

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES)
(AMENDMENT) REGULATIONS 2016

2016 No. 149

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 These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) (“the 2010 Regulations”) to specify that new European Committee for Standardisation (CEN) standards must be used to certify and test new equipment for recovering petrol vapour during refuelling of motor vehicles at service stations.

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 Legislative Context.

4. Legislative context

- 4.1 Commission Directive 2014/99/EU amending for the purposes of its adaptation to technical progress, Directive 2009/126/EC on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations requires transposition by 13 May 2016.
- 4.2 Directive 2009/126/EC has been transposed by means of amendments to the 2010 Regulations made by the Environmental Permitting (England and Wales) (Amendment) Regulations 2011.
- 4.3 The amending Regulations which are the subject of this Memorandum further amend the 2010 Regulations so as to transpose the 2014 Directive.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

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

What is being done and why

- 7.1 Petrol vapours can cause harm to human health and the environment.
- 7.2 Existing legislation aims to reduce the emissions of petrol vapour to the atmosphere at various stages during the storage and distribution of petrol. Stage II petrol vapour recovery involves recovering the petrol vapour displaced from the fuel tank of a motor vehicle during refuelling at a service station and transferring that petrol vapour to an underground storage tank at the service station or back to the petrol dispenser. Directive 2009/126/EC establishes a minimum level of Stage II petrol vapour recovery across Member States.
- 7.3 The 2009 Directive has recently been amended by Commission Directive 2014/99/EU. The changes introduced are minor technical amendments which specify the new European Committee for Standardisation (CEN) standards which must be used to certify and test PVR equipment, replacing the option of different national methodologies. UK industry was involved in development of these standards and will benefit from certifying to common EU standards rather than having to comply with varied national standards and different certification processes.

Consolidation

- 7.4 The 2010 Regulations have been amended a number of times since they were made. Defra and the Welsh Government are intending to consolidate them in late 2016. It is anticipated the consolidated Regulations will come into force in January 2017.

8. Consultation outcome

- 8.1 A public consultation was held between 20 November 2015 and 11 January 2016. The consultation received 7 responses as a result of the low impact and technical nature of the change. All the responses supported the proposed amendment to the Environmental Permitting Regulations. No issues or concerns were raised.
- 8.2 Industry representatives and regulators responding to the consultation agreed that the regulations will not place excessive burdens on industry but rather that the proposals mandate standards already adopted in England and Wales voluntarily, and will have a positive effect on businesses which operate in other Member States.
- 8.3 5 out of 7 responses agreed with the impact assessment. The other 2 responses felt unable to comment on impact because they were not familiar with the petrol vapour recovery equipment manufacturing sector.
- 8.4 A summary of responses is available at:

<https://www.gov.uk/government/consultations/environmental-permitting-updating-the-standards-for-petrol-vapour-recovery-at-service-stations>

9. Guidance

- 9.1 A suite of guidance from Defra and the Welsh Government on the 2010 Regulations is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211852/pb13897-ep-core-guidance-130220.pdf

10. Impact

- 10.1 The impact on business is minimal. The new CEN standards have been developed at the request of industry and are based on practices which were already in common use in the UK. The UK was involved in the development of the CEN standards, and their mandatory use will provide a level playing field across the EU and reduce costs of businesses selling across the EU market. Businesses will not have to invest in new PVR technology in order to comply with the Directive. We estimated that there will be a one-off cost of approximately £10,500-£36,000 to one UK manufacturer associated with re-certifying their products. Our consultation confirmed that industry representatives agreed with our assessment of impact of transposing the Directive. There is no impact on charities or voluntary bodies.
- 10.2 There is no impact on the public sector as the inspection rate for Local Authority regulators is unchanged by this amendment.
- 10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. However, there is no increase in regulation of petrol stations so the impact is negligible. The new standards adopted are those already adopted voluntarily by industry in England and Wales. For manufacturers of petrol vapour recovery equipment the adoption of standardised testing should improve access to markets across the EU.

12. Monitoring & review

- 12.1 The 2010 Regulations are subject to review as set out in regulation 110. As part of the planned consolidation of the 2010 Regulations, Defra is proposing to postpone the statutory review by two years to 2019.

13. Contact

- 13.1 Keith Crane at the Department for Environment, Food and Rural Affairs Telephone: 02080263478 or email: Keith.Crane@Defra.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX A

TRANSPOSITION NOTE

Commission Directive 2014/99/EU of 21 October 2014 amending, for the purposes of its adaptation to technical progress, Directive 2009/126/EC on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations

1. This note describes the implementation in England and Wales of Commission Directive 2014/99/EU amending, for the purposes of its adaptation to technical progress, Directive 2009/126/EC on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations.
2. Directive 2009/126/EC (“the PVR II Directive”) deals with Stage II petrol vapour recovery during refuelling of motor vehicles at service stations. The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2011 (S.I. 2011/2933) implemented the PVR II Directive in England and Wales by amending to the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) (“the EPR”) as follows:
 - Part 2 of Schedule 1 was amended to alter the motor vehicle refuelling activities to which Environmental Permitting requirements are applied; and
 - a new Schedule 18 was substituted which included a new Part 2 requiring regulators to observe the requirements of the 2009 Directive in relation to permits for motor vehicle refuelling activities.
3. The Commission Directive amends articles 4 and 5 of the PVR II Directive which require Member States to ensure that mandatory petrol vapour recovery systems are certified as having a certain minimum level of petrol vapour efficiency and are subject to certain testing at least once a year. These provisions have been amended to require the certification and testing to be carried out in accordance with Standard EN 16321-1:2013.
4. This instrument implements, in England and Wales, these changes by further amending the EPR. Scotland and Northern Ireland will carry out their own implementation of these requirements.
5. National laws, regulations and administrative provisions implementing the Commission Directive must be adopted and published by 12 May 2016 and applied from 13 May 2016.
6. The instrument uses referential drafting to transpose the Commission Directive.
7. In the absence of any reason for earlier implementation, the amending regulations are intended, subject to the will of Parliament, as to come into force from the application deadline of 13 May 2016.
8. Regulation 110 of the Environmental Permitting Regulations (England and Wales) Regulations 2010 (S.I. 2010/675) imposes a statutory duty on the Secretary of State to review those regulations every five years.

9. The table below describes the main substantive provisions of the legislation implementing the Directive. Except where indicated the references are to provisions of this instrument.

Article	Objective	Implementation
1	<p>Amends Article 4.1 of Directive 2009/126/EC to require Member States to ensure, with effect from the date on which Stage II petrol vapour recovery systems become mandatory pursuant to Article 3, that the petrol vapour capture efficiency of such systems is equal to or greater than 85 % as certified by the manufacturer in accordance with Standard EN 16321-1:2013.</p> <p>Amends Article 5.1 of Directive 2009/126/EC to require Member States shall ensure that the in-service petrol vapour capture efficiency of Stage II petrol vapour recovery systems is tested at least once each year in accordance with Standard EN 16321-2:2013.</p>	<p>Regulation 2 provides that the EPR are amended in accordance with Regulations 3 and 4.</p> <p>Regulation 3 amends the EPR to substitute the reference to Directive 2009/126/EC in Section 1.2 of Part 2 of Schedule 1.</p> <p>Regulation 4 amends the EPR to substitute the definition of “PVR II” in paragraph 2 of Part 2 of Schedule 18.</p> <p>The effect of section 20A of the Interpretation Act 1978 (c. 30) is that the updated references to Directive 2009/126/EC is to that Directive as amended by Commission Directive 2014/99/EU.</p>
2.1 First paragraph	Member States to adopt and publish, by 12 May 2016 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. Member States to communicate the text of those provisions to the Commission.	<p>These Regulations were made in February 2016.</p> <p>The requirements to publish and communicate the text to the Commission does not require implementation in national legislation</p>
2.2 Second paragraph	<p>Member States to apply those provisions from 13 May 2016.</p> <p>National provisions to contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.</p>	<p>Regulation 1 provides for a commencement date of 13 May 2016.</p> <p>The footnotes to Article 3.1 and 4 and the Explanatory Note refer to Commission Directive 2014/99/EU</p>

2.2	Member States to communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by the Directive.	No implementation required in national legislation
3	Directive enters into force 20 days after publication	No implementation required in national legislation
4	Directive addressed to Member States	No implementation required in national legislation.