

**EXPLANATORY MEMORANDUM TO**  
**THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT)**  
**(No.2) REGULATIONS 2009**

**2009 No. [XXXX]**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument makes amendments to the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007 No. 3538 as amended by section 88(2) of the Climate Change Act 2008 (c.28), the Waste Batteries and Accumulators Regulations 2009 (S.I. 2009/890) and the Environmental Permitting (England and Wales) Regulations 2009 (S.I. 2009/1799)) “the 2007 Regulations” in order to improve and simplify the regulatory regime for low environmental risk waste recovery and disposal operations across England and Wales.

2.2 It does this by substituting in particular Schedule 2 and Schedule 3 of the 2007 Regulations and by inserting a new Schedule 3A into those Regulations.

**3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**

3.1 It is intended that this instrument will have obtained the necessary parliamentary approval before 18 December 2009 however it will not come into force until 6<sup>th</sup> April 2010. The 2007 Regulations, including the amendments made by this instrument, will be revoked and remade in a consolidating instrument (The Environmental Permitting (England and Wales) Regulations 2010 (“the 2010 Regulations”).

3.2 The 2010 Regulations will revoke and remake many of the provisions of the 2007 Regulations, as well as widen the scope of those Regulations. The 2010 Regulations are expected to be laid in early January 2010 and, subject to the obtaining parliamentary approval, will come into force on 6<sup>th</sup> April 2010 immediately after this instrument comes into force. The reason for laying this instrument and seeking its approval in advance of the 2010 Regulations is to ensure that Parliament has the opportunity to fully consider the provisions of this instrument and the specific amendments it makes to the regulation of low risk waste operations.

**4. Legislative Context**

4.1 The instrument is made in exercise of the powers conferred by section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999.

4.2 The main purpose of the instrument is to amend existing national legislation set out in the 2007 Regulations to proportionately regulate low risk waste recovery and disposal activities in accordance with the Waste Framework Directive<sup>1</sup> “the Directive”. The key objective of the Directive is to ensure that:-

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<sup>1</sup> Originally adopted as Directive 75/442/EEC and codified as Directive 2006/12/EC – and which will be repealed and replaced with effect from 12 December 2010 by Directive 2008/98/EC.

“.....waste is recovered or disposed of without endangering human health and without using processes or methods which could cause harm to the environment, and in particular without risk to water, air, soil, plants and animals and without causing nuisance through noise and odours.....”

4.3 Articles 9 and 10 of the Directive require any establishment or undertaking carrying out specified waste recovery or disposal operations to obtain a permit from the competent authority.

4.4 Article 11 of the Directive gives Member States a discretion to provide exemptions from the permit requirements of Articles 9 and 10 for those establishments or undertakings (a) carrying out their own disposal of waste at the place of production and (b) those carrying out waste recovery operations if:

“competent authorities have adopted general rules for each type of activity laying down the types and quantities of waste and the conditions under which the activity in question may be exempted from the permit requirements: and if the types of quantities of waste and methods of disposal and recovery are such that the conditions imposed in Article 4 are complied with.”

Article 11 also requires any establishment or undertaking carrying out an exempt waste recovery or disposal operation to register with the competent authority.

4.5 The instrument is being introduced principally to amend the existing waste exemptions by replacing Schedule 3 to the 2007 Regulations to provide new and revised descriptions and conditions for exempt waste operations so that operators recover or dispose of waste in a manner that poses a low environmental risk without needing to obtain a permit. The instrument also amends some of the provisions relating to the registration of exemptions by replacing Schedule 2 to the 2007 Regulations.

4.6 The instrument also amends the provisions in the 2007 Regulations relating to waste operations that are not covered by the permitting requirements of the Waste Framework Directive (because they are not disposal or recovery operations) but which may, nonetheless, still require an environmental permit under 33(1)(a) of the Environmental Protection Act 1990 to the extent that they involve the deposit of waste. The 2007 Regulations provide that certain of these operations do not require an environmental permit provided that certain conditions are met. These operations are not subject to a registration requirement. This instrument continues to provide for this but in a revised form with the revisions set out in Schedule 3A, inserted by Schedule 2 to the instrument.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales. Separate systems cover waste management licensing and pollution prevention and control in Scotland and Northern Ireland.

## **6. European Convention on Human Rights**

6.1 Dan Norris MP, Minister for Farming and the Environment has made the following statement regarding Human Rights:

“In my view the provisions of the Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2009 are compatible with the Convention rights”

## **7. Policy background**

7.1 As indicated in paragraphs 4.1-4.5, the objective of the Directive is to take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment.

7.2 The 2007 Regulations provided for exemptions from environmental permitting for various waste management operations that were considered to present a sufficiently low environmental risk. The majority of exemptions have been in place since 1994 with little amendment. The most significant change made during that time was in 2005 which resulted in a two-tier system of 'simple' exemptions and more complex 'notifiable' exemptions that are subject to registration charges, annual renewal requirements and additional requirements prior to registration.

7.3 In October 2006, the Department, the Welsh Assembly Government and the Environment Agency began a major project to review the current scheme of exemptions. The project is in line with the aims of the Environmental Permitting Programme, which is implemented through the 2007 Regulations, in seeking a risk based and proportionate approach to permitting, including all waste recovery and disposal activities.

7.4 This instrument delivers a revised suite of exemptions which allow for waste management operators to register exempt waste exemptions to carry out waste disposal or recovery operations without the need for an environmental permit.

7.5 The instrument introduces a new requirement for operators to re-register exemptions every three years. It also provides transitional provisions for operators that were registered in relation to exempt waste operations under the 2007 Regulations immediately before this instrument comes into force.

### **• Consolidation**

7.6 The Department intends to revoke and replace the 2007 Regulations with a consolidated set of Environmental Permitting Regulations with effect from 6th April 2010 when it brings forward separate proposals to widen the scope of the 2007 Regulations.

## **8. Consultation outcome**

8.1 Over a thousand representatives from a broad range of industry, regulators and other stakeholders have been consulted. The stakeholders included public bodies (both national and local government, and other Government bodies); a wide range of businesses (small, medium and large); trade associations across many business areas; the third sector; and individuals.

8.2 A first informal consultation on policy ran from March to June 2007. Seventy-seven responses were received. In conjunction with the Welsh Assembly Government, and the Environment Agency, the Department initiated a second three month public consultation on proposals to revise the exemptions from environmental permitting systems across England and Wales by means of amendments to the 2007 Regulations. A draft of this instrument, which is now the subject of this Explanatory Memorandum, was included in the consultation paper. The consultation ran for 12 weeks from 31 July

to 23 October 2008; and 285 unique responses were received from a broad cross section of stakeholders.

8.3 The Summary of consultation responses and the Government's Response on the proposed amendments to the waste exemptions system across England and Wales can be found at <http://www.defra.gov.uk/corporate/consult/waste-exemption-review/index.htm>.

8.4 Eleven of the 13 proposals in the second consultation gained significant support from respondents. The two proposals which were not supported concerned charging businesses for the registration of exemptions and the proposal not to introduce a formal appeals system.

8.5 The Government concluded that the consultation responses did not provide sufficient evidence to cause it to change its view on the preferred option to amend the 2007 Regulations to reflect the outcome of the review of waste exemptions and so regulate waste recovery and disposal activities in a risk based, proportionate way.

8.6 However, the Government has decided not to charge businesses for the registration of exemptions. The exception to this is the current arrangement for the exemption for the treatment of Waste Electrical and Electronic Equipment (WEEE) which is already subject to a registration fee to recover the costs of the mandatory inspection and audit requirements under the WEEE Directive, 2002/96/EC.

8.7 The Government has not changed its view on the proposal not to introduce a formal appeals system. However, because there is some uncertainty over what matters might be raised under the new system of exemptions, it is intended to keep this issue under review and should it subsequently be found that such a mechanism would be beneficial, then a formal independent appeal system could be adopted following the end of the transitional period.

8.8 A further separate consultation was started in February 2009 by the Environmental Permitting Programme aimed at bringing other (non-waste) environmental permitting and compliance systems under the single environmental permitting system contained within the 2007 Regulations. This consultation ended on the 11 May 2009. The summary of consultation responses and the Government's Response on this consultation can be found at <http://www.defra.gov.uk/corporate/consult/waste-exemption-review/index.htm>.

## **9. Guidance**

9.1 A consultation on Government Guidance to accompany the amendments made by the instrument was published in October 2009. A copy of this consultation can be found at (<http://www.defra.gov.uk/corporate/consult/waste-exemption-review-guidance/index.htm>)

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is £0.7m to cover obligations under the instrument.

10.2 The impact on the public sector is about £5.3m per annum to cover the costs of enforcing the instrument.

10.3 An Impact Assessment is attached to this memorandum.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that the impact on small firms is small and costs are site specific.

11.3 The basis for the final decision on what action to take to assist small business was based on talking to representative organisations including those for small business, asking them their views and identifying what areas they faced challenging issues as a result of the instrument. The instrument is laid following extensive engagement with the industry.

## **12. Monitoring & review**

12.1 Although lead responsibility for implementation and monitoring remains with the Department and the Welsh Assembly the day to day operational administering of waste exemptions will remain with the Environment Agency and, in certain circumstances, Local Authorities.

12.2 The Government, in conjunction with the Welsh Assembly Government and the Environment Agency, is committed to introducing a system to regularly review and amend the exempt waste operations in the future. A proposed way forward is outlined in Chapter 14 of the Draft Environmental Permitting Guidance – Exempt Waste Operations which was published as part of the consultation on guidance to accompany the amendments made by the exemptions review referred to in paragraph 9.1. The reviews will involve local authority and/or industry representation where it is considered appropriate or necessary.

12.3 The system will provide the opportunity for the existing exempt waste operations to be assessed on how well they are working and for relevant changes to be made and also for new exempt waste operations to be provided where suitable. By basing the review on the environmental principles and criteria that have been developed during consultation consistent levels of risk assessment should continue.

12.4 The recommendations from the reviews will be made in the form of a written report on what exempt waste operation amendments are to be made or additional exempt waste operations to be included and the legislation may be amended accordingly.

12.5 The first opportunity for a review will be after the transitional provisions end on 1 October 2013.

## **13. Contact**

13.1 Jason King at the Department for Environment, Food and Rural Affairs Tel: 020 7238 1519 or email: Jason.king@defra.gsi.gov.uk can answer any queries regarding the instrument.