EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT) (ENGLAND) REGULATIONS 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee

2. Declaration

2.1 Emma Hardy, Minister of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Sejal Mutty, Deputy Director for Planning, Infrastructure and Permitting, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Alex Gatt at the Department for Environment, Food and Rural Affairs can be contacted by email at the following address with any queries regarding the instrument: EnvRegs@defra.gov.uk. Alternatively, the department can be contacted by telephone: 03459 33 55 77.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations amend the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154) ("EPR 2016") to allow the Environment Agency (EA) to define 'exemptions' from permit controls in England, which maintain protections with a lower level of regulatory oversight. They also directly modify certain aspects of the existing regime.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is primarily England. The instrument also makes consequential amendments that apply in England and Wales, with the aim of implementing the reforms in England while preserving the status quo in Wales.

5. Policy Context

What is being done and why?

5.1 EPR 2016 puts in place the environmental permitting regime in England and Wales which regulates a wide variety of activities which create pollution and flood risks. It accommodates various types of risk profiles using proportionate controls. It allows 'exemptions' from permit controls where protections can be maintained with a lower level of regulatory oversight, reducing burdens on operators.

5.2 Exemptions are available for types of activity which meet the descriptions of exempt facilities in the EPR 2016, as well as certain waste operations to which section 33(1)(a) of the Environmental Protection Act 1990 (EPA 1990) does not apply. Requirements, descriptions, and/or conditions apply to each type of exemption, so that the objectives of the regime can be met even where an environmental permit is not in place.

5.3 The instrument streamlines the process used to define exemptions, enabling a more agile response to changing risk profiles, priorities, and trends. This implements recommendation 13 of Dan Corry's review of Defra's regulatory landscape.[1] It also aims to specifically address poor performance and crime in the waste sector, forming part of the government's Waste Crime Action Plan[2] and Environmental Improvement Plan[3] by removing or amending waste exemptions which are routinely abused for the purposes of waste crime.

5.4 These measures replace various provisions which previously defined exemptions in England with 'exemption conditions', while preserving the existing legislative provisions applicable in Wales. Initially, new 'deemed exemption conditions' replicate the previous exemption rules for water discharge and groundwater exemptions, preserving the rules that apply to operators for these activities.

5.5 Further new deemed exemption conditions also replicate most waste exemptions, with modifications adding new requirements. Three previous waste exemptions are not replicated and thus are removed entirely.

5.6 Deemed exemption conditions also replicate all exempt waste controlling and transporting activities (CaT), following the introduction of CaT into the environmental permitting regime by the Environmental Permitting (Waste Controlling or Transporting) and Relevant Functions of Primary Authorities (Amendment) (England) Regulations 2026 (S.I. 2026/873) on 22 July 2027.

5.7 The Environment Agency (EA) may determine or revise exemption conditions via a non-legislative process which is similar to the method used to create standard rules for permits, and which was found to work well by 2023's post implementation review of the EPR 2016.

5.8 This new process includes safeguards to control potential risks, including those relating to environmental principles: the objectives and criteria that apply to regulator functions in the EPR 2016 ensure that environmental protections are maintained and thus new exemptions may only be created for low-risk activities; the process requires public consultation; and Ministers may also direct the EA on its use of the process.

[1] https://www.gov.uk/government/publications/delivering-economic-growth-and-nature-recovery-an-independent-review-of-defras-regulatory-landscape
[2] https://www.gov.uk/government/publications/waste-crime-action-plan/waste-crime-action-plan
[3] https://www.gov.uk/government/publications/environmental-improvement-plan-2025

5.9 The measures require the EA to consult on, publish, and keep under review a public participation statement for its consultations on exemption conditions from 6 January 2027.

5.10 It is expected that the EA will continually review opportunities to use the new process to create, amend, or revoke exemption conditions, initially aiming to ease regulatory burdens for low-risk activities which are commonly used in construction projects, and also further modifying seven specific waste exemptions.

5.11 Media and public interest has focused on the modifications to waste exemptions, due to the impact of waste crime on the environment and local communities, and the large number of existing waste exemptions (with around 119,000 registered in England by organisations and individuals). Reforming the process of defining exemptions is uncontroversial, but may potentially affect more operators (with over 83,000 active permits on the public register, over 200,000 registered exemptions, and an unknown number of non-registered exemptions).

What was the previous policy, how is this different?

5.12 Previously, the EPR 2016 defined around 110 exemptions which were available in England and Wales. Government Ministers could amend them by laying secondary legislation before Parliament. This process is subject to Parliamentary capacity.

5.13 This instrument reforms the process for determining and revising the conditions that apply to waste, water discharge, groundwater and (once introduced by separate legislation) waste CaT exemptions in England, while maintaining the existing arrangements in Wales. It gives the EA new powers to determine exemption conditions, which may be determined by the EA using a new process in line with that used to define standard rules permits which was already part of the EPR 2016.

5.14 For exempt water discharge and groundwater activities, the previous exemptions will initially be replicated with new exemption conditions, for continuity. There is no immediate change for operators and existing exemption registrations will continue to apply.

5.15 For exempt waste operations and waste CaT activities the new exemption conditions largely replicate the existing conditions, with some amendments and modifications. New record-keeping requirements apply, and total waste storage limits are imposed where multiple waste exemptions are registered at the same place. Waste exemptions are no longer available where they are connected to a waste operation which is subject to a permit. Further changes are made to several specific waste exemptions, and three waste exemptions are removed entirely.

6. Legislative and Legal Context

How has the law changed?

6.1 Legislation is required to amend the rules of the environmental permitting regime set out in the EPR 2016 and thereby to achieve the objectives of this policy.

6.2 Part 2 of this instrument amends the EPR 2016 to create a new concept of ‘exemption conditions’, which are conditions applicable in England, and which are determined as a function of the EA. They relate to temporary waste storage activities to which section 33(1)(a) of the EPA 1990 does not apply; exempt waste operations; exempt water discharge activities; and exempt groundwater activities. A range of existing descriptions and conditions for these activities are disapplied in England. All exemptions continue to apply in Wales as they did prior to the entry into force of these

Regulations and these Regulations have been drafted to ensure this continuity in Wales.

6.3 The amendments also specify the process the EA must use to determine and revise exemption conditions. It must assess risks and consult relevant persons (except in relation to minor administrative changes, or where a relevant Government or EA consultation has already taken place). It must publish exemption conditions on its website and notify relevant persons of any proposals to revise or revoke them.

6.4 Part 3 of these Regulations comes into force on 6 July 2027. It amends the EPR 2016 to restrict exempt waste operations being registered at sites where a connected waste operation is carried on under an environmental permit, and to impose total limits at sites with multiple waste exemptions.

6.5 Part 4 of these Regulations comes into force on 22 July 2027, the same day that waste CaT activities are introduced to the EPR 2016 via separate legislation. It removes the descriptions and conditions for exempt waste CaT activities added by that legislation, and allows the EA to determine and revise exemption conditions for these activities.

6.6 Part 5 of these Regulations make transitional provisions. They require the EA to initially publish 'deemed exemption conditions' on its website. These replicate (with modifications, in the case of exempt waste operations and exempt waste CaT activities) the descriptions and conditions disapplied by Parts 2 and 4.

6.7 Modifications for exempt waste operations and exempt waste CaT activities are set out in the Schedule. These add new requirements for record keeping and update various descriptions and conditions for waste exemptions. From 6 April 2027, they also remove three types of waste exemption.

Why was this approach taken to change the law?

6.8 Sub-delegating an additional power to determine exemption conditions to regulators helps achieve the objectives of the permitting regime more effectively and is in line with the regulatory approach used to create and amend standard rules, which was already a feature of the EPR 2016. This instrument has been designed to replicate the existing processes used to determine standard rules, subject to the safeguards discussed in paragraph 5.8.

6.9 A more generalised approach would not be appropriate, as it would likely necessitate more substantial revisions to the environmental permitting regime, which is otherwise considered to be successful in supporting Government objectives.

6.10 The modifications to exempt waste operations and exempt waste CaT activities implement specific changes without any action being needed by the EA. This is appropriate as the Government has already committed to make these changes following earlier consultations.

7. Consultation

Summary of consultation outcome and methodology

7.1 Defra and the Welsh Government held a public consultation from 15 January 2018 to 26 March 2018 on a range of proposals to tackle crime and poor performance in the waste sector, including waste exemptions reforms, via the digital platform citizen space, email and post.[4]

[4] Reforming the waste exemptions system: www.gov.uk/government/publications/reforming-the-waste-exemptions-system

7.2 The summary of responses for the waste exemptions reform element of the consultation was published on 3 July 2018. Government statements on this policy were published on 6 February 2023 and 15 July 2025. The consultation results demonstrated broad support for the proposals and confirmed that reform is needed to reduce risks and criminal abuse of the regime. This instrument implements the proposals with some changes to ensure that they are proportionate and pragmatic.

7.3 Another public consultation on proposals to reform exemptions across all sectors was undertaken jointly by Defra and the Welsh Government from 8 April to 3 June 2025.[5] It sought opinion on giving regulators powers to amend exemptions without secondary legislation, subject to the safeguards detailed in paragraph 5.7 as well as limiting the number of exemptions that may be registered to a single site.

7.4 A summary of responses and Government response was published on 27 October 2025. Of the 79 responses, the majority (73%) supported the amendments proposed. No significant costs or burdens to operators and the public were identified. This instrument implements most aspects of the proposals (except in respect of flood risk activities). However, there was no clear support to limit the number of exemptions registered at a single site outside of the waste sector and this proposal is not being taken forward.

7.5 Defra has worked with officials from the Welsh Government in developing this instrument and agreed that it will implement reforms in England only.

8. Applicable Guidance

8.1 Guidance and information about environmental permits can be found online.[6] This includes core guidance on the environmental permitting framework[7], which provides information about the hierarchy of regulatory approaches, as well as waste exemption guides[8]. This guidance will be updated as appropriate following the making of these regulations.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment considering the practical modifications to waste exemptions is published alongside the Explanatory Memorandum on the legislation.gov.uk website. This instrument's other measures do not directly change the rules for operators and thus a separate 'de minimis' assessment of their impacts has been prepared.

Impact on businesses, charities and voluntary bodies

9.2 The impact of the modifications to waste exemptions and waste CaT activities on business, charities and voluntary bodies has a net positive value. They will reduce opportunities for illegal waste activity by removing or modifying exemptions routinely abused by criminals and so benefit compliant waste operators, as well as the environment and the wider economy. The principal costs arise from operators

[5] Exemptions reform to the Environmental Permitting (England and Wales) Regulations 2016: https://consult.defra.gov.uk/environmental-regulations/exemptions-reform-to-the-environmental-permitting/
[6] https://www.gov.uk/environment/environmental-permits
[7] https://www.gov.uk/government/publications/environmental-permitting-guidance-core-guidance--2
[8] www.gov.uk/government/collections/waste-exemption-guides

impacted by transitioning to new rules, such as by applying for or varying permits and adapting their operations to comply with new requirements.

9.3 The direct impact of this instrument's other measures is limited, and primarily related to familiarisation with the revised regime. To ensure potential indirect impacts may be properly assessed, the provisions allowing the EA to determine exemption conditions impose a requirement for separate consideration and consultation.

9.4 These measures will affect operators of all sizes, including small and micro businesses. The direct impacts will not disproportionately affect SMEs. It is not appropriate to exempt small and micro businesses from these measures, as doing so would undermine the policy objectives.

9.5 The impact of the waste exemption reforms on the public sector is beneficial through reduced illegal waste activity and regulatory costs associated with investigations and incidents and increased tax revenues. The wider exemption reforms also improve regulatory flexibility and responsiveness.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is evaluation as part of post implementation reviews carried out under Regulation 80 of the EPR 2016, which must assess the extent to which the regime achieves its objectives, whether those objectives remain appropriate, and the extent to which they could be achieved in another way which involves less onerous regulatory provisions.

10.2 The waste exemption provisions will also be evaluated as part of Defra's Resources and Waste Policy Programme Evaluation, an independent, externally commissioned programme which assesses the impact of major waste and recycling reforms and is due to report in March 2029. The impact evaluation will review how this policy contributes to the wider objective of reducing waste crime. Indicators relevant to this policy include changes in the information available to regulators, levels of reported waste crime, and stakeholder perceptions of the effectiveness of regulatory controls and the fairness of the waste management sector.

10.3 The evaluation will conduct a process evaluation of this policy, carried out after implementation, to provide early feedback on whether the policy is operating as intended and to identify any areas where delivery or design could be adjusted.

10.4 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015. Emma Hardy has made the following statement: That a statutory review clause has not been included in this instrument, because the EPR 2016 already contains provision for a review of the regulations to take place every 5 years.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument sub-delegates to the EA the power to determine conditions applicable to exemptions under EPR 2016. This transfers to the EA responsibility for setting exemption conditions in relation to waste operations, waste controlling or transporting activities, water discharge activities and groundwater activities.

12. European Convention on Human Rights

12.1 The Emma Hardy has made the following statement regarding Human Rights:
"In my view the provisions of the Environmental permitting (England and Wales) (Amendment) (England) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").