STATUTORY INSTRUMENTS

2018 No. 110

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Environmental Permitting (England and Wales) (Amendment) Regulations 2018

Made - - - - 29th January 2018

Coming into force in accordance with regulation 1

The Secretary of State and the Welsh Ministers make these Regulations in exercise of the powers conferred by sections 2 and 7(9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999 ("the 1999 Act")(**1**).

In accordance with section 2(4) of the 1999 Act, the Secretary of State and the Welsh Ministers have consulted—

(a) the Environment Agency,

(b) the Natural Resources Body for Wales,

(c) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses as they consider appropriate, and

(d) such other bodies or persons as they consider appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament and by the National Assembly for Wales pursuant to section 2(8) and (9)(d) of the 1999 Act(**2**).

(**1**) 1999 c.24; section 2 was amended by section 62(13) of the Water Act 2014 (c.21) and by S.I. 2013/755 (W.90). Schedule 1 has been amended as follows: paragraphs 3 and 20 were amended by S.I. 2011/1043; paragraph 9A was inserted by, and paragraph 24 amended by, S.I. 2005/925 and paragraph 9A was further amended by S.I. 2012/2788; paragraph 21A was inserted by section 38 of the Waste and Emissions Trading Act 2003 (c.33), and paragraph 25 was amended by section 105(1) of the Clean Neighbourhoods and Environment Act 2005 (c.16) and by S.I. 2015/664. Functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by virtue of article 3(1) of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

(**2**) The reference in section 2(8) to approval by each House of Parliament has effect in relation to exercise of functions by the Welsh Ministers as if it were a reference to approval by the National Assembly for Wales by virtue of paragraph 33 of Schedule 11 to the Government of Wales Act 2006.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2018 and come into force on the day after the day on which they are made.

PART 2

Amendment of the Environmental Permitting (England and Wales) Regulations 2016

Amendment of the Environmental Permitting (England and Wales) Regulations 2016

2. The Environmental Permitting (England and Wales) Regulations 2016(**3**) are amended as set out in this Part.

Regulation 2 (interpretation: general)

3.—(1) In regulation 2(1) (interpretation: general)—

(a) after the definition of "coastal waters" insert—

""combustion plant" means any technical apparatus in which fuels are oxidised in order to use the heat generated;",

(b) in the definition of "emission", at the end insert—

"(i) in relation to a medium combustion plant, the release of substances from the plant into the air;

(j) in relation to a specified generator, the release of substances from the plant into the air;",

(c) after the definition of "main river" insert—

""medium combustion plant" has the meaning given in paragraph 2(1) of Schedule 25A;",

(d) after the definition of "mining waste operation" insert—

""mobile medium combustion plant" means a medium combustion plant that is—

(a) designed to move or be moved whether on roads or other land, and

(b) is not Part B mobile plant;",

(e) in the definition of "mobile plant"—

(i) for "either" substitute "any",

(ii) after paragraph (b) insert—

"(c) mobile medium combustion plant;",

(f) in the definition of "Part B installation", after "subject to" insert "paragraph (8) and to",

(g) after the definition of "solvent emission activity" insert—

""specified generator" has the meaning given in paragraph 2(1) of Schedule 25B;",

(**3**) S.I. 2016/1154.

(h) in paragraph (a) of the definition of "waste", for "17 and 19" substitute "17, 19, 25A and 25B".

(2) After paragraph (7) insert—

"(8) From the transfer date any medium combustion plant or specified generator does not form part of a Part B installation unless the operation of the plant is itself a Part B activity.

(9) In paragraph (8), "transfer date" has the meaning given in regulation 32(5C).".

Regulation 3 (interpretation: Directives)

4. In regulation 3 (interpretation: Directives), after the definition of "the Landfill Directive" insert —

""the Medium Combustion Plant Directive" means Directive 2015/2193/EU of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants(**4**);".

Regulation 7 (interpretation: operate a regulated facility and operator)

5. In regulation 7 (interpretation: operate a regulated facility and operator), in paragraph (a) of the definition of "operate a regulated facility", for "or mobile plant" substitute ", mobile plant, a medium combustion plant or a specified generator".

Regulation 8 (interpretation: regulated facility)

6. In regulation 8 (interpretation: regulated facility)—

(a) after paragraph (1)(j) insert—

"(k) a medium combustion plant;

(l) a specified generator",

(b) after paragraph (4)(g) insert—

"(h) a medium combustion plant;

(i) a specified generator".

Regulation 12 (requirement for an environmental permit)

7. After regulation 12(1) (requirement for an environmental permit) insert—

"(1A) Paragraph (1)(a) does not apply in relation to the operation of a medium combustion plant, mobile medium combustion plant or a specified generator comprising—

(a) a new medium combustion plant, before 20th December 2018;

(b) an existing medium combustion plant with a rated thermal input greater than 5 megawatts, before 1st January 2024;

(c) an existing medium combustion plant with a rated thermal input of less than or equal to 5 megawatts, before 1st January 2029;

(d) a specified generator, before the permitting date,

unless that medium combustion plant, mobile medium combustion plant or specified generator, is required to have a permit by virtue of forming part of another class of regulated facility.

(1B) For the purposes of paragraph (1A)—

(**4**) OJ No L 313, 28.11.2015, p. 1–19.

(a) "existing medium combustion plant" and "new medium combustion plant" have the meanings given in paragraph 2(1) of Schedule 25A;

(b) "permitting date" has the meaning given in paragraph 3(2) of Schedule 25B.".

Regulation 17 (single site permits etc.)

8. In regulation 17(2) (single site permits etc.), at the end insert—

"(g) of more than one medium combustion plant on more than one site,

(h) of more than one specified generator on more than one site,

(i) of more than one Part B installation that contains at least one medium combustion plant on more than one site".

Regulation 24 (notification of the surrender of an environmental permit)

9. In regulation 24(1) (notification of the surrender of an environmental permit), after sub-paragraph (e) insert—

"(f) a medium combustion plant;

(g) a specified generator".

Regulation 32 (discharge of functions)

10. In regulation 32 (discharge of functions)—

(a) in paragraph (2)—

(i) after "in relation to waste mobile plant" insert "and mobile medium combustion plant",

(ii) in sub-paragraph (c)(i), after "waste mobile plant" insert "or mobile medium combustion plant",

(iii) in sub-paragraph (c)(ii), for "waste mobile plant" substitute "that waste mobile plant or mobile medium combustion plant",

(b) in paragraph (3), after "waste mobile plant" in each place where it occurs insert "or mobile medium combustion plant",

(c) in paragraph (4)—

(i) for "Schedule 23" substitute "Schedule 22",

(ii) after "waste mobile plant" insert "or mobile medium combustion plant",

(d) in paragraph (5)—

(i) at the beginning insert "Subject to paragraph (5A),",

(ii) in sub-paragraph (a), after "installation" insert "but not, from the transfer date, in respect of any medium combustion plant or specified generator, in so far as they are carried on at the installation",

(iii) after sub-paragraph (b)(iv) insert—

"(v) from the transfer date, a medium combustion plant or specified generator;",

(e) after paragraph (5) insert—

"(5A) In the case of a Part B installation—

(a) where the only activity carried on at that installation is a medium combustion plant or a specified generator, or both, and

(b) which has been authorised by an environmental permit granted by a local authority before the transfer date,

the permit is deemed to have been granted by the appropriate agency immediately before the transfer date.

(5B) Where paragraph (5A) applies—

(a) anything (including, without limitation, legal proceedings) which, at the transfer date, is in the process of being done by a local authority in exercise of, or in connection with, a function that is being transferred may be continued by or in relation to the appropriate agency;

(b) anything done by or in relation to a local authority before the transfer date in the exercise of, or in connection with, a function that is being transferred is, so far as is required for continuing its effect on and after that date, to have effect as if done by or in relation to the appropriate agency;

(c) any reference to a local authority (and any reference which is to be read as a reference to a local authority) in any document constituting or relating to anything to which the provisions of paragraph (5A) apply, is so far as it is required for giving effect to those provisions, to be treated as a reference to the appropriate agency.

(5C) In this regulation—

(a) any reference to a medium combustion plant or to a specified generator includes any directly associated activity (as defined in paragraph 1(2) of Part 1 of Schedule 1) that, but for that medium combustion plant or specified generator, would not form part of an installation;

(b) "transfer date" means—

(i) in relation to a medium combustion plant, the date specified in paragraph 1(a) or (b) of Schedule 25A, as appropriate,

(ii) in relation to a specified generator, the "permitting date" described in paragraph 3(2) of Schedule 25B.".

Regulation 35 (specific provisions applying to environmental permits)

11. In regulation 35, for "25" in both places where it occurs, substitute "25B".

Regulation 80 (review: England)

12. In regulation 80(2) (review: England), after sub-paragraph (i) insert—

"(ai) the Medium Combustion Plant Directive,".

Schedule 5 (environmental permits)

13. In paragraph 5 of Part 1 of Schedule 5—

(a) at the end of sub-paragraph (1) insert—

"(f) a medium combustion plant or a specified generator, unless the regulator determines that the operation of the medium combustion plant or specified generator may have significant negative effects on human beings or the environment",

(b) after sub-paragraph (6) insert—

"(7) When assessing whether the operation of a medium combustion plant or a specified generator may have significant negative effects on human beings or the environment, the regulator must consider only its emissions to air.".

Schedule 15 (large combustion plants: Industrial Emissions Directive)

14. In paragraph 2(1) of Schedule 15, omit the definition of "combustion plant".

Schedule 24 (efficiency in heating and cooling energy: Energy Efficiency Directive)

15. In paragraph 1(1) of Schedule 24—

(a) in the definition of "installation"—

(i) after paragraph (a) omit "or",

(ii) after paragraph (b) insert—

"; or

(c) a medium combustion plant",

(b) in the definition of "relevant installation"—

(i) after paragraph (c) omit "or",

(ii) after paragraph (d) insert—

"; or

(e) a medium combustion plant operation".

Schedule 25A (medium combustion plants: Medium Combustion Plant Directive) and Schedule 25B (specified generators)

16. After Schedule 25 insert—

"SCHEDULE 25A Regulation 35(1)

Medium Combustion Plants: Medium Combustion Plant Directive

PART 1

General

Application

1. This Schedule applies—

(a) in relation to every new medium combustion plant from 20th December 2018,

(b) in relation to every existing medium combustion plant from the date specified in regulation 12(1A)(b) or (c), as appropriate.

Interpretation

2.—(1) In this Schedule—

"existing medium combustion plant" means a medium combustion plant—

(a) put into operation before 20th December 2018, or

(b) for which an environmental permit was granted before 19th December 2017, provided that the plant is put into operation no later than 20th December 2018;

"the MCPD" means the Medium Combustion Plant Directive;

"medium combustion plant" means a combustion plant with a rated thermal input equal to or greater than 1 megawatt but less than 50 megawatts, and any combination of combustion plants referred to in article 2(2) or article 4 of the MCPD, provided that—

(a) it does not fall within Article 2(3) or (4) of the MCPD,

(b) it is not installed on an offshore platform situated on, above or below those parts of the sea adjacent to England and Wales from the low water mark to the seaward baseline of the United Kingdom territorial sea,

(c) it is not installed on a gas storage or unloading platform as defined in regulation 2 of the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013(**5**);

"new medium combustion plant" means a medium combustion plant which is not an existing medium combustion plant.

(2) In sub-paragraph (1), "offshore platform" means any fixed or floating structure which—

(a) is used for the purposes of or in connection with the production of petroleum, and

(b) in the case of a floating structure, is maintained on a station during the course of production,

but does not include any structure where the principal purpose of the use of the structure is the establishment of the existence of petroleum or the appraisal of its characteristics, quality or quantity or the extent of any reservoir in which it occurs.

(3) In sub-paragraph (2), "petroleum" includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

(4) When interpreting the MCPD for the purposes of this Schedule—

(a) an expression that is defined in Part 1 of these Regulations has the meaning given in that Part;

(b) "permit" means environmental permit;

(c) the competent authority is the regulator;

(d) "general binding rule" means a standard rule published under regulation 26.

Applications for the grant of an environmental permit

3.—(1) The regulator must ensure that every application for the grant of an environmental permit—

(a) includes the information specified in Annex I to the MCPD;

(b) specifies which (if any) of paragraphs 7 to 11 of this Schedule is considered relevant to the application.

(2) Subject to sub-paragraph (3), the regulator must start the procedure for determining an application for the grant of an environmental permit within one month of the operator providing the information referred to in paragraph (1) and must inform the operator of the start of the procedure.

(3) Sub-paragraph (2) applies only when the operator has submitted a duly made application.

(**5**) S.I. 2013/971.

Exercise of relevant function

4.—(1) The regulator must exercise its relevant functions so as to ensure compliance with the following provisions of the MCPD—

(a) Article 4;

(b) Article 5(1) and (2);

(c) Article 5(6);

(d) Article 6(1);

(e) Article 6(2);

(f) Article 6(7);

(g) Article 6(13);

(h) Article 7 (except Article 7(8));

(i) Article 8(2) and (3);

(j) Article 9.

(2) In exercising its relevant functions, the regulator must ensure that there is no persistent emission of dark smoke, where "dark smoke" has the meaning given in section 3(1) of the Clean Air Act 1993(**6**).

(3) In exercising its relevant functions so as to ensure compliance with Article 6(1), (2), (7) or (13) of the MCPD, the regulator must ensure that environmental permits include emission limit values set in accordance with the provisions of Part 2 of this Schedule.

PART 2

Emission Limit Values

Interpretation of this Part

5. In this Part—

"Ambient Air Quality Directive" means Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe(**7**);

"Annex I" means Annex I of the MCPD;

"Annex II" means Annex II of the MCPD;

"biomass", "dust", "emission limit value", "micro isolated system", "nitrogen oxides", "operating hours", "small isolated system" and "zone" have the respective meanings given in article 3 of the MCPD;

any reference to emissions expressed in mg/Nm^3 is to those emissions defined in accordance with the first paragraph of Annex II.

Emission limit values

6.—(1) Sub-paragraphs (2) to (4) apply, subject to paragraphs 7 to 11.

(2) From 20th December 2018, emission limit values applicable to a new medium combustion plant, for emissions into the air of sulphur dioxide, nitrogen oxides and dust, are the corresponding

(**6**) 1993 c.11.
(**7**) OJ No L 152, 11.6.2008, p1.

emission limit values set out in Part 2 of Annex II (but with the modification that footnote (3) in Table 2 of that Part is to be read as if for "may be" there were substituted "are").

(3) From 1st January 2025, emission limit values applicable to an existing medium combustion plant with a rated thermal input greater than 5 megawatts, for emissions into the air of sulphur dioxide, nitrogen oxides and dust, are the corresponding emission limit values set out in Tables 2 and 3 of Part 1 of Annex II.

(4) From 1st January 2030, emission limit values applicable to an existing medium combustion plant with a rated thermal input of less than or equal to 5 megawatts, for emissions into the air of sulphur dioxide, nitrogen oxides and dust, are the corresponding emission limit values set out in Tables 1 and 3 of Part 1 of Annex II.

Limited operating hours – existing medium combustion plants

7.—(1) An existing medium combustion plant which operates for no more than 500 operating hours per year, as a rolling average over a period of five years, is not required to comply with the emission limit values set out in Tables 1, 2, and 3 of Part 1 of Annex II, provided that the operator has signed a declaration in accordance with paragraph 7 of Annex I.

(2) An existing medium combustion plant is not required to comply with the emission limit values set out in Tables 1, 2, and 3 of Part 1 of Annex II where it operates for no more than 1,000 operating hours per year, as a rolling average over a period of five years to—

(a) provide backup power production in islands connected to an electricity transmission system or distribution system, in the event of an interruption of the main power supply to an island; or

(b) produce heat in cases of exceptionally cold weather events,

provided that the operator has signed a declaration in accordance with paragraph 7 of Annex I.

(3) Subject to sub-paragraph (4), where an existing medium combustion plant firing solid fuels falls within sub-paragraph (1) or sub-paragraph (2), an emission limit value for dust of 200mg/Nm^3 applies.

(4) In the case of an existing medium combustion plant falling within sub-paragraph (2)(b), the emission limit value for dust in sub-paragraph (3) only applies during any period which has been notified by the appropriate authority to the regulator as an exceptionally cold weather event.

(5) For the purposes of sub-paragraph (2)(a), "transmission system" and "distribution system" have the meanings given in section 4(4) of the Electricity Act 1989(**8**).

Limited operating hours - new medium combustion plants

8.—(1) A new medium combustion plant which operates for no more than 500 operating hours per year, as a rolling average over a period of three years, is not required to comply with the emission limit values set out in Part 2 of Annex II, provided that the operator has signed a declaration in accordance with paragraph 7 of Annex I.

(2) Where a new medium combustion plant firing solid fuels falls within sub-paragraph (1), an emission limit value for dust of 100mg/Nm^3 applies.

(**8**) 1989 c.29. Section 4(4) was amended by section 28(3) of the Utilities Act 2000 (c.27) and by section 135(4) of the Energy Act 2004 (c.20).

Small and micro isolated systems – existing medium combustion plants

9. Existing medium combustion plants which are part of a small isolated system or a micro isolated system are only required to comply with the emission limit values set out in Tables 1, 2 and 3 of Part 1 of Annex II from 1st January 2030.

Plant at gas compressor stations – existing medium combustion plants

10. An existing medium combustion plant—

(a) with a rated thermal input greater than 5 megawatts; and

(b) which is used to drive gas compressor stations required to ensure the safety and security of a national gas transmission system,

is only required to comply with the emission limit values for nitrogen oxides set out in Table 3 of Part 1 of Annex II from 1st January 2030.

Temporary derogations – existing and new medium combustion plants

11.—(1) This sub-paragraph applies in relation to a medium combustion plant which normally uses low sulphur fuel, where the operator is unable to comply with the relevant emission limit values for sulphur dioxide in paragraph 6 because of an interruption in the supply of low-sulphur fuel resulting from a serious shortage.

(2) Where sub-paragraph (1) applies, the regulator may grant a derogation from the obligation to comply with those emission limit values for such period, up to a maximum of six months, as the operator satisfies the regulator is justified under the circumstances.

(3) This sub-paragraph applies in relation to a medium combustion plant using only gaseous fuel where—

(a) the plant has to resort exceptionally to the use of other fuels because of an interruption in the supply of gas; and

(b) as a result of using those other fuels, the plant would need to be equipped with secondary abatement equipment in order to comply with the relevant emission limit values for sulphur dioxide, nitrogen oxides and dust in paragraph 6.

(4) Where sub-paragraph (3) applies, the regulator may grant a derogation from the obligation to comply with the relevant emission limit values in paragraph 6—

(a) for a maximum of 10 days; or

(b) for such longer period as the operator satisfies the regulator is justified under the circumstances.

(5) Where the regulator grants a derogation under sub-paragraph (2) or (4), the regulator must inform the appropriate authority immediately.

SCHEDULE 25B

Regulation 35(1)

Specified generators

Application

1. This Schedule applies in relation to every specified generator from the permitting date.

Interpretation – specified generators

2.—(1) In this Schedule—

"generator" means any combustion plant which is used for the purpose of generating electricity, but does not include any generator that is mobile unless it is connected to—

(a) an electricity transmission system or distribution system, or

(b) other apparatus, equipment or appliances at a site, and is performing a function that could be performed by a generator that is not mobile;

"specified generator" means—

(a) a generator, other than an excluded generator, with a rated thermal input—

(i) more than or equal to 1 megawatt and less than 50 megawatts, or

(ii) in the case of a generator used to meet a capacity agreement or an agreement to provide balancing services, less than 50 megawatts;

(b) where two or more generators falling with paragraph (a)(i) or (ii) are operated—

(i) on the same site,

(ii) by the same operator, and

(iii) for the same purpose,

those generators together, provided that the rated thermal input of those generators together is less than 50 megawatts; or

(c) where two or more generators, other than excluded generators—

(i) are operated as set out in paragraph (b)(i) to (iii), and

(ii) together have a rated thermal input more than or equal to 1 megawatt and less than 50 megawatts, even if one or more of the generators has a rated thermal input of less than 1 megawatt,

those generators together.

(2) For the purposes of paragraph (1)—

"excluded generator" means—

(a) generators subject to the provisions of Chapter II or Chapter III of the Industrial Emissions Directive,

(b) generators operating with a defined nuclear safety role under a nuclear site licence issued by the Office for Nuclear Regulation(**9**),

(c) back-up generators operated for the purpose of testing for no more than 50 hours per year,

(d) generators installed on an offshore platform situated on, above or below those parts of the sea adjacent to England and Wales from the low water mark to the seaward baseline of the United Kingdom territorial sea,

(e) generators installed on a gas storage or unloading platform as defined in regulation 2 of the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013;

"mobile", in relation to a generator, means designed to move or be moved whether on roads or other land.

(3) In sub-paragraph (2), "offshore platform" means any fixed or floating structure which—

(a) is used for the purposes of or in connection with the production of petroleum, and

(**9**) The Office for Nuclear Regulation was established by section 77(1) of the Energy Act 2013 (c.32).

(b) in the case of a floating structure, is maintained on a station during the course of production,

but does not include any structure where the principal purpose of the use of the structure is the establishment of the existence of petroleum or the appraisal of its characteristics, quality or quantity or the extent of any reservoir in which it occurs.

(4) In sub-paragraph (3), "petroleum" includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

Interpretation – relevant dates and permitting dates

3.—(1) The "relevant date" in relation to a generator means—

(a) 1st January 2019, in the case of a Tranche B generator;

(b) 1st October 2019, in the case of a Tranche A generator with a rated thermal input greater than 5 megawatts which—

(i) has an emission of nitrogen oxides of equal to or greater than 500mg/Nm^3, and

(ii) operates for more than 50 hours per year;

(c) 1st January 2025, in the case of a Tranche A generator with a rated thermal input greater than 5 megawatts which—

(i) has an emission of nitrogen oxides of less than 500mg/Nm^3, or

(ii) operates for less than or equal to 50 hours per year;

(d) 1st January 2030, in the case of a Tranche A generator with a rated thermal input equal to or less than 5 megawatts.

(2) The "permitting date"—

(a) in relation to a specified generator falling within paragraph 2(1)(a), is the relevant date in relation to that specified generator;

(b) in relation to a specified generator falling within paragraph 2(1)(b) or (c), is the earliest of the relevant dates in relation to the generators comprising that specified generator.

(3) For the purposes of sub-paragraph (1)—

"Tranche A generator" means a generator—

(a) with a rated thermal input equal to or greater than 1 megawatt and less than 50 megawatts—

(i) which came into operation before 1st December 2016,

(ii) which is the subject of a capacity agreement arising from the 2014 or 2015 capacity auctions (whether or not the generator came into operation before 1st December 2016), or

(iii) for which a Feed-in Tariff preliminary accreditation application was received by the Gas and Electricity Markets Authority(**10**) before 1st December 2016;

(b) with a rated thermal input of less than 1 megawatt—

(i) which is the subject of a capacity agreement arising from the 2014, 2015 or 2016 capacity auctions (whether or not the generator came into operation before 1st December 2016),

(**10**) The Gas and Electricity Markets Authority was established by section 1(1) of the Utilities Act 2000 (c.27).

(ii) for which a Feed-in Tariff preliminary accreditation application was received by the Gas and Electricity Markets Authority before 1st December 2017; or

(iii) which is the subject of an agreement to provide balancing services entered into before 31st October 2017,

provided that a generator ceases to be a Tranche A generator if it is the subject of a capacity agreement, or an agreement for provision of balancing services, where that agreement is entered into after 31st October 2017 and remains in force after 31st December 2018;

"Tranche B generator" means any generator which is not a Tranche A generator or an excluded generator (and includes a specified generator which has ceased to be a Tranche A generator).

(4) For the purposes of sub-paragraph (1), in the case of a generator which is comprised in a specified generator falling within paragraph 2(1)(b) or (c), the generator is deemed to have the total rated thermal input of all the generators comprised in the specified generator.

Interpretation - general

4. In this Schedule—

"back-up generator" means a generator operated for the sole purpose of maintaining power supply at a site during an on-site emergency;

"balancing services" means any services procured by the transmission system operator in order to balance demand and supply, and to ensure the security and quality of electricity supply, across the national transmission system for Great Britain;

"capacity agreement" has the meaning given in regulation 30 of the Electricity Capacity Regulations 2014(**11**);

"capacity auction" means an auction under Part 4 of the Electricity Capacity Regulations 2014;

"distribution system" has the meaning given in section 4(4) of the Electricity Act 1989;

"emission limit value" means the maximum permissible quantity of a substance contained in the waste gases from a generator which may be discharged into the air during a given period;

"Feed-in Tariff preliminary accreditation application" means an application for preliminary accreditation made under Part 3 of the Feed-in Tariffs Order 2012(**12**);

"nitrogen oxides" means nitric oxide and nitrogen dioxide;

"nuclear site licence" has the meaning given in section 1 of the Nuclear Installations Act 1965(**13**);

"transmission system" has the meaning given in section 4(4) of the Electricity Act 1989;

"transmission system operator" means the person operating the national transmission system for Great Britain;

any reference to emissions expressed in mg/Nm^3 is to those emissions defined in accordance with the first paragraph of Annex II of the Medium Combustion Plant Directive.

(**11**) S.I. 2014/2043, as amended by S.I. 2014/3354, 2015/875, 2015/1974 and 2016/742.
(**12**) S.I. 2012/2782, as amended by S.I. 2013/1099, 2014/1601, 2015/35, 2015/1659, 2015/2045, 2016/319 and 2017/131.
(**13**) 1965 c.57. Section 1 was substituted by paragraph 17 of Schedule 12 to the Energy Act 2013 (c.32).

Environmental permit conditions: general

5.—(1) Subject to paragraph 6, the regulator must exercise its relevant functions in relation to specified generators so as to ensure that they are operated, from the permitting date, in such a way that—

(a) there is compliance with an emission limit value for nitrogen oxides of 190mg/Nm^3;

(b) where secondary abatement is required to ensure compliance with the requirement in paragraph (a), the emission limit value for nitrogen oxides is met—

(i) in the case of a Tranche A generator or a Tranche B generator which was, but has ceased to be, a Tranche A generator, within 20 minutes of the specified generator commencing operation, or

(ii) in the case of any other Tranche B generator, within 10 minutes of the specified generator commencing operation,

and in every case emissions must be monitored at least every three years;

(c) there is no persistent emission of dark smoke, where "dark smoke" has the meaning given in section 3(1) of the Clean Air Act 1993.

(2) Where compliance with air quality aspects of an environmental quality standard requires stricter conditions for the operation of a specified generator, or a generator comprised in a specified generator falling within paragraph 2(1)(b) or (c), from the permitting date the regulator must include additional or stricter measures in the permit to comply with those standards, including (if necessary) a stricter emission limit value than that specified in paragraph (1)(a).

(3) In the case of a specified generator falling within paragraph 2(1)(b) or (c), the requirements of sub-paragraph (1) must be met by each generator comprising that specified generator only from the relevant date relating to that generator.

Exceptions to environmental permit conditions

6.—(1) Paragraph 5 does not apply in relation to a specified generator falling within paragraph 2(1)(a), or a generator comprised in a specified generator falling within paragraph 2(1)(b) or (c), that is—

(a) used at a site which it is not reasonably practicable to connect to the distribution system;

(b) a back-up generator in respect of which, in the opinion of the regulator, the operator has demonstrated a genuine need to carry out routine testing for more than 50 hours per year.

(2) Paragraph 5 does not apply—

(a) until 1st January 2025 in relation to a Tranche A generator not falling within sub-paragraph (1)—

(i) with a rated thermal input greater than 5 megawatts,

(ii) with nitrogen oxide emissions of 500mg/Nm^3 or greater, and

(iii) that operates for more than 50 hours per year;

(b) in relation to a Tranche A generator—

(i) with a rated thermal input greater than 5 megawatts,

(ii) with nitrogen oxide emissions of 500mg/Nm^3 or greater,

(iii) that operates for more than 50 hours per year, and

(iv) that is operated only for the purpose of a capacity agreement entered into before 1st December 2016,

for the period in which that capacity agreement remains in force, or until 1st January 2025, whichever is later.

(3) Where a generator falls within sub-paragraph (1) or (2), the regulator must exercise its functions from the relevant date to ensure that the operation of the generator will not give rise to an exceedance of the limit values for nitrogen dioxide specified—

(a) in the case of a generator operated in England, in Schedule 2 to the Air Quality Standards Regulations 2010(**14**), and

(b) in the case of a generator operated in Wales, in Schedule 1 to the Air Quality Standards (Wales) Regulations 2010(**15**).

(4) Paragraph 5 does not apply in relation to a Tranche A generator—

(a) with a rated thermal input greater than 5 megawatts which—

(i) has an emission of nitrogen oxides of less than 500mg/Nm^3, or

(ii) operates for no more than 50 hours per year; or

(b) with a rated thermal input greater than or equal to 1 megawatt but no greater than 5 megawatts,

where it is operated only for the purpose of a capacity agreement entered into before 1st December 2016, during the period in which that capacity agreement remains in force.

(5) Paragraph 5 does not apply in relation to a Tranche A generator with a rated thermal input of less than 1 megawatt where it is operated only for the purpose of a capacity agreement entered into before 31st January 2017, during the period in which that capacity agreement remains in force.

(6) For the purposes of sub-paragraphs (2), (4) and (5), a generator comprised in a specified generator falling within paragraph 2(1)(b) or (c) is deemed to have the total rated thermal input of all the generators comprised in that specified generator.”.

Schedule 26 (Enforcement undertakings)

17. In Schedule 26, omit paragraph 1(2).

PART 3

Amendment of other Regulations

Amendment of the Air Quality Standards Regulations 2010

18.—(1) The Air Quality Standards Regulations 2010 are amended as follows.

(2) In regulation 26—

(a) after paragraph (5) insert—

“(5A) The air quality plan must include an assessment of the need to apply lower emission limit values for individual medium combustion plants than those set out in Directive 2015/2193/EU of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants (“the Medium Combustion Plant Directive”) provided that,

(**14**) S.I. 2010/1001, as amended by S.I. 2016/1184.
(**15**) S.I. 2010/1433.

in the opinion of the Secretary of State, applying such emission limit values would effectively contribute to a noticeable improvement of air quality.

(5B) In considering whether to impose lower emission limit values, the Secretary of State must take into account the results of the information exchange referred to in Article 6(10) of the Medium Combustion Plant Directive.",

(b) after paragraph (7) insert—

"(8) In this regulation—

"emission limit values" has the meaning given in paragraph 5 of Schedule 25A to the Environmental Permitting (England and Wales) Regulations 2016, and

"medium combustion plants" has the meaning given in paragraph 2(1) of Schedule 25A to those Regulations.".

Amendment of the Air Quality Standards (Wales) Regulations 2010

19.—(1) The Air Quality Standards (Wales) Regulations 2010 are amended as follows.

(2) After regulation 20(8) insert—

(a) in the English language text—

"(9) The air quality plan must include an assessment of the need to apply lower emission limit values for individual medium combustion plants than those set out in Directive 2015/2193/EU of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants ("the Medium Combustion Plant Directive") provided that, in the opinion of the Welsh Ministers, applying such emission limit values would effectively contribute to a noticeable improvement of air quality.

(10) In considering whether to impose lower emission limit values, the Welsh Ministers must take into account the results of the information exchange referred to in Article 6(10) of the Medium Combustion Plant Directive.

(11) In this regulation—

"emission limit values" has the meaning given in paragraph 5 of Schedule 25A to the Environmental Permitting (England and Wales) Regulations 2016, and

"medium combustion plants" has the meaning given in paragraph 2(1) of Schedule 25A to those Regulations.",

(b) in the Welsh language text insert—

"(9) Rhaid i'r cynllun ansawdd aer gynnwys asesiad o'r angen i gymhwyso gwerthoedd terfyn allyriadau is ar gyfer gweithfeydd hylosgi canolig unigol na'r rhai a nodir yng Nghyfarwyddeb 2015/2193/EU Senedd Ewrop a'r Cyngor ar 25 Tachwedd 2015 ar gyfyngu ar allyriadau llygryddion penodol i'r aer o weithfeydd hylosgi canolig ("y Gyfarwyddeb Gweithfeydd Hylosgi Canolig") ar yr amod, ym marn Gweinidogion Cymru, y byddai cymhwyso gwerthoedd terfyn allyriadau o'r fath yn cyfrannu'n effeithiol at welliant amlwg yn ansawdd yr aer.

(10) Wrth ystyried a ddylid gosod gwerthoedd terfyn allyriadau is, rhaid i Weinidogion Cymru ystyried canlyniadau'r cyfnewid gwybodaeth y cyfeirir ato yn Erthygl 6(10) o'r Gyfarwyddeb Gweithfeydd Hylosgi Canolig.

(11) Yn y rheoliad hwn—

mae i "gwerthoedd terfyn allyriadau" yr un ystyr ag a roddir i "emission limit values" ym mharagraff 5 o Atodlen 25A i Reoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr) 2016; ac

mae i “gweithfeydd hylosgi canolig” yr un ystyr ag a roddir i “medium combustion plants” ym mharagraff 2(1) o Atodlen 25A i’r Rheoliadau hynny..”.

Thérèse Coffey
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

29th January 2018

Hannah Blythyn
Minister for Environment under the authority of the Cabinet Secretary for Energy, Planning and Rural Affairs, one of the Welsh Ministers

23rd January 2018

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,

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).