EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) REGULATIONS 2016

2016 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 The Environmental Permitting (England and Wales) Regulations 2016 ("the 2016 Regulations") consolidate and replace the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) ("the 2010 Regulations"), which have been amended 15 times to date. The 2016 Regulations set out an environmental permitting and compliance regime that applies to various activities and industries.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument varies between provisions.

4. Legislative Context

4.1 The 2010 Regulations have been amended 15 times to date and, in accordance with good administration, are now consolidated by the 2016 Regulations.

4.2 The 2016 Regulations make domestic provision but also retranspose 15 Directives. A transposition note setting out the details of the transposition is submitted with this explanatory memorandum.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and the sea adjacent to England out as far as the seaward boundary of the territorial sea, and Wales. The territorial application varies between provisions.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for the Department of Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Environmental Permitting (England and Wales) Regulations 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 On 23rd June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. It will be for the Prime Minister to begin negotiations to exit the EU, and until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

7.2 The environmental permitting framework was originally created in 2007 to simplify the process of applying for, regulating and measuring compliance in permitting. The legislation created a more efficient and effective regime, reducing the bureaucracy associated with the various separate permitting regimes that had previously been in place.

7.3 Since the coming into force of the 2010 Regulations, there have been 15 amending instruments, including, for example, provisions to strengthen powers for regulators to tackle illegal operators and provisions to add a new permitting regime for flood defences.

7.4 In the interests of good administration, given the importance of legislation being available in a readily accessible and comprehensible form, the 2016 Regulations consolidate the 2010 Regulations. This will assist industry and the public in general in accessing the current legislation. Annex A to the explanatory memorandum contains a correlation table to assist readers in identifying where provisions of the 2010 Regulations may be found in the 2016 Regulations.

7.5 As well as consolidating and updating the legislation, there is a set of amendments to the 2016 Regulations which revise the rules for mobile crushing of lamps that contain mercury (the T17 exemption). This will restrict those who are able to crush lamps under the T17 exemption and reduce the number of lamps which can be crushed without a permit. It will provide protection to human health and the environment whilst maintaining a proportionate approach to the regulation of waste lamps.

7.6 For administrative reasons, the 2016 Regulations provide that the registrations of the T17 exemption under the 2010 Regulations will cease to have effect. Anyone wishing to operate under the new rules, as set out in the 2016 Regulations, will have to register to use the new T17 exemption. Registration is simple, quick and free. The relevant regulators will publicise this in advance of the coming into force of the 2016 Regulations.

7.7 There is also a correction to allow the Canal and Rivers Trust and other statutory undertakers to be able to dredge without the need for a permit under a flood risk activity scheme in England (see Schedule 25). This continues the process which was in place prior to April 2016 when flood risk activities were included in the permitting regime.

8. Consultation outcome

8.1 A joint consultation by Defra and the Welsh Government on the consolidation of the 2010 Regulations was published on 18th August 2015 and ended on 27th October 2015 (duration of 10 weeks). At that time, there had been 12 amending instruments. A draft of the 2016 Regulations was included with the consultation. This took account of

amendments to the 2010 Regulations made by those amending instruments, as well as amendments made by other legislation, so as to reflect the up-to-date legal position.

8.2 Since the consultation closed, there have been three further amending instruments. Individual consultations were published on each of those.

8.3 The amendments on the T17 exemption were also the subject of a joint consultation by Defra and the Welsh Government, published on 14th December 2015 and ending on 8th February 2016.

8.4 A summary and response to the consultation on the consolidation was published on 10th December 2015, which can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/484024/epr-consolidation-consult-sum-resp.pdf.

8.5 Six respondents submitted comments: the National Farmers Union (NFU), UK Environmental Law Association (UKELA), Dŵr Cymru Welsh Water, representatives from Serco and Sellafield Ltd and a group of Welsh local authorities.

8.6 Some comments were outside the scope of the consultation. Comments or queries (including specific drafting points) made by two industry representatives, NFU and the local authorities were taken on board or cleared by correspondence. UKELA welcomed the consolidation, noting that the 2016 Regulations continue the practice of referential drafting (drafting by reference to specific provisions of EU instruments). As a result of this comment, we have provided links in the transposition note to the EU Directives being retransposed so as to improve accessibility.

8.7 A summary and response to the consultation on the T17 exemption was published on 22nd March 2016, which can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509604/lamp-crushing-consult-sum-resp.pdf.

8.8 There were 30 respondents who submitted comments: 17 private businesses, 5 local authorities and public bodies, 2 consultants, 2 NGOs, 2 professional bodies, and 2 private individuals.

8.9 The consultation set out three options for changing the T17 exemption. Most respondents supported the changes proposed under all three options and over half expressed a preference for the option implemented through this instrument. The main reason given for preferring this option was that it will provide companies with flexibility regarding how they recycle their lamps, whilst addressing the hazards posed by mercury contained in the lamps. Some companies that compete with commercial mobile lamp crushers did not support the continuation of mobile lamp crushing in any form. Defra has addressed this concern by requiring commercial mobile lamp crushers to operate under a permit.

9. Guidance

9.1 Environment Agency guidance on environmental permitting was revised, simplified and streamlined under the Smarter Environmental Regulation Review (SERR) initiative, published on 1st February 2016.

9.2 There is an overarching Government guidance document (the Core Guidance) which explains the environmental permitting system in detail. This guidance is underpinned by separate Government and regulator guidance on different aspects of the regime.

9.3 An explanatory note will be provided to accompany the Core Guidance to explain the changes made by the 2016 Regulations.

10. Impact

10.1 The environmental permitting regime is a common framework for applying for, receiving, varying, transferring and surrendering permits, along with compliance, enforcement and appeals arrangements. It rationalises the previous permitting and compliance regimes into a common framework that is easier to understand and simpler to use. A key component is that it allows applicants that would otherwise require several permits for activities falling under various regulations on a single site to complete a single application, and to be issued with one permit. The framework introduces different levels of control, based on risk: exclusions (very low risk activities which may be undertaken without any permit), exemptions (lower risk activities which may be undertaken after registering, which is free), standard rules permits (standard requirements and conditions for the relevant activities are set out so that applicants can determine in advance whether the permit is applicable to their proposals) and bespoke permits (permits written specifically for activities which are unique or of higher risk).

10.2 The impact on business, charities or voluntary bodies is reduced administrative costs.

10.3 The impact on the public sector is also reduced administrative costs as the regulators can focus resources on higher risk activities.

10.4 Full Impact Assessments of the effect that the 2010 Regulations, and its amending instruments where appropriate, will have on the costs of business and the voluntary sector are available at www.legislation.gov.uk. A separate Impact Assessment has not been produced for this consolidation.

10.5 The expected net cost to business of the T17 exemption is between £50k and £175k. This is a low impact measure and as such no full Impact Assessment has been produced.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 The activities regulated by the 2016 Regulations include activities carried out by large and small businesses. It is not possible to exclude small businesses from regulation given that the purpose of the regime is protection of the environment and human health. However, the approach taken does provide exclusions and exemptions from permitting in specified cases, with an associated simplified regime, including in relation to inspections by the relevant regulator. Environmental permitting is focussed upon reducing administrative burdens, and its risk-based approach allows the regulators to minimise burdens to all regulated businesses, but its benefits are greatest for small businesses which have fewer resources available to spend additional time on administration.

11.3 The consultation document was sent to businesses and business organisations, including those that represent small businesses.

12. Monitoring & review

12.1 A review clause has been included in accordance with sections 28 to 32 of the Small Business Enterprise and Employment Act 2015 (c. 26). The review clause in the 2010

Regulations set out that the first report would be published before 6th April 2017. The review clause in the 2016 Regulations extends this date to the end of December 2019 to enable the review to consider all aspects of the consolidated legislation.

12.2 The regulators will provide information to Defra which will enable the Department to monitor the effectiveness of these measures.

13. Contact

13.1 Sophie Alderton at Defra, Telephone: 0208 026 4116 or email: sophie.alderton@defra.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX A – CORRELATION TABLE

Regulations

2010 Regulations	**2016 Regulations**
1-44	*1-44 (numbering unchanged)*
44A	39
45-57	*45-57 (numbering unchanged)*
57A	58
58-66	59-67
66A and 66B	68 and 69
67	70
67A	71
68	4
69	-
70	79
71-85	-
86-87	77
88-92	-
93-99	77
100	-
101	77 and 78
102	78
103-105	-
106	74
107	75
108	73 and 74
109	-
110	80

Schedules

2010 Regulations	**2016 Regulations**
1-6	*1-6 (numbering unchanged)*
7	-
7A	7
8	*8 (numbering unchanged)*
8A	24
9	9 Part 1
9A	9 Part 2
10-12	*10-12 (numbering unchanged)*
13	-
13A	13
14	*14 (numbering unchanged)*
15	-
15A	15
16	*16 (numbering unchanged)*
17	-
17A	17
18-23	*18-23 (numbering unchanged)*
23ZA	25
23A	26
24	27
25	3 Part 5
26	29
27	28
28	-