

Regulatory guidance note 5: operator competence

Introduction

We require operators holding environmental permits to be competent to deal with the environmental risks associated with their activities.

This document explains how we assess the competence of permit holders.

The Environmental Permitting Regulations (EPR) and Section 9 of the [Environmental Permitting Regulations Core Guidance](#) set out requirements for the competence of operators holding environmental permits.

We may consider operator competence at any time, whether as part of determining an application for a new permit, transfer or variation. The exception is when an operator notifies us about the transfer of standalone water discharge, groundwater, or flood risk activity, which is done by notification. We will assess whether the operator is competent enough to comply with the conditions that are likely to be included in the permit.

The factors which may suggest that the operator is unlikely to comply with the permit conditions are:

- an inadequate management system
- inadequate technical competence
- a record of poor behaviour or non-compliance with previous regulatory requirements
- inadequate financial competence.

Not all of these factors will be assessed for every regime under EPR, this is explained further below.

If we consider the operator is not competent or not willing to comply with the conditions, we may refuse an application or revoke (or partially revoke) a permit.

Operator competence may also be considered at any time during the life of the permit. Once a permit has been granted, an operator must follow all the conditions in it. We will check compliance with these conditions as well as competence. We may take enforcement action or revoke the permit if we think the operator is no longer a competent.

We assess requirements in the following areas, as appropriate, according to the class of regulated facility the activity falls under:

- Environment Management Systems (EMS)
- Technical competence
- Record of compliance (including relevant convictions)

- Financial competence (including financial provision for some types of regulated facility).

This RGN does not apply to Flood Risk Activity Permits. For these permits, competency is demonstrated by the contents of the permit application and proposed method of working. You can find more information on our website: [Natural Resources Wales / Environmental permits for flood risk activities](#)

We apply these requirements in proportion to the complexity of the regulated facility and its environmental risks. For example, the environmental management system for a chemical process must be quite detailed to cover the range of possibilities but we only need simple written instructions and adequate training/supervision for spreading used sheep-dip on land or for a small sewage discharge to surface water.

Guidance is available to help operators comply with their permit. For most sectors, this is included in our guidance [How To Comply with your environmental permit \(PDF\)](#), which explains what permit conditions and rules mean and what an operator needs to do to comply with their permit. This includes the information needed to meet the four areas of competency mentioned above.

Requirements for permit holders and applicants

The requirements for each permit depends on the class of facility.

Waste operations and waste mobile plant

- A written management system proportionate to the complexity of the regulated activities (a formal system externally certified by a UKAS accredited body is encouraged for complex or higher risk sites).
- Training as part of management systems and compliance with an approved technical competence scheme.
- A good record of compliance, including consideration of relevant convictions.
- Financial competence is assessed in all cases, but financial provision is only required for inert landfills.

Installations

- A written management system proportionate to the complexity of the regulated activities (a formal system externally certified by a UKAS accredited body is encouraged for complex or higher risk sites).
- Training as part of management systems.
- Installations that are also relevant waste operations also require compliance with an approved technical competence scheme.
- A good record of compliance, including consideration of relevant convictions.
- Financial competence is assessed, but financial provision is only required for landfills.

Mining waste facilities

- A written management system.

- Training as part of management systems.
- A good record of compliance, including consideration of relevant convictions.
- Financial competence is assessed, but financial provision is only required for Category A and hazardous waste mining facilities.

Water discharge and groundwater activities

- A written management system.
- Training as part of management systems.
- Relevant convictions and financial competence may be considered as part of compliance assessment.

Radioactive substances

- A written management system.
- Training as part of management systems.
- Relevant convictions, compliance record and financial competence will be assessed as appropriate.
- Financial Provision is usually only required for High Activity Sealed Sources (HASS).
- Those authorised to accumulate or dispose of radioactive waste must seek advice from a Radioactive Waste Adviser (RWA).
- Holders of sealed sources should also seek advice from a suitable radiation protection expert.

Medium combustion plant and specified generators

- A written management system.
- Training as part of management systems.
- Relevant convictions and financial competence may be considered as part of compliance assessment.

Flood risk activities

This RGN **does not apply** to flood risk activity permits.

What we may assess as part of a check of operator competence

Management systems

We expect an effective written Environmental Management System (EMS) ('management system') to be in place, appropriate to the complexity and nature of the operation and proportionate to the environmental risk. This is a set of procedures describing the risks posed by the operations and what the operator must do to minimise the risk of pollution from their activities.

We will check the adequacy and implementation of management systems at both the application and operational stages, particularly at newly permitted operations.

Guidance on creating a management system can be found in [How To Comply with your environmental permit \(PDF\)](#).

Some waste permits that were granted before 6 April 2008 do not contain a specific condition that requires a working plan or management system, however the regulations state that all permit holders will need to manage and operate their waste activity in line with a written management system.

For the most complex regulated activities, for example installations, and waste operations dealing with hazardous waste or the permanent deposit of waste, we encourage operators to use a management system based on a recognised standard. The system should include safeguards for legal compliance and a commitment of continuous improvement of environmental performance. Preferably this should also be certified by an independent United Kingdom Accreditation Service (UKAS) accredited body.

For simpler activities, a management system may be a more basic, in-house system.

Applicants for standard permits are required to indicate the type of management system they intend to adopt on the application form. We do not require a copy of the management system to be submitted.

Applicants for bespoke permits must give us an outline summary (not a copy) of their management system. We will assess its scope to see if it is adequate and will refuse the application if we identify a serious deficiency.

For operators of installations and waste operations, a management system may need to include one or more of the following management plans (written in accordance with our guidance) where they are relevant to the activities:

- odour management plan
- noise and vibration management plan
- pest management plan
- fugitive emissions management plan
- fire prevention and mitigation plan
- waste recovery plan.

If any of the management plans identified above are required as part of a management system, these will need to be submitted for approval as part of the application.

For operators of installations, the management system must also meet the requirements of Best Available Techniques (BAT). Guidance on the management aspects of BAT is included in the first part of the published BAT conclusions document (BAT1) for each sector where BAT conclusions have already been published. [Reference Documents | Eippcb \(europa.eu\)](#)

If sector specific BAT conclusions are not available, or have not yet been published by the EU, then additional information on EMS for installations may be found in sector specific

guidance. You may find this in [Technical guidance for regulated industry sectors: environmental permitting - GOV.UK \(www.gov.uk\)](https://www.gov.uk/technical-guidance-for-regulated-industry-sectors-environmental-permitting).

As the UK moves out of the EUEXIT transition period, the EU BAT process will be replaced with its own approach, including BAT for management systems. Currently the UK is developing proposals for its own version of BAT for the UK.

Technical competence

General requirements

All operators must be technically competent to operate their facility and be capable of demonstrating their competence on an ongoing basis. Operators must demonstrate that:

- they know how to operate the equipment
- they know how to comply with the law and government policies
- they know how to minimise risk and the impact on people and the environment
- have enough resources available, including operating and maintaining the necessary equipment
- employ enough staff in order to operate in line with your permit, including how they will be properly trained
- they understand the permit and their duties as an operator.

An operator's management system must cover staff training and development, and make provision to update staff competence in line with technical and legislative change. We consider this at the application stage and throughout the life of a permit.

Requirements for different types of facility

There are more requirements for some facilities because of the specific nature of the risks. For example, staff at 'relevant waste operations' need specific training in waste management and this is generally arranged through industry-developed specific training schemes.

Note, for some activities we may rely on competence requirements set by other legislation. For example, the Veterinary Medicines Regulations (VMR) require a person purchasing sheep dip - which will include controlled discharge to land - to have a Certificate of competence in the use of sheep dips. The VMR require dipping to be carried out by/under supervision of a person who holds this certificate.

Relevant waste operations

A relevant waste operation is defined as:

- a waste operation that is not carried out at an installation or Part B Mobile Plant, or
- a 'specified waste management activity' where a specified waste management activity is an Installation listed in Chapter 5 of Part 2 of Schedule 1 (Waste Management). This does not include the Activities listed under 5.1 (Incineration) and 5.7 (Treatment of Waste Water).

Operators of relevant waste operations must explain in their management system how they intend to demonstrate technical competence.

This can be demonstrated by satisfying one of the following. We will try to identify the most appropriate industry scheme if an applicant claims their waste operation is not covered by any of them. If this is not possible, then exceptionally we may carry out an activity-specific competence assessment.

Certificates of Technical Competence (CoTCs)

Existing holders of CoTC issued by the Waste Management Industry Training and Advisory Board (WAMITAB) will continue to be recognised as competent to manage operations for which their certificate is valid. A database of CoTC holders will be maintained by WAMITAB and will be the definitive central record.

Deemed competence

Persons operating under a waste disposal licence before May 1994 have been deemed technically competent for that operation, and have never been required to demonstrate their technical competence. These individuals retain deemed competent status until 1 March 2011 when they will be expected to have passed the continuing competence assessment.

Where an operator claims deemed competent status, either at application or during compliance assessment, this should be checked against local records.

Regulator assessments

Industry schemes will provide full coverage across the waste industry and we will not routinely provide assessments ourselves.

Approved industry schemes

Compliance with an approved industry scheme. Scheme providers will maintain databases of individuals and/or organisations qualifying as technically competent under their scheme, which we will also use to carry out compliance assessment checks.

To establish whether an applicant has the appropriate level of technical competence we will:

- check that the technically competent person/organisation appears on the chosen scheme's database
- check that the type and level of competence attained is appropriate to the operations being permitted.

Currently there are two approved schemes:

- The CIWM/WAMITAB scheme that has been jointly developed by the Chartered Institution of Wastes Management (CIWM) and the Waste Management Industry Training and Advisory Board (WAMITAB).

- The ESA/EU Skills competency management system scheme that has been jointly developed by the Environmental Services Association (ESA) and the Energy and Utility Sector Skills Council (EU Sector Skills).

Your organisation needs to have CIWM/WAMITAB qualifications or the ESA/EU Skills certified competence management system in place before you can apply:

- to have a permit varied or transferred to you
- for a new permit for a landfill site.

When applying for a new permit for a waste site that's not a landfill site, operators have up to 12 months to put these things in place, as long as they meet the minimum requirements set out in either of the schemes.

Applicants are required to specify on the application form which option they will rely on. The operator's management system will include reference to the relevant scheme with details of any technically competent persons. All applications for the grant or transfer of a permit must include evidence of technical competence, this will be cross-checked against the relevant database to verify that the operator's technical competence is valid.

The CIWM/WAMITAB scheme

If an operator joins the CIWM/WAMITAB scheme, their managers will need to work towards gaining the scheme's qualifications (Certificate of Technical Competence (CoTC)).

The CIWM/WAMITAB scheme allows operators a maximum of four weeks from the time at which permitted operations begin to obtain an Environmental Permit Operator Certificate (EPOC) awarded by CIWM or the relevant 4 'QCF' units. For low risk operations this is a sufficient level of competence. Operators of medium or high risk operations will additionally be required to attain the appropriate level of competence within 12 months (or in the case of a mobile plant permit, within 12 months of the commencement date of the first deployment).

Operators will already be considered part of this scheme if either of the following apply:

- They hold registered and validated deemed competence status (see above).
- They have previously completed an NRW assessment for non-CoTC activities. Details of all persons and the sites/activities for which they were assessed will be listed on an NRW database. No new assessments have been carried out since the first industry scheme was approved in December 2008 but previous assessments will remain valid.

Operators who are part of this scheme need to pass a Continuing Competency assessment every 2 years.

You can find information on how often these certified staff need to be at the site in the guidance on our website: [How to comply with your environmental permit \(cyfoethnaturiol.cymru\)](http://cyfoethnaturiol.cymru)

The ESA/EU Skills scheme

The ESA/EU Skills scheme considers the competence of the organisation as a whole. To join this scheme operators need to have a competence management system in place and this must be certified by one of the scheme's approval bodies.

For operators who are using ESA/EU Skills scheme as the method of demonstrating competence, certification must be attained within 12 months and all the following requirements satisfied. The operator must:

- identify the EU/ESA Skills scheme as their choice of scheme on their application
- select and contract with an Accredited Certification Body, and provide proof of registration or contract at the application stage
- have an agreed schedule for the audit and certification process within 4 weeks of the permit being issued
- Have a Stage 1 audit completed by the Accredited Certification Body within 6 months of the permit being issued
- achieve formal accredited certification of their Competence Management System within 12 months of the permit being issued.

Operators of waste operations must supply NRW with information which demonstrates their ongoing compliance with the technical competence schemes using the quarterly or annual waste return.

Radioactive waste

The UK environment agencies require holders of permits which authorise the accumulation or disposal of radioactive waste to appoint a certified Radioactive Waste Adviser (RWA). The requirement is formally set out in The Environmental Permitting Regulations 2016 (as amended in 2018 no.2). We have a UK-wide scheme for the formal recognition of RWAs.

An RWA is defined as an individual, or group of individuals, with the knowledge, training and experience needed to give radioactive waste management and environmental radiation protection advice in relation to radioactive waste in order to ensure the effective protection of members of the public, and whose competence in that respect is recognised by the regulator. They may also advise on issues associated with environmental assessment and impact, auditing and permit compliance.

Holders of sealed sources should also seek advice from a suitable radiation protection expert. They may be assigned the technical responsibility for the tasks of radiation protection of workers and members of the general public and may also advise on auditing and permit compliance.

The term radiation protection expert was defined in the Basic Safety Standard Directive (BSSD) 2013/59/EURATOM and can apply to a range of qualified specialists which are defined depending on the role. For radioactive waste, this is the RWA, however, for other activities, advisers with alternative qualifications / certifications may also perform the RPE role.

"Radiation protection expert" means:

an individual or, if provided for in the national legislation, a group of individuals having the knowledge, training and experience needed to give radiation protection advice in order to ensure the effective protection of individuals, and whose competence in this respect is recognised by the competent authority.

Record of compliance

When considering a permit application, or reviewing the competence of a permit holder, we review the operators record of compliance. The factors we assess depend on the regime, as shown in the 'Requirements for permit holders and applicants' section above, and may include:

- any previous relevant convictions for relevant persons, which must be declared as part of an application or following a relevant conviction ('relevant convictions' and 'relevant persons' are explained below).
- the record of compliance with permits or other authorisations, for example warnings or enforcement notices and how these were responded to.
- the response to any accidents at sites operated in the past.
- poor behaviour, which includes any behaviour that we consider to be unacceptable. This could include physical acts or language (written, verbal or online) that causes staff to feel intimidated, afraid, offended, threatened or abused. Preventing access to a site, relevant records or operational information, failure to provide required documents and declarations that are disingenuous may also be considered poor behaviour.

If there are any relevant convictions or there is a poor record of compliance, we may assess this as part of a check of competence and consider a number of factors, including:

- the potential consequences for the environment and people.
- culpability and whether we consider that it is desirable that an operator is allowed to hold a permit.
- whether there are repeated failures of infrastructure, procedures, or other management controls.
- whether the operator was uncooperative in explaining the circumstances and how the operator intends to improve operations.
- whether the operator previously had an application or permit refused or revoked.

Where an operator or other relevant person applying for or holding a permit for relevant waste operations, installations, or mining waste operations sustains a relevant conviction, we will consider the offence and the likelihood of re-offending.

Relevant convictions may also be a consideration for radioactive substances, water discharge and groundwater activities, but our specific relevant convictions procedure does not apply in these cases. Additionally, in the case of stand-alone water discharge and groundwater activities, consideration of relevant convictions will only take place at the compliance assessment stage.

We will normally revoke (or partially revoke) a permit, or refuse to grant any future permits, apart from stand-alone water discharge and groundwater discharge activities, where we are not satisfied that the person is a suitable person to hold the permit. We will be firm, but fair in our decision making.

Relevant offences are those we can consider as part of our check of competence. This [list of relevant offences](#) should be used to declare relevant any convictions for waste activities.

We consider convictions held by relevant persons.

For companies and other corporate bodies, relevant persons are:

- the company
- directors, managers, company secretaries or similar officers
- other companies, if a director or company secretary of your company were officers of that company when they were convicted.

For individuals:

- the individual
- companies for which the individual is a director, manager, secretary or similar officer.

For partnerships:

- any of the partners
- partner convictions related to another business as well as the partnership.

For all types of operator, a relevant person also includes any other person that we have reason to believe is a controlling or guiding mind of the operation.

Applicants and permit holders are required to disclose in their application any relevant convictions against themselves or other relevant persons. The provisions of the Rehabilitation of Offenders Act 1974 apply, allowing convictions held by individuals to be treated as 'spent' after a prescribed period. Spent convictions are not disclosable. Offences committed by corporate bodies do not become spent as the Rehabilitation of Offenders Act 1974 does not apply to them.

We may consider relevant offences committed by individuals that have become spent under the terms of the Rehabilitation of Offenders Act 1974 but only where we are satisfied that justice cannot be done without doing so (in accordance with section 7(3) of the Act).

A single serious offence can be sufficient to warrant refusal or revocation .

Permit refusal or revocation would normally be appropriate for offences that demonstrate deliberate disregard for the environment or for environmental regulation – for example, repeated convictions or deliberately making false or misleading statements.

Financial competence

We only issue a permit if we believe the operator will be capable of meeting the financial obligations of the permit. All operators must have the finances to carry out operations correctly and meet the permit conditions.

Financial competence checks are made at the permitting stage for installations, waste operations and mining waste operations.

We assess the risk based on whether the operator has any current or past insolvency and bankruptcy proceedings and a credit check where appropriate.

Where a declaration is made and consent for a credit check is not forthcoming the operator should be advised that the application may be refused.

Financial competence may also be assessed at any time during the life of the permit and could lead us to consider that an operator was not able to comply with permit conditions. This could result in the permit being revoked. Financial competence is considered at the compliance assessment stage for installations, waste operations, mining waste operations, water discharge and groundwater activities.

Financial provision

Some types of facility could present a significant financial liability if the operator was to cease trading without properly surrendering the permit. Operators of these facilities are required by the Regulations to make and maintain a financial provision. This includes the following:

Landfill operations

The Landfill Directive requires an operator to make sufficient financial provision prior to the operation of the landfill, adequate to discharge the obligations of the permit (including closure and aftercare). Operators of landfill sites must demonstrate they have fulfilled this requirement in accordance with our requirements, i.e. sufficient, secure and available to the operator.

Operators will specify the mechanism they have chosen to make financial provision and provide a plan of the estimated expenditure or each phase of the landfill. Operators will provide a detailed estimate of the necessary financial provision as well as specify the mechanism they have chosen to make financial provision. A separate legal agreement will also need to be drawn up specifically for the Financial provision agreement

Category A and hazardous waste mining facilities

The Mining Waste Directive requires operators of Category A and hazardous waste mining facilities to make a financial guarantee to ensure the obligations arising from the permit are fulfilled.

The key principles of the financial guarantee are as follows:

- a financial guarantee to ensure that the obligations arising from a permit are fulfilled
- the provision has to be sufficient in monetary terms, secure and available when required
- all aftercare costs will include a contingency sum that will remain after the period covered by detailed costings, in case additional expenditure is required
- amounts of financial guarantees will be calculated based on third party costs and a contingency element.

How the High Activity Sealed Sources Directive applies to orphan sources

The High Activity Sealed Sources (HASS) Directive requires that adequate provision is made for the safe management of radioactive sources when they have become disused, including where the holder becomes insolvent or goes out of business. This must be provided using a financial security or equivalent means appropriate to the type of source.

We must ensure that the provision is in place before we can issue a permit.

Record of changes for this document:

Version 1 March 2008 Issued for launch of EPR

Draft December 2009 Draft for informal consultation. Incorporated mining waste, water discharge, groundwater and radioactive substances activities. No change necessary for batteries.

Version 2 April 2010 Minor editing after considering comments

Version 3 March 2011 Correction of 'relevant waste operation' definition and general amendments

Version 4 September 2014 Rebrand to Natural Resources Wales

Version 5 September 2022 Accessibility review and edits following changes to EPR in 2016 (including in relation to 'relevant waste operations'), and changes to Core Guidance in 2020