

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT)
(NO 2) REGULATIONS

2015 No. 934

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This instrument amends the Environmental Permitting (England and Wales) Regulations 2010 to correct a defect in Schedule 8A brought about by an error in the Environmental Permitting (England and Wales) (Amendment) Regulations 2015. The error means that the current regulations do not fully apply the allowable exemptions from requirements for operators of certain combustion installations to consider whether the installation of cogeneration (known as CHP in the UK) or waste heat recovery systems would be cost-beneficial, with the aim to increase energy efficiency. This defect occurred due to a typographical error. Copies of this instrument will be issued free to all known recipients of the defective instrument.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 This instrument inserts the words “and 12 to 15” into paragraph 11 of Schedule 8A of the Environmental Permitting Regulations as follows:

“Paragraphs 7 to 10 and 12 to 15 do not apply to an installation, except an installation which forms part of a district cooling network, with any of the following—.....”

4.2 Due to a typographical error, the exclusion of the words “and 12 to 15” means that the current regulations do not fully transpose an allowed derogation to exempt installations which do not have enough “useable heat”, or are too far from a provider or user of the heat from needing to undertake the cost benefit analysis. If this is not corrected, it would mean that installations which would otherwise be exempt from the regulations would need to assess the costs and benefits of installing a system which would not be suitable because they do not have enough “useable heat” or are too far from a provider or recipient of the heat.

The intention of the UK was to transpose this derogation, it was included in the consultation which was conducted in 2014.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 This instrument amends the Environmental Permitting (England and Wales) Regulations 2010 to correct a defect in Schedule 8A which does not fully apply the allowable exemptions from requirements for operators of certain combustion installations to consider whether the installation of cogeneration (known as CHP in the UK) or waste heat recovery systems would be cost-beneficial, with the aim to increase energy efficiency. This defect occurred due to a typographical error.

7.2 This instrument inserts the words “and 12 to 15” into paragraph 11 of Schedule 8A of the Environmental Permitting Regulations as follows:

“Paragraphs 7 to 10 and 12 to 15 do not apply to an installation, except an installation which forms part of a district cooling network, with any of the following—.....”

7.3 The exclusion of the words “and 12 to 15” means that the current regulations do not fully transpose an allowed derogation to exempt installations which do not have enough “useable heat”, or are too far from a provider or user of the heat from needing to undertake the cost benefit analysis. If this is not corrected, it would mean that installations which would otherwise be exempt from the regulations would need to assess the costs and benefits of installing a system which would not be suitable because they do not have enough “useable heat” or are too far from a provider or recipient of the heat.

- Consolidation

7.4 The Department of Environment, Food and Rural Affairs is intending to consolidate the Environmental Permitting (England and Wales) Regulations 2010, as amended, as soon as practicable.

8. Consultation outcome

8.1 None. The instrument was not subject to consultation as it amends a defect.

9. Guidance

9.1 Guidance is being prepared by the Environment Agency to ensure operators understand the requirements of Schedule 8A of the Environmental Permitting (England and Wales) Regulations 2010. This guidance reflects the correction of the defect.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to all businesses who operate combustion installations with a thermal rating greater than 20MW. Although this could include small business, most businesses affected are likely to be of medium or large scale. Even where small businesses are caught under the scope of Schedule 8A of the Environmental Permitting (England and Wales) Regulations 2010, the expected annual compliance and administrative costs are considered negligible.

12. Monitoring & review

12.1 The Environmental Permitting (England and Wales) Regulations 2010, contains a requirement on the Secretary of State, in relation to England, to carry out a review of the Environmental Permitting (England and Wales) Regulations 2010 and to publish a report before 6 April 2017, then at intervals not exceeding 5 years. The review will consider in particular whether:

- The objectives intended to be achieved by the regulatory system established by these regulations (which include the provisions transposing articles 14(5)-(9) of the Energy Efficiency Directive) have been achieved
- Overall, the objectives remain appropriate, and, if so, the extent to which they could be achieved with a system that imposes less regulation.

13. Contact

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