Draft Regulations laid before Parliament under section 62(3) of the Regulatory Enforcement and Sanctions Act 2008 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No. 0000

ENVIRONMENTAL PROTECTION, ENGLAND

The Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2015

Made - - - -	*****
Coming into force - -	*6th April 2015*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999(**a**) and section 62 of the Regulatory Enforcement and Sanctions Act 2008(**b**).

The Secretary of State has, in accordance with section 2(4) of the Pollution Prevention and Control Act 1999, consulted—

(a) the Environment Agency;

(b) such bodies or persons appearing to the Secretary of State to be representative of the interests of local government, industry, agriculture and small businesses as the Secretary of State considers appropriate; and

(c) such other bodies or persons as the Secretary of State considers appropriate.

In accordance with section 66 of the Regulatory Enforcement and Sanctions Act 2008, the Secretary of State is satisfied that the Environment Agency will act in accordance with the principles referred to in section 5(2) of that Act in exercising the powers in these Regulations.

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to section 62 of the Regulatory Enforcement and Sanctions Act 2008.

Citation, commencement and application

1. These Regulations—

(a) may be cited as the Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2015;

(b) come into force on 6th April 2015; and

(c) apply in relation to England only.

(**a**) 1999 c. 24. Section 2 was amended by section 62(13) of the Water Act 2014 (c. 21) and by S.I. 2013/755. Schedule 1 was amended by section 38 of the Waste and Emissions Trading Act 2013 (c. 33) and section 105(1) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and by S.I. 2005/925, 2011/1043 and 2012/2788.

(**b**) 2008 c. 13.

Amendments to the Environmental Permitting (England and Wales) Regulations 2010

2.—(1) The Environmental Permitting (England and Wales) Regulations 2010(**a**) are amended as follows.

(2) In regulation 2(1), after the definition of "enforcement notice", insert—

""enforcement undertaking" has the meaning given in paragraph 1(2) of Schedule 23A;".

(3) After regulation 44, insert—

"**Enforcement undertakings**

44A. Schedule 23A (enforcement undertakings) has effect.".

(4) After Schedule 23, insert the new Schedule 23A contained in the Schedule to these Regulations.

(5) In paragraph 1(2)(a) of Schedule 24, after "formal caution for", insert ", or enforcement undertaking accepted in relation to,".

Name
Parliamentary Under Secretary of State
Date Department for Environment, Food and Rural Affairs

SCHEDULE

Regulation 2(4)

New Schedule 23A

"SCHEDULE 23A

Regulation 44A

Enforcement undertakings

Enforcement undertakings

1.—(1) The Agency may accept an enforcement undertaking from a person in a case where the Agency has reasonable grounds to suspect that the person has committed any of the following offences in relation to a regulated facility or an exempt facility that has been or is being operated in England—

(a) regulation 38(1) (contravening regulation 12(1) or knowingly causing or knowingly permitting the contravention of regulation 12(1)(a));

(b) regulation 38(2) (failing to comply with, or contravening, an environmental permit condition);

(c) regulation 38(4)(a) (failing to comply with a notice under regulation 60(1) requiring the provision of information);

(d) regulation 38(5)(a) (failing to comply with the record-keeping requirements in paragraph 14(3) or (4) of Schedule 2); or

(e) regulation 38(6) (acts of third parties) so far as it relates to an offence listed in paragraphs (a) to (d).

(**a**) S.I. 2010/675, amended by S.I. 2011/988; there are other amending instruments but none is relevant.

(2) For the purposes of this Schedule, an "enforcement undertaking" is a written undertaking to take such action as may be specified in the undertaking within such period as may be so specified.

Contents of an enforcement undertaking

2.—(1) An enforcement undertaking must specify—

(a) action to secure that the offence does not continue or recur;

(b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed;

(c) action (including the payment of a sum of money) to benefit any person affected by the offence; or

(d) where restoration of the harm arising from the offence is not possible, action that will secure equivalent benefit or improvement to the environment.

(2) It must specify the period within which the action must be completed.

(3) It must include—

(a) a statement that the undertaking is made in accordance with this Schedule;

(b) the terms of the undertaking;

(c) how and when a person is considered to have discharged the undertaking.

(4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both parties agree in writing.

Acceptance of an enforcement undertaking

3. If the Agency has accepted an enforcement undertaking then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it, that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates.

General provisions on enforcement undertakings

4.—(1) The Agency must establish and publish the procedure for entering into an enforcement undertaking.

(2) The Agency must consult such persons as it considers appropriate before doing so.

(3) When it accepts an undertaking, the Agency may publish it in whatever manner it sees fit.

Discharge of an enforcement undertaking

5.—(1) If the Agency is satisfied that an enforcement undertaking has been complied with, it must issue a certificate to that effect.

(2) The Agency may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.

(3) The person who gave the undertaking may at any time apply for such a certificate.

(4) The Agency must make a decision as to whether to issue such a certificate, and give written notice of the decision to the applicant, within 14 days of such an application.

(5) The person to whom the notice is given may appeal against a decision not to issue a certificate on the grounds that the decision—

(a) was based on an error of fact;

(b) was wrong in law;

(c) was unfair or unreasonable;

(d) was wrong for any other reason.

Inaccurate, incomplete or misleading information

6.—(1) A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is regarded as not having complied with it.

(2) The Agency may by notice in writing revoke a certificate issued under paragraph 5 if it was issued on the basis of inaccurate, incomplete or misleading information.

Non-compliance with an enforcement undertaking

7.—(1) If an enforcement undertaking is not complied with, the Agency may bring criminal proceedings for the offence in respect of the act or omission to which the undertaking relates.

(2) If a person has complied partly but not fully with an undertaking, that part-compliance must be taken into account in the imposition of any criminal sanction on the person.

(3) Criminal proceedings for offences triable summarily to which an enforcement undertaking relates may be instituted at any time up to six months from the date when the Agency notifies the person that such person has failed to comply with that undertaking.

Appeals

8.—(1) An appeal against a decision of the Agency under paragraph 5 is to the First-tier Tribunal.

(2) The Tribunal may—

(a) affirm the decision;

(b) quash the decision and remit it to the Agency.

Guidance as to use of enforcement undertakings

9.—(1) The Agency must publish guidance about its use of enforcement undertakings.

(2) The Agency must revise the guidance where appropriate.

(3) The Agency must consult such persons as it considers appropriate before publishing any guidance or revised guidance.

(4) The Agency must have regard to the guidance or revised guidance in exercising its functions.

Publication of enforcement undertakings

10.—(1) The Agency must from time to time publish the cases in which an enforcement undertaking has been entered into.

(2) This paragraph does not apply in cases where the Agency considers that publication would be inappropriate."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) in relation to England. They provide for the Environment Agency to accept an enforcement undertaking in respect of an offence under regulation 38(1), (2), (4)(a), (5)(a) or (6) of those Regulations, committed in relation to a regulated or exempt facility in England. An enforcement undertaking is an undertaking from a person whom the Environment Agency suspects of having committed an offence to take certain action within a specified period (for

example action to secure that the offence does not continue or recur). A person from whom an enforcement undertaking is accepted may not be convicted of the offence to which it relates unless that person fails to comply with the undertaking.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

© Crown copyright 2014

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£4.25

UK2014121210 12/2014 19585

http://www.legislation.gov.uk/id/ukdsi/2015/9780111125601

ISBN 978-0-11-112560-1

9 780111 125601