

The Environmental Permitting (Exercise of Functions) (Wales) Direction 2018

Explanatory Note

This Direction is made pursuant to regulations 33 and 62 of the Environmental Permitting (England and Wales) Regulations 2016¹ (“EPR 2016”). It concerns the allocation of environmental regulatory responsibilities for a Part A(1) installation², operated by Kronospan Limited in Chirk, North Wales.

Under the default application of the EPR 2016, Natural Resources Wales (NRW) is the regulator for Part A(1) installations³ located in Wales. However, in accordance with The Environmental Permitting (England and Wales) (Exercise of Functions) (Wrexham County Borough Council) Direction 2014⁴, the functions of ‘regulator’ in relation to the activities specified in that direction carried on at the Kronospan installation⁵ are exercisable by Wrexham County Borough Council (WCBC). NRW is the ‘regulator’ for all other activities carried on at that installation.

Article 3 of this Direction revokes the 2014 Direction, the effect of which is to re-instate the default application of the EPR 2016. However, this Direction also makes provision for a transitional period, to ensure an orderly and effective transfer of the WCBC regulator functions to NRW.

Article 4 places a requirement on NRW to take the necessary steps to replace the existing environmental permits (issued by NRW and WCBC) for the Kronospan installation with a single consolidated environmental permit issued by NRW alone. The replacement permit must at least continue to authorise the same activities as are authorised by the existing permits. This obligation does not require NRW to authorise any activity that is not properly authorised by the existing permits as at the date the Direction comes into force (for example any activities that are not yet authorised as at that date). It also does not limit NRW’s functions under the EPR 2016 to determine new or vary existing environmental permit conditions as they consider appropriate.

Article 5(1) requires (and empowers) WCBC to continue to regulate the part of the installation covered by the current WCBC permit during the transitional

¹ S.I. 2016/1154.

² See the EPR 2016, regulation 2(1).

³ See the EPR 2016, regulation 32(1)(b).

⁴ The 2014 Direction was made under section 33 of the Environmental Permitting (England and Wales) Regulations 2010. Those regulations were revoked and replaced by the EPR 2016. The 2014 Direction continues to have effect by virtue of EPR 2016, regulation 77(2)(h). The 2014 Direction replaced the Pollution Prevention and Control (England and Wales) (Exercise of Functions) (Wrexham County Borough Council) Direction 2003 – which was issued by the Secretary of State under regulation 8(8) of the Pollution Prevention and Control (England and Wales) Regulations 2000.

⁵ The Part A(1) installation operated by Kronospan Limited at Maesgwyn Farm, Holyhead Road, Chirk, Wrexham, LL14 5NT as shown edged in red on the Site Plan Reference 7000/282, which is attached at Schedule 2 of the existing WCBC permit.

period – that is from the date this Direction comes into force until the point that NRW issue the consolidated permit replacing the existing permits. At that point the Direction will automatically cease to have effect (see article 7), and NRW will be the sole regulator for the entire installation. During the transitional period, article 5(3) requires WCBC to notify NRW before exercising certain functions (including the function to grant, consolidate, vary, transfer or revoke a permit, and functions relating to enforcement of permit conditions).

Article 5(4) ensures that NRW is able to exercise any functions under the Regulations in relation to the part of the installation covered by the current WCBC permit for the purpose of complying with the requirement in Article 4.

Article 6 requires WCBC to provide NRW with such information or assistance as NRW request in complying with the requirement in Article 4.

Article 7 provides that this Direction automatically ceases to have effect at the point that NRW issues a single consolidated permit for the Kronospan installation.

The Environmental Permitting (Exercise of Functions) (Wales) Direction 2018

The Welsh Ministers, in exercise of the powers conferred by regulations 33 and 62 of the Environmental Permitting (England and Wales) Regulations 2016⁶, give the following Direction.

In accordance with regulations 33(5) and 62(3), the Welsh Ministers have notified, and consulted:-

- (a) the Natural Resources Body for Wales;
- (b) Wrexham County Borough Council;
- (c) Kronospan Limited

In accordance with regulation 33(5), this Direction has been published on the Welsh Government website.

Title and commencement

1. The title of this Direction is the Environmental Permitting (Exercise of Functions) (Wales) Direction 2018 and it comes into force on 31 March 2018.

Interpretation

2.- (1) in this Direction-

“activities” (“*gweithgareddau*”) refers to any activities within the meaning given in paragraph 1(1) of Part 1 of Schedule 1 to the Regulations; and includes any directly associated activity;

“the Kronospan permits” (“*trwyddedau Kronospan*”) means the NRW permit and the WCBC permit;

⁶ S.I. 2016/1154, to which there are amendments not relevant to this direction.

“NRW” (“*CNC*”) means the Natural Resources Body for Wales;

“the NRW permit” (“*trwydded CNC*”) means the environment permit issued by NRW, with the reference number EPR/BW9999IG, together with any variation to that permit determined before the end of the day before the day this Direction comes into force;

“the premises” (“*y fangre*”) means the site of the installation operated by Kronospan Limited at Maesgwyn Farm, Holyhead Road, Chirk, Wrexham, LL14 5NT and shown as the land edged in red on the Site Plan Reference 7000/282, which is attached at Schedule 2 of the WCBC permit;

“the Regulations” (“*y Rheoliadau*”) means the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154);

“WCBC” (“*CBSW*”) means Wrexham County Borough Council;

“the WCBC permit” (“*trwydded CBSW*”) means the environmental permit issued by WCBC, with the reference number WCBC/IPPC/03/KR(V3, together with any variation to that permit determined before the end of the day before the day this Direction comes into force.

(2) Any expression that is not otherwise defined in this Direction has the same meaning as in the Regulations.

Revocation of the existing Direction

3. - The Environmental Permitting (England and Wales) (Exercise of Functions) (Wrexham County Borough Council) Direction 2014 is revoked.

Requirement on NRW to consolidate environmental permits

4.– NRW must ensure that the activities authorised under the Kronospan permits are authorised under a single consolidated environmental permit issued by NRW.

Transitional provision – exercise of functions pending the issue of a consolidated permit

5.- (1) WCBC must continue to exercise the functions of the regulator under the Regulations in relation to the activities authorised by the WCBC permit.

(2) But paragraph (1) is subject to paragraphs (3) and (4).

(3) WCBC must notify NRW of any intention to exercise functions under or in pursuance of regulations 13 (grant of an environmental permit), 18 (consolidation of an environmental permit), 20 (variation of an environmental permit), 21 (transfer of a permit), 22 (revocation of an environmental permit: general) or 38 (offences) of the Regulations in relation to the activities authorised by the WCBC permit before exercising those functions.

(4) NRW may exercise functions of the regulator under the Regulations in relation to the activities authorised by the WCBC permit for the purpose of complying with the requirement under Article 4 of this Direction.

Cooperation

6.-(1) If NRW asks WCBC to provide NRW with information held by WCBC, that NRW requires for the purpose of exercising its functions in compliance with this direction, WBCB must provide the information unless the WCBC is prohibited from providing it by virtue of an enactment or any other rule of law.

(2) If NRW asks WCBC to exercise its functions to provide NRW with other assistance that NRW requires for the purpose of exercising its functions in compliance with this direction, WCBC must provide the assistance unless the WCBC considers that doing so would—

(a) be incompatible with the WCBC's own duties, or

(b) otherwise have an adverse effect on the exercise of WCBC's functions.

Expiry

7.- This Direction ceases to have effect when NRW issues a single consolidated environmental permit in relation to the installation operated by Kronospan Limited at the premises.

Signed

A handwritten signature in black ink, appearing to read "Hannah Blythyn". The signature is written in a cursive style with a long horizontal stroke at the end.

Minister for Environment.

Under authority of the Cabinet Secretary for Energy, Planning and Rural
Affairs, one of the Welsh Ministers.

Date

22/03/18