EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2013

2013 No. DRAFT

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.

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

2. Purpose of the instrument

2.1. The primary purpose of the instrument is to amend the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No. 675) (as already amended) so as to transpose 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). That Directive recasts seven current Directives into a single one about regulating emissions from various industrial activities, ranging from power generation to intensive pig farming and waste incineration to dry cleaning. Much of the material in the component Directives is substantively unchanged, but there are some tightened or clarified requirements.

2.2. The instrument also removes some otiose descriptions of industrial activities from Schedule 1 to those Regulations and repeals three other statutory instruments which have no current purpose.

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

3.1. The deadline for the transposition of the industrial emissions Directive is 7 January 2013.

3.2. The instrument corrects errors in the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2011 (SI 2011 No. 2933), reported by the Committee in its Thirty-ninth Report of Session 2010-12.

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.

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[1] which have been recast into the industrial emissions Directive are all transposed through the Environmental Permitting (England and Wales) Regulations 2010. Since a great deal of those Directives remains substantively unchanged, it was evident that transposition of the industrial emissions Directive should proceed through amendment of those Regulations. The approach to transposition is set out in further detail in Annex A to this Memorandum.

5. Territorial Extent and Application

5.1. This instrument applies to England and Wales.

5.2. The administrations in Scotland, Northern Ireland and Gibraltar are bringing forward separate secondary legislation to transpose the industrial emissions Directive close to the 7 January 2013 deadline. The Department for Energy and Climate Change is doing so in respect of United Kingdom offshore oil and gas installations to the extent that they are subject to the Directive.

6. European Convention on Human Rights

6.1. The Parliamentary Under-Secretary for Resource Management, the Local Environment and Environmental Science, the Lord de Mauley has made the following statement regarding Human Rights:

> "In my view the provisions of the Environmental Permitting (England and Wales) (Amendment) Regulations 2013 are compatible with the Convention rights."

7. Policy background

7.1. After a two-year review launched in the autumn of 2005, in which the UK actively participated, the European Commission proposed the industrial emissions Directive on 21 December 2007 for adoption through the co-decision procedure[2]. After a 2nd Reading agreement concluded in July 2010, the Directive was adopted on 24 November 2010.

7.2. The purpose of the industrial emissions Directive is `to achieve a high level of protection for the environment taken as a whole' from harmful effects of industrial activities. It will

[1] The component Directives are those concerning integrated pollution prevention and control (2008/1/EC), large combustion plants (2001/80/EC), waste incineration (2000/76/EC), solvent emissions (1999/13/EC) and three concerning waste from the titanium dioxide industry (78/176/EEC, 82/883/EEC and 92/112/EEC). Note that Directive 2008/1/EC is a codified version of the original which was 96/61/EC.

[2] . Further history details and associated European documents can be found at http://www.europarl.europa.eu/oeil/file.jsp?id=5578652&language=en&mailer=true .

apply to some 10,000 industrial installations in England and Wales, ranging from power stations to intensive poultry farms and from waste incinerators to dry cleaners. Nearly all are already subject to one or more of the component Directives of the recast. This wide range is united in that all the installations it encompasses present – often individually and certainly in aggregate - a significant risk in various ways to human health and the environment from polluting activities.

7.3. The Directive, like those it recasts, is founded upon the principle that every installation it covers needs a permit from the relevant competent authority. **There is consequently no alternative to regulation**. The Directive contains provisions to improve the implementation of current controls on industrial emissions, particularly through better development and application of best available techniques (BAT) and improved, risk-based, inspection arrangements. The concept of BAT is founded upon the need for the techniques to be demonstrably both technically and economically viable in the industry sector concerned. As a result of UK input both to the negotiation of the Directive and to the review which gave rise to the Commission's proposal, the Directive (i) includes only relatively small and justifiable additions to the range of industrial installations covered by the Directive, and (ii) reflects UK practice in respect of risk-based inspections and site monitoring. It also contains important optional time-limited provisions regarding control of emissions from large combustion plants[3]. These should assist the UK in managing the transition to low carbon power generation whilst maintaining security of electricity supplies.

7.4. Fundamentally, the BAT basis of the Directive means that the costs to operators of meeting permit requirements should be at a level which is assessed by the regulator as economically viable for the sector as a whole. Moreover, the Directive's provisions reflect UK practice in enabling the detailed requirements of permits to be based on the environmental risk presented by each installation, thus enabling a proportionate approach which should minimise burdens upon installations which are environmentally well managed, thus providing incentive upon operators to improve their performance.

7.5. The Coalition *Programme for Government* states that we believe `that we need to protect the environment for future generations, make our economy more environmentally sustainable, and improve our quality of life and well-being'. Control of industrial pollution is essential in that regard, and indeed much of the Directive is founded upon UK-designed integrated approaches introduced under the Environmental Protection Act 1990.

7.6. The *Programme for Government* also states that `we will work towards full compliance with European Air Quality standards'. The Directive contains important provisions which will facilitate that whilst also, in particular, helping the power sector – which has a significant influence on air quality - to manage the transition to low carbon whilst maintaining security of supply.

[3] "Large combustion plants" is the term used for any installation in which fuel is burned and which has a thermal input of more than 50 Megawatts.

7.7. The component Directives are currently transposed through the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No. 675) – the "EPR" hereinafter. They transpose not only the component Directives but also a wide range of other environmental Directives in a way which standardises as far as possible the mechanics of permitting, compliance assessment and enforcement. In the light of their experience, operators and regulators regard the EPR approach favourably. The instrument therefore amends the EPR so as to transpose the industrial emissions Directive. This would be the sixth set of EPR amending Regulations. Defra is conscious of the need to keep the possibility of consolidating the Regulations under review, and is currently developing a work plan with the aim of producing a consolidated version as soon as practicable.

8. Consultation outcome

8.1. Formal consultation on the draft instrument opened on 12 March 2012 and closed on 6 June. The consultation pointed out that much of material in the component Directives and so the corresponding provisions in the Regulations to be amended remained unchanged, but that views were sought on a number of points concerning proposed changes. The consultation also sought views on removing 49 industrial activity descriptions from the Regulations on the grounds that they were no longer carried on or that they were in any case covered by other descriptions. Responses were received from 89 organisations, 31 of which were from individual or groupings of local authorities in England and Wales. The responses largely endorsed the transposition proposals and the proposals to remove otiose industrial activity descriptions. However, there was virtually no support for the proposed provision – in line with an option in a component Directive which had not previously been transposed - of a registration procedure, rather than full permitting, for activities using solvents. The instrument therefore omits that provision but is otherwise very similar to the draft for consultation.

8.2. A summary of consultation responses is at Annex B to this memorandum.

9. Guidance

9.1. A suite of guidance from Defra and the Welsh Government on the Environmental Permitting Regulations is available through http://www.defra.gov.uk/environment/quality/permitting/ . The consultation on the draft instrument also sought views on a revision of the guidance for "Part A" installations which is included in that suite. These are installations subject to the integrated pollution prevention and control Directive, one of the component Directives and the one which is most strengthened and clarified by the industrial emissions Directive. The revised version of that guidance will be added to the Defra web site early in 2013. The suite also contains guidance on large combustion plants, solvent activities and waste incineration which needs mostly cosmetic revisions to reflect the coming of the recast Directive. That

revision will be made early in 2013 but is not crucial to the understanding of the Directive's provisions in those respects.

10. Impact

10.1. The impact on business is set out in the Impact Assessment attached to this memorandum. Charities and voluntary bodies do not operate industrial installations subject to this instrument.

10.2. The impact on the public sector is in terms of the duties of the Environment Agency and local authorities in implementing the instrument. Since the instrument amends provisions with which those bodies are already very familiar, the impact is not great. They will need to reflect the tightened regulatory requirements in the Directive although these are largely based on existing UK practice. The costs incurred by those bodies in their regulatory duties are recovered through charges to permit holders set in charging schemes approved by the Secretary of State.

10.3. An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1. The legislation applies to small business. Industrial activities subject to the instrument are defined with a clear capacity threshold. Whilst there is not necessarily a direct relationship between the capacity of an installation and the business size of its operator, the existence of those thresholds very probably means that micro business is scarcely affected by the Directive, and small business to a very limited extent. Furthermore, any small or micro businesses will be affected only to the extent of the permit conditions which the regulator considers it necessary to impose. Regulators already have established criteria, irrespective of business size, for identifying "low impact" installations and regulating them accordingly within the general requirements of the Directive.

12. Monitoring & review

12.1. The Directive requires the European Commission to report upon the implementation of the Directive to the European Parliament and to the Council every three years, with the first report due by 7 January 2016. This report is to be based upon reports required from Member States at a frequency to be decided (as an implementing act under comitology)[4] but which will be not less than triennial.

[4] At a Committee meeting on 20 November 2012, Member States voted in favour of the adoption as a Commission Implementing Decision a questionnaire for reports covering (i) in outline, the calendar year 2013, and (ii) in more detail, the calendar years 2013 to 2016. This was published on 19 December 2012 as Commission Implementing Decision 2012/795/EU of 12 December 2012.

12.2. Under the Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (SI 2012 No. 630), Ministerial review of the Environmental Permitting (England and Wales) Regulations 2010 as a whole is required by 6 April 2017 but it is anticipated that the preparation of the triennial reports to the European Commission will in any case provide an effective and administratively efficient means of enabling Ministers regularly to review UK implementation within the 5 year period set out in the guiding principles for EU regulation.

12.3. Results of emissions monitoring at the larger industrial installations subject to the Directive are reported annually on the UK's Pollutant Release and Transfer Register (UK-PRTR)[5] which an EU Regulation requires to be maintained in each Member State.

13. Contact

13.1. Richard Vincent at the Department for Environment, Food and Rural Affairs, Tel: 020 7238 1678 or email: richard.vincent@defra.gsi.gov.uk can answer any queries regarding the instrument.

[5] At http://prtr.defra.gov.uk/ .

ANNEX A

The approach to transposition

A1. In transposing the industrial emissions Directive, the instrument has been drawn up in line with the Coalition Government's *Transposition guidance: how to implement EU Directives effectively* and in particular with its five transposition principles. These are considered in the following paragraphs.

A2. *Wherever possible, seek to implement EU policy and legal obligations through the use of alternatives to regulation.* The Directive, like those it recasts, is founded upon the principle that every installation it covers needs a permit from the relevant competent authority. There is consequently no alternative to regulation in transposing its requirements.

A3. *Endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts.* In negotiation of the Directive, the UK secured important optional provisions regarding large combustion plants. These will assist in providing greater flexibility to manage effectively the transition to low carbon power generation whilst maintaining security of electricity supplies. UK input also ensured that the Directive (i) includes only relatively small and justifiable additions to the range of industrial installations covered by the Directive, and (ii) preserves a vital "derogation" provision which maintains the current ability of regulators in certain circumstances to set emission limits less stringent than those associated with the application of best available techniques (BAT) for pollution control.

A4. The concept of BAT is founded upon the need for the techniques to be demonstrably both technically and economically viable in the industry sector concerned. The Directive continues and enhances the information exchange process amongst Member States through which conclusions on (BAT) are reached and adopted by the European Commission. The information exchanged can only come from operational experience and so, by contributing fully to that process as we encourage them to do, operators have full opportunity to influence BAT conclusions and so the standards which their installations have to meet. Defra chairs a grouping of UK industry representatives who have shown themselves able to identify any perceived disparity of practice within the EU in respect of industrial pollution control.

A5. *Always use copy out for transposition where it is available, except where doing so would adversely affect UK interests* - The component Directives are currently transposed through the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No. 675) – the "EPR" hereinafter. They transpose not only the component Directives but also a wide range of other environmental Directives in a way which standardises as far as possible the mechanics of permitting, compliance assessment and enforcement. They do that in a way which, although not strict "copy out", does not go beyond what the individual Directives require. The specific

requirements of each of the component Directives are transposed through individual Schedules which require the regulators to exercise their functions in accordance with cited Articles, thereby in effect "copying out" the Directive.

A6. In the light of their experience, operators and regulators regard the EPR approach favourably. EPR amending Regulations have therefore been drafted so as to make the changes necessary to transpose the industrial emissions Directive. With two exceptions (see paragraph A9*f*), all derogations available in the Directive are made available through the amended Regulations.

A7. *Ensure the necessary implementing measures come into force on (rather than before) the transposition deadline specified in a Directive.* 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 transposition deadline of 7 January 2013. They also are structured so as accord with the Directive's somewhat complex transitional provisions which have "milestones" at 7 January 2014, 7 July 2015 and 1 January 2016.

A8. *Include a statutory duty for Ministerial review every five years.* Separate amendments to the EPR took effect in April 2012 which insert requirements for the EPR as a whole (i) to be reviewed and a report published by 6 April 2017, and (ii) for review reports thereafter to be published at intervals not exceeding five years. Through being done by further amendment of the EPR, the transposition of the industrial emissions Directive will thus be subject to those requirements.

A9. The first of the *derogation exceptions* noted in paragraph A6 above concerns the Directive's option for a single permit to cover 'several parts of an installation operated by different operators', provided that the permit specifies the responsibilities of each operator. But a permit covering the activities of more than one operator would still need to make the responsibilities of each operator within the installation completely clear and so would be highly complex in terms both of its content and the processes needed in making and determining the application. Both informal and formal consultation provided no indication that UK operators seek such an option and so the instrument does not provide it.

A10. The second of the exceptions concerns the option for installations carrying out only activities using solvents to be registered rather than permitted by the regulator. Formal consultation showed strong opposition to this from local authority regulators on grounds of administrative burden and uncertainty for operators. Operators saw no benefit and added uncertainty. So the instrument does not provide it.

ANNEX B

Summary of consultation responses

B1. Set out below are all the specific questions raised in the consultation paper with a short commentary on responses to each in *italics*.

B2. 'Please consider the draft amending Regulations as a whole and comment on any perceived deficiencies or uncertainties'.

Of 28 responses, 22 provided comments. A few lamented the use of amending Regulations, pointing out the resulting complexity. Other responses under this heading were about guidance and overlapped to varying degrees with responses to questions 4 and 8. The finalised amending Regulations take account of the comments.

B3. 'Do you have any concerns about the proposed replacement Schedule 8? '

Only five respondents did, and none of those was major.

B4. 'We shall be grateful for comments on the form and content of the draft guidance which accompanies this consultation.'

Sixteen respondents provided comments, some very helpful. These will be reflected in the final guidance.

B5. 'Are you content with the proposal not to transpose the option for a single permit to cover several parts of an installation operated by different operators? If not, can you demonstrate from a real example that allowing a permit to cover several parts of an installation operated by different operators will reduce overall regulatory burden whilst maintaining the environmental protection required by the Directive?'

Four respondents were not, but gave no convincing illustration of a need for this option. Thirty four respondents were content with the proposal and so the option is not been transposed in the finalised amending Regulations. This does not preclude transposition at a later stage if a convincing demonstration of need is forthcoming.

B6. ‘Do you agree with our proposed transposition of Article 7(c) concerning incidents and accidents? If not, why not?’

Those agreeing (29) outnumbered the contraries by two to one. Some of the latter appeared not to understand that the Government is obliged to make this transposition. Others of that group felt that permit conditions should remove the need, although amongst those agreeing were correct observations on why current permit conditions are not enough.

B7. ‘Are you content with the proposed way of transposing the Article 9(2) option not to apply energy efficiency requirements to EU-ETS installations? What guidance on that issue do you consider Ministers should issue?’

Twenty-one expressed content, although in some cases with comments about what the guidance should or should not contain. The nine discontents sought greater clarity on what was intended and the guidance will take those concerns into account.

B8. ‘Is the “Part A” guidance concerning Articles 15(3) and(4) (setting emission limit values where there are BAT conclusions and derogation from that requirement) clear and sufficient?’

Just over half the 42 respondents thought so, but some even so offered suggestions for improvement. Consideration of all the suggestions will be reflected in the finalised guidance.

B9. ‘Do you consider that, in particular sectors, further use of standard rules could be made?’

Twenty thought so. The Regulations already facilitate this and the Government will encourage the regulators to develop more standard rules for suitable sectors of industry.

B10. ‘Do you currently envisage it being necessary to strengthen existing site condition reports? If so, in what way or ways, and at what cost?’

A large majority (29 of 36) didn’t. Many comments recognised that it is for the operator to consider whether the site report would provide a sufficient baseline upon which the operator’s stewardship of the site’s condition could be assessed when the permit needs to be surrendered.

B11. ‘Do you have views on how regulators can encourage the development and application of emerging techniques?’

It was encouraging to find 36 respondents offering views, ranging from the cautious to the enthusiastic. Some had perhaps not fully appreciated the flexibilities already present in the regulation of emerging techniques. These views will be taken into account as the Directive is implemented.

B12. ‘Do you have any uncertainties about which waste management activities are now subject to IPPC requirements? If so, how would you like them remedied?’

Fifteen out of 27 had uncertainties, including five of the eight respondents from the Waste sector. These uncertainties can be addressed in guidance.

B13. ‘Do you agree with the assignment of the wood preservation activity as described in the Directive to local authorities?’

All 15 respondents agreed.

B14. ‘Do you have any comments about the assignment of local authorities as regulators for all waste incineration and co-incineration activities which are below the capacity thresholds in Annex I of the Directive?’

Only 17 responded, many withsome concerns about local authority competence to undertake the task. The Government will address those concerns by encouraging local authorities to share their knowledge and experiences.

B15. ‘Do you agree with the proposal to remove BAT requirements from incineration and co-incineration installations not subject to IPPC? What environmental consequences and compliance cost savings may arise?’

Twelve of the 14 didn’t agree, most claiming that retention of IPPC would provide better environmental protection and that cost savings would be minimal. None seemed to regard this proposals as removal of gold plating, although that is what it is and so in England (but not in Wales) the amending Regulations will remove that excess requirement.

B16. ‘Do you agree with the proposal to remove obligatory PCB and PAH monitoring from waste incineration plants? If not, why not?’

Twenty responded, roughly evenly divided in opinion. Those disagreeing generally appeared not to recognise in the proposal the regulator’s ability to prescribe these monitoring requirements in specific cases.

B17. ‘Do you consider that the introduction of a registration system for solvent activities would be worthwhile in the short and longer term? Can you suggest any alternative form of registration?’

Only two of the 35 responses to this question showed any enthusiasm for a registration system. The rest were opposed, mainly on the grounds that a registration system would offer no benefit in terms of regulatory burden reduction, although a very few offered some constructive suggestions on an alternative form of registration or quasi-registration. The amending Regulations therefore do not provide a registration system although the Government will explore with local authorities how further simplification can be made in the current permitting requirements.

B18. ‘Do you agree with the proposal to remove BAT requirements from solvent activities? In What are your views on the environmental consequences and compliance cost savings which may arise?’

Nearly all the 31 respondents disagreed. In the few cases where gold plating was identified as the issue, respondents appeared sanguine about its retention. Nevertheless, in England (but not in Wales) the amending Regulations will remove the excess requirement.

B19. ‘Have you any comments upon the proposed means of incentivising permit applications in respect of “2015 installations[6]”? Can you suggest any non-regulatory means by which the flow of permit applications to the Environment Agency can be spread?’

Twenty-two respondents had comments. Many suggested that reduced permit application charges for early application might be appropriate, but that would leave other permit holders in effect subsidising the new entrants. Guidance and awareness-raising amongst operators were identified as other non-regulatory means and the Government will

[6] That is to say, installations at which one of the activities newly subjected to IPPC are carried on and which therefore do need a permit for that activity until 7 July 2015.

encourage the Environment Agency in that regard.

B20. 'Do you consider that any of the "legacy" activity descriptions proposed in Appendices C and E for deletion or adjustment should in fact be retained? If so, please provide reasons.'

Ten of the 15 respondents were content with the proposals. Those which were not had highly specific concerns which have been addressed in the amending Regulations.

B21. 'Do you agree that the retention of the "legacy" descriptions tabulated in Appendix D is justified? Have you any evidence which either supports or refutes the need for retention?'

Twelve of 14 respondents agreed, with the other two raising highly specific points which have been addressed in the amending Regulations.

B22. Do you agree with the proposal to end IPPC requirements for mobile plant? (See paragraph 33.1.)

Just over two to one in favour (13 to 6), with the six against expressing vague concerns about environmental protection or positing that, even though there are fewer than five such installations currently, there might be more in the future. However, the Directive plainly does not require IPPC to be applied to mobile plant and so the amending Regulations will remove that gold plating.

B23. 'You are invited to respond to the questions which are contained in the draft impact assessment which accompanies this consultation'

Fifteen respondents did so, including (as expected) some major contributions from the power sector. Those responses have been reflected in the finalised impact assessment.

Industrial emissions Directive (2010/75/EU)

Transposition table – to accompany the draft Environmental Permitting (England and Wales) (Amendment) Regulations 2013

Introduction

This transposition table incorporates the format recommended in the Government's *Transposition Guidance: How to implement European Directives effectively*. It is intended to provide a summary of how the components of the industrial emissions Directive are transposed through the draft Environmental Permitting (England and Wales) Regulations 2013. It has an additional "commentary" column, briefly describing in most cases how the cited component of the draft Regulations provides transposition.

Because the Directive is a recast of seven existing Directives (the "component Directives"), not every Article or complete Annex in it needs transposition. Article 80(1) of the Directive lists those which have to be transposed. This table therefore lists each of those, in the numerical order used in Article 80(1). The tables also includes, in *italics*, a very few entries concerning Articles which offer derogations available in the component Directives but which have not previously been transposed.

In the table headings:

> **Copy-out**, means the draft Regulations either use effectively the same wording as that of the Directive or (in most cases) cross-refer to the relevant Directive provision; and
>
> **Elaboration** means the draft Regulations add to the wording of the Directive to clarify its meaning for legal reasons.

Within the table:

> **The main Regulations** or **'un-amended EPR'** means the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No.675)[1] as already amended[2].

[1] At http://www.legislation.gov.uk/uksi/2010/675/contents/made .

[2] By S.I. 2010/2933, S.I. 2011/988, 2043 and 881 in England and S.I. 2011/2377 in Wales and S.I. 2012/630.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
Chapter I – Common Provisions				
2(1) – Scope	N	Needs to be covered in the relevant Schedules rather than in a single place.	47(2), 50(2), 51, 52(2) and 53(2)	These regulations substitute or insert Schedules addressing the activities covered by Chapters II to VI of the Directive.
2(2) – Scope	Y	N/A	19(4)(c)	
3(8) – Definition - general binding rule	N	Equivalent provision already in regulation 26 of un-amended EPR	-	-
3(11) - Definition - BAT reference document	Y	N/A	47(2) – paragraphs 5(1)(f), 8 and 6 of the inserted Schedule 7A.	Regulator to exercise functions so as to comply with Articles 13(7), 24 and 27, each of which mentions the defined term and so requires reference to the Directive definition.
3(12) - Definition – BAT conclusions	Y	N/A	47(2) – paragraphs 5(1), 7 and 6 of the inserted Schedule 7A.	Regulator to exercise functions so as to comply with Articles 13(7), 14, 15, 16, 19 and 21, each of which mentions the defined term and so requires reference to the Directive definition.

[3] The numbers in this column refer to the regulation number in the draft Environmental Permitting (England and Wales) Regulations 2013.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
3(12) - Definition – emission levels associated with BAT	Y	N/A	47(2) – paragraphs 5(1)(g) and (h), 7 and 8 of the inserted Schedule 7A.	Regulator to exercise functions so as to comply with Articles 14, 15, 21 and 24, each of which mentions the defined term and so requires reference to the Directive definition.
3(14) – Definition – emerging technique	Y	N/A	47(2) – paragraphs 5(1)(h) and 6 of the inserted Schedule 7A.	Regulator to exercise functions so as to comply with Articles 15 and 27, each of which mentions the defined term and so requires reference to the Directive definition.
3(15) – Definition – operator	N	Equivalent provision already in regulation 7 of un-amended EPR	-	-
3(18) – Definition – hazardous substances	Y	N/A	47(2) – paragraphs 5(1)(g) and (m) of the inserted Schedule 7A.	Regulator to exercise functions so as to comply with Article 14, which mentions the defined term and so requires reference to the Directive definition.
3(19) – Definition – baseline report	Y	N/A	47(2) – paragraphs 4 and 5(1)(m) of the inserted Schedule 7A.	Regulator to exercise functions so as to comply with Articles 12 and 22, each of which mentions the defined term and so requires reference to the Directive definition.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
3(20) – Definition – groundwater	Y	N/A	47(2) – paragraphs 5(1)(g), (i) and (m) of the inserted Schedule 7A. 50(2) – paragraphs 3(j) and (n) of the inserted Schedule 13A.	Regulator to exercise functions so as to comply with Articles 14, 16 and 22, each of which mentions the defined term and so requires reference to the Directive definition. Regulator to exercise functions so as to comply with Articles 48 and 52, each of which mentions the defined term and so requires reference to the Directive definition.
3(21) – Definition – soil	Y	N/A	47(2) – paragraphs 5(1)(g), (i) and (m) of the inserted Schedule 7A. 50(2) – paragraphs 3(h) and (n) of the inserted Schedule 13A.	Regulator to exercise functions so as to comply with Articles 14, 16 and 22, each of which mentions the defined term and so requires reference to the Directive definition. Regulator to exercise functions so as to comply with Articles 46 and 52, each of which mentions the defined term and so requires reference to the Directive definition.
3(22) – Definition – environmental inspection	Y	N/A	47(2) – paragraph 9 of the inserted Schedule 7A.	Regulator to exercise functions so as to comply with Article 23 which mentions the defined term and so requires reference to the Directive definition.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
3(23) – Definition – poultry	Y	N/A	-	Regulation 12 of the un-amended EPR requires an operator to have an environmental permit. "poultry" appears in Section 6.9 of Part 2 of the un-amended Schedule 1 as a "part A" activity to which the regulator, under regulation 35(2)(a), must apply the inserted Schedule 7A, thus requiring reference to this Directive definition.
3(26) – Definition – stack	Y	N/A	52(2) – paragraphs 3(a) and (b) of the inserted Schedule 15A. 50(2) – paragraphs 3(e) and (h) of the inserted Schedule 13A. 51 – paragraph 3(e) of the substituted Schedule 14.	Regulator to exercise functions so as to comply with Articles 29 and 30, each of which mentions the defined term and so requires reference to the Directive definition. Regulator to exercise functions so as to comply with Articles 42 and 46, each of which mentions the defined term and so requires reference to the Directive definition. Regulator to exercise functions so as to comply with Articles 57 which mentions the defined term and so requires reference to the Directive definition.
3(27) – Definition – operating hours	Y	N/A	52(2) – paragraphs 3(b) and (e) of the inserted Schedule 15A.	Regulator to exercise functions so as to comply with Articles 29 and 30, each of which mentions the defined term and so requires reference to the Directive definition.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
3(28) – Definition – rate of desulphurisation	Y	N/A	52(2) – paragraph 3 of the inserted Schedule 15A.	Regulator to exercise functions so as to comply with Articles 30 to 35, each of which mentions the defined term and so requires reference to the Directive definition.
3(29) – Definition – indigenous solid fuel	Y	N/A	52(2) – paragraphs 3(c) and (e) of the inserted Schedule 15A.	Regulator to exercise functions so as to comply with Articles 31 and 33 each of which mentions the defined term and so requires reference to the Directive definition.
3(30) – Definition – determinative fuel	Y	N/A	52(2) – paragraph 3(k) of the inserted Schedule 15A.	Regulator to exercise functions so as to comply with Articles 40 which mentions the defined term and so requires reference to the Directive definition.
3(34) – Definition – gas engine	Y	N/A	52(2) - paragraph 1 of the inserted Schedule 15A. 52(2) – paragraphs 3(b) to (f) and (i) to (k) of the inserted Schedule 15A.	Schedule applies to a plant to which Chapter III of the Directive applies, thus including Article 28 where the defined term occurs. Regulator to exercise functions so as to apply Articles 30 – 34 and 38 – 40, each of which refer to Annex V, which mentions the defined term in several places and so requires reference to the Directive definition.
3(35) – Definition – diesel engine	Y	N/A	52(2) – paragraphs 3(b) of the inserted Schedule 15A.	Regulator to exercise functions so as to apply Articles 30 which mentions the defined term and so requires reference to the Directive definition.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
3(36) – Definition – small isolated system	Y	N/A	52(2) – paragraphs 3(e) and (f) of the inserted Schedule 15A.	Regulator to exercise functions so as to comply with Articles 33 and 34 each of which mentions the defined term and so requires reference to the Directive definition.
3(37) – Definition – waste	Y	N/A	4(11)	Paragraph (a) of the substituted definition covers this definition.
3(38) – Definition – hazardous waste	Y	N/A	4(5)	This slightly amends the definition in regulation 2(1) of the un-amended EPR.
3(41) – Definition – waste co-incineration plant	Y	N/A	4(12)	
4(2) – Obligation to hold a permit – optional provision - one operator, two or more installations on same site.	N	Equivalent provision already in regulation 17 of un-amended EPR.	-	-
4(3) – Obligation to hold a permit – optional provision - more than one operator, several parts of an installation.	N	Option not transposed: consultation revealed no real call for this option.	-	-
7 – Incidents and accidents	Y	N/A	47(7)	Paragraph (a) of the inserted regulation 47(7) covers this.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
8 – Non-compliance	Y	N/A	47(7)	Paragraphs (b) and (c) of the inserted regulation 47(7) covers this.
9(2) – Emission of greenhouse gases – energy efficiency requirements[4]	Y	N/A	47(2): paragraph 5(1)(d) of the inserted Schedule 7A. 50(2): paragraph 4(d) of the inserted Schedule 13A. 51: paragraph 3(d) of the substituted Schedule 14.	Regulator to exercise functions.
Chapter II – provisions for activities listed in Annex I				
10 - Scope	Y	N/A	47(2) – paragraph 1 of the inserted Schedule 7A.	This paragraph applies Schedule 7A to Part A installations, which are defined in regulation 2(1) of the un-amended EPR by reference to Schedule 1.

[4] This Article is not listed in Article 80(1) since the equivalent option was available in the IPPC Directive but not transposed. The Article is included here because it is proposed to include it in the present transposition.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
11(e) – General principles - waste	Y	N/A	47(2) - paragraph 5(1)(e) of the inserted Schedule 7A	Regulator to exercise functions.
11(h) – General principles – site restoration	Y	N/A	47(2) - paragraph 5(1)(e) of the inserted Schedule 7A	Regulator to exercise functions.
12(1)(e) – Applications for permits – baseline report	Y	N/A	47(2): paragraph 4 of the inserted Schedule 7A	Regulator to ensure every application includes information required by Article 12.
12(1)(h) – Applications for permits – waste measures	Y	N/A	47(2): paragraph 4 of the inserted Schedule 7A	Regulator to ensure every application includes information required by Article 12.
13(7) – BAT reference documents – BAT conclusions prior to adoption	Y	N/A	47(2): paragraph 5(1)(f) of the inserted Schedule 7A.	Regulator to exercise functions.
14(1)(c)(ii) – Permit conditions – monitoring requirements and BAT	Y	N/A	47(2): paragraph 5(1)(g) of the inserted Schedule 7A.	Regulator to exercise functions.
14(1)(d) – Permit conditions –supply of monitoring information	Y	N/A	47(2): paragraph 5(1)(g) of the inserted Schedule 7A.	Regulator to exercise functions.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
14(1)(e) – Permit conditions – soil and groundwater monitoring	Y	N/A	47(2): paragraph 5(1)(g) of the inserted Schedule 7A.	Regulator to exercise functions.
14(1)(f) – Permit conditions – measures relating to abnormal operating conditions	Y	N/A	47(2): paragraph 5(1)(g) of the inserted Schedule 7A.	Regulator to exercise functions.
14(1)(h) – Permit conditions – assessing compliance	Y	N/A	47(2): paragraph 5(1)(g) of the inserted Schedule 7A.	Regulator to exercise functions.
14(2) – Permit conditions – equivalent parameters or technical measures	Y	N/A	47(2): paragraph 5(1)(g) of the inserted Schedule 7A.	Regulator to exercise functions.
14(3) – Permit conditions – BAT conclusions the reference	Y	N/A	47(2): paragraph 5(1)(g) of the inserted Schedule 7A.	Regulator to exercise functions.
14(4) – Permit conditions – stricter than achievable with BAT	Y	N/A	47(2): paragraph 5(1)(g) of the inserted Schedule 7A.	Regulator to exercise functions.
14(5) – Permit conditions – BAT not described in BAT conclusions	Y	N/A	47(2): paragraph 5(1)(g) of the inserted Schedule 7A.	Regulator to exercise functions.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
14(6) – Permit conditions – activity not covered by BAT conclusions	Y	N/A	47(2): paragraph 5(1)(g) of the inserted Schedule 7A.	Regulator to exercise functions.
14(1)(h) – Permit conditions – animal welfare	Y	N/A	47(2): paragraph 5(1)(g) of the inserted Schedule 7A.	Regulator to exercise functions.
15(2) – Emission limit values [etc.] – based on BAT	Y	N/A	47(2): paragraph 5(1)(h) of the inserted Schedule 7A.	Regulator to exercise functions.
15(3) – Emission limit values [etc.] – setting in line with BAT conclusions	Y	N/A	47(2): paragraph 5(1)(h) of the inserted Schedule 7A.	Regulator to exercise functions.
15(4) – Emission limit values [etc.] – derogation from setting in line with BAT conclusions	Y	N/A	47(2): paragraph 5(1)(h) of the inserted Schedule 7A.	Regulator to exercise functions.
15(5) – Emission limit values [etc.] – temporary derogations	Y	N/A	47(2): paragraph 5(1)(h) of the inserted Schedule 7A.	Regulator to exercise functions.
16 – Monitoring requirements	Y	N/A	47(2): paragraph 5(1)(i) of the inserted Schedule 7A.	Regulator to exercise functions.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
17 – General binding rules	Y	N/A	47(2): paragraph 5(1)(j) of the inserted Schedule 7A.	Regulator to exercise functions.
19 – Developments in BAT	Y	N/A	47(2): paragraph 6 of the inserted Schedule 7A.	Regulator must ensure that it is informed of developments..
21(2) – Reconsideration and updating of permit conditions – provision of information	Y	N/A	47(2): paragraph 7 of the inserted Schedule 7A.	Regulator to review permits in accordance with Article 21.
21(3) – Reconsideration and updating of permit conditions – within 4 years of publication of BAT conclusions	Y	N/A	47(2): paragraph 7 of the inserted Schedule 7A.	Regulator to review permits in accordance with Article 21.
21(4) – Reconsideration and updating of permit conditions – in absence of BAT conclusions	Y	N/A	47(2): paragraph 7 of the inserted Schedule 7A.	Regulator to review permits in accordance with Article 21.
21(5) – Reconsideration and updating of permit conditions – in particular cases	Y	N/A	47(2): paragraph 7 of the inserted Schedule 7A.	Regulator to review permits in accordance with Article 21.
22 – Site closure	Y	N/A	47(2): paragraph 5(1)(m) of the inserted Schedule 7A.	Regulator to exercise functions.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
23 – Environmental inspections	Y	N/A	47(2): paragraph 9 of the inserted Schedule 7A.	Regulator to inspect – under regulation 34(2) of the main Regulations, in accordance with Article 23.
24 – Access to information and public participation	Y	N/A	47(2): paragraph 8 of the inserted Schedule 7A.	Regulator to exercise functions.
27 – Emerging techniques	Y	N/A	47(2): paragraph 6 of the inserted Schedule 7A.	Regulator to exercise functions to encourage application.
Chapter III – special provisions for combustion plants				
28 – Scope (combustion plants)	Y	N/A	52(2): paragraph 1 of the inserted Schedule 15A.	
29 – Aggregation rules	Y	N/A	52(2): paragraph 3(a) of the inserted Schedule 15A.	Regulator to exercise functions.
30(1) – Emission limit values - stack	Y	N/A	52(2): paragraph 3(b) of the inserted Schedule 15A.	Regulator to exercise functions.
30(2) – Emission limit values – "existing" plants	Y	N/A	52(2): paragraph 3(b) of the inserted Schedule 15A.	Regulator to exercise functions.
30(3) – Emission limit values – new plants	Y	N/A	52(2): paragraph 3(b) of the inserted Schedule 15A.	Regulator to exercise functions.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
30(4) – Emission limit values - application	Y	N/A	52(2): paragraph 3(b) of the inserted Schedule 15A.	Regulator to exercise functions.
30(7) – Emission limit values – where plant is extended	Y	N/A	52(2): paragraph 3(b) of the inserted Schedule 15A.	Regulator to exercise functions.
30(8) – Emission limit values – not applicable	Y	N/A	52(2): paragraph 3(b) of the inserted Schedule 15A.	Regulator to exercise functions.
31 – Desulphurisation rate	Y	N/A	52(2): paragraph 3(c) of the inserted Schedule 15A.	Regulator to exercise functions.
32 – Transitional national plan	Y	N/A	52(2): paragraph 3(d) of the inserted Schedule 15A.	Regulator to exercise functions.
33 – Limited life time derogation	Y	N/A	52(2): paragraph 3(e) of the inserted Schedule 15A.	Regulator to exercise functions.
34 – Small isolated systems	Y	N/A	52(2): paragraph 3(f) of the inserted Schedule 15A.	Regulator to exercise functions.
35 – District heating plants	Y	N/A	52(2): paragraph 3(g) of the inserted Schedule 15A.	Regulator to exercise functions.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
36 – Geological storage of carbon dioxide	N	Implemented through the existing consenting requirements of the Electricity Act 1989 (for existing installations) or the Planning Act 2008 (for new installations).	-	The Large Combustion Plant (Electricity Generating Stations) (Carbon Capture Readiness) Regulations 2012 (currently in draft) will provide explicit transposition
38 – Monitoring	Y	N/A	52(2): paragraph 3(i) of the inserted Schedule 15A.	Regulator to exercise functions.
39 - Compliance	Y	N/A	52(2): paragraph 3(j) of the inserted Schedule 15A.	Regulator to exercise functions.
40(2) – Multi-fuel firing – emission limit values	Y	N/A	52(2): paragraph 3(k) of the inserted Schedule 15A.	Regulator to exercise functions.
40(3) – Multi-fuel firing – average emission limit values	Y	N/A	52(2): paragraph 3(k) of the inserted Schedule 15A.	Regulator to exercise functions.
Chapter IV – special provisions for waste incineration plants and waste co-incineration plants				
42 – Scope	Y	N/A	50(2): paragraph 3(e) of the inserted Schedule 13A.	Regulator to exercise functions.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
43 – Definition of residue	Y	N/A	50(2): paragraph 3(f) of the inserted Schedule 13A.	Regulator to exercise functions.
45(1) – Permit conditions	Y	N/A	50(2): paragraph 3(g) of the inserted Schedule 13A.	Regulator to exercise functions.
Chapter V – special provisions for installations and activities using organic solvents				
58 – Substitution of hazardous substances	Y	N/A	51: paragraph 3(f) of the substituted Schedule 14.	
59(5) – Control of emissions – specifically-labelled substances	Y	N/A	51: paragraph 3(g) of the substituted Schedule 14	
63 – Substantial change to existing installations	Y	N/A	51:paragraph 3(k) of the substituted Schedule 14	
65(3) – Access to information - restrictions	Y	N/A	51:paragraph 3(l) of the substituted Schedule 14	
Chapter VI – special provisions for installations producing titanium dioxide				
69 – Prevention and control of emissions into air	Y	N/A	53(2): paragraph 3(c) of the inserted Schedule 17A.	Regulator to exercise functions.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
70 – Monitoring of emissions	Y	N/A	53(2): paragraph 3(d) of the inserted Schedule 17A.	Regulator to exercise functions.
Chapter VII – committee, transitional and final provisions				
71 – Competent authorities	N	Not amenable to literal "copy out". Met by cited amendments.	47(2) - paragraph 2(2)(d) of the inserted Schedule 7A; 50(2) – paragraph 2(2)(b) of the inserted Schedule 13A; 51 – paragraph 2(b) of the substituted Schedule 14; 52(2) – paragraph 2(2)(b) of the inserted Schedule 15A; 53(2) – paragraph 2(2)(b) of the inserted Schedule 17A;.	The amendments make the regulator the competent authority in respect of the Schedule concerned. 'Regulator' is defined in regulation 2(1) of the EPR by reference to regulations 32 and 33. Regulation 32 is amended in respect of solvent activities and small waste incineration plants by regulation 13 of the draft amending Regulations.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
72 – Reporting by Member States	N	Competent authorities already have powers through which the data and information necessary for compliance with this Article can be gathered.	-	Permit conditions, set in accordance with, as relevant, Articles 14, 38, 48, 62 and 65 (which are transposed as shown elsewhere in this table) provide regulators with the necessary powers to obtain information. Furthermore, Regulation 60 of the EPR gives regulators a general power to require the provision of information. The regulator will in turn provide government withthe information necessary required for reporting under Article 72: regulation 61 enables a direction to be given to the regulator if necessary
79 - Penalties	N	Not amenable to literal "copy out". Already met by regulations 38, 39 and 40 of the EPR.	-	-
Annexes				
Annex I – point 1.1 – combustion of fuels	N	Already in Section 1.1 of Part 2 of Schedule 1 to the un-amended EPR	-	-
Annex I – point 1.4 – gasification or liquefaction	Y	N/A	22(1)(b)	
Annex I – point 2.5(b)	Y	N/A	23(1)(b)	
Annex I – point 3.1 – production of cement etc.	Y	N/A	24(a) and (b)	
Annex I – point 3.3 – manufacture of glass and glass fibre	Y	N/A	26	This point is not listed in Article 80(1) for transposition but the transposition amending Regulations align the capacity threshold with that in the Directive

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
Annex I – point 4 – Chemical industry	Y	N/A	28	
Annex I – point 5 – Waste management	Y	N/A	35-38	
Annex I – point 6.1(c) wood-based panels	Y	N/A	40(b)	
Annex I – point 6.4(b) – food production	Y	N/A	44	
Annex I – point 6.10 – wood preservation	Y	N/A	43	
Annex I – point 6.11 – independent waste water treatment	Y	N/A	39	
Annex II – List of polluting substances	Y	N/A	47(2) – paragraph 5(1)(h) of the inserted Schedule 7A.	Regulator to exercise functions so as to apply Article 14: Article 14(1)(a) refers to Annex II.
Annex III – point 12 – published information relevant to BAT	Y	N/A	47(2) – paragraph 5(1)(g) of the inserted Schedule 7A.	Regulator to exercise functions so as to apply Article 14: Articles 14(5) and (6) refer to Annex III..
Annex V – Technical provisions relating to combustion plants	Y	N/A	52(2) – paragraphs 3(b) to (f) and (i) to (k) of the inserted Schedule 15A	Regulator to exercise functions so as to apply Articles 30 – 34 and 38 – 40, each of which refer to Annex V.

Article	Copy out?	Elaboration reason	Regulation[3]	Commentary
Annex VI – various points	Y	N/A	52(2) – paragraphs 3(b) and (c) of the inserted Schedule 15A. 50(2)– paragraphs 3(h), (j), (k) and (m) of the inserted Schedule 13A.	Regulator to exercise functions so as to apply Articles 31 and 32, which refer to Annex VI. Regulator to exercise functions so as to apply Articles 46, 48, 49 and 51, each of which refer to Annex VI.
Annex VII – various points	Y	N/A	51 –, paragraphs 3(e) to (j) of the substituted Schedule 14.	Regulator to exercise functions so as to apply Articles 57 and 59 -63, each of which refer to Annex VII
Annex VIII – various points	Y	N/A	53(2) – paragraphs 3(b) to (d) of the inserted Schedule 17A.	Regulator to exercise functions so as to apply Articles 68 -70, each of which refer to Annex VIII.