TRANSPOSITION NOTE

This Note shows how the requirements of articles 14(5) –(9) of Council Directive 2012/27/EU on energy efficiency and amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC ("the Energy Efficiency Directive"), have been implemented in England and Wales.

Approach of the Regulations

The environmental permitting procedure under the Environmental Permitting Regulations 2010 (S.I. 2010/675) ("the 2010 Regulations") will be used to implement the requirements of articles 14(5)-(9) of the Energy Efficiency Directive in England and Wales. The 2010 Regulations will be amended by the 2014 Regulations by the insertion of a new schedule 8A and consequential amendments to provisions in the 2010 Regulations. Other amendments to the 2010 Regulations will be made to include installations not previously regulated under the 2010 Regulations, for the purposes of applying the requirements of the Energy Efficiency Directive to those installations. Environmental permitting, implemented through the 2010 Regulations, is an established process for regulating the development, operation and refurbishment of industrial installations in England and Wales. Nearly all of the installations subject to Article 14(5) are already subject to the 2010 Regulations and therefore amending these regulations was determined to be the most appropriate route to transpose these provisions of the Energy Efficiency Directive in England and Wales.

The aim of the Directive is to drive improvements in energy efficiency across the EU. It is intended to put the EU on track to reduce energy use by 20% by 2020 (against 2007 Business-as-Usual projections).

This Transposition Note refers only to Articles 14(5-9) of Directive 2012/27/EU and their transposition in England and Wales. These provisions have been transposed separately in Scotland and Northern Ireland. The Energy Efficiency (Encouragement, Assessment and Information) Regulations 2014, laid in Parliament in June 2014, transposed, among other provisions, Articles 14 (1) and (3) in relation to the UK and Article 14(10) in relation to Great Britain."

Copy-out has not been used to transpose all the provisions in articles 14(5)-(9) of the Energy Efficiency Directive. The articles impose obligation that are required under the EED to be applied through authorisation or permit criteria. These obligations will to be incorporated into the existing integrated pollution prevention and control regulatory regime in 2010 Regulations. Therefore the application of some of the provisions of the Energy Efficiency Directive to installations already regulated by way of permit conditions under the 2010 regulations had to be made clear. A departure from copy-out was necessary to ensure clarity and legal certainty. The impact of this departure from using copy-out has been assessed and does not go beyond the minimum necessary to transpose articles 14(5)-(9) of the Energy Efficiency Directive.

The requirements of articles 14(5) –(9) of the Energy Efficiency Directive, will be implemented by the 2015 Regulations as follows:

Article in the Energy Efficiency Directive	Objective	Implementation
14(5)(a)	Requires Member States to ensure that a cost benefit analysis is carried out when a new thermal electricity generation installation with a total thermal input exceeding 20 MW is planned, to assess the costs and benefits of providing for the operation of the installation as a high-efficiency cogeneration installation.	Paragraph 2 of Schedule 8A provides that an application for the grant of an environmental permit for combustion or waste incineration plants generating electricity must contain a cost benefit analysis which assesses the cost and benefits of providing for the operation of the installation as a high-efficiency cogeneration installation. Paragraph 1(2)(c) of Schedule 8A provides that the requirements of Schedule 8A apply to installations which have a net rated thermal input exceeding 20 MW. Regulation 5 amends Part 2 of Schedule 1 to the 2010 Regulations to ensure that where the net rated thermal input of individual appliances on the same site exceeds 20 MW, they are treated as a single installation with a net thermal input exceeding 20MW. Paragraph 1(2)(d) of Schedule 8A makes similar provision in relation to small waste incineration plants . Elaboration has been used in these provisions to clarify the scope of the obligation in relation to installations carrying out activities under the permitting regime in the 2010 Regulations. Article 14(5)(a) is intended to create and obligation which has

		to be complied with and this obligation must be sufficiently clear so that it can be understood..
14(5)(b)	Requires Member States to ensure that a cost benefit analysis is carried out when an existing thermal electricity generation installation with a total thermal input exceeding 20 MW is substantially refurbished, to assess the costs and benefits of converting it to high-efficiency cogeneration.	Paragraph 3 of Schedule 8A provides that the regulator must ensure that an application for a variation of an environmental permit is made before the energy plant of a combustion or waste incineration plant generating electricity is substantially refurbished. Paragraph 4 of Schedule 8A provides that the application for a variation must include a cost-benefit analysis which assesses the cost and benefits of converting the installation to high-efficiency cogeneration. Regulation 5 amends Part 2 of Schedule 1 to the 2010 Regulations to ensure that where the net rated thermal input of individual appliances on the same site exceeds 20 MW, they are treated as a single installation with a net thermal input exceeding 20MW. Paragraph 1(2)(d) of Schedule 8A makes similar provision in relation to small waste incineration plants . Paragraph 1(2)(c) of Schedule 8A provides that the requirements of the Schedule apply to installations which have a net rated thermal input exceeding 20 MW. Elaboration has been used in these provisions to clarify the scope and extent of the obligation in relation to installations carrying out specified activities under the permitting regime in the 2010 Regulations. Article 14(5)(b) is intended to create an obligation which has to be complied with and this obligation must be sufficiently clear so that it can be understood.

14(5)(c)	Requires Member States to ensure that where an industrial installation with a total thermal input exceeding 20MW generating waste heat at a useful temperature level is planned or substantially refurbished a cost benefit analysis is carried out to assess the costs and benefits of utilising the waste heat to satisfy economically justified demand, including through cogeneration, and of the connection of that installation to a district heating and cooling network.	Paragraph 7 of Schedule 8A provides that an application for an environmental permit for a new installation, generating waste heat at a useful temperature level, other than an electricity generating installation in paragraph 2 of that schedule, must contain a cost benefit analysis. Paragraph 8of Schedule 8A provides that the regulator must ensure that an application for a variation of an environmental permit is made before the energy plant of an installation, generating waste heat at a useful temperature level, other than an electricity generating installation in paragraph 4 of that Schedule, is substantially refurbished. Paragraph 9 of Schedule 8A provides that the application for a variation of the environmental permit must contain a cost benefit analysis. Paragraph 10 of Schedule 8A provides that the cost-benefit analysis required by paragraphs 7 and 9 must include an assessment of the cost and benefits of utilising the waste heat to satisfy economically justified demand, including through cogeneration and connection of that installation to a district heating and cooling network. Elaboration has been used in these provisions to clarify the extent of the obligation. Article 14(5)(c) is intended to create an obligation which has to be complied with and this obligation must be sufficiently clear so that it can be understood.
14(5)(d)	Requires Member States to ensure that where a new distract heating and cooling network is planned or in an existing	Paragraph 12 of Schedule 8A provides that an application for an environmental permit for a combustion or waste

	district heating and cooling network a new energy production installation with a total thermal input exceeding 20MW is planned or is to be substantially refurbished, a cost benefit analysis is carried out to assess the costs and benefits of utilising the waste heat from nearby industrial installations.	incineration plant which forms part of a new district heating and cooling network must contain a cost benefit analysis. Paragraph 13 of Schedule 8A provides that the regulator must ensure that an application for a variation of an environmental permit is made before the energy plant for a combustion or waste incineration plant which forms part of an existing district heating and cooling network is substantially refurbished. Paragraph 14 of Schedule 8A provides that the application for the variation of the environmental permit must contain a cost benefit analysis. Paragraph 15 provides that the cost benefit analysis must include an assessment of the cost and benefits of utilising the waste heat from nearby industrial installations. Elaboration has been used in these provisions to clarify the scope and extent of the obligations in relation to installations carrying out specified activities under the permitting regime in the 2010 Regulations. Article 14(5)(c) is intended to create obligations which have to be complied with and these obligation must be sufficiently clear so that they can be understood
14 (5) First paragraph	This provides that the fitting of equipment to capture carbon dioxide produced by a combustion installation with a view to its being geologically stored shall not be considered refurbishment.	Paragraph 1(2)(e) of Schedule 8A provides that fitting of equipment to carry out the activity of carbon dioxide capture from and installation for the purposes of geological storage is excluded from the definition of "substantial refurbishment" . Elaboration has been used because this provision limits the

		extent of the application of the obligations in paragraphs 3, 8 and 13 of Schedule 8A, and is necessary to clarify the scope of the exception in relation to installations carrying out a specific activities under the permitting regime in the 2010 Regulations.
14(5) Second paragraph	This provides that Member States may require that the cost-benefit analysis in article 14(5)(c) and (d) to be carried out in cooperation with the companies responsible for the operation of district heating and cooling networks.	This optional provision has not been transposed. Requiring district heating and cooling network operators to be involved in the cost benefit analysis required under Articles 14 (5)(c) and (d) would have placed an unreasonable burden on them. In practice we expect that developers of such installations are likely to involve the network operators in order to accurately reflect costs. Permit applications are subject to public consultation which will ensure an alternative opportunity for network operators to provide input should they wish.
14(6) (a)-(c).	Enables Member States to exempt certain installations from the application of the cost-benefit obligations in article 14(5).	Paragraph 5 of Schedule 8 provides that the cost benefit obligations do not apply to peak load and back-up electricity generating installations that are planned to operate under 1500 hours per year as a rolling average over 5 years Copy-out has been used to transpose this provision Paragraph 21(a) of Schedule 8A provides that the cost benefit obligations do not apply to installations which have to be located close to a geological storage site for the storage of captured carbon dioxide. Copy-out has been used to transpose this provision

		Paragraph 21(b) of Schedule 8A provides that the cost benefit obligations do not apply to combustion and waste incineration plants carried on within a nuclear site Elaboration has been used to clarify the scope of the exception in relation to its application to installations carrying out specific activities under the permitting regime in the 2010 Regulations.
14(6) First paragraph	This provides that Member States may lay down thresholds for exempting individual installations, in terms of available useful waste heat, the demand for heat or distances between installations and district heating networks, from the cost benefit obligations in articles 14(5)(c) and (d).	Paragraph 11 of Schedule 8A exempts installations from the requirement to carry out cost-benefit on the basis of waste heat temperature, heat demand and the distance between heat source and heat demand installations. Elaboration has been used because this provision exempts installations from the application of the obligations in paragraphs 7 to 10 of Schedule 8A in specific circumstances.
14(6) Second paragraph	This provides that Member States have to notify the exemptions adopted to the Commission by 31 December 2013 and any subsequent changes.	This provision has not been transposed.. This provision concerns only relations between Member States and the Commission, and therefore does not have to be transposed.
14(7)(a)-(c)	This provides that Member States shall adopt authorisation criteria as referred to in Article 7 of Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, or equivalent permit criteria, to take account of the comprehensive assessment in article 14(1) and the cost benefit analysis, and ensure that the requirements of article 14(5) are fulfilled.	Paragraphs 16 of Schedule 8A provides that the regulator must take into account the outcome of the cost-benefit analysis and from 31 December 2015 the comprehensive assessment under article 14(1) when considering applications for the grant of variation of environmental permits for the installations covered by schedule 8A. Paragraph 17 and 18 provide that where the cost benefit analysis shows that benefits exceeds costs, the regulator must include conditions in the environmental permit which give

		effect to the outcome of the analysis. The installations described in paragraphs 2, 7, and 12 of Schedule 8A are required to include the cost benefit analysis as required by article 14(5) with an application for the grant of an environmental permit. Under paragraphs 3, 8, and 13of Schedule 8A the regulator is required to ensure that an application for a variation of an environmental permit is made before a substantial refurbishment is carried out, and include a cost-benefit analysis must be included with the application.. Elaboration has been used in these provisions to clarify the scope of the obligations in relation to installations carrying out specified activities under the permitting regime in the 2010 Regulations. Article 14(7)(a)-(c) are intended to create obligations which have to be complied with and these obligation must be sufficiently clear so that they can be understood
14(8)	This provides that Member States may exempt individual installations from the implementation of options whose benefits exceeds costs where there are imperative reasons of law, ownership or finance for doing so. The Member State must submit a notification to the Commission within three months of the decision to exempt.	Paragraph 19 of Schedule 8A provides that the obligation to include conditions to give effect to the cost-benefit analysis in paragraphs 17-18 does not apply if the regulator decides that there are imperative reasons of law, ownership of finance for them not to apply. Paragraph 20 requires the regulator to the appropriate authority of that decision. Copy out has been used for this provision.

14(9)	This provides that articles 14.5-8 shall apply to installations covered by Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) without prejudice to the requirements of that Directive.	Paragraph 22 of Schedule 8A provides that nothing in this Schedule affects the application of the Industrial Emissions Directive to installations. Elaboration has been used for this provision to comply with drafting practice.
2(30)	Definition of "cogeneration"	Paragraph 1(1) of Schedule 8A. Copy-out has been used for this definition.
2(31)	Definition of "economically justifiable demand"	Paragraph 1(1) of Schedule 8A. Copy out has been used for this definition.
2(34)	Definition of "high-efficiency cogeneration"	Paragraph 1(1) of Schedule8A. Copy out has been used for this definition.
2(44)	Definition of "substantially refurbished"	Paragraph 1(1) of Schedule 8A. Elaboration has been used for this definition to provide clarity regarding the application of this definition to a specific part of the installation.