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STATUTORY INSTRUMENTS

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**2013 No. 766**

**ENVIRONMENTAL PROTECTION,  
ENGLAND AND WALES  
HEALTH AND SAFETY**

**The Environmental Permitting (England and  
Wales) (Amendment) (No. 2) Regulations 2013**

<i>Made</i>	- - - -	<i>27th March 2013</i>
<i>Laid before Parliament</i>		<i>2nd April 2013</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>2nd April 2013</i>
<i>Coming into force</i>	- -	<i>26th April 2013</i>

The Secretary of State in relation to England (and Wales and Scotland, so far as relating to regulation 3 of the following Regulations), and the Welsh Ministers in relation to Wales (except so far as relating to regulation 3), have, in accordance with section 2(4) of the Pollution Prevention and Control Act 1999(1) (“the 1999 Act”), consulted—

- (a) the Environment Agency;
- (b) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small business as they consider appropriate; and
- (c) such other bodies or persons as they consider appropriate.

The Secretary of State has also, in accordance with section 2(4)(b) of the 1999 Act, consulted the Scottish Environment Protection Agency in relation to regulation 3.

The Secretary of State makes the following Regulations—

- (a) so far as relating to regulation 3, in relation to England, Wales and Scotland in exercise of the powers conferred by section 2 of, and paragraph 20(1) of Schedule 1 to, the 1999 Act;
- (b) otherwise, in relation to England in exercise of the powers conferred by sections 2 and 7(9) of, and Schedule 1 to, the 1999 Act.

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(1) 1999 c. 24. Functions of the Secretary of State under or in relation to section 2, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales, except in relation to offshore oil and gas exploration and exploitation, by article 3(1) of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). But this was subject to article 3(2), which provided that, so far as any of those functions are exercisable by the Secretary of State in relation to a cross-border body but which, by their nature, are not functions which can be specifically exercised in relation to Wales, such functions are exercisable by the National Assembly for Wales in relation to that body concurrently with the Secretary of State. Functions of the National Assembly for Wales were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

The Welsh Ministers make the following Regulations, except so far as relating to regulation 3, in relation to Wales in exercise of the powers conferred by sections 2 and 7(9) of, and Schedule 1 to, the 1999 Act.

### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2013.

(2) They come into force on 26th April 2013.

(3) Subject to paragraph (4), these Regulations extend to England and Wales.

(4) Regulation 3 extends to England and Wales and Scotland.

### **Amendment of the Environmental Permitting (England and Wales) Regulations 2010**

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

(2) In regulation 3 (interpretation: Directives), for the definition of “the Landfill Directive” substitute the following definition—

““the Landfill Directive” means Council Directive [1999/31/EC](#) on the landfill of waste(3), as read with Council Decision [2003/33/EC](#) establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of, and Annex II to, Directive [1999/31/EC](#)(4);”.

(3) In paragraph 5 of Schedule 10 (landfill), after sub-paragraph (3) insert—

“(4) The regulator may exercise those relevant functions so as to permit the storage of metallic mercury in accordance with Regulation (EC) No [1102/2008](#) of the European Parliament and of the Council on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury(5).

(5) For the purposes of Article 5(1) of that Regulation, the regulator must send to the Secretary of State—

(a) a copy of any permit issued for a facility designated to store metallic mercury temporarily or permanently; and

(b) the respective safety assessment pursuant to Article 4(1) of that Regulation.”.

### **Amendment of the Control of Major Accident Hazards Regulations 1999**

3. For regulation 3(3)(d) (application) of the Control of Major Accident Hazards Regulations 1999(6), substitute—

“(d) waste land-fill sites, except—

(i) tailing ponds or dams and other operational tailings disposal facilities containing dangerous substances, in particular when any such facilities are used in connection with the chemical and thermal processing of minerals;

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(2) [S.I. 2010/675](#); a relevant amendment was made by [S.I. 2011/988](#). There are other amendments not relevant to this instrument.

(3) OJ No L 182, 16.7.99, p 1, as last amended by Council Directive 2011/97/EU amending Directive [1999/31/EC](#) as regards specific criteria for the storage of metallic mercury considered as waste (OJ No L 328, 10.12.11, p 49).

(4) OJ No L 11, 16.1.03, p 27.

(5) OJ No L 304, 14.11.08, p 75.

(6) [S.I. 1999/743](#). Regulation 3(3)(d) was substituted by regulation 4(1) of [S.I. 2005/1088](#). There are other amendments not relevant to this instrument.

- (ii) sites used for the storage of metallic mercury pursuant to Article 3(1)(b) of Regulation [\(EC\) No 1102/2008](#) of the European Parliament and of the Council on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury.”.

25th March 2013

*de Mauley*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

Signed on behalf of the Welsh Ministers

27th March 2013

*Alun Davies*  
Minister for Natural Resources and Food  
One of the Welsh Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Council Directive 2011/97/EU (OJ No L 328, 10.12.11, p 49), which amends Council Directive [1999/31/EC](#) on the landfill of waste (OJ No L 182 16.7.99, p 1) (“the Landfill Directive”) as regards specific criteria for the storage of metallic mercury considered as waste.

Article 5(3)(a) of the Landfill Directive prohibits the storage of liquid waste in landfill. Regulation [\(EC\) No 1102/2008](#) (OJ No L 304, 14.11.08, p 75) (“the Mercury Regulation”) contains a derogation from that prohibition. These Regulations make provision relating to the use of that derogation.

Regulation 2(2) amends the Environmental Permitting (England and Wales) Regulations 2010 ([S.I. 2010/675](#)) to replace the definition of the Landfill Directive so as to take account of that Directive’s amendment by Council Directive 2011/97/EU. Regulation 2(3) amends those Regulations to enable the regulator to exercise its functions so as to permit the storage of liquid waste in accordance with the Mercury Regulation and to impose obligations to send copies of environmental permits and safety assessments to the Secretary of State.

Regulation 3 amends the Control of Major Accident Hazards Regulations 1999 ([S.I. 1999/743](#)) in relation to England, Wales and Scotland to bring sites used for the storage of metallic mercury pursuant to Article 3(1)(b) of the Mercury Regulation within the scope of application of those Regulations.

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