EXPLANATORY MEMORANDUM TO THE

THE AIR QUALITY LIMIT VALUES (AMENDMENT) (ENGLAND) REGULATIONS 2004

2004 NO. 2888

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. Description

2.1 The Air Quality Limit Values (Amendment) (England) Regulations 2004 (the "amending regulations") implement the Council Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.

3. Matters of special interest

3.1 None.

4. Legislative background

The Regulations:

4.1 The Air Quality Limit Values (Amendment) (England) Regulations 2004 are made in order to transpose article 2 of Directive 2003/35/EC of the European Parliament and Council providing for public participation in respect of drawing up of certain plans and programmes relating to the environment.

4.2 The Directive provides for public participation in a number of environmental plans and programmes required to be drawn up under several existing environmental directives (e.g. on waste, air pollution and protection of waters against nitrate pollution). The amending regulations relate only to the transposition of provisions relating to plans and programmes required to be drawn up under Directive 96/62/EC on ambient air quality assessment and management. This Directive is transposed in England by the Air Quality Limit Values Regulations 2003. The amending regulations therefore amend the Air Quality Limit Values Regulations 2003 in order to transpose certain requirements of the Directive.

4.3 The amending regulations also amend the existing regulations to: (a) add an alternative method for the sampling and measurement of PM_{10} to reflect more closely the wording of Council Directive 1999/30/EC relating to limit values for sulphur dioxide, nitrogen dioxide, oxides of nitrogen, particulate matter and lead in ambient air; and (b) to update the website address referred to in the existing regulations and make a typographical correction.

The Directive:

4.4 The Directive was adopted on 25 May 2003 and came into force on 26 May 2003. The objective of the Directive is to contribute to the implementation of the obligations arising under the Arhus Convention (UN/ECE Convention on Access to Information, Public

Participation in Decision-Making and Access to Justice in Environmental Matters), in particular, providing for public participation in respect of decision making in environmental matters.

4.5 The Directive requires that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 25 June 2005. They shall forthwith inform the Commission thereof. A transposition note is attached to this explanatory memorandum which sets out how the amending Regulations transpose the relevant articles of the Directive.

5. Extent

5.1 These amending regulations apply to England only. Wales, Scotland, Northern Ireland and Gibraltar will be making separate legislation to implement these changes.

6. European Convention on Human Rights

6.1 It is the view of Defra that these amending Regulations are compatible with the Convention rights.

7. Policy Background

7.1 Community legislation in the field of the environment aims to contribute to preserving, protecting and improving the quality of the environment and protecting human health. It includes provisions for public authorities and other bodies to take decisions which may have significant effect on the environment as well as on personal health and well being.

7.2 Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decision taken.

7.3 Participation, including participation by associations and groups, such as non-governmental organizations promoting environmental protection, should accordingly be fostered, including inter alia by promoting environmental education of the public.

7.4 Present policies within the UK are expected to satisfy the Directives provisions. Many of the requirements of the Directive to provide for public participation in relation to air quality plans and programmes required to be drawn up under the Air Quality Limit Values Regulations 2003 are already implemented in the UK. It is the view of the Government that the amendments to these existing Regulations will formalise existing practice.

7.5 There are measures in place within the UK to meet the Directives provisions to inform the Commission about implementation.

8. Impact

8.1 In principle, many of the requirements of the directive are already implemented in the UK. There will be only some small costs on the Secretary of State which will be met within existing budgets. A regulatory impact assessment has been prepared and a copy is attached to this explanatory memorandum.

8.2 The Directive on public participation places an obligation on member states to ensure that the Directive is transposed by 25th June 2005.

8.3 It is for this reason that it is proposed to transpose the Directive into national legislation by means of amending regulations under the European Communities Act 1972. These regulations place the obligation of ensuring public participation in air quality plans and programmes on the Secretary of State. The Secretary of State is obliged to meet the requirements of the Directive.

8.4 All the principal stakeholders were consulted on the draft amending regulations and proposals.

9. Contact

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FINAL REGULATORY IMPACT ASSESSMENT

1. Title

The Air Quality Limit Values (Amendment) (England) Regulations 2004 (the "amending regulations") that implement the Council Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.

2. Purpose and Intended Effect of the Measures

2.1 The Objective

To transpose into national legislation, by regulation, the requirements of Directive 2003/35/EC (known as the Directive on public participation) by 25th June 2005, in accordance with the Directive's requirements and timetables.

The Directive provides for public participation in the preparation of a number of environmental plans and programmes required to be drawn up under several existing environmental directives on waste, air pollution and protection of waters against nitrate pollution. This regulatory impact assessment refers only to the transposition of provisions relating to plans and programmes required to be drawn up under: (a) Directive 96/62/EC on ambient air quality assessment and management; (b) Directive 99/30/EC relating to limit values for sulphur dioxide, nitrogen dioxide, oxides or nitrogen, particulate matter and lead in ambient air; (c) Directive 2000/69/EC relating to limit values for benzene and carbon monoxide in ambient air; and (d) Directive 2002/3/EC relating to ozone in ambient air. These Directives are transposed in England by the Air Quality Limit Values Regulations 2003. The amending regulations therefore amend the Air Quality Limit Values Regulations 2003 in order to transpose certain of the requirements of the Directive on public participation.

The amending regulations place the obligation to provide for effective public participation in environmental decision making on the Secretary of State. There is a package of measures in place to provide for effective public participation which will have the effect of meeting the Directive's obligations. It is our view that the amendments to The Air Quality Limit Values Regulations 2003 will formalise and strengthen existing practice.

2.2 Devolution

The Directive applies throughout the UK. It will be transposed separately in Scotland, Wales, Northern Ireland and Gibraltar.

2.3 Background

The importance of fostering increased public participation in environmental decision-making was recognized at the international level in the UN/ECE Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters ("the Aarhus Convention") which the Community signed on 25 June 1998 and which has also been signed by the UK. Since signing the Aarhus Convention in 1998, the EU has taken steps to update existing legal provisions in order to meet the requirements of the Århus Convention by means of legislation directed to Member States. The main legal instrument used to align Community legislation with the provisions of the Århus Convention on public participation is the Directive on public participation.

2.4 Risk assessment

Human Health Effects:

There are no health effects.

Infraction proceedings:

If the UK does not transpose the Directive on time, there is a risk that it will be subject to infraction proceedings by the European Commission .

3. Options

3.1 Option 1: Do Nothing

This is not a realistic or desirable option. The UK is legally obliged, as a Member of the European Union, to implement fully Directive 2003/35/EC.

3.2 Option 2: Transpose into UK law using Regulations

The Directive on public participation places an obligation on Member States to ensure that the directive is transposed by 25th June 2005. In transposing the Directive into national legislation, it is necessary to place an obligation on an individual or organisation with the powers to ensure that the Directive's objectives are met as far as possible.

It is for this reason that it is proposed to transpose the Directive into national legislation by means of amending regulations under the European Communities Act 1972. These regulations place the obligation of ensuring public participation in air quality plans and programmes on the Secretary of State. The Secretary of State is obliged to meet the requirements of the Directive.

4. Benefits

4.1 Option 1:

There are no benefits associated with this option, as by failing to transpose the UK would risk infraction proceedings by the European Commission.

4.2 Option 2:

Public authorities and other bodies frequently take decisions which may have a significant effect on the environment and as well as on personal health and well being. Effective public participation in environmental decision-making has several benefits. It enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to the decisions in question. This increases the accountability and transparency of the decision-making process and contributes to public awareness of environmental issues.

5. Costs

5.1 Compliance costs

Option 1:

Failure to transpose could result in considerable costs if infraction proceedings were brought against the UK by the European Commission .

Option 2:

In principle, many of the requirements of the Directive are already implemented in the UK under existing legislation. There will be only some small costs on the Secretary of State which will be absorbed in the existing budgets.

5.2 Compliance costs for business

There would be no additional costs for business under any of the options.

5.3 Compliance costs for a "typical" business

There would be no additional costs on a typical business under any of the options.

6. Consultation with small business: the Small Firms' Impact Tests

The Air Quality Limit Value (Amendment) (England) Regulations 2004 would not impose any additional costs on small businesses. Representative bodies for small businesses and the Small Business Service will be consulted on this draft Regulatory Impact Assessment.

7. Competition Assessment

- As stated above, as there are no direct effects on business, there are no implications for competition.

8. Enforcement and Sanctions

- As the current proposal imposes no additional obligations on individuals, no additional sanctions are provided under the amending regulations.

9. Monitoring and Review

Article 5 of Directive 2003/35/EC provides that by 25 June 2009, the Commission must send a report on the application and effectiveness of this Directive to the European Parliament and Council. This provision also allows the Commission to review the Directive, taking into account the experiences acquired in the application of the Directive in the Member States.

This article does not impose an obligation on Member States to report to the Commission, but for the Commission to report to the Council and Parliament and for the Commission to review the directive.

10. Consultation

(10.1) Within Government

Appropriate representatives of other Government Departments and the Devolved Administrations of Wales, Scotland, Northern Ireland and Gibraltar have been appropriately consulted on the UK position with regard to this proposal.

(10.2) Public consultation

A full public consultation on our policy direction is being carried out.

11. Summary and Recommendations

The regulations are necessary in order to transpose the requirements of Directive 2003/35/EC into national legislation and to place the legal obligation on the Secretary of State for the Environment, Food and Rural Affairs to ensure that measures are in place for providing effective public participation in environmental decision making. There will not be additional cost to industry or small businesses as a result of the proposed implementing regulations over and above those costs associated with complying with existing international agreements to which the UK is committed.

It is our recommendation that we transpose the Directive. In principle, many of the requirements of the Directive to provide for public participation in relation to air quality plans and programmes, required to be drawn up under existing legislation, are already implemented in the UK. It is our view that the amendments to The Air Quality Limit Values Regulations 2003 will formalise and strengthen existing practice.

12. Regulatory Quality Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed By the Minister responsible: Whitty

Date: 4th November 2004

Parliamentary Under Secretary of State
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TRANSPOSITION NOTE

TRANSPOSITION OF DIRECTIVE 2003/35/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PUBLIC PARTICIPATION IN RESPECT OF THE DRAWING UP OF CERTAIN PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT.

The Directive

The Directive 2003/35/EC on public participation (the "Directive") requires Member States to ensure certain measures are in place to allow the public to participate in the drawing up and amendment of certain plans and programmes that are required to be drawn up under existing legislation. To that end, the Government is proposing to amend *various* environmental regulations to implement this specific requirement of the Directive.

Article 2

This Transposition Note *only* concerns the requirements under Article 2 of the Directive in relation to plans or programmes required to be drawn up under Article 8(3) of Council Directive 96/62/EC on ambient air quality assessment and management ("air quality plans and programmes").

Transposition Measures For England

The existing Air Quality Limit Values Regulations 2003 (SI 2003 No 2121) are being amended to deliver the requirements of Article 2 of the Directive by The Air Quality Limit Values (Amendment) (England) Regulations 2004.

Transposition Measures for Devolved Administrations

Separate amending regulations will be made to transpose Article 2 of the Directive in relation to Wales, Scotland and Northern Ireland.

Table Showing How Main Elements Of Article 2 Of The Directive That Apply To Air Quality Plans and Programmes Have Been Implemented By The Air Quality Limit Values (Amendment) (England) Regulations 2004

Articles of the Directive on public participation	**Provision of Air Quality Limit Values (Amendment) (England) Regulations 2004**
Article 1 sets out the objective of the Directive to contribute to the implementation of the obligations arising under the Arhus Convention, in particular by: (a) providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.	This Article does not require transposition.

(b) improving the public participation and providing for provisions on access to justice within Council Directives 85/337/EEC and 96/61/EC.	
Article 2 (1) sets out the meaning of 'the public'. For the purposes of this Article, 'the public' shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisation or groups.	Regulation 4(1) and 4(3) amend Regulation 2 of the Air Quality Limit Values Regulations 2003 to give effect to the requirements under this Article.
Article 2 (2) requires that Member States shall ensure that the public is given early and effective opportunities to participate in the preparation and modification or review of the plans or programmes required to be drawn up under the provisions listed in Annex I. To that end, Member States shall ensure that: (a) the public is informed, whether by public notices or other appropriate means such as electronic media where available, about any proposals for such plans or programmes or for their modification or review and that relevant information about such proposal is made available to the public including inter alia information about the right to participate in decision-making about the competent authority to which comments or questions may be submitted. (b) the public is entitled to express comments and opinions when all options are open before decisions on the plans and programmes are made. (c) in making those decisions, due account shall be taken of the results of the public participation. (d) having examined the comments and opinions expressed by the public, the competent authority shall make reasonable efforts to inform the public about the decisions taken and the reasons and consideration upon which those decisions are	Regulation 4(2) gives effect to the requirements under this Article.

based, including information about the public participation process.	
Article 2 (3) requires that Member States shall identify the public entitled to participate for the purposes of paragraph 2, including relevant non-governmental organisations meeting any requirements imposed under national law, such as those promoting environmental protection. The detailed arrangements for public participation under this Article shall be determined by the Member States so as to enable the public to prepare and participate effectively. Reasonable time-frames shall be provided allowing sufficient time for each of the different stages of public participation required by this Article.	Regulation 4(2) gives effect to the requirements under this Article.
Article 2 (4) sets out that this Article shall *not* apply to plans and programmes designed for the sole purpose of serving national defence or taken in case of civil emergencies.	This Article does <u>not</u> require transposition in relation to air quality plans and programmes.
Article 2 (5) sets out that this Article shall *not* apply to plans and programmes set out in Annex I for which a public participation procedure is carried out under Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment or under Directive 2000/60/EC of the European Parliament and of the Council of 23 October establishing a framework for Community action in the field of water policy[6].	This Article does <u>not</u> require transposition in relation to air quality plans and programmes.
Article 3 sets outs amendments to Directive 85/337/EEC.	This Article does <u>not</u> require transposition in relation to air quality plans and programmes.
Article 4 sets out amendments to Directive 96/61/EC.	This Article does <u>not</u> require transposition in relation to air quality plans and

	programmes.
Article 5 sets out reporting and reviewing requirements for the Commission: By 25 June 2009, the Commission shall send a report on the application and effectiveness of this Directive to the European Parliament and to the Council. With a view to further integrating environmental protection requirements, in accordance with Article 6 of the Treaty, and taking into account the experience acquired in the application of the Directive in the Member States, such a report will be accompanied by proposals for amendments of this Directive, if appropriate. In particular, the Commission will consider the possibility of extending the scope of this Directive to other plans and programmes relating to the environment.	This Article does not require Member States to transpose this Article.
Article 6 sets out implementation requirements: Member States shall bring into force laws, regulations and administrative provisions necessary to comply with this Directive by 25 June 2005 at the latest. They shall forthwith inform the Commission thereof. When Member States adopt these measures , they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.	See Regulation 1.
Article 7 sets out the date of entry into force for the Directive: This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.	This Article does not require transposing.

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