
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Environmental Permitting (England and Wales) Regulations 2016 (“the principal Regulations”) provide a consolidated regime of environmental permitting in England and Wales. They replaced the Environmental Permitting (England and Wales) Regulations 2010 and its amending instruments. These Regulations amend the principal Regulations, and come into force on the day after the day on which they are made.

Part 2 of these Regulations amends the principal Regulations to add provisions relating to medium combustion plants (“MCPs”). It transposes the Medium Combustion Plant Directive, which lays down rules to control emissions of sulphur dioxide, nitrogen oxides and dust from MCPs. A MCP is a combustion plant, or a combination of combustion plants, with a rated thermal input equal to or greater than 1 megawatt but less than 50 megawatts. As such, some MCPs were already within scope of the environmental permitting regime in the principal Regulations, and in those cases the provisions inserted by Part 2 will impose additional requirements.

The amendments made by Part 2 provide that no MCP brought into operation after 20th December 2018 can operate without a permit. In relation to MCPs already in operation as at that date, those with a rated thermal input above 5 megawatts are brought within the permitting regime from 1st January 2024, and those with a rated thermal input of 1 to 5 megawatts are brought within the permitting regime from 1st January 2029. The amendments require MCPs to comply with emission limit values for sulphur dioxide, nitrogen oxides and dust, subject to specified exceptions.

It also amends Schedule 26 to the principal Regulations to remove the disapplication of the availability of enforcement undertakings in respect of offences in relation to a flood risk activity, as access to enforcement undertakings is now available under the Regulatory Enforcement and Sanctions Act 2008, and it makes a minor change to regulation 32 to amend an incorrect cross reference.

Part 2 further amends the principal Regulations to introduce provisions in relation to certain generators (“specified generators”). Generators are electricity generating combustion plants, and some will already be within scope of the environmental permitting regime. These Regulations impose additional requirements in relation to specified generators, to further limit emissions of nitrogen oxides.

Part 3 makes amendments to the Air Quality Standard Regulations 2010, and the Air Quality Standard (Wales) Regulations 2010, as part of the transposition of the Medium Combustion Plant Directive. The amendments require that when preparing an air quality plan, the Secretary of State, or the Welsh Ministers, must consider whether to include measures imposing lower emission limit values for MCPs than those set out in the Medium Combustion Plant Directive, if that would make a noticeable improvement to air quality.

Full impact assessments of the effect that the Environmental Permitting (England and Wales) Regulations 2010 and its amending instruments where appropriate will have on the costs of business and the voluntary sector are available from the Air Quality and Industrial Emissions Team at the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR or at www.legislation.gov.uk.

Two impact assessments of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector are available from the Air Quality and Industrial Emissions Team at the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square,

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Environmental Permitting (England and Wales) (Amendment) Regulations 2018 No. 110*

London SW1P 3JR. An updated transposition note is submitted with the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

A draft of these Regulations was notified to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p.1).