure that there is no ambiguity over which operator has responsibility for which part of the installation

Pre-application discussions

- 5.4 Pre-application discussions between operators and regulators can help in improving the quality of the formal application and are therefore encouraged. Regulators will provide free basic pre-application advice, but more in-depth advice will be chargeable³³. 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 will not provide advice that might prejudice its determination of an application.
- 5.5 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 if appropriate – for example, a public consultee (see chapter 10 on [Consultation and public participation](#)). Participation of other parties might be subject to national security restrictions or limited because of commercial confidentiality issues (See Chapter 14 on [Public registers and information](#)).
- 5.6 Operators should bear in mind that, especially for cases where there is a high level of public interest, good engagement with local or national interested parties at the pre-application stage can be beneficial to all sides and operators are encouraged to take account of the interests of the local community at the earliest possible stage.

Using existing data

- 5.7 Operators may draw upon or attach other sources of information in their applications such as extracts from:
- Environmental Impact Assessments;

³³ See: <https://www.gov.uk/government/publications/environmental-permit-pre-application-advice-form>. See also (for Wales): <https://naturalresources.wales/permits-and-permissions/environmental-permits/pre-application-advice-for-environmental-permits/?lang=en>.

- documents relating to an installation’s regulation under the Control of Major Accident Hazards (COMAH) Regulations³⁴;
 - externally certified environmental management systems;
 - site reports prepared for planning purposes; and
 - reports to meet the requirements of the Quarries Regulations³⁵.
- 5.8 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 applications³⁶

- 5.9 Where proposals involve substantial expenditure, whether on construction work, equipment, software, procedures or training, operators should normally make an application when they have drawn up full designs but before any work commences (whether on a new regulated facility or when making changes to an existing one). Where regulated 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 and after a permit has been granted, 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 6 on [Application Procedures](#)).
- 5.10 There is nothing in the EPR to stop an operator from beginning construction before an environmental permit has been issued (but it should be noted that planning requirements are a separate issue). However, the operator risks regulators not agreeing 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 it has an environmental permit will be at its own risk and will in no way affect the regulator’s decision.
- 5.11 The preceding paragraph does not however apply to flood risk activities, where construction of anything in a relevant location might cause an unacceptable flood risk. A flood risk activity permit must be in place before any physical interventions begin.

³⁴ The Control of Major Accident Hazards Regulations 2015 (SI 2015/483).

³⁵ The Quarries Regulations 1999 (SI 1999/2024).

³⁶ These paragraphs do not apply to radioactive substances activities consisting of intrusive investigation work, or to nuclear new-build activities.

Novel applications

- 5.12 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.
- 5.13 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 procedure³⁷.

Planning and environmental permit applications

- 5.14 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 environmental regulator to start its formal consideration early on, thus allowing it to have a more informed input to the planning process³⁸.
- 5.15 Applicants for complex proposals are likely to find pre-application discussions particularly beneficial. Wherever possible in such cases, operators should engage in pre-application discussions with the regulator before submitting an application for an environmental permit. This can potentially avoid significant costs and delay in the course of the permitting process by identifying any issues of fundamental concern at an early stage and ensuring these are addressed at the design stage if possible.

Consolidation into a single permit

- 5.16 Regulation 18 provides 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.
- 5.17 This consolidation can be done where there is more than one regulated facility with the same operator. There are however limits to the permits that can be combined (see the section on [A single permit](#) in chapter 3).

³⁷ This procedure is not the same as the staged procedure described in the Guidance on Radioactive Substances Regulation.

³⁸ <https://www.gov.uk/government/publications/developments-requiring-planning-permission-and-environmental-permits>

5.18 It is expected that the regulator will not normally exercise this power without the agreement of the operator.

6. Application procedures³⁹

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

Applications

6.1 The requirements for applications are set out in Schedule 5. 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 jointly by the current and future operators;
- be made on the form provided by the regulator or via a regulator's online application platform;
- include the information required by the application form or the online platform; and
- include the relevant fee (see chapter 12 on [Charging](#)).

6.2 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

6.3 Operators must use the forms or online platform provided by regulators to make their applications. 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.

³⁹ See: <https://www.gov.uk/topic/environmental-management/environmental-permits>.

Ensuring applications are complete and duly made

- 6.4 Applications should be made properly and give all the information a regulator needs to make a determination. An application may not be “duly made” if 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 EPR (it is not for a regulated facility);
 - the information in the application is not sufficiently comprehensive or adequate to make a determination;
 - it has been sent to the wrong regulator; or
 - the prescribed fee has not been paid.
- 6.5 Where there is more than one operator of an installation, each operator must make a permit application in respect of the part of the installation it operates. The regulator cannot consider that any of the applications is duly made unless and until it has received duly made applications from all of the operators.
- 6.6 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.
- 6.7 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 (see paragraph 15 of Part 1 of Schedule 5), the applicant can notify the regulator that it considers the application to have been refused and so allow an appeal against that refusal (see also chapter 13 on [Appeals](#)).
- 6.8 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, however, a new application will be required. The implications of changes to an application for the requirements of public participation should always be considered (see chapter 10 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

- 6.9 The determination period begins on the date the regulator receives an application which is subsequently determined to be duly made (see paragraph 16 of Part 1 of Schedule 5). A rare exception to this is where it is necessary to consult with other EU Member States (see paragraph 10 of Part 1 of Schedule 5). This can apply only to an activity listed in Annex I to the Industrial Emissions Directive (see the Guidance on Part A installations⁴⁰) and to a Category A mining waste facility (see the Guidance on the Mining Waste Directive⁴¹)⁴².
- 6.10 The periods for determining applications are (see paragraph 15 of Part 1 of Schedule 5):
- two months for an application:
 - to transfer a permit; or
 - for the grant or variation of a permit for a stand-alone flood risk activity;
 - three months for an application:
 - for the grant of an environmental permit for:
 - mobile plant;
 - radioactive substances activities described in paragraph 11(5) of Part 2 of Schedule 23 (mobile radioactive apparatus used for specified purposes);
 - standard facilities (except those that are also Part A installations – see Chapter 8 [Standard Rules Permits](#));
 - mining waste operations not involving a mining waste facility to which Article 7 of the Mining Waste Directive applies (see paragraph 2(1) of Schedule 20);
 - certain stand-alone flood risk activities (see paragraph 5(1) of Part 1 of Schedule 5); or

⁴⁰ See <https://www.gov.uk/government/publications/environmental-permitting-regulations-guidance-on-part-a-installations>.

⁴¹ See: <https://www.gov.uk/government/publications/environmental-permitting-guidance-the-mining-waste-directive>

⁴² Note that certain radioactive substances activities require an opinion from the European Commission under Article 37 of the Euratom Treaty before grant of an environmental permit (see the Guidance on Radioactive Substances Regulation: <https://www.gov.uk/government/publications/radioactive-substance-regulations-rsr-guidance>)

- medium combustion plant and specified generators, unless the regulator determines that the public should be consulted;
 - to surrender a permit; or
 - to vary a permit (other than for a stand-alone flood risk activity or where public participation is required);
 - four months for an application:
 - for the grant of an environmental permit for any regulated facility except for the exceptions set out above; or
 - to vary a permit where public participation is required (see paragraph 5(2) to (4) of Part 1 of Schedule 5).
- 6.11 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.
- 6.12 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 planner⁴³ that it has the information necessary to enable it to draw up an external emergency plan.
- 6.13 It is always open to the regulator and the applicant to agree a longer period if this is necessary.
- 6.14 Where the regulator has not determined the application within the prescribed time, the applicant can notify the regulator that it considers the application to have been refused. The applicant may then appeal against the deemed refusal (see chapter 13 on [Appeals](#)).
- 6.15 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; or
 - further information is required to determine the application.
- 6.16 The “clock stops” on the determination period where the regulator has served a notice requiring further information (see paragraph 16(3)(a) of Part 1 of Schedule 5). The clock starts again once the regulator has received all the information required by the notice.

⁴³ “Competent Authority” as defined by regulation 2 of the Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 (SI 2009/1927).

- 6.17 These are the legal requirements but, in order to meet a recommendation from the Penfold Review on non-planning consents⁴⁴, the Environment Agency aims to determine all new permit applications within 13 weeks⁴⁵. This target is subject to a number of exceptions agreed with government, including:
- major/complex projects on a scale similar to those determined through the major infrastructure planning unit;
 - factors beyond the Environment Agency’s control:
 - where the statutory consultation periods take up all or a significant proportion of the 13 week period, or the site is of high public interest and extended consultation is required;
 - where the delay is due to another permission, consent or decision being required before the permit can be issued (for example “call-in” by the Secretary of State, a planning consent is required, or the permit application is linked to another permit);
 - where a notice for further information is required to complete the determination; and
 - where a different deadline is agreed with the applicant.

Requests for more information

6.18 Even where an application is duly made, there may be circumstances where the regulator needs to serve a notice asking for more information it needs to determine the application (paragraph 4 of Part 1 of Schedule 5).

6.19 The regulator should require further information only 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.

6.20 This information might, for example, comprise of either:

- information to understand sufficiently the environmental impact or risk posed; or

⁴⁴ See chapter 3 of the review <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/p/10-1027-penfold-review-final-report.pdf>

⁴⁵ Applications, driven by legislative deadlines, that create short term yet significant increases in permit applications fall outside of the Penfold 13 week target (for example new waste installation permits required by the Industrial Emissions Directive in 2015).

- information to understand the proposed operations sufficiently.
- 6.21 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.
- 6.22 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.
- 6.23 The regulator can decide, if the applicant does not provide the further information, that the determination should be discontinued. 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.
- 6.24 Where a regulator intends to take this step, it should normally offer the operator a final opportunity to supply the information and consider offering an opportunity for a face-to-face meeting. There is a right of appeal against the deemed withdrawal of the application (see chapter 13 on [Appeals](#)).

Duty to consider representations

- 6.25 The regulator has a duty to consider the representations made during the determination process (see paragraph 11 of Part 1 of Schedule 5). These representations may be received from:
- members of the public or interested bodies;
 - persons with rights to land; and
 - other Member States.
- 6.26 Public participation is addressed in chapter 10 on [Consultation and public participation](#).

Permit conditions requiring the consent of others

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

- 6.28 These conditions may for example be used where it is necessary to monitor the effects of an activity on another person's land.
- 6.29 The people who own or have the ability to grant rights to the land must be notified by the regulator (see paragraph 9 of Part 1 of Schedule 5).

Notification of the determination

- 6.30 The regulator must notify the applicant of its decision and the reasons for making the decision (see paragraph 17 of Part 1 of Schedule 5). The determination must also be published on the regulator's website. Applicants must be informed of their rights of appeal (see chapter 13 on [Appeals](#)).
- 6.31 Whenever it considers it necessary, the regulator should issue a new permit consolidating any changes brought about by the application for variation, transfer (in whole or in part) or partial surrender (see paragraph 19 of Part 1 of Schedule 5). This will provide clarity for both the regulator and the operator.

Specific procedures for different types of applications

Variation applications

- 6.32 Once an operator has an environmental permit, changes in the operation of the regulated facility may require the operator to apply to vary the permit⁴⁶.
- 6.33 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 when the operator's legal identity changes, for example a change to its unique identifier at Companies House: this would require a transfer application).
- 6.34 A variation application may include an increase to the 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.
- 6.35 However, a variation cannot reduce the 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 other than one that relates to a waste operation (regulated for emissions to air only), or for stand-

⁴⁶ Specific provisions apply to Part A installations - see the Guidance on Part A installations.

alone water discharge or groundwater activities, this restriction does not apply to them (see regulation 20(2) and 20(3)). Where the restriction does apply, an operator wishing to reduce the extent of the site of the regulated facility must apply for partial surrender (see the section on [Surrender applications and notifications](#)).

- 6.36 For applications to vary an environmental permit, public participation is required in two situations (see paragraph 5(2) of Part 1 of Schedule 5). First where there is a “substantial change” to the operation of an installation (see guidance for Part A installations⁴⁷) and mining waste facilities⁴⁸. Second, the regulator may decide that consultation is appropriate 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 10 on [Consultation and public participation](#)).

Transfer applications and notifications

- 6.37 The EPR allow for permit transfers (see regulation 21). Whenever the operator's legal identity changes, for example a change to its unique identifier at Companies House; or if the permit holder ceases to be the operator, this requires a transfer application or notification.
- 6.38 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 regulated facility; and another operator taking over the operation of the transferred part of the original facility, which then becomes a second separate regulated facility
- 6.39 Transfer by notification is possible only in the case of any part of a permit that relates to a stand-alone water discharge, stand-alone groundwater or stand-alone flood risk activity (see regulation 21(3)). In these cases joint notification by the operator and proposed transferee must be made on a form provided by the regulator, include information specified on that form and specify an effective date for the transfer to take place. Where more than one person is the current permit holder only one such person need notify a transfer, together with the proposed operator.

⁴⁷ Available at www.defra.gov.uk/environment/policy/permits/guidance.htm

⁴⁸ See Article 8(3) of the Mining Waste Directive, and paragraph 5(2)(b) of Schedule 5, and paragraph 8 of Schedule 20.

- 6.40 In all other cases where an operator wants to transfer all, or part, of a permit to someone else, it must make a joint application with the proposed new operator. 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.
- 6.41 Where the regulator grants an application to transfer the whole permit, it will issue a new permit to the new operator.
- 6.42 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 vary the original operator's permit to reflect the extent of the transfer.
- 6.43 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 there is co-operation between the operators.

Transfers where the permit holder cannot be located or dies

- 6.44 Where the regulator is satisfied that the current permit holder who is a private individual cannot be located, it can accept an application or notification for a transfer from a proposed transferee alone. The regulator will require the proposed transferee to explain the basis for their view that the current permit holder cannot be found. If it appears from the explanation that the proposed transferee has not taken reasonable steps to find the current permit holder, the regulator can ask for more steps to be taken. As a last resort, the regulator has the option to reject the application as not duly made, in which case an application for a new permit would have to be made instead.
- 6.45 Where there is more than one permit holder, all the holders that can be located must join the application, but this requirement does not apply to notifications. This type of transfer is not available where the facility authorised by the permit has been out of operation for more than six months.
- 6.46 For transfers of this type that require an application, the identity and competence of the proposed new operator will be assessed in the usual way.
- 6.47 Where an environmental permit authorising the operation of a regulated facility is held by an individual who dies, the permit will vest in the personal representatives of the deceased. They must notify the regulator that the permit has vested in them as soon as practicable. They have up to six months from the date the operator died to make an application to transfer the permit. If

not transferred within the six months period, the permit will cease to have effect.

- 6.48 In some cases, personal representatives may not want to hold the permit in which case, if they request it to do so, the regulator will consider whether it is appropriate to revoke the permit. The regulator may also consider revocation if it has serious concerns about the ability of the personal representatives to operate the facility in accordance with the permit.

Surrender applications and notifications

- 6.49 There are two separate methods for surrender. The operators of some regulated facilities may simply notify the regulator; but all others must make an application to the regulator (see regulations 24 and 25).
- 6.50 Surrender of the environmental permit by notification is restricted to the operators of Part B installations (except to the extent they relate to a waste operation), mobile plant, solvent emission activities, stand-alone water discharge activities, stand-alone groundwater activities, stand-alone flood risk activities (except where a permit condition operates beyond the time when the activity is complete), medium combustion plant, and specified generators.
- 6.51 Where surrender of a permit is by application, the regulator must accept an application (except for a permit for a radioactive substances activity at a nuclear site) if it is satisfied that the necessary measures have been taken to:
- avoid a pollution risk resulting from the operation of the regulated facility; and
 - 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.
- 6.52 For permits authorising flood risk activities, the regulator must also be satisfied that the necessary measures have been taken to avoid risk of flooding, of harm to the environment, and of detrimental impact on drainage.
- 6.53 The pollution control measures which the regulator is required to apply to Part B installations, water discharge activities and groundwater activities do not include measures to address pollution of the land. There is therefore no requirement to consider the condition of the land prior to surrendering the permit.
- 6.54 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.

- 6.55 The criteria for determining surrender of a permit for a radioactive substances activity on a nuclear site are set out in guidance published jointly by the regulators for England, Wales and Scotland⁴⁹.
- 6.56 It is possible to surrender part of an environmental permit. This is the only method of reducing the extent of the site of a regulated facility covered by 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

- 6.57 The Secretary of State or the Welsh Ministers can require any application to be sent to them for determination (see 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, 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.
- 6.58 Any decision on the need for determination by the Secretary of State or Welsh Ministers would be made solely on those grounds, with no consideration of the substantive merits of the application itself.
- 6.59 The Secretary of State or the Welsh Ministers will deal with these cases 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.

⁴⁹ See: <https://www.gov.uk/government/publications/decommissioning-of-nuclear-sites-and-release-from-regulation>.

7. 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

- 7.1 The regulator must decide whether to grant or refuse the proposal in an application and, where applicable, what permit conditions to impose.
- 7.2 For all applications made under the EPR, the regulator must ensure that its determination delivers all relevant statutory requirements and provides the required level of protection to the environment.

Assessing environmental risk⁵⁰

- 7.3 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.
- 7.4 Guidance on environmental risk assessment has been produced and where appropriate regulators should make reference to this guidance⁵¹.

Requirements from Directives

- 7.5 EU Directives set out most of the requirements to be met through environmental permitting. Schedules 7 to 25B set out the Articles in Directives that the regulator must take into account when permitting regulated facilities under the EPR regime. Chapter 2 illustrates the way that various different Directive requirements may apply to a regulated facility and references guidance on the Directive-specific requirements.

⁵⁰ Paragraphs 7.3 and 7.4 do not apply to radioactive substances activities: see instead the Guidance on Radioactive Substances Regulation.

⁵¹ See: <https://www.gov.uk/government/publications/guidelines-for-environmental-risk-assessment-and-management-green-leaves-iii>

Refusing an application

- 7.6 The regulator must refuse a permit application in certain circumstances (see the section on [Permit applications](#)).
- 7.7 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 9 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 6 section on [Requests for more information](#)); and
 - the requirements of relevant EU Directives cannot be met.

Permit conditions

- 7.8 If the regulator grants a permit it can include any conditions it sees fit (see paragraph 12(2) of Part 1 of Schedule 5). It has a duty to impose conditions in order to secure the objectives that apply to the class of regulated facility (see [Requirements from Directives](#)).
- 7.9 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 variations to the environmental permit (see paragraph 12(3)(a) of Part 1 of Schedule 5).
- 7.10 All permit conditions should be both necessary and enforceable. "Necessary" means that the regulator should be able to justify the permit conditions. 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. Subject to legal requirements, duplication with the requirements of other legislation should be avoided.
- 7.11 Permit conditions may comprise some or all of the following:
- conditions stipulating objectives or outcomes;
 - standards to mitigate a particular hazard/risk; and

- conditions addressing particular legislative requirements.
- 7.12 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

7.13 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

- 7.14 The regulator is required to refuse an application for a permit in three 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, stand-alone groundwater or stand-alone flood risk activities, the regulator must not grant a permit if it considers that the operator will not comply with its conditions (see paragraph 13 of Part 1 of Schedule 5) – see chapter 9 on [Operator Competence](#); and
 - the regulator must refuse to grant a permit relating to an existing Category A mining waste facility if the regulator receives a notice from the relevant emergency planner that the operator has not provided the information necessary to enable the relevant emergency planner to draw up an external emergency plan (see paragraph 14(2) of Schedule 20).

Variation applications

- 7.15 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 EPR.
- 7.16 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

- 7.17 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 (see paragraph 13 of Part 1 of 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 9 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

- 7.18 An environmental permit remains in force until it is surrendered, revoked or consolidated or, where a permit is held by personal representatives following the death of the permit holder (see [Transfers where the permit holder cannot be located or dies](#)), no transfer application or notification is made within 6 months of the death of the permit holder. Until that time, the operator remains subject to its conditions.
- 7.19 When a regulated facility ceases to operate⁵², an operator should (but is not compelled to) seek surrender of the permit so as to end regulation under EPR and the requirement to pay the associated annual charges.
- 7.20 Chapter 6 (see [Surrender applications and notifications](#)) sets out the two methods of surrender: application and notification; and which applies to what type of regulated facility. This section addresses only the situation where an operator is required to apply to surrender its environmental permit, that is to say where the regulator must make a decision whether or not to accept the surrender.
- 7.21 The general requirements for permit surrender (see paragraph 14 of Part 1 of 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 7.23 below); and
 - 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 7.30 to 7.33 below).
- 7.22 These requirements do not apply to an application to surrender a permit authorising a radioactive substances activity at a nuclear licensed site⁵³.

⁵² Landfill facilities and mining waste operations should not apply to surrender the permit until after the appropriate period of aftercare.

Avoiding pollution risk

7.23 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

7.24 “The site of the regulated facility” means all of the land on which any of the regulated facilities covered by an environmental permit may be carried on. The site is the “footprint” of the regulated facility/ies. 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 pipework.

7.25 Where there is more than one regulated facility on the same site regulated under the same permit (see the section in chapter 3 on [A single permit](#)), the site is made up of the footprints of the individual regulated facilities.

7.26 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

7.27 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. 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.

7.28 The regulator should not hold the operator responsible under the EPR for contamination on the site that the regulator is convinced was caused:

⁵³ The ONR has powers under the Nuclear Installations Act 1965 (NIA 65) to impose similar requirements on nuclear site licensees to protect land quality. There is a process under NIA 65 for delicensing nuclear sites. However there is no direct statutory link between delicensing and surrender of an EPR permit. For this reason the environmental regulators have published the guidance described in paragraph 6.54 above explaining how they will determine surrender applications for nuclear sites.

- before the environmental permit was issued under the EPR for a new regulated facility;
- for a regulated facility that obtained its environmental licence before the coming into force of the EPR:
 - before the PPC permit was issued for a facility previously regulated under the PPC Regulations;
 - 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); or
 - before the issue of a registration or authorisation under the 1960 or 1993 Radioactive Substances Acts.

7.29 For those sites that were previously regulated under a waste management licence (see paragraph 7.28 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

7.30 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 be achieved only if operators aim to restore a site to the condition it was in before the facility was put into operation⁵⁴⁵⁵.

7.31 This may be significantly stricter than the “suitable for use” test of the contaminated land regime in Part IIA of the Environmental Protection Act 1990 and similar controls on redevelopment. While “suitable for use” is appropriate for pre-existing contamination, it is not the right test for the preventative 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 IIA and if so whether it would be more cost effective to undertake operations for both purposes at the same time.

⁵⁴ For radioactive substances activities see the Guidance on Radioactive Substances Regulation Guidance at: <https://www.gov.uk/government/publications/radioactive-substance-regulations-rsr-guidance>.

⁵⁵ Additional guidance in respect of installations covered by Chapter II of the Industrial Emissions Directive is in the Part A Guidance.

- 7.32 Other than in exceptional circumstances operators should remove any contamination and return the site to the original condition⁵⁶. 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.
- 7.33 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

- 7.34 If the operator satisfies the regulator that it has removed any pollution risks and has restored the site to a satisfactory state (and, in the case of flood risk activities, it has removed any risks of flooding, harm to the environment and detrimental impact on drainage), 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.

⁵⁶ For a landfill, mining waste operation for the permanent deposit of extractive waste, or a near surface disposal facility for solid radioactive waste, it is clearly not possible to return the site to the state that existed prior to the operation of the facility.

8. Standard rules permits

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

Standard rules⁵⁷

- 8.1 The Secretary of State, the Welsh Ministers, the Environment Agency and Natural Resources Wales can make standard rules (regulation 26⁵⁸).
- 8.2 These rules consist of requirements common to the type of facilities subject to them (“standard facilities” as defined in regulation 2(1)) and can be used instead of site-specific permit conditions. Standard rules are suitable for industry sectors where the generic risks are well-understood, assessed and mitigated.
- 8.3 Standard rules must achieve the same high level of environmental protection as site-specific conditions.
- 8.4 Each set of rules will form the conditions of the standard rules permit. Because an application for a permit subject to a set of standard rules is entirely voluntary, there is no right of appeal under regulation 31(1)(b) against the inclusion of standard rules as permit conditions (see regulation 27(3)). (All other rights of appeal are unaffected.)

Developing standard rules

- 8.5 In preparing standard rules, it is necessary to consult widely with those who may be affected by or have an interest in the rules (see 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.
- 8.6 It is expected that standard rules will be developed in consultation with the relevant industry.

⁵⁷ See: <https://www.gov.uk/government/collections/standard-rules-environmental-permitting>. For Wales, see: <https://naturalresources.wales/permits-and-permissions/installations/standard-rules-permits-for-installation/?lang=en>.

⁵⁸ The Secretary of State and Welsh Ministers may make standard rules for local authority-regulated facilities in (respectively) England and Wales. The Environment Agency and Natural Resources Wales may make standard rules in relation to facilities they regulate (in England and Wales respectively).

- 8.7 Assessments of risk can be carried out nationally for common generic facilities. This understanding of the hazards and risks posed by these facilities would form the basis for the development of standard rules for standard facilities.

Standard rules permits

- 8.8 It is the operator's decision whether it wishes to operate under standard rules. Where standard rules have been made, operators of regulated facilities eligible for standard rules permits can, if they wish, request that their regulated facility be made subject to the relevant rules. This request may be made in an application for a new permit or to vary an existing environmental permit.
- 8.9 The generic assessments of risk for standard facilities should be made available to businesses to assist them in (a) determining whether their activity is within the scope of the standard rules; and (b), if they apply for a standard rules permit, in adopting suitable control measures to meet those rules.
- 8.10 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.
- 8.11 If the regulator agrees that standard rules are appropriate, the permit will state that the relevant set of rules is the conditions of the permit (see 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 rules permit".
- 8.12 A standard rules permit can authorise the operation of more than one standard facility operated by the same operator (see regulation 17(2)(d)). 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 3 on [A single permit](#)). This environmental permit would not however be a standard rules permit.
- 8.13 Public consultation on applications for individual standard facilities is not required. This reflects the fact that consultation in the development of the rules must have already taken place (see chapter 10 on [Consultation and public participation](#)).

Revision and revocation of standard rules

- 8.14 Standard rules can be revised at any time, and there is a duty imposed by the EPR on regulators to keep the rules under review (see regulation 26(4)).
- 8.15 Where revisions are proposed, a consultation must take place in the same way as for the original production of the rules. A consultation is not however required for minor administrative changes to the rules (see regulation 26(3)).
- 8.16 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 (see regulation 28). Operators not wishing to operate under the revised rules can apply for a variation to their permit before the rules take effect.
- 8.17 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 (see regulation 29).
- 8.18 Where such a revocation is to take place the regulator must vary permits containing standard rules to include suitable alternative conditions. The revoked rules continue to be conditions of the environmental permit until the regulator varies the permit (see regulation 30).

9. Operator competence

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

Operator competence

- 9.1 Operator competence supports the objectives of permitting by examining and maintaining the operator's ability to operate a regulated facility and fulfil the obligations of an operator (see the chapter 5 section on [The operator](#)).
- 9.2 Operator competence can be considered by the regulator at any time, whether as part of the determination of an application or at any time during the life of the permit. The regulator may refuse an application, set and vary permit conditions, and take enforcement action, having regard to the principles of operator competence described in this Chapter.
- 9.3 Following an application for the grant or transfer of an environmental permit, there is also a specific duty on the regulator not to grant or transfer the permit if it considers that the operator/new operator will not operate the facility in accordance with the permit (see paragraph 13 of Part 1 of Schedule 5⁵⁹). 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:
 - has an inadequate management system;
 - demonstrates inadequate technical competence;
 - has a record of poor behaviour or non-compliance with previous regulatory requirements; or
 - has inadequate financial competence.
- 9.4 The following sections deal with each of these points in turn.

⁵⁹ This requirement does not apply in relation to standalone water discharge activities, stand-alone groundwater activities or stand-alone flood risk activities, where for these classes, transfer to a new operator is by way of notification, not application (see paragraph 6.39).

Management systems

- 9.5 In order to ensure a high level of environmental protection, operators should have effective management systems. The nature of the management system depends upon the complexity of the regulated facility.
- 9.6 Waste operation permits issued before 6 April 2008 for operations not carried out at an installation or Part B mobile plant, that do not already have a relevant existing permit condition, must have effective written management systems. These must also be kept under regular review, and produced on request by the regulator.
- 9.7 Complex regulated facilities are encouraged to put in place a formal environmental management system externally certified to the international standard ISO 14001 by a United Kingdom Accreditation Service (UKAS) accredited certification body. ISO 14001 requires that the management system includes safeguards for legal compliance and a commitment to continuous improvement of environmental performance. Environmental management systems must be specific to the site and activities for which they are being relied upon.
- 9.8 For simpler regulated facilities, externally-certified schemes 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 environmental management system implementation much simpler. Organisations can achieve UKAS-accredited certification to one or more stages of BS8555 under the IEMA, BSI Stems or, in Wales, the Green Dragon Scheme. There is also specific guidance on management systems for some industry sectors on the website of the Institute of Environmental Management and Assessment.

Box 2 – Other sources of information on Environmental Management systems

- ISO 14001: <https://www.iso.org/iso-14001-environmental-management.html>
- IEMA: <https://www.iema.net/policy/environmental-management/>
- UKAS: www.ukas.com
- BSI Stems: www.bsi-global.com/en/Assessment-and-certificationservices/management-systems/Standards-and-Schemes/BS-8555STEMS/
- Green Dragon: <https://www.groundwork.org.uk/Sites/greendragon/pages/about-greendragon>

9.9 Environmental management systems have relevance to other aspects of regulation, such as determining risk-based inspection frequencies (see section on chapter 11 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.

Technical competence

9.10 Operators should be technically competent to operate their facility in compliance with the conditions of their permits. 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.

9.11 All individuals that make up the technically competent management for any activity must:

- be in a position to control the day-to-day activities authorised by the permit;
- understand the processes and equipment being used;
- understand the risks to people and the environment and how those risks need to be managed;
- know how to comply with the law and relevant guidance;
- be familiar with the management systems and management structure on site; and
- have the authority to make appropriate interventions in the running of the operation.

9.12 The development of industry-led competence schemes is strongly encouraged. Scheme providers should seek the advice of the relevant Sector Skills Council where appropriate when developing the scheme. All schemes should be based predominantly on qualifications accredited by Ofqual or Qualifications Wales, based on vocational qualifications where these exist, and agreed with the regulator and government.

9.13 Operators managing radioactive waste must seek advice from a Radioactive Waste Adviser (RWA) in relation to certain matters. This requirement does not

apply to waste in the form of sealed radioactive sources (see paragraph 7 of Part 4 of Schedule 23⁶⁰).

9.14 For operators of Part B installations technical competence is covered in Chapter 11 of the Manual⁶¹.

Relevant waste operations: approved schemes

9.15 “Relevant waste operations” are one or both of the following:

- any permitted waste operation which is not carried on at an installation or by means of a Part B mobile plant;
- a specified waste management activity as defined in paragraph 2(4) and (5) of Part 3 of Schedule 9 to the EPR.

9.16 All operators of relevant waste operations should comply with an approved competence scheme. Where no appropriate approved competence scheme is available, the regulator should assess the technical competence of the operator. Operators must periodically give the regulator either evidence of compliance with such a scheme or confirmation that the operator has not complied with such a scheme. This must be done by means of their quarterly or annual waste returns.

9.17 Any approved competence scheme 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;

⁶⁰ Further information on RWAs can be found on the Scottish Environment Protection Agency’s website at <https://www.sepa.org.uk/regulations/radioactive-substances/radioactive-waste-advisers>

⁶¹ See: <https://www.gov.uk/government/publications/environmental-permitting-general-guidance-manual-on-policy-and-procedures-for-a2-and-b-installations>.

- able to cater for the evolving complexity and diversity of the waste and resources management sector;
 - applicable to all relevant waste management operations, or where appropriate to all operations within the sectors for which the scheme is designed; and
 - inclusive, and must not prevent new entrants from developing necessary competences in the workplace.
- 9.18 Approved schemes for operators of relevant waste operations that meet the above criteria are:
- CIWM/WAMITAB scheme version 9, jointly developed by the Chartered Institution of Wastes Management (CIWM) and the Waste Management Industry Training and Advisory Board (WAMITAB); and
 - Competence Management System version 4, developed by the Energy and Utility Sector Skills Council (EU Sector Skills).

Poor record of compliance and behaviour

- 9.19 In assessing operator competence the regulator may also consider whether the operator or any other “relevant person” (see below) has a poor record of compliance with regulatory requirements. These considerations will include, but are not restricted to, evidence of convictions for “relevant offences”. Other considerations may include receipt of formal enforcement notices such as enforcement or suspension notices or a history of, or acute, non-compliance with permit condition(s).
- 9.20 In this context, a “relevant offence” is an offence that is relevant to a person’s ability to operate in compliance with the permit applied for or held or to a person’s conduct as the operator of a waste facility.⁶²
- 9.21 A “relevant person” in relation to a conviction for a relevant offence or non-compliance includes:
- the operator;
 - 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

⁶² A list of offences that are considered to be relevant when considering environmental permits can be found here: <https://www.gov.uk/government/publications/relevant-conviction-guidance-for-permit-applications-for-waste-activities-and-installations-only>. The list is for guidance purposes and is not intended to be exhaustive.

him/herself, or who held a position in another corporate body when it was convicted of a relevant offence; and

- any other person that the regulator has reason to believe is a controlling or guiding mind of the operation.
- 9.22 The regulator must not grant or transfer a permit to persons it considers will not be the operator of that facility or will not operate the facility in accordance with the permit⁶³. This may include persons who have such a poor record of compliance with regulatory requirements or persons who have demonstrated such poor behaviour towards officers and the regulatory process that it appears unlikely that they would comply with permit conditions. Similar considerations could, equally, lead to revocation of (an) existing permit(s).
- 9.23 “Poor behaviour” includes any behaviour that the regulator considers to be unacceptable. In addition to previous operator performance, this could include physical acts or language (written, verbal or online) that causes staff to feel intimidated, afraid, offended, threatened or abused. Preventing access to a site, relevant records or operational information, failure to provide required documents and declarations that are disingenuous may also be considered poor behaviour.
- 9.24 The regulator must take into account the terms of the Rehabilitation of Offenders Act 1974 (ROA 1974). The Act applies only where an individual has been convicted of an offence. It does not apply to corporate bodies.
- 9.25 The regulator may consider relevant offences committed by individuals that have become spent under the terms of the ROA 1974 but only where the regulator is satisfied that justice cannot be done without doing so in accordance with section 7(3) of the ROA 1974.
- 9.26 After considering all available evidence, the regulator may still decide to grant or transfer a permit, or to allow a permit to continue in force, even though an operator has demonstrated a poor record of compliance with regulatory requirements such as being convicted of a relevant offence.

Financial competence

- 9.27 The operator of any regulated facility should be financially capable of complying with the environmental permit. The regulator should consider an

⁶³ See paragraph 13(2) of Part 1 of Schedule 5. The requirement not to grant or transfer the permit where the regulator considers that the operator will not comply with permit conditions does not apply to stand-alone water discharge activities, stand-alone groundwater activities and stand-alone flood risk activities (see paragraph 13(3) of Part 1 of Schedule 5).

operator's financial competence when determining the operator's ability to comply with the conditions in its permit.

- 9.28 Specific provisions apply to landfill facilities (see Guidance on the Landfill Directive⁶⁴), mining waste facilities (see Guidance on the Mining Waste Directive⁶⁵) and radioactive substances activities (see the section on high-activity sealed sources in the Guidance on Radioactive Substances Regulation⁶⁶).

Maintaining competence

- 9.29 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.
- 9.30 Regulators can reassess competence at any time and if not satisfied can take enforcement action including revocation of the permit (see the section in Chapter 11 on [Revocation](#)). In particular, if the operator of a relevant waste operation fails to comply with an approved competence scheme, the regulator may revoke the permit.

⁶⁴ See: <https://www.gov.uk/government/publications/environmental-permitting-guidance-the-landfill-directive>.

⁶⁵ See: <https://www.gov.uk/government/publications/environmental-permitting-guidance-the-mining-waste-directive>.

⁶⁶ See: <https://www.gov.uk/government/publications/radioactive-substance-regulations-rsr-guidance>.

10. Consultation and public participation

This chapter covers the requirements for consulting the public.

- 10.1 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.
- 10.2 Regulators must take into consideration any representations made by consultees during the period stipulated for the consultation.

Consulting the public

- 10.3 The EPR require consultation of the public on some 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.
- 10.4 The meaning of “public consultee” is given in paragraph 1 of Part 1 of Schedule 5 to the EPR and includes anyone whom the regulator considers is, or is likely to be affected by, or has an interest in the application.
- 10.5 Public participation is provided for where there is an application for an environmental permit (see paragraph 5 of Part 1 of Schedule 5). This requirement to consult does not apply to permit applications for:
 - mobile plant;
 - radioactive substances activities involving mobile radioactive apparatus;
 - standard facilities;
 - certain small Part B installations;
 - a mining waste operation not involving a mining waste facility to which Article 7 of the Mining Waste Directive applies⁶⁷;
 - certain stand-alone flood risk activities⁶⁸;
 - medium combustion plant; and
 - specified generators⁶⁹.

⁶⁷ Article 8 of the Mining Waste Directive requires public participation in relation to mining waste facilities requiring a permit under Article 7.

⁶⁸ Consultation is not required on an application for a permit for a stand-alone flood risk activity which is not likely to have a significant adverse effect on the environment; or for which a consultation has been carried out under separate legislation in which the potential environmental impact of that activity has been addressed.

- 10.6 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 8 on [Standard Rules 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 (see paragraph 5(4) of Part 1 of Schedule 5). For mining waste operations, public participation is only required where the Mining Waste Directive requires it⁷⁰.
- 10.7 Substantial changes to Part A installations must be consulted on (see the Guidance on Part A installations⁷¹). The requirement to consult on a substantial change applies both to applications for a variation by the operator and variations initiated by the regulator (see paragraph 5(2)(a) and 5(3)(a) of Part 1 of Schedule 5). There must also be consultation if the regulator proposes to grant a derogation for a Part A installation under Article 15(4) of the Industrial Emissions Directive⁷².
- 10.8 The regulator may decide that other variations to environmental permits should also be subject to public consultation (see paragraph 5(2)(b) and 5(3)(b) of Part 1 of Schedule 5).
- 10.9 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 14 on [Public registers and information](#)) must not form part of the public consultation.

The Environment Agency and Natural Resources Wales's public participation statements

- 10.10 The Environment Agency and Natural Resources Wales must prepare a statement of their policies on Public Participation (regulation 60)⁷³. These

⁶⁹ In the case of medium combustion plant and specified generators, consultation is required on the permit application where the regulator determines that the operation of the regulated facility may have significant negative effects on human beings or the environment.

⁷⁰ See Chapter 5 of the Mining Waste Directive Guidance. Available at: <https://www.gov.uk/government/publications/environmental-permitting-guidance-the-mining-waste-directive>.

⁷¹ Available at <https://www.gov.uk/government/publications/environmental-permitting-regulations-guidance-on-part-a-installations>.

⁷² The operation of this derogation is explained in detail in the Part A Guidance.

⁷³ For England see: <https://www.gov.uk/government/publications/environmental-permits-when-and-how-we-consult>. For Wales, see: <https://naturalresources.wales/about-us/what-we-do/how-we->

policies must relate to each body's duties in relation to determining applications for permits and permit variations, and making or revising standard rules.

- 10.11 In preparing or revising the statement the Environment Agency and Natural Resources Wales must consult those people they consider are, or are likely to be affected by, or who have an interest in the statement. This consultation will be in accordance with the government's consultation principles⁷⁴. The Environment Agency and Natural Resources Wales must keep their statements under review, revise them when they consider it necessary, and publish any revised version.

[regulate-you/environmental-permitting-how-we-work-together/?lang=en](https://www.gov.uk/government/publications/regulate-you/environmental-permitting-how-we-work-together/?lang=en). For local authority consultation see: <https://www.gov.uk/government/publications/environmental-permitting-general-guidance-manual-on-policy-and-procedures-for-a2-and-b-installations>.

⁷⁴ See: <https://www.gov.uk/government/publications/consultation-principles-guidance>.

11. 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

11.1 Risk-based compliance assessment should include:

- targeting those 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.

11.2 The Environment Agency and Natural Resources Wales should maintain guidance on a risk-based approach to compliance assessment⁷⁵. This should take into account the operator's management of the facility.

Methods of compliance assessment

11.3 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. In addition, the regulator should also audit the operator's systems for the management and supervision of the facility.

⁷⁵ For England, see: Hyperlink should now be <https://www.gov.uk/government/publications/assessing-and-scoring-environmental-permit-compliance>. For Wales, see: <https://naturalresourceswales.gov.uk/about-us/what-we-do/how-we-regulate-you/how-we-assess-business-compliance/?lang=en>.

- 11.4 The EPR place a duty on regulators to undertake appropriate periodic inspections of regulated facilities (see regulation 34(2))⁷⁶. There is also a duty on the exemption registration authority (see chapter 15 on [Exempt facilities](#)) to carry out periodic inspections of exempt waste operations (see paragraph 18 of Schedule 2).
- 11.5 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.
- 11.6 In its procedures for the EPR 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 inspection⁷⁷.
- 11.7 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

- 11.8 Regulation 36 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.
- 11.9 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

- 11.10 The regulator can serve a suspension notice on the operator if the operation of a regulated facility involves a risk of serious pollution (see regulation 37(2)); or if the way in which the regulated facility is being operated both contravenes a permit condition and involves a risk of pollution (see regulation 37(5)).

⁷⁶ Part A installations are subject to minimum inspection requirements as a result of Article 23 of the Industrial Emissions Directive, as described in the Part A Guidance.

⁷⁷ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001H0331>

- 11.11 This means that, where the operator has contravened a permit condition, there has to be a risk of pollution, but not of serious pollution.
- 11.12 In the case of a flood risk activity, the regulator may also serve a suspension notice where it considers there is a risk of serious flooding, serious detrimental impact on drainage, or serious harm to the environment (see regulation 37(2)); and where breach of a permit conditions involves a risk of flooding, detrimental impact on drainage or harm to the environment (see regulation 37(5)).
- 11.13 A suspension notice may also be served by a local authority regulator for non-payment of a charge. Guidance on this is contained in the Manual.
- 11.14 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.
- 11.15 When the regulator serves a suspension notice, the permit ceases to authorise the operation of the entire regulated facility or specified activities depending upon what is specified in the notice.
- 11.16 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 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.
- 11.17 When the operator has taken the remedial steps required by the notice, the regulator must withdraw the notice.

Prosecutions

- 11.18 If an operator has committed a criminal offence under the EPR, regulators should consider a prosecution. Conviction in a magistrates' court carries an unlimited fine and up to twelve months' imprisonment⁷⁸ for the most serious offences under the EPR. Conviction in the Crown court may lead to an unlimited fine and imprisonment for up to five years.
- 11.19 Regulators have clear guidance on the factors to take into account when deciding whether to prosecute. Regulators should take account of the Regulators' Code⁷⁹ and the Code for Crown Prosecutors⁸⁰. These contain

⁷⁸ See regulation 39(3) – pending the commencement of section 154(1) of the Criminal Justice Act 2003, the maximum term of imprisonment on summary conviction is 6 months.

⁷⁹ See: <https://www.gov.uk/government/publications/regulators-code>.

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.

- 11.20 The Environment Agency and Natural Resources Wales's enforcement and sanctions policies⁸¹ set out a range of possible enforcement actions. These range from warnings to formal cautions to prosecution depending upon the facts. Individual local authorities should also have enforcement policies.
- 11.21 The EPR also contain another important safeguard for operators, the emergency defence (see regulation 40(1)). 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.
- 11.22 Where an EPR 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.
- 11.23 The regulator must place details of any conviction or formal caution on the public register. This requirement does not override the ROA 1974 regarding spent conditions, and regulators must take care to remove relevant entries at the appropriate time⁸². Formal cautions must be removed from the register after 5 years has lapsed. It is important that the regulators have the systems in place to ensure that this is done.

Enforcement undertakings

- 11.24 Regulation 39(6) and Schedule 26 provide that the Environment Agency⁸³ may, where it has reasonable grounds to suspect that a specified offence⁸⁴ under the EPR has been committed, accept an enforcement undertaking instead of, for example, bringing criminal proceedings.

⁸⁰ See: <https://www.cps.gov.uk/sites/default/files/documents/publications/Code-for-Crown-Prosecutors-October-2018.pdf>.

⁸¹ For England, see: <https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy>. For Wales, see: <https://naturalresources.wales/about-us/what-we-do/how-we-regulate-you/regulatory-responsibilities/?lang=en>.

⁸² See: <https://www.nacro.org.uk/resettlement-advice-service/support-for-individuals/disclosing-criminal-records/rehabilitation-offenders-act/>.

⁸³ In relation to England only.

⁸⁴ See paragraph 1(1) of Schedule 26.

- 11.25 An “enforcement undertaking” is a written undertaking, made by the person who has committed the offence, to take specified actions within a specified period (see paragraph 1(3) of Schedule 26). If the Environment Agency accepts the undertaking, it cannot then prosecute the offence, so long as the operator complies with the undertaking (see paragraph 3 of Schedule 26).
- 11.26 The Environment Agency publishes its procedure for entering into an enforcement undertaking⁸⁵. It also publishes details of the undertakings it accepts⁸⁶.

Revocation

- 11.27 The regulator can revoke a permit, in whole or in part, by serving a “revocation notice” (see 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, where the permit holder is no longer the operator (for example, where a transfer application should have been made but has not been) or where the operator is considered not to be competent (see Chapter 9 on [Operator competence](#)). Unlike other types of notice, if a revocation notice is appealed the revocation does not take effect until the appeal is determined or withdrawn (see regulation 31(7)(b)).
- 11.28 The permit ceases to authorise the operation of a regulated facility, facilities or part of a facility to the extent specified in the revocation notice. Any post-operation requirements, such as site restoration, may remain in force (see regulation 22).
- 11.29 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](#)).

Remediation⁸⁷

- 11.30 If the operation of a regulated or exempt facility gives rise to a risk of serious pollution, a regulator may arrange for the risk to be removed (see regulation

⁸⁵ See: <https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/annex-1-res-act-the-environment-agencys-approach-to-applying-civil-sanctions-and-accepting-enforcement-undertakings>.

⁸⁶ See: <https://www.gov.uk/government/publications/the-environment-agencys-use-of-civil-sanctions>.

⁸⁷ Special arrangements apply in the case of remediation of radioactive contamination on a nuclear site: see the Nuclear Installations Act 1965 and associated guidance.

- 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.
- 11.31 If the operation of a regulated or exempt flood risk activity gives rise to a risk of serious flooding, serious detrimental impact on drainage or serious harm to the environment, the regulator may arrange for the risk to be removed at the operator's expense under regulation 58.
- 11.32 In the case of an emergency relating to a flood risk activity, the regulator may serve an emergency works notice requiring the operator, owner or person responsible for the activity to take action, such as remove or modify a structure, carry on the activity or take remedial action on flooding/risk to flooding, harm/risk of harm to the environment or detrimental impact on drainage.
- 11.33 If the regulator considers that an unauthorised flood risk activity is being or has been carried on, it may serve a remediation notice on the operator and certain other categories of people (as set out in paragraph 8(1) and (4) of Part 1 of Schedule 25). The regulator may also take steps to remove, alter or pull down any works carried out pursuant to an unauthorised flood risk activity at the expense of the person responsible for that activity.
- 11.34 Site protection must be addressed throughout the life of a permit. The requirement for 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 ceases to operate before removing any contamination or remedying any harm at the site.
- 11.35 Where an incident such as a spillage occurs, the regulator should be notified and 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

- 11.36 The Crown is bound by the EPR, as are people who work for it. However, the Crown is not criminally liable, even if it contravenes the EPR. 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 EPR. These provisions are set out in

Schedule 4. Special provisions apply in the case of radioactive substances activities (see the Guidance on Radioactive Substances Regulation⁸⁸).

Ongoing review

Variation of conditions by the regulator

- 11.37 The regulator may vary permit conditions at any time, even if the operator has not requested this (see regulation 20), except in certain circumstances in the case of a stand-alone water discharge activity⁸⁹ or a stand-alone flood risk activity⁹⁰. It is most likely to do this in response to the findings of a permit review (see paragraphs 11.41 to 11.42), because additional conditions are needed to deal with new matters or where compliance assessment has identified a need to vary the conditions.
- 11.38 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 or Natural Resources Wales requests this under regulation 59 (see paragraph 4.7).
- 11.39 Where the regulator decides to vary permit conditions, it will serve a variation notice and may require the operator to pay a fee. (see paragraph 8 of Part 1 of Schedule 5).
- 11.40 The regulator will consult on a proposed variation notice, in much the same way as when the operator applies for a variation. Regulators can assess competence at any time and if not satisfied can revoke the permit. In particular, if the operator of a relevant waste operation fails to comply with an approved competence scheme, the regulator may revoke the permit.

Permit reviews

- 11.41 Regulators are required to review permits periodically (see regulation 34(1)). 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.

⁸⁸ See: <https://www.gov.uk/government/publications/radioactive-substance-regulations-rsr-guidance>.

⁸⁹ See the Guidance on Water Discharge Activities.

⁹⁰ Guidance on when and how the Environment Agency will use its powers under regulation 20(7) can be found at www.gov.uk/guidance/flood-risk-activities-environmental-permits#complying-with-your-permit.

11.42 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 EPR do not specify when regulators should carry out permit reviews, except in relation to Part A installations under Article 21(3) of the Industrial Emissions Directive⁹¹. The Environment Agency and Natural Resources Wales will determine when to carry out reviews, having regard to their 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.

⁹¹ Article 21(3) of the Industrial Emissions Directive requires permit reviews after publication of decisions on BAT Conclusions, as further described in the Part A Guidance.

12. Charging

This chapter describes the system of charging for environmental permits.

12.1 Two separate but related sets of charging schemes apply to regulated facilities:

- for facilities where the Environment Agency or Natural Resources Wales is the regulator, under section 41 of the Environment Act 1995 and approved by the Secretary of State⁹²; and
- for facilities where the local authority is the regulator, set by the Secretary of State and the Welsh Ministers under regulation 66⁹³.

12.2 Within this overall arrangement, different charges are payable at different regulatory stages. They will also vary across sectors.

Charges for applications

12.3 Applications will normally incur charges. Where an operator must pay a charge when submitting an application, the application will not be duly made until the regulator receives the charge.

12.4 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 puts into determining the application;
- the potential environmental impact or risk; and
- the extent of public participation.

Subsistence

12.5 Operators must pay subsistence charges to support the regulator's ongoing costs: for example, for checking monitoring data or assessing compliance. If an operator fails to pay a subsistence charge, the regulator may revoke the permit.

⁹² For England, see: <https://www.gov.uk/government/publications/environmental-permitting-charging-scheme-2019>. For Wales, see: <https://naturalresources.wales/about-us/what-we-do/how-we-regulate-you/our-charges/?lang=en>.

⁹³ See: <https://www.gov.uk/local-authority-environmental-permit>.

13. 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?

13.1 A person may appeal (see regulation 31) when:

- the regulator has refused their application (for the grant, variation, transfer or surrender of a permit)⁹⁴;
- they disagree with any of the conditions imposed by the regulator where the regulator has varied the permit: either on its own initiative; or to reflect a partial transfer, partial revocation or partial surrender of the permit;
- an application is deemed to have been refused (see paragraph 15(1) of Part 1 of Schedule 5);
- 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; or
- the regulator has served an enforcement, revocation, suspension or prohibition notice, a landfill or mining waste facility closure notice, or a flood risk activity emergency works notice, notice of intent or remediation notice on them⁹⁵.

13.2 A person may appeal under regulation 53 where the regulator has determined that certain information in relation to their application or permit must be included on the public register.

13.3 A person may not however appeal where:

- the regulator's decision implements a statutory direction by the Secretary of State or Welsh Ministers;

⁹⁴ This includes where the regulator deems an application withdrawn under paragraph 4(2) of Part 1 of Schedule 5.

⁹⁵ But no right of appeal exists against a revocation or a suspension notice served because of a failure by the operator to pay a subsistence charge for its permit.

- the regulator has refused an application for the grant or variation of a permit in relation to a Category A mining waste facility that is an existing mining waste facility, under paragraph 14(2) of Schedule 20; or
 - a local authority issues a revocation or suspension notice because of a failure to pay subsistence charges.
- 13.4 Time limits for making appeals vary according to the basis of the appeal (see paragraph 3 of Schedule 6). The Secretary of State or the Welsh Ministers have the power to extend some of the limits but will do so only in the most compelling circumstances.
- 13.5 An appeal must be made:
- before a revocation notice takes effect;
 - no later than 15 working days after the date of a notice that an application is deemed to be withdrawn (see paragraph 4(2) of Part 1 of Schedule 5);
 - within two months from the date of an enforcement, regulator-initiated variation, suspension, mining waste facility closure or landfill closure notice, or a flood risk activity remediation notice;
 - no later than 21 days after the date of a prohibition notice; and
 - in all other cases within six months of the date of the decision or deemed decision.
- 13.6 An appeal under regulation 53 must be made no later than 15 working days from the date of a notice that certain information must be included on the public register.

To whom should an appeal be made?

- 13.7 Appeals must be made to the Secretary of State or the Welsh Ministers (as appropriate).
- 13.8 The Secretary of State and the Welsh Ministers may appoint another person to determine appeals on their behalf⁹⁶. The Planning Inspectorate (PINS) is generally appointed to determine appeals under the EPR. The Secretary of State or the Welsh Ministers can exceptionally recover any appeal, but this is likely to be done only if the appeal meets particular criteria⁹⁷.

⁹⁶ Section 114 of the Environment Act 1995

⁹⁷ See Appendix 2 to the Planning Inspectorate's environmental appeals guidance: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792726/EP_appeal_guide_March_2019.pdf.

13.9 The Planning Inspectorate's environmental permit appeals guidance⁹⁸ explains the procedure. A failure to follow that procedure may lead to adverse costs implications.

While the appeal is being considered

13.10 If a person appeals against a revocation notice, the revocation does not take effect until the appeal has been determined or withdrawn (see regulation 31(7)(b)), (except in certain circumstances in relation to stand-alone water discharge activities⁹⁹).

13.11 If the appeal is against a permit condition, or a variation notice, enforcement notice, suspension notice, prohibition notice, landfill closure notice, mining waste facility closure notice, flood risk activity emergency works notice, flood risk activity notice of intent or flood risk activity remediation 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 (see regulation 31(7)(a)), except in certain circumstances in relation to stand-alone water discharge activities (see regulation 31(9)).

Who should be informed that an appeal has been made?

13.12 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 (see paragraph 4 of 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.

13.13 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 (see paragraph 4(3) of Schedule 6).

Conducting an appeal

13.14 An appeal may be conducted by written representations, or through a hearing or inquiry under the control of the Secretary of State's or the Welsh Ministers'

⁹⁸ See:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831106/EP_appeal_guide_September_2019.pdf.

⁹⁹ See the Guidance on Water Discharge Activities:

<https://www.gov.uk/government/publications/environmental-permitting-guidance-water-discharge-activities>.

appointee. 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 decides one is necessary. Each appeal procedure will be conducted in the spirit of the rules and Regulations for planning appeals¹⁰⁰.

Withdrawing an appeal

13.15 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.

13.16 The Secretary of State's or the Welsh Ministers' appointee should tell anyone with an interest in the appeal that it has been withdrawn.

13.17 The regulator should inform all the people it notified of the appeal (see paragraph 4(4) of Schedule 6).

Costs

13.18 The appellant and regulator will normally be expected to pay their own expenses during an appeal. Where a hearing or inquiry is held, however, either the appellant or the regulator can apply for costs.

13.19 Following an application for costs, the appointed person or the Secretary of State in England will act in the spirit of Circular 03/09¹⁰¹. In Wales the Welsh Ministers will act in the spirit of Welsh Office Circular 23/93¹⁰².

13.20 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

13.21 After the exchange of written representations has been completed or the hearing or inquiry held, the appointed person will either make a decision or

¹⁰⁰ See, in relation to England, The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (SI 2009 No. 452); The 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).

¹⁰¹ Costs Awards in Appeals and other Planning Proceedings.

¹⁰² Awards of Costs incurred in Planning and other (including compulsory purchase order) proceedings.

report their conclusions and recommendations to the Secretary of State or the Welsh Ministers for determination.

- 13.22 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 may quash or vary any notice. They may also direct the regulator on what permit conditions to impose.
- 13.23 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.
- 13.24 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.
- 13.25 The regulator should take into account relevant appeal decisions when reviewing and developing the conditions to be attached to permits.
- 13.26 Appeal decisions may be challenged by judicial review on a point of law.

14. Public registers and information

This chapter explains regulators' duty to maintain public registers for environmental permits and refers to other sources of information on environmental permitting.

- 14.1 Information relevant to environmental permitting is available through public registers and under the Freedom of Information Act (FOIA)¹⁰³ and the Environmental Information Regulations (EIR)¹⁰⁴.
- 14.2 In order to ensure that information is readily and easily available for the purposes of public participation under the EPR, regulators must maintain public registers of specified information on environmental permitting¹⁰⁵.
- 14.3 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.
- 14.4 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

- 14.5 Regulators must maintain registers containing information on all the regulated facilities for which they are responsible (see regulation 46).
- 14.6 The registers must be available for inspection by the public free of charge at all reasonable times (regulation 46(6)(a)). Copies of any entry on a register must be available to any member of the public on payment of a reasonable charge (regulation 46(6)(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(5)).

¹⁰³ Sections 19-20 Freedom of Information Act 2000.

¹⁰⁴ R 4 Environmental Information Regulations 2004 (SI 2004/3391).

¹⁰⁵ For England, see: <https://www.gov.uk/guidance/access-the-public-register-for-environmental-information>. For Wales, see: <https://naturalresourceswales.gov.uk/permits-and-permissions/check-for-a-permit-licence-or-exemption/?lang=en>.

Form and content of registers

- 14.7 The register can be in any form (regulation 46(7)), but should allow proper public access. Regulators generally may choose¹⁰⁶, 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.
- 14.8 Registers must contain the information set out in paragraph 1 of Schedule 27. This includes copies of permits, applications, enforcement notices and monitoring information.
- 14.9 The regulator is not required to place information relating to criminal proceedings on the register while the proceedings are in progress (see regulation 46(2)).

Withdrawal of information

- 14.10 Paragraph 2 of Schedule 27 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.
- 14.11 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 FOIA or the EIR (see the section on [Other information legislation](#)).

National security

- 14.12 No information should be included in a register if, in the opinion of the Secretary of State or the Welsh Ministers, doing so would be contrary to the interests of national security (see regulation 47).
- 14.13 Exclusion on this ground follows a determination by the Secretary of State or the Welsh Ministers. 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 (see regulation 47(1)).

¹⁰⁶ Except in respect of Part A installations, for which Article 24 of the Industrial Emissions Directive prescribes use of the internet.

- 14.14 The Secretary of State or the Welsh Ministers may direct the regulator to refer a specified description of information to him/her for determination before its inclusion on the register (see regulation 47(3)).
- 14.15 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 (see 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 exclude this information from the register unless or until the Secretary of State or the Welsh Ministers determines that it should be included (see regulation 47(7)).

Commercial and industrial confidentiality

- 14.16 Information may be withheld from the public register where the regulator judges that it may be commercially or industrially confidential (regulation 48). When this occurs, the regulator must place a statement on the register indicating the existence of that information. “Confidential information” is defined in regulation 2(1) as information that is commercially or industrially confidential in relation to any person.
- 14.17 The possible exclusion of information from the register can be triggered where:
- the regulator decides that the information may be commercially or industrially confidential (see regulation 51); or
 - anyone objects¹⁰⁷ to the inclusion of information on the grounds of commercial or industrial confidentiality.
- 14.18 If an operator wants information it considers confidential to be excluded from the register, it should make a request at the time the information is submitted to the regulator, whether as part of an application, as monitoring information or for any other purpose. The operator should provide clear justification for exclusion for each item it wishes to be kept from the register. It will not be enough, for example, merely to assert commercial prejudice: the operator must provide evidence that the confidentiality is provided by law to protect a legitimate economic interest.

¹⁰⁷ The objector will normally 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 EPR as “the information subject”, but for simplicity in the rest of this chapter it is assumed that it will be the operator.

- 14.19 The amount of information requested to be excluded from the register should be kept to the minimum necessary to safeguard the operator's commercial advantage.
- 14.20 The operator should make sure that any information which it considers 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".
- 14.21 The regulator must give notice of its decision on whether information should 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);
 - when the operator objects to information being included after a notification by the regulator under regulation 49(1); or
 - 15 working days from when the regulation 49(1) notice is given if, by then, no response has been received to the 49(1) notice.
- 14.22 The regulator may determine requests only on the basis of 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. The regulator must always determine that information relating to "emissions" must be included on the register (regulation 51(3)).
- 14.23 In reaching its decision, 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.
- 14.24 Other information may be withheld if it cannot reasonably be separated for the purposes of inclusion on the register (see regulation 51(4)).
- 14.25 If a determination is made regarding the confidentiality of monitoring information and the information is to be withheld from the public register (see

paragraph 1(5) of Schedule 27), the regulator must place a statement in the register indicating whether the operator has complied with permit conditions.

- 14.26 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. This constitutes a written notice of a deemed decision by the regulator to place the information on the register; and a right of appeal against this deemed decision. The operator then has 15 working days from the date of this notice of deemed decision to appeal.
- 14.27 At this point, whether the regulator has actively determined that information is not confidential, or the operator has notified the regulator of its deemed determination, the regulator must keep the information 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 regulator must place the information on the register.
- 14.28 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 13 on [Appeals](#)).
- 14.29 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 (regulation 53(3)).
- 14.30 The regulator may grant confidentiality for four years or specify a shorter period when it makes the original decision (see regulation 55(1)).
- 14.31 If it wishes to keep the information off the register, the operator must re-apply for commercial confidentiality before the end of the four years (or shorter period). If the operator fails to apply, the regulator must place all previously commercially confidential information on the public register.
- 14.32 If practicable, the regulator should write and inform operators that the end of a time period is approaching, allowing sufficient time for re-application. Operators should not, however, rely on the regulator providing this service.

Other information legislation

- 14.33 FOIA and EIR provide a system of fully enforceable rights of access to information held by public authorities.

- 14.34 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.
- 14.35 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.
- 14.36 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.
- 14.37 Further information on access to information is provided by the Information Commissioner’s Office¹⁰⁸ .

¹⁰⁸ See: <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/>.

15. Exempt facilities

This chapter describes the general requirements for exempt facilities and the requirements for registering exemptions and keeping records. For further information, see the guidance on Exempt Waste Operations. This chapter does not apply to radioactive substances activities. Guidance on exempt radioactive substances activities is provided in the guidance on the scope of and exemptions from the Radioactive Substances Legislation in the UK¹⁰⁹.

- 15.1 Some facilities that pose a sufficiently low risk can be exempt from the need to hold a permit. This can happen, however, only where no applicable European Directive requires a permit. A waste operation¹¹⁰, water discharge, groundwater or flood risk activity must meet certain criteria in order to be exempt from the need for an environmental permit.
- 15.2 A facility can be exempt only if it meets the general requirements of Schedule 2.
- 15.3 The compliance effort for exempt facilities should follow the same principles as for regulated facilities (see chapter 11 on [Compliance Assessment, Enforcement and Review](#)).

Registration of exempt facilities

- 15.4 A waste operation can be exempt from the need to hold a permit only where the operation, and an establishment or undertaking in relation to that operation have been registered (see paragraph 4(1) of Schedule 2). In the case of a water discharge activity or groundwater activity either the occupier or operator must register, depending on the description of activity (see paragraphs 5(b) and 6(b) of Schedule 2 in relation to water discharge activities; and paragraphs 7(b) and 8(b) in relation to groundwater activities in Wales and England (respectively)). In the case of a flood risk activity, the operator and the flood risk activity must be registered (see paragraph 9 of Schedule 2).
- 15.5 The exemption registration authority for each type of exempt facility is identified in see paragraph 2 of Schedule 2.

¹⁰⁹ <https://www.gov.uk/government/publications/guidance-on-the-scope-of-and-exemptions-from-the-radioactive-substances-legislation-in-the-uk>.

¹¹⁰ See: <https://www.gov.uk/government/publications/environmental-permitting-guidance-exempt-waste-operations>.

15.6 The regulator is required to maintain a register of exempt facilities and relevant particulars (see paragraph 11 of Schedule 2). This is required only where the registration authority has been notified of the facility. Entries must be removed from the register in certain circumstances (see paragraph 12 of Schedule 2) including where the exempt facility is no longer in operation or has ceased to be an exempt facility. The Secretary of State or the Welsh Ministers may direct the exemption registration authority that information must be excluded from the register on the grounds of national security (see paragraph 13 of Schedule 2).

Annex 1: Connections with other legislation

A1.1 Regulated facilities will often need to comply with other relevant environmental legislation, as well as the EPR. Some of this legislation should be addressed by the environmental permit (through permit conditions and/or the decisions of the regulator). This Annex explains the main connections between EPR and legislation relating to: the regulators (paragraphs A.1.2 to A1.3); other relevant regimes (paragraphs A1.4 to A.1.21); and permitting considerations (paragraphs A1.22 to A1.35), but it should not be regarded as covering all possible environmental legislation applicable in individual cases.

Regulators

Environment Agency

A1.2 The Environment Act 1995 established the Environment Agency and conferred upon it various duties and powers. The most notable sections in relation to EPR are:

- Section 4, stating the principal aim and objectives of the Environment Agency in terms of environment protection and contributing to sustainable development¹¹¹;
- 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.

Natural Resources Wales

A1.3 The Natural Resources Body for Wales (Establishment) Order 2012 established a new statutory body, usually known as Natural Resources Wales, and provided for its purpose, membership, procedure, financial governance and initial functions. The Natural Resources Body for Wales (Functions) Order 2013 makes further provision about the Body, including provision about the modification and transfer of environmental functions to the Body.

Other relevant regimes

Contaminated Land

A1.4 A local authority is responsible for the determination of “contaminated land” in its area under Part IIA of the Environmental Protection Act 1990¹¹².

¹¹¹ 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 <http://archive.defra.gov.uk/corporate/about/partners/ea/sustainable.htm#ep>.

- A1.5 A local authority with a regulated facility in its area will normally receive a copy of the permit application for that facility, either as the regulator or as a consultee. The information in the application may suggest to the local authority that the site might meet the statutory definition of contaminated land under Part IIA and that further investigation is necessary to establish if this is the case.
- A1.6 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.
- A1.7 If the regulator finds that the site of a regulated facility is polluted as a result of the regulated activities, it cannot seek remedial action under Part IIA if enforcement action under the EPR is possible.
- A1.8 After an environmental permit has been surrendered the regulator may consider further remediation under Part IIA. EPR requirements for site restoration will usually be of a higher standard than that required under Part IIA. However, if the site is polluted with material from operations pre-dating the reference point for contamination, then remediation under the Part IIA regime is possible.
- A1.9 In 2006 the Part IIA regime was extended to include radioactive contaminated land in England and Wales, and a further modification came into force in December 2007. It does not however apply to land contaminated with radioactivity on nuclear-licensed sites. The Office for Nuclear Regulation (ONR) has powers under the Nuclear Industry Act 1965 to regulate land contaminated with radioactivity within the boundaries of nuclear licensed sites.

Control of Major Accident Hazards

- A1.10 The Control of Major Accident Hazards (COMAH) Regulations 2015¹¹³ implement Directives 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 (HSE) and the Environment Agency or Natural Resources Wales (as appropriate) acting jointly.
- A1.11 The COMAH 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;

¹¹² See: <https://www.gov.uk/guidance/land-affected-by-contamination>.

¹¹³ SI 2015 No. 483.

- 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 it has taken all measures necessary to comply with the COMAH Regulations; and
- require the operator to notify major accidents to the competent authority.

Greenhouse gas emission trading

A1.12 The Greenhouse Gas Emissions Trading Scheme Regulations 2012¹¹⁴ 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 EU. These Regulations control emissions of carbon dioxide from any of the activities listed in Schedule 1.

Groundwater Directive

A1.13 The Groundwater Directive (Directive 2006/118/EC) 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. It also, however, requires measures to prevent or limit the input of pollutants to groundwater. The EPR are one of the mechanisms for meeting the requirements for such measures.

Health and safety

A1.14 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 enforce 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.

A1.15 There is Health and Safety Legislation directly relevant to some mining waste operations, such as the Quarries Regulations 1999.

A1.16 Specific guidance on interfaces with HSE and the ONR in relation to radioactive substances activities is contained in the Guidance on Radioactive Substances Activities.

¹¹⁴ SI 2012/3038.

Land use planning

A1.17 The relationship between pollution control and planning is set out in the National Planning Policy Framework¹¹⁵.

A1.18 The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009¹¹⁶ 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.

Statutory nuisance

A1.19 Part III of the Environmental Protection Act 1990 is concerned with “statutory nuisances” and is regulated by local authorities. Local authorities must investigate complaints of statutory nuisance in their area and, if they establish a nuisance is has been, is being or is likely to be caused, must serve an abatement notice on the person causing the nuisance. Failure to comply with an abatement notice can lead to prosecution.

A1.20 The local authority has the same duties where a nuisance is caused by a regulated facility or an exempt facility. It may not bring a prosecution, however, where action to address the nuisance may be taken by the regulator (including determining that the activity is no longer exempt and should be permitted), without the consent of the Secretary of State or Welsh Ministers (as appropriate). The local authority must nevertheless take all the steps prior to prosecution but should also liaise as appropriate with the regulator.

A1.21 It should be noted that the mere existence of a permit does not automatically guarantee that action to address a statutory nuisance can be taken under that permit. Local authorities should liaise with the regulator (where that is not the local authority) to determine the regulatory position. Environmental permits relating only to radioactive substances activities or stand-alone water discharge, or stand-alone groundwater activities will not address nuisance.

A1.22 The requirement for consent prior to prosecution is to avoid “double jeopardy” for operators. However, court proceedings in relation to activities that are not covered by EPR (even though they are on the sites of regulated or exempt facilities) may be taken under the statutory nuisance provisions without the Secretary of State’s or Welsh Ministers’ consent. The same applies where the statutory nuisance cannot be addressed under the environmental permit. The provisions 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.

¹¹⁵ See: <https://www.gov.uk/government/publications/national-planning-policy-framework--2>.

¹¹⁶ SI 2009/1927.

Permitting considerations¹¹⁷

Air quality strategy

A1.23 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 and Natural Resources Wales to have regard to that strategy when discharging their pollution control functions.

Conservation

A1.24 The Conservation of Habitats and Species Regulations 2017¹¹⁸ 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 to the Habitats Directive respectively) to be designated as Special Areas of Conservation. These sites and Special Protection Areas classified under Council Directive 79/409/EEC on the Conservation of Wild Birds (the Wild Birds Directive) form a network termed Natura 2000.

A1.25 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 2017 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 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.

A1.26 These assessments should ascertain whether 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 refused, or to be granted subject to stringent conditions to protect the designated site.

A1.27 1.26 In carrying out the appropriate assessment, the regulator must consult the relevant statutory nature conservation body and have regard to any representation made by them. The Environment Agency and Natural Resources Wales will carry out this consultation in accordance with their public participation statements (see chapter 10 on [Consultation and public participation](#)).

A1.28 Part II of The Wildlife and Countryside Act 1981 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 and Natural Resources Wales. Section 28G places a duty on

¹¹⁷ In relation to Part B facilities, the permitting considerations only apply insofar as they relate to the control of air emissions.

¹¹⁸ SI 2017/1012.

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. Section 28 also requires that they consult statutory nature conservation bodies before permitting (section 28I) any operation likely to damage a SSSI (see chapter 10 on [Consultation and public participation](#)).

A1.29 The EPR 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 2006 which extends the pre-existing duty on Ministers of the Crown, government departments and the Welsh Government to all public authorities (this replaces section 74(1) of the Countryside and Rights of Way Act 2000).

Water Framework Directive

A1.30 The Water Environment (Water Framework Directive) Regulations 2017¹¹⁹ make provision for the purpose of implementing 2000/60/EC establishing a framework for Community action in the field of water policy ("the Water Framework Directive") in river basin districts within England and Wales. They require a planning process to be established to manage, protect and improve the quality of water resources. The Environment Agency and Natural Resources Wales are the competent authorities for England and Wales (respectively), and they prepare river basin management plans for Secretary of State's and the Welsh Ministers' (respectively) approval. The plans are to set environmental objectives and to set out programmes of measures to fulfil the plans. The Secretary of State, Welsh Ministers, the Environment Agency and Natural Resources Wales must exercise their functions, including permitting powers under EPR, so as to secure compliance with the requirements of the Water Framework Directive.

A1.31 The second cycle of Plans was produced, approved and published in December 2015, and the programmes of measures have to be made operational to meet the objectives identified in the Plan by December 2021. All Protected Areas have to meet their objectives by then. A third cycle of plans and programmes of measures are required for the following six years. Along with other public bodies, the Environment Agency and Natural Resources Wales are 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.

The Bathing Waters Directive (2006/7/EC)

A1.32 This Directive aims to protect designated bathing waters from faecal pollution, in order to protect human health and the environment. It therefore affects any

¹¹⁹ SI 2017 No 407.

discharges from urban waste water treatment works, as well as some other types of business and industry, that may impact on the quality of the bathing waters.

A1.33 This Directive has been transposed via the Bathing Waters Regulations 2013¹²⁰ which established water quality objectives for designated bathing waters. The Environment Agency and Natural Resources Wales must exercise their powers, including their permitting powers under the EPR, so as to ensure compliance with the requirements of the Bathing Waters Directive.

The Urban Waste Water Treatment Directive (91/271/EEC)

A1.34 This Directive aims to protect the environment from the adverse effects of the collection, treatment and discharge of urban waste water. The Directive covers statutory water and sewerage companies, since they own and operate the public sewerage system and the urban waste water treatment works. Discharges from certain industrial sectors such as food and drink processing plants can have a similar polluting effect to untreated sewage, so some of these are also covered by the Directive.

A1.35 This Directive has been transposed by Urban Waste Water Treatment (England and Wales) Regulations 1994¹²¹ which impose a duty on the Environment Agency and Natural Resources Wales to reflect the requirements of the Regulations in any permits they grant.

A1.36 A permit must be obtained for any discharge to water that is covered by any of the above Directives. This is so that the regulator can limit the potential for pollution in the receiving waters and ensure the waters meet the objectives set by the legislation, thereby protecting the environment and human health.

¹²⁰ SI 2013/1675.

¹²¹ SI 1994/2841.