



# Exclusive Economic Zone and Continental Shelf (Environmental Effects—Decommissioning Plans) Regulations 2021

Patsy Reddy, Governor-General

## Order in Council

At Wellington this 27th day of September 2021

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 29E, 30, and 146 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for the Environment made after complying with sections 10(3)(b) and 32 of that Act.

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(Environmental Effects—Decommissioning Plans)  
Regulations 2021**

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## Regulations

### 1 Title

These regulations are the Exclusive Economic Zone and Continental Shelf (Environmental Effects—Decommissioning Plans) Regulations 2021.

## 2 Commencement

These regulations come into force on 28 October 2021.

## 3 Interpretation

In these regulations, unless the context otherwise requires,—

**abandon** means to leave something behind in its current location at sea

**Act** means the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

**applicant**, in relation to a decommissioning plan, means the owner or operator of an offshore installation or infrastructure who submits the plan to the EPA for acceptance

**area of interest** means the area that the iwi and hapū represented by an iwi authority identify as their rohe

**comparative assessment** means the comparative assessment required by regulation 12

**infrastructure** means 1 or more of the following things that is associated with an offshore installation:

- (a) a structure (other than an offshore installation):
- (b) a submarine pipeline:
- (c) a submarine cable

**marine management agency** means each of the following:

- (a) the 1 or more regional councils whose regions may be affected by the decommissioning of an offshore installation or infrastructure:
- (b) WorkSafe New Zealand:
- (c) Maritime New Zealand:
- (d) the Department of Conservation:
- (e) the Ministry for Primary Industries:
- (f) the Ministry of Business, Innovation, and Employment

**personnel** means persons who are to undertake the decommissioning of an offshore installation or infrastructure

**practicable**, in relation to an approach, opportunity, or other matter that relates to the decommissioning of an offshore installation or infrastructure, means reasonably practicable, having regard to—

- (a) the current state of technical knowledge; and
- (b) the total cost; and
- (c) the risk of injury to personnel

**preliminary consultation** means the consultation referred to in regulation 9(1)

**proposed approach to decommissioning** or **proposed approach** means the proposed approach to the decommissioning of an offshore installation or infrastructure, as set out in the decommissioning plan

**reasonably foreseeable natural forces** means natural forces such as waves, tides, currents, and storms that are reasonably foreseeable

**relevant iwi authority** means an iwi authority whose area of interest includes, or is adjacent to, the offshore installation or infrastructure that is to be decommissioned

**remove**, in relation to the decommissioning of an offshore installation or infrastructure, means to remove the whole or a part of the offshore installation or infrastructure from—

- (a) the exclusive economic zone; or
- (b) in, on, or above an area of the continental shelf that is beyond the outer limits of the exclusive economic zone

**safety of navigation** means the safety of navigation on or below the surface of the sea

**specified matters** means—

- (a) the environment; and
- (b) existing interests; and
- (c) human health; and
- (d) Māori cultural values; and
- (e) the safety of navigation.

#### 4 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

#### 5 Outline

- (1) These regulations relate to decommissioning plans that, under section 38(3) of the Act, must be included in certain applications for marine consents, marine discharge consents, and marine dumping consents.
- (2) These regulations set out, for the purposes of sections 100A and 100B of the Act,—
  - (a) information that must be included in a decommissioning plan; and
  - (b) the process by which the EPA must deal with a decommissioning plan that is submitted for acceptance; and
  - (c) the criteria against which the EPA must assess a decommissioning plan when deciding whether to accept it.
- (3) Subclauses (1) and (2) are intended as a guide only to the general scheme and effect of these regulations.

*Information requirements: general*

**6 General information requirements**

Every decommissioning plan must include the information required by—

- (a) regulation 7 (background information); and
- (b) regulation 8 (information about the proposed approach); and
- (c) regulation 9 (information about consultation); and
- (d) regulation 10 (information about timing); and
- (e) regulation 11 (information about post-decommissioning monitoring and maintenance).

**7 Background information**

A decommissioning plan must—

- (a) describe the offshore installation or infrastructure that is to be decommissioned, including—
  - (i) each well (if any) that is to be decommissioned; and
  - (ii) the amount, type, location, depth, size, stability, age, and condition of the materials that make up the offshore installation or infrastructure; and
- (b) describe the type of equipment and other structures that are to be used in the proposed approach to decommissioning; and
- (c) describe the existing environment at the location of the offshore installation or infrastructure; and
- (d) describe the location and characteristics of each active, suspended, or abandoned well (if any) that is associated with the offshore installation or infrastructure, but whose decommissioning is not provided for in the decommissioning plan; and
- (e) describe the location and characteristics of the equipment and other infrastructure (if any) that is associated with the offshore installation or infrastructure, but whose decommissioning is not provided for in the decommissioning plan; and
- (f) explain why the decommissioning plan does not provide for the decommissioning of the wells, equipment, or other infrastructure referred to in paragraphs (d) and (e).

**8 Information about proposed approach**

A decommissioning plan must—

- (a) describe how, under the proposed approach, the whole or each part of the offshore installation or infrastructure is to be—
  - (i) removed and disposed of; or

- (ii) disposed of by being dumped or abandoned; and
- (b) provide a general description of how, under the proposed approach, the waste or other matter (if any) that is contained inside the offshore installation or infrastructure will be disposed of; and
- (c) identify the practicable opportunities (if any) to—
  - (i) reuse or recycle the waste or other matter that makes up the offshore installation or infrastructure; or
  - (ii) avoid, remedy, or mitigate the adverse effects on the specified matters of disposing of the waste or other matter that makes up, or is contained inside, the offshore installation or infrastructure; and
- (d) provide a general description of how the waste or other matter (if any) that is likely to be generated by the proposed approach will be disposed of; and
- (e) describe the actions (if any) that have been or are to be undertaken in preparation for the decommissioning.

## 9 Information about consultation

### *Preliminary consultation*

- (1) A decommissioning plan must describe the consultation undertaken on the decommissioning before the plan was submitted for acceptance.
- (2) The description must—
  - (a) list the 1 or more marine management agencies that were consulted; and
  - (b) identify the following (if any):
    - (i) the persons with existing interests that may be affected by the decommissioning; and
    - (ii) the relevant iwi authorities; and
  - (c) of those persons and authorities, identify the persons who and authorities that were not consulted (if any) and explain why; and
  - (d) describe how the marine management agencies, persons, and relevant iwi authorities were consulted, including—
    - (i) how their views were sought; and
    - (ii) what information was provided to them and how it was provided; and
    - (iii) details of the consultation process agreed (if any) with each relevant iwi authority that was consulted; and
  - (e) describe whether and, if so, how matters raised in the consultation have been or are to be considered and addressed.

*Communication during and after decommissioning*

- (3) A decommissioning plan must describe how (if at all) the following will be informed or consulted about matters relating to the decommissioning during the decommissioning or after it is finished:
  - (a) marine management agencies;
  - (b) persons with existing interests that may be affected by the decommissioning;
  - (c) relevant iwi authorities.

**10 Information about timing**

A decommissioning plan must state—

- (a) how long the decommissioning is likely to take overall; and
- (b) when each material step involved in the decommissioning is likely to start and finish.

**11 Information about post-decommissioning monitoring and maintenance**

- (1) A decommissioning plan must describe the following operations (if any) that are to be undertaken in relation to the offshore installation or infrastructure after it is decommissioned:
  - (a) monitoring operations, including seabed sampling surveys to monitor levels of hydrocarbons, heavy metals, and other contaminants in sediment and animal and plant life; and
  - (b) inspection and maintenance operations.
- (2) The description of a monitoring operation must include—
  - (a) a statement of when the monitoring is likely to start and finish, and an explanation of why the monitoring is likely to start and finish on those dates; and
  - (b) a description of how and when results of the monitoring are to be reported to the EPA.
- (3) If the proposed approach involves the whole or a part of the offshore installation or infrastructure being dumped or abandoned on or above (but not under) the seabed, the description of maintenance operations must include—
  - (a) a description of the intended inspection and maintenance programme for the whole or part that is to be dumped or abandoned; and
  - (b) an estimate of the total cost of the programme.

*Information requirements: comparative assessment*

- 12 Comparative assessment required if decommissioning involves dumping, abandonment, or submarine pipeline**
- (1) A decommissioning plan must include an assessment under this regulation if 1 or both of the following apply:
- (a) the proposed approach involves the whole or a part of the offshore installation or infrastructure being dumped or abandoned:
  - (b) the plan relates to the decommissioning of a submarine pipeline (whether or not the proposed approach involves the abandonment of the pipeline).
- (2) The assessment must relate to,—
- (a) if subclause (1)(a) applies, the decommissioning of the whole offshore installation or infrastructure (even if the proposed approach involves the removal of some of the offshore installation or infrastructure):
  - (b) if only subclause (1)(b) applies, the decommissioning of the submarine pipeline only (even if the decommissioning plan also relates to the decommissioning of an offshore installation or other infrastructure).
- (3) The assessment must compare the proposed approach against the other practicable approaches to the decommissioning (if any) by setting out the information required by subclause (4) for each approach.
- (4) The following information must be set out for each approach:
- (a) the effects of the approach on the specified matters, including the effects (if any) caused by 1 or both of the following:
    - (i) the potential deterioration of waste or other matter after it is dumped or abandoned:
    - (ii) the potential movement of waste or other matter, under the influence of reasonably foreseeable natural forces, after it is dumped or abandoned:
  - (b) how the following kinds of toxic or hazardous waste (if any) would be removed, destroyed, or reduced so as to avoid, remedy, or mitigate its adverse effects on the specified matters:
    - (i) toxic or hazardous waste that makes up, or is contained inside, the offshore installation or infrastructure; and
    - (ii) toxic or hazardous waste that is generated by the approach to decommissioning:
  - (c) for every method that would be used to dispose of waste or other matter that makes up, or is contained inside, the offshore installation or infrastructure,—
    - (i) the practical limitations on the method of disposal; and

- (ii) the ongoing management or monitoring (if any) needed to avoid or mitigate the adverse effects of the method of disposal on the specified matters; and
  - (iii) the estimated total cost of—
    - (A) the method of disposal; and
    - (B) the ongoing management or monitoring (if any); and
  - (iv) if the disposal is of waste or other matter that makes up the offshore installation or infrastructure,—
    - (A) the practicable opportunities (if any) to reuse or recycle the waste or other matter instead of disposing of it; and
    - (B) how the practical limitations on, and estimated total cost of, each opportunity to reuse or recycle the waste or other matter compare with the limitations and cost referred to in subparagraphs (i) and (iii).
- (5) If subclause (1)(a) applies, the assessment must describe the following (even if complete removal of the offshore installation or infrastructure is not a practicable approach):
- (a) the practical limitations on the complete removal of the offshore installation or infrastructure:
  - (b) the risk of injury to personnel posed by its complete removal:
  - (c) the estimated total cost of its complete removal.

*Public consultation*

**13 Public notice of decommissioning plan**

- (1) If the preconditions set out in regulation 14 are met, the EPA must—
- (a) give public notice of the decommissioning plan; and
  - (b) provide a copy of the public notice and accompanying report to—
    - (i) all marine management agencies, relevant iwi authorities, and other persons (if any) who participated in preliminary consultation; and
    - (ii) all persons (if any) who the EPA considers relevant.
- (2) The EPA must give the public notice in accordance with—
- (a) regulation 15 (public notice must be accompanied by report); and
  - (b) regulation 16 (public notice must invite submissions).
- (3) *See also* regulation 26 (protection of sensitive information in decommissioning plan and submissions).

**14 Preconditions for giving public notice**

- (1) Before publicly notifying a decommissioning plan, the EPA must be satisfied that—
  - (a) the plan sets out the information required by regulations 6 to 12 at a level of detail that—
    - (i) is proportionate to the effects of the proposed approach on the specified matters; and
    - (ii) will enable the public to make informed submissions on the proposed approach; and
    - (iii) will enable the EPA to assess the plan against the criteria set out in regulations 21 to 23; and
  - (b) the information about preliminary consultation demonstrates that the consultation was sufficient, having regard to the effects of the proposed approach on the specified matters.
- (2) For preliminary consultation with an iwi authority, the EPA may be satisfied that subclause (1)(b) is met only if the information demonstrates that the person who undertook the consultation—
  - (a) considered ways, and took steps, to foster the development of the authority's capacity to respond to an invitation to consult; and
  - (b) made reasonable efforts to agree with the authority to a consultation process under which the authority had opportunities to provide input into the decommissioning plan (including any comparative assessment included in the plan); and
  - (c) if a process was agreed to, consulted the authority in accordance with that process; and
  - (d) whether or not a process was agreed to, consulted the authority in a way that included—
    - (i) enabling the authority to identify issues of concern to the authority that relate to the decommissioning; and
    - (ii) indicating to the authority whether and, if so, how those issues have been or are to be addressed.
- (3) If the EPA is not satisfied that the preconditions set out in this regulation are met, it must give the applicant written reasons explaining why.

**15 Public notice must be accompanied by report and other relevant information**

- (1) The public notice of a decommissioning plan must be accompanied by—
  - (a) a report on what the EPA considers to be the key matters relating to the plan; and

- (b) other information (if any) that the EPA considers will assist the public to understand the report and the plan.
- (2) The report may include—
  - (a) an indication of any particular information that the EPA is seeking from submitters; and
  - (b) any advice received by the EPA in relation to the decommissioning plan from—
    - (i) a marine management agency; or
    - (ii) the Māori Advisory Committee.
- (3) The EPA must prepare or commission the report.

**16 Public notice must invite submissions**

- (1) The public notice of a decommissioning plan must—
  - (a) invite submissions on the plan from all persons who wish to make them; and
  - (b) set a closing date for those submissions that is no less than 30 working days after the date on which the short summary of the notice required by section 7A(1)(b) of the Act is first published; and
  - (c) include a statement to the effect that submissions will be—
    - (i) published on the EPA’s Internet site; and
    - (ii) provided to the applicant.
- (2) In deciding on the closing date, the EPA must have regard to—
  - (a) the interests of any person who, in the EPA’s opinion, will be directly affected by the timing or length of the submission period; and
  - (b) the interests of the community in being able to adequately assess the effects of the decommissioning on the specified matters.

**17 Submissions must be published and provided to applicant**

- (1) After the closing date for submissions on a decommissioning plan, the EPA must—
  - (a) publish each submission on the EPA’s Internet site; and
  - (b) provide each submission to the applicant.
- (2) *See also* regulation 26 (protection of sensitive information in decommissioning plan and submissions).

**18 Response to submissions by applicant**

An applicant must consider each submission it receives under regulation 17 and—

- (a) amend the decommissioning plan in response to the submission; or

- (b) explain to the EPA why the applicant does not propose to amend the plan in response to the submission.

**19 Public notice of revised decommissioning plan**

- (1) This regulation applies if—
  - (a) a decommissioning plan that has been submitted under section 100A of the Act and notified under regulation 13 is later revised in response to advice from the EPA under regulation 26; or
  - (b) a revised decommissioning plan is submitted under section 100C of the Act to replace an accepted decommissioning plan.
- (2) The EPA may—
  - (a) publicly notify the whole revised plan; or
  - (b) publicly notify only the changes in the revised plan; or
  - (c) if subclause (3) applies, not publicly notify the revised plan at all.
- (3) This subclause applies if the EPA is satisfied that the effect on the environment and existing interests of implementing the revised plan would not be materially different from, or would be less than, the effect of implementing the plan as originally submitted or as accepted.
- (4) If the EPA decides to publicly notify only the changes made in the revised plan, regulations 13 to 18 apply only in relation to those changes.

*Criteria for acceptance*

**20 Criteria for acceptance of decommissioning plan**

The EPA must accept a decommissioning plan if it is satisfied that the plan meets the criteria set out in—

- (a) regulation 21 (proposed approach must result in complete removal or be best practicable environmental option); and
- (b) regulation 22 (additional criteria if proposed approach will not result in complete removal); and
- (c) regulation 23 (amendments in response to submissions).

**21 Criteria: proposed approach must result in complete removal or be best practicable environmental option**

- (1) For the decommissioning of an offshore installation or infrastructure (other than a submarine pipeline), a decommissioning plan must set out a proposed approach that—
  - (a) will result in the complete removal of the offshore installation or infrastructure; or
  - (b) is the best practicable environmental option.

- (2) For the decommissioning of a submarine pipeline, a decommissioning plan must set out a proposed approach that is the best practicable environmental option.
- (3) In deciding whether a proposed approach is the best practicable environmental option, the EPA must consult—
  - (a) all marine management agencies that the EPA considers relevant; and
  - (b) all relevant iwi authorities (if any).
- (4) In this regulation, **best practicable environmental option** means the approach to decommissioning that is the best option for avoiding or minimising adverse effects on the environment, having regard to—
  - (a) the practicability of the approach, as compared with the other practicable approaches (if any); and
  - (b) the effects of the approach on the specified matters, as compared with the other practicable approaches (if any); and
  - (c) the other matters (if any) that the EPA considers relevant.

**22 Criteria: additional criteria if proposed approach will not result in complete removal**

- (1) This regulation applies if the proposed approach will not result in the complete removal of the offshore installation or infrastructure that is to be decommissioned.
- (2) For the whole or part of the offshore installation or infrastructure that is to be dumped or abandoned, the decommissioning plan must demonstrate—
  - (a) that the dumping or abandonment will not cause an unjustifiable interference with existing interests; and
  - (b) that, for the whole or part that is to be dumped or abandoned on or above (but not under) the seabed (if any),—
    - (i) the whole or part will not move under the influence of reasonably foreseeable natural forces and cause a hazard as a result; and
    - (ii) if the whole or part will project above the sea's surface, it will be maintained so as to prevent its structural failure; and
    - (iii) if the whole or part will not project above the seas's surface, it will be at a sufficient depth to ensure safety of navigation; and
  - (c) that reusing or recycling the waste or other matter that makes up the whole or part that is to be dumped or abandoned would not be practicable or would pose an unreasonable risk to the environment; and
  - (d) that taking further measures to avoid, remedy, or mitigate the adverse effects of the dumping or abandonment on the specified matters would not be practicable or would pose an unreasonable risk to the environment.

**23 Criteria: amendments in response to submissions**

A decommissioning plan must include the amendments (if any) that are needed to adequately respond to submissions, having regard to—

- (a) the effects of the proposed approach on the specified matters; and
- (b) the need for the plan to meet the criteria set out in regulations 21 and 22.

*Notice of decisions and publication of accepted decommissioning plans*

**24 Public notice of decision**

- (1) The EPA must—
  - (a) give public notice of its decision to accept or refuse to accept a decommissioning plan; and
  - (b) provide a copy of the public notice to—
    - (i) all persons who submitted on the decommissioning plan; and
    - (ii) all other persons (if any) who the EPA considers relevant.
- (2) *See also* section 100B(4) of the Act (which relates to notifying the applicant of the decision).

**25 EPA must publish accepted decommissioning plan**

- (1) The EPA must publish a copy of every accepted decommissioning plan on its Internet site.
- (2) *See also* regulation 26 (protection of sensitive information in decommissioning plan and submissions).

*Miscellaneous*

**26 Protection of sensitive information in decommissioning plan and submissions**

- (1) This regulation allows the EPA to withhold certain information from 1 or both of the following:
  - (a) the copy of a decommissioning plan that the EPA publishes on its Internet site in accordance with regulation 13 or 25 or provides to any person;
  - (b) the copy of a submission that the EPA publishes on its Internet site in accordance with regulation 17 or provides to any person (other than the applicant).
- (2) The EPA may withhold information from—
  - (a) the copy of a decommissioning plan or a submission, if satisfied that doing so is necessary to avoid causing serious offence to tikanga Māori or disclosing the location of wāhi tapu; or
  - (b) the copy a decommissioning plan, if satisfied that doing so is necessary to avoid disclosing a trade secret or causing unreasonable prejudice to

the commercial position of the person who supplied, or is the subject of, the information.

- (3) The EPA may withhold information under subclause (2)(a) on its own initiative or at the request of any person.
- (4) The EPA may withhold information under subclause (2)(b) on its own initiative or at the applicant's request.
- (5) The EPA may not withhold information under this regulation if, in the circumstances of the particular case, the public interest in making the information available outweighs the importance of avoiding the offence, disclosure, or prejudice.

**27 EPA may advise of likely refusal**

The EPA may advise an applicant that the acceptance of its decommissioning plan is likely to be refused (and of the reasons why) at any time before deciding whether to accept the plan.

**28 EPA may seek advice or information**

The EPA may seek advice or information it considers necessary from any person at any time before deciding whether to accept a decommissioning plan.

**29 Amendments to Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013**

- (1) This regulation amends the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013.
- (2) After regulation 4(1)(a)(i), insert:
  - (ia) for a staff member with delegated authority to determine whether to accept a decommissioning plan, \$257.04 per hour:
- (3) After regulation 6(e), insert:
  - (ea) for a decommissioning plan that is submitted for acceptance under section 100A of the Act, the owner or operator who submits the plan:

## Schedule 1 Transitional, savings, and related provisions

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### Part 1 Provisions relating to these regulations as made

There are no transitional, savings, or related provisions relating to these regulations as made.

Michael Webster,  
Clerk of the Executive Council.

### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations are made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the **Act**). They come into force on 28 October 2021.

These regulations relate to plans for the decommissioning of offshore installations and other structures, submarine pipelines, and submarine cables (**infrastructure**). They set out, for the purposes of sections 100A and 100B of the Act,—

- information that must be included in a decommissioning plan; and
- the process by which the Environmental Protection Authority (the **EPA**) must deal with a decommissioning plan that is submitted for acceptance; and
- the criteria against which the EPA must assess a decommissioning plan when deciding whether to accept it.

Once these regulations come into force,—

- an application for a marine consent, a marine discharge consent, or a marine dumping consent to undertake a discretionary activity will need to include an accepted decommissioning plan if the activity is connected to the decommissioning of an offshore installation or infrastructure; and
- the proposed carrying out of the activity will need to be in accordance with that plan (*see* section 38(3) and clause 2 of Schedule 1 of the Act).

In these regulations,—

- *regulations 1 to 5* are preliminary provisions. They include definitions of key terms used in these regulations (*see regulation 4* and *see also* section 4 of the Act for further definitions that apply in these regulations):

- *regulations 6 to 11* set out the information that must be contained in all decommissioning plans:
- *regulation 12* requires that a decommissioning plan include a comparative assessment if the proposed approach to decommissioning involves an offshore installation or infrastructure being dumped or abandoned, or relates to a submarine pipeline:
- *regulations 13 to 19* set out the process by which the EPA must undertake public consultation on a decommissioning plan:
- *regulations 20 to 23* set out the criteria against which the EPA must assess a decommissioning plan when deciding whether to accept it. The criteria include a requirement that the proposed approach to decommissioning either result in the complete removal of the offshore installation or infrastructure or be the best practicable environmental option:
- *regulations 24 and 25* relate to the notification of the EPA's decisions and the publication of accepted decommissioning plans:
- *regulations 26 to 29* set out other matters, including—
  - a power for the EPA to withhold certain sensitive information from the copy of a decommissioning plan or submission that the EPA publishes; and
  - amendments to the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013 to enable the EPA to recover costs incurred in determining whether to accept a decommissioning plan.

### Regulatory impact assessment

The Ministry for the Environment produced a regulatory impact assessment on 20 June 2019 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact assessment can be found at—

- <https://environment.govt.nz/what-government-is-doing/cabinet-papers/impact-summary-development-of-regulations-under-the-eez-act-for-decommissioning-offshore-oil-and-gas-infrastructure/>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 30 September 2021.

These regulations are administered by the Ministry for the Environment.