

GUERNSEY STATUTORY INSTRUMENT

ENTITLED

The Environmental Pollution (Prescribed Operations) (Exemptions) Regulations, 2019 *

[CONSOLIDATED TEXT]

NOTE

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* G.S.I. No. 117 of 2019; as amended by the: Charities etc. (Guernsey and Alderney) Ordinance, 2021 (No. XXIV of 2021); Environmental Pollution (Prescribed Operations) (Exemptions) (Amendment) Regulations, 2022 (G.S.I. No. 86 of 2022).

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The Environmental Pollution (Prescribed Operations) (Exemptions) Regulations, 2019

ARRANGEMENT OF REGULATIONS

1. Interpretation.
2. Exemption from requirement to hold a licence for operations regulated under FEPA.
3. Further exemptions from the requirement to hold a licence.
4. Registration in connection with exempt operations.
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SCHEDULE Descriptions of operations exempt from the requirement to hold a licence.

Explanatory Note.

(Made on 29th November, 2019.)

The Environmental Pollution (Prescribed Operations) (Exemptions) Regulations, 2019

THE DIRECTOR OF ENVIRONMENTAL HEALTH AND POLLUTION REGULATION, in exercise of the powers conferred on him by section 3 of the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010^a, that section as applied by section 3 of the Environmental Pollution (Air Pollution) Ordinance, 2019^b and section 72 of the Environmental Pollution (Guernsey) Law, 2004^c and of all other powers enabling him in that behalf, hereby makes the following Regulations: –

Interpretation.

1. (1) In these Regulations, unless the context requires otherwise –

"agricultural land" means land used for the purposes of agriculture,

"agriculture" means dairy farming, livestock breeding and keeping, horticulture, fruit growing, seed growing, market gardening, the use of land as an orchard or for grazing, meadow or pasture land where, in each case, carried on as a trade or business,

^a Ordinance No. XVIII of 2010; amended by Ordinance No. IX of 2016 and the Environmental Pollution (Air Pollution) Ordinance, 2019.

^b Approved by the States on 27th November, 2019.

^c Order in Council No. XIII of 2004; amended by Order in Council No. XIII of 2010; Nos. XV and XVI of 2015; Ordinance No. XXXIII of 2003; No. XXXVIII of 2006; No. XLIX of 2006; No. XIII of 2007; No. XVIII of 2010; No. V of 2011; No. IX of 2016 and the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019.

"charity" has the meaning given by [section 4 of the Charities and Non Profit Organisations (Enabling Provisions) (Guernsey and Alderney) Law, 2009],

"the Director" means the person appointed as Director of Environmental Health and Pollution Regulation under section 4 of the Law,

"exempt operation" means an operation of a description set out in the Schedule,

"Guernsey" includes the Islands of Guernsey, Herm and Jethou, all other islands, islets and rocks around the coasts of those Islands, whether or not attached at low water, and all of the territorial waters adjacent thereto,

"landfill" means a waste disposal site for the deposit of waste into or under land,

"the Law" means the Environmental Pollution (Guernsey) Law, 2004,

"medicinal product" has the meaning in section 133 of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008^e,

"place of special interest" means a **"site of special significance"** or a **"protected monument"** as defined in section 92 and Schedule 2 to the Land Planning and Development (Guernsey) Law, 2005^f,

^e Order in Council No. V of 2009; section 133 is amended by Ordinance No. IX of 2016; there are other amendments not relevant to these Regulations.

^f Order in Council No. XVI of 2005; amended by Order in Council No. XIII of 2010, Ordinances Nos. XXI, XXII, XXV, XXVII and XXVIII of 2007, No. XVIII of

"planning permission" means –

- (a) planning permission granted under the Land Planning and Development (Guernsey) Law, 2005, or
- (b) permission granted under the Island Development (Guernsey) Law, 1966^g,

"prescription only medicine" means a medicinal product of a description or falling within a class specified in section 2 of the Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009^h,

"relevant fee" means any fee or charge payable under regulations made by the States Policy & Resources Committee under section 8 of the Law,

"register" means the register established and maintained by the Director under regulation 4,

"specially controlled waste" means any description of waste identified by Ordinance under section 37 of the Law as so dangerous or difficult to dispose of that special measures need to be taken in respect of itⁱ,

2011, Nos. IX and XI of 2016 and No III of 2019.

^g Ordres en Conseil Vol. XX, p. 276; amended by Vol. XXII, p. 573; Vol. XXIII, p. 231; Vol. XXVII, p. 355; Vol. XXXI, p. 61; Vol. XXXII, p. 33; repealed with savings by Order in Council No. XVI of 2005; see also Ordinance No. XXX of 2007.

^h Ordinance No. XXV of 2009; amended by Ordinance No. XXV of 2010 and No. IX of 2016.

ⁱ See section 26 of the Environmental Pollution (Waste Control and Disposal)

and

"waste" has the meaning in the Law except that it does not include –

- (a) radioactive waste, and
- (b) any substance which is explosive within the meaning of the Explosives (Guernsey) Law, 1905^j.

(2) For the purposes of these Regulations, a container, lagoon, place or area is secure in relation to waste kept in it if all reasonable precautions are taken to ensure that the waste cannot escape from it and members of the public are unable to gain access to the waste, and any reference in these Regulations to "secure storage" means storage in a secure container, lagoon, place or area.

NOTE

In regulation 1, the words in square brackets in the definition of the expression "charity" in paragraph (1) were substituted by the Charities etc. (Guernsey and Alderney) Ordinance, 2021, section 52(3), Schedule 8, paragraph 3(1)(b) and paragraph 3(2)(b), with effect from 29th April, 2022.

Exemption from requirement to hold a licence for operations regulated under FEPA.

2. [...] The following descriptions of operations are exempt from the requirement under the Law to hold a licence –

Ordinance, 2010 and regulation 2 of the Waste Control and Disposal (Specially Controlled Waste) Regulations, 2010.

^j Ordres en Conseil Vol. III, p. 414; amended by Ordres en Conseil Vol. III, p. 473; Vol. V, p. 30, Vol. XV, p. 11; there are other amendments not relevant to these Regulations.

- (a) deposits of waste for which a licence is required under Part II of the Food and Environment Protection Act 1985^k as extended to the Bailiwick of Guernsey ("FEPA"), [...]
- [(ab) discharges, falling within section 1(1) of the Environmental Pollution (Water Pollution) Ordinance, 2022, for which a licence is required under FEPA, and]
- (b) operations which do not need a licence under Part II of FEPA by virtue of any order made under section 7 of FEPA^l.

NOTE

In regulation 2, first, the parentheses and number omitted in square brackets was revoked and, second, paragraph (ab) was inserted and the word omitted in square brackets at the end of paragraph (a) was revoked by the Environmental Pollution (Prescribed Operations) (Exemptions) (Amendment) Regulations, 2022, regulation 1(2), respectively paragraph (a) and paragraph (b), with effect from 28th November, 2022.

Further exemptions from the requirement to hold a licence.

3. (1) Subject to the following provisions of these Regulations and to any conditions set out in the Schedule, the operations described in the Schedule are exempt from the requirement under the Law to hold a licence.

(2) In the case of an exempt operation set out in paragraph 1, 5, 6,

^k An Act of Parliament (1985 c.48); extended to the Bailiwick of Guernsey by the Food and Environment Protection Act 1985 (Guernsey) Order 1987 (U.K. S.I. 1987/665 as amended by U.K. S.I. 1997/1770).

^l See G.S.I. Nos. 11 and 23 of 1992.

11 and 16 of the Schedule, the exemption from the requirement to hold a licence only applies if –

- (a) the exempt operation is carried on by or with the written consent of the owner of any part of the land where the operation is, or is to be, carried on, or
- (b) the person carrying on the operation has provided a written statement to the Director that the person has made all reasonable enquiries to identify any such owner and obtain such written consent but such enquiries have failed to identify any such owner.

(3) Paragraph (1) does not apply to the carrying on of an exempt operation insofar as it involves specially controlled waste unless otherwise indicated in the Schedule.

(4) Paragraph (1) applies in relation to an exempt operation involving the disposal or recovery of waste by a person only if the type and quantity of waste submitted to the operation and the method of disposal or recovery are consistent with the objectives of ensuring that waste is recovered and disposed of without –

- (a) causing pollution and in particular, without –
 - (i) endangering the health or well-being of man,
 - (ii) using processes or methods which could harm the environment or living organisms other than man which are supported by the environment

and, in particular, without risk to water, air,
land, plants and animals,

- (b) causing nuisance through noise or odours, or
- (c) adversely affecting the countryside or a place of special interest.

Registration in connection with exempt operations.

4. (1) The exemption in regulation 3(1) is subject to the condition that any person carrying on an exempt operation which involves the recovery or disposal of waste, must, subject to paragraph (2) –

- (a) register with the Director, in writing –
 - (i) in the case of an exempt operation being carried on immediately before the commencement of these Regulations which has not been registered in accordance with regulation 4(1)(a) of the Waste Control and Disposal (Exemptions) Regulations, 2010^m, within one month starting from 2nd December, 2019, or
 - (ii) in any other case, within 3 months starting with the date that operation was first carried on at any time after these regulations came into force, and

^m G.S.I. No. 44 of 2010; amended by Ordinance No. IX of 2016.

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- (b) in so doing provide the Director, in writing, with the information set out in paragraph (4)(a) to (c).

(2) Any particulars referred to in paragraph (4) which are contained on the register established and maintained under regulation 4(2) of the Waste Control and Disposal (Exemptions) Regulations, 2010 immediately before 2nd December, 2019 –

- (a) are deemed to be registered with the Director under paragraph (1), and
- (b) must be contained in the register referred to in paragraph (3),

with effect from the date these Regulations come into force.

(3) The Director must establish and maintain a register for the purposes of paragraph (1) of persons carrying on exempt operations involving the recovery or disposal of waste.

(4) Subject to paragraph (5), the register must contain the following particulars in relation to each person carrying on an exempt operation –

- (a) the person's name and address,
- (b) the operation which constitutes the exempt operation, and
- (c) the place where the operation is carried on.

(5) The Director must, except in relation to particulars which are required to be contained in the register under paragraph (2), enter the particulars in

paragraph (4) in the register when the person registers such particulars with the Director or if the Director otherwise becomes aware of those particulars.

- (6) The Director must provide facilities for –
 - (a) making the information contained in entries in the register available for public inspection at such reasonable times during such business days as the Director may from time to time determine, and
 - (b) enabling copies of that information to be taken or obtained upon payment of the relevant fee.
- (7) The register may be kept in any form.

Revocation.

5. The Waste Control and Disposal (Exemptions) Regulations, 2010 are revoked.

Extent.

6. These Regulations shall have effect in Guernsey.

Citation.

7. These Regulations may be cited as the Environmental Pollution (Prescribed Operations) (Exemptions) Regulations, 2019.

Commencement.

8. These Regulations shall come into force on the 2nd of December, 2019.

SCHEDULE Regulations 1(1) and 3
DESCRIPTIONS OF OPERATIONS EXEMPT FROM THE REQUIREMENT TO
HOLD A LICENCE

1. (1) The cleaning, washing or spraying of waste consisting of packaging or containers so that it can be reused.

(2) The storage of the waste described in subparagraph (1) in connection with the operations described in that subparagraph, provided that the waste stored does not, at any time, exceed 50 tonnes.

2. (1) Subject to subparagraphs (3), (5) and (6) –

(a) the spreading of any of the wastes listed in the Table on agricultural land, or

(b) the spreading of slurry (arising from the carrying on of agriculture on land) –

(i) on agricultural land, and

(ii) in accordance with a manure management plan (however named) for the farm in question, which has been approved by the States of Guernsey Committee for the Environment & Infrastructure.

(2) Subject to subparagraph (4), the spreading of any of the wastes listed in Part 1 of the Table on land which is a forest, woodland, park, garden, verge, landscaped area, sports ground, recreation ground, churchyard, cemetery or on land

controlled by the States of Guernsey for the purposes of Guernsey waterⁿ.

(3) The total quantity of all descriptions of waste set out in the Table spread on agricultural land must not exceed 10 tonnes per hectare in any period of 12 months.

(4) The total quantity of any one description of waste set out in the Table spread on any land, other than that agricultural land, must not exceed –

(a) 10 tonnes per hectare, or

(b) in the case of dredgings from inland waters, 100 tonnes per hectare,

in any period of 12 months.

THE TABLE

Part 1

Waste soil or compost.

Waste wood, bark or other plant matter.

Part 2

Waste lime.

Dredgings from any inland waters.

(5) The Director must be notified in writing of any proposal to

ⁿ Guernsey Water is a division of the States' Trading Supervisory Board.

spread wastes listed in Part 2 of the Table prior to any spreading taking place and such notification must include –

- (a) the name, address and telephone number of the person proposing to carry out the operation,
- (b) a description of the types and quantities of waste, and
- (c) particulars of where and when the waste is to be spread.

(6) Where, upon receipt of a notification under subparagraph (5), the Director is of the opinion that the spreading in question may give rise to environmental pollution, the Director may decide that such spreading is not exempt and notify the person who made the notification under subparagraph (5) accordingly.

3. (1) Subject to subparagraph (2), the storage of waste set out in the Table, at the place where it is to be spread in reliance upon the exemption in paragraph 2, provided that such waste is not stored there for more than 3 months.

(2) The storage of waste in liquid form is only exempt under subparagraph (1) if it is stored in a secure container or lagoon and no more than 100 tonnes is stored in any one container or lagoon.

4. The storage and spreading of waste consisting of soil or rock, waste from the dredging of inland waters or arising from any construction or demolition work on any land in connection with its reclamation or improvement if –

- (a) by reason of industrial or other development the land is incapable of beneficial use without treatment,

- (b) the spreading is carried out in accordance with the terms and conditions of a planning permission for development relating to the reclamation or improvement of the land where such a permission is required, and
- (c) no more than 1,000 cubic metres per hectare of such waste is spread on the land,

except that this paragraph does not apply to the disposal of waste at a site designed or adapted for the final disposal of waste by landfill.

5. (1) The storage and composting of biodegradable waste at the place where the waste is produced or the compost is to be used or at any other place occupied by the person producing or using the waste or compost provided that the total quantity of waste being stored or composted does not exceed –

- (a) 100 cubic metres in a case where such waste is used for cultivating mushrooms, or
- (b) 50 cubic metres where such waste is used for any other purpose.

(2) In this paragraph "**composting**" includes any biological transformation process that results in materials which may be spread on land for the benefit of agriculture or ecological improvement.

6. The manufacture of soil or soil substitutes from waste arising from demolition or construction or from waste which consists of aggregates provided that –

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- (a) the manufacture is carried out at the place where the waste is produced or where the manufactured product is to be applied to land, and
- (b) the total amount manufactured at that place on any one day does not exceed 100 tonnes.

7. The manufacture of finished goods from waste metal, waste glass, waste ceramics, waste rubber, waste textiles, waste wood, waste paper or waste cardboard.

8. The beneficial use of waste provided that it is put to use without further treatment and that use does not involve its disposal.

9. The storage on a site of waste which arises from demolition or construction work or tunnelling or other excavations or which consists of ash, slag, clinker, rock or road planings if –

- (a) the waste will be used for works to be carried on at the site,
- (b) in the case of waste not produced on the site, it is not stored at the site for more than 3 months before such work starts, and
- (c) no more than 1,000 tonnes of such waste is stored at the site.

10. The storage, laundering or other cleaning of waste textiles prior to their use or recovery.

11. The storage and chipping, shredding, cutting or pulverising of waste plant matter (including wood and bark), or sorting and baling of sawdust or wood shavings, on any premises if –

- (a) such operations are carried on for recovery or reuse, and
- (b) no more than 50 tonnes of any such waste is dealt with on the premises in any 7 day period.

12. The deposit of waste arising from dredging inland waters, or from clearing plant matter from inland waters, if –

- (a) the waste is deposited along the bank of the waters where the dredging or clearing takes place, or
- (b) the waste is deposited along the bank of any inland waters so as to result in benefit to agriculture or ecological improvement.

13. The recovery or disposal of waste at the place where it is produced, provided that this is an integral part of the process that produces it and the storage at that place of waste which is intended to be so recovered or disposed of.

14. The baling, compacting, crushing, shredding or pulverising of waste at the place where it was produced and the storage at that place of waste which is to be so baled, compacted, crushed, shredded or pulverised.

15. The storage of returned goods that are waste for a period not exceeding 6 months by their manufacturer, distributor or retailer.

16. The burning of waste consisting of waste wood or waste bark from plants or other plant matter on land in the open provided that –

- (a) the waste is burned on the land where it was grown, and
- (b) the total quantity of any such waste burned in any period of 24 hours does not exceed 1 tonne.

17. The burial of a dead domestic pet in the garden of a domestic property where the pet lived, provided that the remains are not hazardous to any person who may come into contact with it.

18. (1) The storage of samples of waste, including samples of waste which is specially controlled waste, which are being or are to be subjected to testing and analysis, at any place where they are to be tested or analysed, if the samples are taken –

- (a) by or on behalf of a person in the exercise of any statutory function,
- (b) by or on behalf of a holder of a licence in pursuance of the conditions of that licence,
- (c) by or on behalf of the owner of land from which the samples are taken,
- (d) by or on behalf of any person to whom the duty in section 36(1) of the Law applies in connection with the person's duties under that section, or
- (e) by or on behalf of a person for the purposes of research.

(2) The storage of samples of waste taken in any of the circumstances referred to in subparagraph (1) in connection with their use as evidence in any legal proceedings.

19. The secure storage at a pharmacy or at premises occupied by the Committee for Health & Social Care, pending their disposal there or elsewhere, of waste medicinal products (including those which are specially controlled waste by virtue of being a prescription only medicine) that have been returned to the Committee for Health & Social Care by an individual, such products having previously been held by such person, or a member of their household, for their own personal use, if –

- (a) the total quantity of such returned waste medicinal products at the pharmacy or hospital does not exceed 5 cubic metres at any one time, and
- (b) any such waste medicinal products are not stored there for longer than 6 months.

20. The temporary storage of waste, pending its collection, at the place where it was produced if –

- (a) the waste is stored on that site for no more than 3 months,
- (b) the volume of waste stored at any time on that site does not exceed 50 cubic metres, and
- (c) the waste is stored separately, from other materials on the site, in secured containers or secured areas.

21. (1) Subject to subparagraph (2), the transportation of waste and any collection, removal or handling of waste, which is carried out in connection with that transportation of waste, where carried out in any of the following circumstances—

- (a) by a charity in connection with its operations carried out for charitable purposes,
- (b) by a person who is transporting such waste within the same premises between different places in those premises,
- (c) by the States of Guernsey States' Trading Supervisory Board where such waste is sewage being transported in vehicles, or
- (d) by the States of Guernsey Committee for Health & Social Care where such waste is a medicinal product which is being transported from a retail pharmacy in connection with amnesties or other schemes (however named) initiated by the States of Guernsey Committee for Health & Social Care for the safe return of such medicinal products to that Committee.

(2) An operation is not exempt under subparagraph (1)(a), (c) or (d) if it is being transported by a person by way of business for or on behalf of a person referred to in those subparagraphs.

EXPLANATORY NOTE

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

These Regulations revoke and replace the Waste Control and Disposal (Exemptions) Regulations, 2010 (2010 Regulations).

The Regulations provide for exemptions from the requirement to hold a licence under the Environmental Pollution (Guernsey) Law, 2004 (regulations 2 and 3 and the Schedule) for certain operations relating to waste.

The exemptions in regulation 3, for the operations described in the Schedule, are subject to the conditions set out in regulation 3 and the Schedule.

These conditions include that any person carrying on an exempt operation described in the Schedule which involves the recovery or disposal of waste must, as a condition of the exemption, register specified information with the Director of Environmental Health and Pollution Regulation (see regulation 4). Registration is not required, in relation to persons carrying on operations involving the recovery or disposal of waste, where the relevant information is already contained on the equivalent register maintained under the 2010 Regulations.

Otherwise, such registration must be made within three months of the date the operation is first carried on or, where waste operation is being carried on at the date these regulations come into force and has not been registered in accordance with the 2010 Regulations, within one month of that coming into force date.

The main difference from the 2010 Regulations is that three exemptions for descriptions of operations relating to waste have been removed as they were not used in practice. The exemptions removed concern operations (including storage) in relation to specified recyclates and other specified waste in former paragraphs 5, 10 and 11 of the Schedule to the 2010 Regulations.

The title of the Regulations has also been changed to reflect the fact that certain operations requiring a licence (prescribed operations) are now prescribed under the Environmental Pollution (Air Pollution) Ordinance, 2019. No general exemptions for such new prescribed operations are provided for under these Regulations but a business may apply to the Director for an individual exemption.

These Regulations come into force on 2nd December, 2019.

** The text of this Explanatory Note is as it was when the Statutory Instrument was first made – that is to say that the Explanatory Note has not been updated to take account of any changes made by subsequent amending Statutory Instruments with their own Explanatory Notes.