

EXPLANATORY MEMORANDUM TO
THE LARGE COMBUSTION PLANTS (TRANSITIONAL NATIONAL PLAN)
REGULATIONS 2015

2015 No. 1973

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Large Combustion Plants (Transitional National Plan) Regulations 2015 (“the Regulations”) will provide a legal basis for the operation of a time-limited derogation available in respect of existing large combustion plants under the Industrial Emissions Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast) (“the IED”). Plants within the Transitional National Plan (TNP) have a transitional period in which to achieve IED emission limits, and may participate in emissions trading to help support that transition.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Following a letter from the Minister of State for Food, Farming and the Environment dated 14 July 2009, the House of Commons European Scrutiny Committee gave scrutiny clearance for the proposed Directive (which ultimately became the IED).
- 4.2 In a letter to the Parliamentary Under Secretary of State at Defra dated 17 June 2009, the Chairman of the House of Lords Committee on the European Union released the proposed Directive from scrutiny.
- 4.3 The component Directives which have been recast into the IED are all transposed through the Environmental Permitting (England and Wales) Regulations 2010, as amended. The provisions concerning large combustion plants are principally set out in Schedule 15A of those Regulations, as inserted by SI 2013/390.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England, Wales, Scotland and Northern Ireland.
- 5.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 Under Article 32 of the IED, Member States may implement a TNP which allows certain large combustion plants an additional four and a half years in which to make the necessary investment in emissions abatement technology to achieve compliance with the stringent IED emission limits for three key pollutants (nitrogen oxides, sulphur dioxide and dust). Article 32 also stipulates that Member States which opt to establish a TNP must submit their plans to the European Commission for approval before they can be implemented. The Commission's decision on the UK TNP as submitted on 20 October 2015 is anticipated before the end of the year.
- 7.2 Implementing the UK TNP will achieve a reduction in emissions of air pollutants and the associated environmental and human health benefits in a cost-beneficial manner without imposing an unreasonable burden on industry. Plants within the UK TNP will be able to make the necessary upgrades to their facilities to deliver the environmental benefits arising from a reduction in emissions of air pollutants whilst continuing to operate to ensure security of energy supply. The plants included in the plan are important to the UK in terms of both economic productivity and energy security and include plants which power major industrial sites.
- 7.3 The regulations establish the duties and powers of the Secretary of State, the Environment Agency, the other relevant UK regulatory agencies (the Scottish Environment Protection Agency, Natural Resources Wales, and the Department of the Environment Northern Ireland), and the operators of plants participating in the UK TNP. The regulations set out that the Environment Agency will be responsible for maintaining a register of the participating plants and collating reports on their emissions of the relevant pollutants, which will be produced by operators and submitted to their relevant regulator.
- 7.4 The regulations also establish an emissions trading system, which will allow participants to trade any unused 'emission allowances' with other participating plants in order to reduce total costs of implementation while delivering the same level of overall environmental benefits. Existing environmental permitting legislation provides the necessary framework for ensuring compliance and the issuing of penalties for non-compliance with the conditions of the UK TNP.
- 7.5 The UK TNP will be implemented from 1 January 2016 and will finish on 30 June 2020.

8. Consultation outcome

- 8.1 Formal consultation on the draft instrument opened on 14 September 2015 and closed on 26 October. The consultation sought views on the suggested approach in the regulations and also on the proposed emissions trading system.
- 8.2 Responses were received from 18 organisations. 13 were from energy providers and manufacturers, 4 from NGOs and 1 from a Trade Association. The responses largely endorsed the proposed approach noting that it was similar to the system which operated under the National Emissions Reduction Plan (NERP). However a few respondents disagreed with the proposed approach.
- 8.3 Concerns were raised that the deadline of 31 January for regulators to submit annual emission reports to the Environment Agency (EA) would potentially compress the reporting window at the end of the calendar year for operators regulated by bodies other than the EA. The deadline has now been moved to 28 February. We have also made other appropriate changes to the regulations to provide clarity.

9. Guidance

- 9.1 A suite of guidance from Defra and the Environment Agency will be available at <https://www.gov.uk>

10. Impact

- 10.1 The impact on business is set out in the Impact Assessment.
- 10.2 Charities and voluntary bodies do not operate industrial installations subject to this instrument.
- 10.3 The impact on the public sector is in terms of the Environment Agency and other regulators implementing this instrument. Since the instrument amends provisions with which those bodies are already familiar, the impact is considered minor.
- 10.4 An Impact Assessment will be published on www.legislation.gov.uk.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 This instrument will be monitored in accordance with Article 32(4) of the IED, which requires the Transitional National Plan to contain provisions on monitoring and reporting that comply with the implementing rules established in Commission Implementing Decision 2012/115/EU.

13. Contact

- 13.1 Olu Ogunbadejo at the Department for Environment, Food and Rural Affairs (Defra) Tel: 020 7238 4335 or email - olu.ogunbadejo@defra.gsi.gov.uk can answer any queries regarding the instrument.