



**THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES)  
REGULATIONS 2010 (AS AMENDED) (“THE EP REGULATIONS”)**

**EXPLANATORY NOTES**

Under **Regulation 13 (1)**, Environmental Permits are granted to operate an installation or mobile plant carrying out one or more of the activities listed in **Part B to Part 2 Schedule 1** of the Regulations. These explanatory notes are provided for operators of such installations or mobile plant to assist in the interpretation of their duties under these provisions.

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## **STATUTORY REQUIREMENTS**

A Permit is issued under the **Environmental Permitting Regulations 2010**.

The responsibilities you have under the **Health and Safety at Work Etc. Act 1974** in the workplace remains in force.

In addition, the Permit does not relieve you of your obligations to obtain any of the following:

- **Planning Permission** for the installation and any new construction
- **Building Regulation** approval for any construction work
- **Hazardous Substances Consent**
- **Water Discharge Consent**
- **Waste Disposal Licence**

## **REPORTING REQUIREMENTS AND CONTACT DETAILS**

A Permit may require the submission of certain information to Newark and Sherwood District Council. In addition, the authority has the power to seek further information at any time under Regulation 60 provided that it acts reasonably. Where a Permit condition imposes a requirement to forward documents or to report a specified occurrence, the following shall be used:

By Post            **Environmental Health, Newark & Sherwood District Council, Kelham Hall, Kelham, Newark, Notts, NG23 5QX**

By Phone        During office hours:        **01636 650000**  
Outside office hours:      **01636 655588**

By Fax            Facsimile No.:              **01636 655626**

By E-mail        [environmental.health@nsdc.info](mailto:environmental.health@nsdc.info)

## **AVAILABLE GUIDANCE**

Title	Available from
EP Core guidance for the Environmental Permitting (England and Wales) Regulations 2010	<a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211852/pb13897-ep-core-guidance-130220.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211852/pb13897-ep-core-guidance-130220.pdf</a>
General Guidance Manual on Policy and Procedures for A2 and B Installations	<a href="http://www.defra.gov.uk/industrial-emissions/las-regulations/guidance/">http://www.defra.gov.uk/industrial-emissions/las-regulations/guidance/</a>
Process Guidance Notes	<a href="http://www.defra.gov.uk/industrial-emissions/las-regulations/guidance/">http://www.defra.gov.uk/industrial-emissions/las-regulations/guidance/</a>

## **BEST AVAILABLE TECHNIQUES (BAT)**

**Schedule 8** of the Regulations describes 'BAT' as:

“the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole; where -

- Techniques - includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned
- Available techniques - means those techniques developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, and which are reasonably accessible to the operator.
- Best - means most effective in achieving a high general level of protection of the environment as a whole.”

A permit includes conditions that must be complied with. We may include general conditions requiring the operator to use BAT to prevent or reduce emissions that are not covered by more specific permit conditions. This is intended to cover the most detailed level of plant design and operation where the operator will usually be in the best position to understand what pollution control means for an installation in practice.

This replaces the 'implied' BAT duty on the operator to use BAT in relation to matters not covered by specific permit conditions. For PPC permits that transfer automatically into EP, the implied duty will continue automatically when it becomes an EP permit (**EP Regulation 106(1)**).

## **PERMIT FEES AND CHARGES**

Under **Regulation 65**, permit holders are required to pay a fee for the subsistence of the Permit which must be used by the local authority for administration and enforcement purposes. This fee is payable on an annual basis from the 1st April. Should an operator fail to pay the fee promptly, **Regulation 65 (5)** allows the local authority to revoke the permit.

The level of fees and charges is set down in a local authority charging scheme and are proportionate to a risk rating for the installation. A list of the current fees and charges scheme is available from:

<http://www.defra.gov.uk/industrial-emissions/files/List-of-Charges-April-2013.pdf>

Further guidance on the fees and charges associated with permitted activities can be found in **Chapter 23 General Guidance Manual (GGM)**

## **PUBLIC REGISTER**

Under **Regulation 46**, we have a duty to maintain a “public register”. Subject to some exclusion (see following sections), the registers will contain the following:

- a) Applications for a permit;
- b) Notices asking for information and responses to such;
- c) Advertisements and representations in response to such (unless requested not to by the person responding)
- d) In the case of c) above, a statement to the effect that representations were made but have been omitted – must not identify the person making the representation;
- e) Statutory consultee responses to applications or applications for variations;
- f) Permits;
- g) Notifications of changes in the operation of installations;
- h) Applications for variations, transfers or surrenders of permits;
- i) Variations, transfers and surrenders granted;
- j) Revocations;
- k) Enforcement or suspension notices;
- l) Notices withdrawing enforcement and suspension notices;
- m) Notice of an appeal including the grounds of the appeal, relevant correspondence between the appellant and the regulator, and the decision/notice which is the subject of the appeal;
- n) Representations in response to appeal (unless requested not to by the person responding);
- o) In the case of n) above, a statement to the effect that representation were made but have been omitted – must not identify the person making the representations;
- p) The appeal decision and any accompanying report;
- q) Convictions, formal cautions; to include the name of the person, date of conviction/caution, and (where appropriate) penalty and name of court. This requirement does not override the Rehabilitation of Offenders Act 1974 regarding spent conditions, and authorities must take care to remove relevant entries at the appropriate time;
- r) Monitoring data obtained by the authority from its own monitoring, or sent to the authority on accordance with a permit condition or regulation 60(2) notice;
- s) If any monitoring information is omitted because it is commercially confidential, the authority must put a statement on the register indicating whether relevant permit conditions are being complied with, based on the withheld information;

The registers are available for inspection by the public free of charge during office hours at:

**Newark and Sherwood District Council Offices**  
**Kelham Hall**  
**Kelham**  
**Newark**  
**NG23 5QX**

## **COMMERCIAL CONFIDENTIALITY**

Under **Regulations 48-51**, information that may be considered commercially confidential may be excluded from the public register.

An operator may request certain information to remain confidential i.e. not be placed on the public register. The operator must request the exclusion from the public register of commercially confidential information at the time of supply of the information requested. The operator should provide clear justification for each item wishing to be kept from the register. The amount of information excluded from the register should be kept to the minimum necessary to safeguard the operator's commercial advantage

We will determine this request within 28 days of the date of such an application and will issue a Determination Notice detailing our decision. The notice may specify a time period over which the information is to remain commercially confidential (if not specified, it will be four years beginning with the date of the determination). The operator may appeal to the Secretary of State within 21 days of the notification of the decision.

If the application is granted we will then place a statement on the public register stating that certain information has been withheld and stating the reasons why, plus whether this information is relevant to a permit condition, and whether the permit condition has been complied with.

Further guidance on commercial confidentiality can be found in **Chapter 8 General Guidance Manual (GGM)**

## **NATIONAL SECURITY**

Under **Regulation 47**, information may be excluded from the public register on the grounds of National Security. If it is considered that the inclusion of information on a public register is contrary to the interests of national security, the operator may apply to the Secretary of State, specifying the information and indicating the apparent nature of risk to national security. The operator must inform us of such an application, we will not include the information on the public register until the Secretary of State has decided the matter.

## **INSTALLATION CHANGES**

### **Changes proposed by operator**

When deciding to make changes to an installation which already has a permit, the operator should notify the local authority of the change.

A 'change in operation' means a change in the nature or functioning, or an extension, of the installation, which may have consequences for the environment. This could entail either technical alterations or modifications in operational or management practices, including changes to raw materials or fuels used and to the installation throughput.

A definition of 'substantial change', which is incorporated by the EP Regulations, is "a change in operation which, in the opinion of the competent authority, may have significant negative effects on human beings or the environment".

The current Regulations do not include a variation notification procedure. For PPC permits transferring automatically to EP, the notification condition is automatically included in the permit by virtue of **Regulation 69(6)** (EP Regulations 2007) and **Regulation 108(4)** (EP Regulations 2010). For new permits, we will include a notification condition for changes in operation.

If the operator is in doubt over whether a particular change is substantial, they should ask the opinion of the local authority. Further guidance on the meaning of substantial change can be found in **Annex III General Guidance Manual (GGM)**

### **Making the change without notifying or applying to the authority**

Many changes will not have consequences for the environment and notification will not be necessary. There may be cases where it is nonetheless good practice for an operator to do so in order to keep the authority informed.

It is also good practice to notify authorities of any administrative changes, such as the name or address of the operator (where the installation has not changed ownership), and authorities can simply amend the permit without going through any formal procedures.

### **Changes initiated by the local authority**

If we decide that the existing permit conditions warrant amendment without receiving any notification or application from the operator, we can make the necessary changes to the permit.

This can occur when this authority decides that the conditions need varying after a periodic review (**EP Regulation 34**), due to revised guidance from government or because of the transfer of a permit to another operator.

## **PERMIT VARIATIONS**

### **Variation application made by operator**

If the Operator wants any of the conditions of the Permit to be changed, it must submit a formal application. Applications for variations which entail a substantial change ('substantial variations') must be accompanied by the relevant fee and are subject to the same publicity and consultation arrangements as for new permit applications.

Applications for variations which do not amount to a substantial change ('non-substantial variations') do not require either any consultation or publicity, or the payment of a fee. Also the form need only be completed to the extent necessary and proportionate to the change which is proposed to be made.

The variation application form is available from:

<http://www.newark-sherwooddc.gov.uk/media/newarkandsherwood/imagesandfiles/environmentalhealth/pollution/Part%20B%20Variation%20form%20EP.pdf>

### **Variation initiated by the local authority**

The procedures for substantial variations on the initiative of local authorities are contained in **Part 1 of Schedule 5** to the EP Regulations. As with operator-instigated variations, changes initiated by authorities can be either involve substantial or non-substantial variations. Where substantial, the publicity, consultation and fee provisions apply.

Where, following completion of these stages, the authority decides to vary the permit, it must, in accordance with **Paragraph 17 of Schedule 5**, notify the operator of the decision (including the reasons for it). This must include the date on which any variation takes effect, any rights of appeal, and both how to make an appeal and what the time limit is.

It is good practice for an authority to give advance warning, where possible, that they propose to activate these procedures. At minimum it is recommended that authorities explain to the operator, preferably in writing, before serving the variation notice, what will be happening, what opportunities there will be for him/her to make representations, and the rights of appeal.

There are no procedures in the EP Regulations for handling authority-initiated variations which do not entail a substantial change. Authorities should therefore at minimum:

- ensure that the operator is consulted over the proposed variation and any comments are considered
- give reasons for their decision
- inform the operator of his/her rights of appeal, which are the same as for substantial variations.

No fee is payable for non-substantial variations, which are intended to be covered by the income from the annual subsistence charge.

### **PERMIT SURRENDER**

Should operations cease and where an operator of an installation or mobile plant wishes to surrender their permit either in whole or part, they must notify this authority using the relevant notification form and provide the information as specified in **Regulation 24**.

The surrender application form is available from:

<http://www.newark-sherwooddc.gov.uk/media/newarkandsherwood/imagesandfiles/environmentalhealth/pollution/Part%20B%20Surrender%20Form%20EP.pdf>

Further guidance on the surrender procedure can be found in **Chapter 19 General Guidance Manual (GGM)**

### **PERMIT TRANSFER**

Installations may change hands through normal business transactions. **Regulation 21** allows for permit transfers either for the whole installation, or for one or more parts of it through partial transfer arrangements.

When an operator wants to transfer all or part of a permit a joint application should be made by both the existing and proposed holders using the relevant transfer form. A transfer will usually be allowed unless we consider that the proposed holder will not be the person who will have control over the operation of the installation or will not ensure compliance with the conditions of the transferred Permit. New operators should have the appropriate management systems and the competence to run installations properly in compliance with the existing permit.

The transfer application form is available from:

<http://www.newark-sherwooddc.gov.uk/media/newarkandsherwood/imagesandfiles/environmentalhealth/pollution/Permit%20Transfer%20form%20EP.pdf>

Further guidance on the transfer procedure can be found in **Chapter 25 General Guidance Manual (GGM)**

## **APPEALS**

Under **Regulation 31 and Schedule 6** operators have the right of appeal against the conditions attached to their permit. The right to appeal does not apply in circumstances where the notice implements a direction of the Secretary of State.

Appeals against a variation notice do not have the effect of suspending the operation of the notice. Appeals do not have the effect of suspending permit conditions, or any of the mentioned notices.

Notice of appeal against the conditions attached to the permit must be given within six months of the date of the notice, which is the subject matter of the appeal. The Secretary of State may in a particular case allow notice of appeal to be given after the expiry of this period, but would only do so in the most compelling circumstances.

### **How to appeal**

There are no forms or charges for appealing. However, for an appeal to be valid, appellants (the person/operator making the appeal) are legally required to provide:

- written notice of the appeal;
- a statement of the grounds of appeal;
- a statement indicating whether the appellant wishes the appeal to be dealt with by written representations procedure or a hearing - a hearing must be held if either the appellant or enforcing authority requests this, or if the Planning Inspector or the Secretary of State decides to hold one.
- (appellants must copy the above three items to the local authority when the appeal is made)
- a copy of any relevant application;
- a copy of any relevant permit;
- a copy of any relevant correspondence between the appellant and the regulator; and
- a copy of any decision or notice, which is the subject matter of the appeal.

Appellants should state whether any of the information enclosed with the appeal has been the subject of a successful application for commercial confidentiality under **Regulation 48**, provide relevant details and unless such information is provided all documents submitted will be open to inspection. Further guidance on commercial confidentiality can be found in the sections above.

## **Where to send your appeal documents:**

Appeals should be despatched on the day they are dated, and addressed to:

**The Planning Inspectorate  
Environmental Appeals Administration  
Room 4/19 - Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol  
BS1 6PN**

On receipt of an appeal and during the appeal process the main parties will be informed about the next steps, and will also normally be provided with additional copies of each other's representations.

To withdraw an appeal, which may be done at any time, the appellant must notify the Planning Inspectorate in writing and copy the notification to the local authority who must in turn notify anyone with an interest in the appeal.

## **Appeal Costs**

Guidance from the Planning Inspectorate states that operator and regulator would be normally expected to pay their own expenses during an appeal. Where a hearing or enquiry is held as part of the appeal process, either the appellant or the local authority can apply for costs. Applications for costs are normally heard towards the end of the proceedings and will only be allowed if the party claiming them can show that the other side behaved unreasonably and put them to unnecessary expense. There is no provision for costs to be awarded where appeals are dealt with by written representatives.