EXPLANATORY MEMORANDUM TO

THE OFFSHORE COMBUSTION INSTALLATIONS (POLLUTION PREVENTION AND CONTROL) (AMENDMENT) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the instrument is to amend the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013 (S.I. 2013/971, "the 2013 Regulations") to transpose Chapter III of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 (commonly referred to as the Industrial Emissions Directive) on the limitation of certain pollutant emissions into the air from large combustion plant; and to transpose Directive 2015/2193/EU of the European Parliament and Council of 25 November 2015 (commonly referred to as the Medium Combustion Plant Directive (MCPD)) on the limitation of certain pollutant emissions into the air from medium combustion plant. The instrument widens the scope of the 2013 Regulations to require permits for both large and medium combustion plant in order to regulate emissions and protect air quality.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of special interest to the House of Commons

3.2 Disregarding minor and consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 The 2013 Regulations were made to transpose Chapters I, II and VII of the IED.

4.2 The 2013 Regulations currently apply emission controls to combustion plant on offshore installations that alone, or when aggregated together, have a thermal input equal to or greater than 50 Megawatt (MW).

4.3 The instrument amends the scope of the 2013 Regulations requiring permits for, and regulation of pollutant emissions from, large combustion plant with an individual thermal input equal to or greater than 50MW, and medium combustion plant with an individual thermal input of greater than 1 and less than 50MW, in addition to regulating the aggregated emissions arising from a qualifying offshore installation.

4.4 A Transposition Note is submitted with this Explanatory Memorandum, setting out how the instrument transposes the MCPD and Chapter III of the IED.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is:

a) "the offshore area" for combustion plant on petroleum platforms; and

b) "the relevant gas area" for combustion plant on gas storage or unloading platforms"; and

c) the United Kingdom for combustion plant on a carbon dioxide storage or unloading platform.

5.3 The 'offshore area' means

a) the sea adjacent to England from the low water mark to the landward baseline of the United Kingdom territorial sea;

b) the United Kingdom territorial sea adjacent to:

(i) England; and

(ii) Scotland, Wales and Northern Ireland except that part which extends seaward for 3 nautical miles from the landward baseline;

c) the sea in any designated area within the meaning of the Continental Shelf Act 1964; and

includes places above those areas and the bed and subsoil of the sea in those areas.

5.4 The "relevant gas area" means the sea areas described in paragraphs (a) and (b) in paragraph 5.3 and the sea in a Gas Importation and Storage Zone (within the meaning of section 1(5) of the Energy Act 2008) and includes the places above those areas and the bed and subsoil of the sea within those areas.

6. European Convention on Human Rights

6.1 The RT Hon Claire Perry, Minister of State for Energy & Clean Growth at the Department for Business, Energy and Industrial Strategy has made the following statement regarding Human Rights:

"In my view the provisions of the Offshore Combustion Installations (Pollution Prevention and Control) (Amendment) Regulations 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until negotiations to exit the EU are concluded, the UK remains a full member of the European Union and all the rights and obligations of the EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of the negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

7.2 On 24 November 2010 the IED was adopted. The Directive reorganised seven previously existing Directives, including Directives covering large combustion plant, waste incineration and co-incineration plants, activities using organic solvents and titanium dioxide production, and was based upon the principles of an integrated approach, best available techniques, flexibility, inspections and public participation in the permit decision-making process. At the time it was transposed in 2013, the control of pollutant emissions from large combustion plant which fell under Chapter III of the IED were not relevant, or foreseen to be relevant, for offshore facilities, and therefore those obligations were not transposed.

7.3 There are now large combustion plant in use on offshore facilities that fall within scope of Chapter III of the IED, and the Department is transposing the requirements to effect compliance. The key obligations of Chapter III of the IED are designed to control atmospheric emissions of nitrogen oxides, sulphur dioxide and dust by means of emission limit values and to monitor emissions to demonstrate compliance. This instrument will provide the necessary powers to implement these controls and **there is no alternative to regulation for transposing Chapter III of the IED.**

7.4 In October 2013 the European Commission completed a three year review of EU air policy including stakeholder engagement and public consultation. Following consideration of the review, the Commission adopted the Clean Air Policy Package in December 2013. This package led to proposals for limiting emissions into the air from medium combustion plant which were not subject to controls under the IED. On 25 November 2015, the MCPD was made, which was required to be transposed into UK law by 19 December 2017. The Directive requires the operation of medium combustion plant to be authorised by permit so that limits can be placed on atmospheric emissions of nitrogen oxides, sulphur dioxide and dust. Medium combustion plant are also required to be monitored at periodic frequencies (related to plant size) to demonstrate compliance. **There is no alternative to regulation for transposition.**

7.5 The 2013 Regulations will be amended to place an obligation on the Secretary of State to ensure compliance with the requirements of Chapter III of the IED and to incorporate the necessary permit conditions. Existing permits will be amended to incorporate emissions limit values and specific monitoring requirements.

7.6 The broadening of the 2013 Regulations does not remove the existing requirement under those Regulations to control pollutant emissions arising from other eligible combustion plants (e.g. gas turbines, gas and diesel engines) with an aggregated thermal input (of all constituent plant) equal to or greater than 50MWth.

7.7 In addition, the Department is required to transpose MCPD, which contains similar objectives to the IED with regard to regulating emissions of certain pollutants harmful to human health and the environment which arises from combustion plant with a thermal input of greater than 1 and less than 50MW.

7.8 A phased implementation will apply for the MCPD requirements with: (i) new medium combustion plant requiring a permit from 20 December 2018: (ii) existing plant with a thermal input of greater than 5MW requiring a permit from 1 January 2024; and (iii) existing plant with thermal input of greater than 1 but equal to or less than 5MW requiring a permit from 1 January 2029. Compliance by offshore operators will need to be achieved one year after the implementation date for each category of plant.

7.9 The existing permits issued under the 2013 Regulations will be amended to incorporate obligations of Chapter III of the IED and the requirements of the MCPD. Where necessary, new permits will be issued to cover medium combustion plant on offshore installations with an aggregated thermal input less than 50MW.

7.10 The amending of the existing Regulations and widening of permit requirements are already familiar to offshore operators, who will receive a single permit covering all the qualifying combustion plant for each installation. This will avoid issuing and holding multiple permits that fulfil similar obligations under the two Directives.

7.11 There are two provisions in particular where further information would be helpful for the reader:

(a) as a result of regulation 11 (inserting new regulation 7A into the 2013 Regulations), where a duly-made application is received for a permit that relates to medium combustion plant (but not a large combustion installation), the Secretary of State must start the procedure for determining the application within one month of the operator providing the required information. Operators will submit the application through an electronic portal, and a member of the Department's staff will check that all the required information has been submitted, and that the application has been duly made. The member of staff will then issue an acknowledgement of receipt via the portal to the operator, and determination of the application will start at that point. This acknowledgement will be "the start of the procedure to determine the application" referred to in regulation 7A; and

(b) regulation 33 does not relate to the transposition of either the IED or the MCPD. Regulation 25(d) of the 2013 Regulations provides that an inspector may "take such measurements and photographs or record such information as in inspector considers necessary". The equivalent provisions for inspectors in regulation 16(3)(e) of the Offshore Chemicals Regulations 2005 and regulation 12(3)(e) of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 use "and" rather than "or" in this provision. While there can be little doubt that the "or" in regulation 25(d) has the same meaning as "and" in those other provisions, the Department is taking the opportunity to ensure consistency between these powers for the avoidance of any possible doubt.

Consolidation

7.12 No consolidation is planned at this stage since this is the first amendment to the 2013 Regulations.

8. Consultation outcome

8.1 A public consultation on the policy proposals for offshore installations was published on 7 September 2017 and ended on 5 October 2017 (duration of four weeks). The consultation included all appropriate stakeholders including offshore oil and gas operators, service providers, the offshore industry trade association and non-governmental organisations. A shorter consultation period was selected as the scope and scale of the impact was low and it only affected one industry sector with which the Department regularly engages.

8.2 Eight respondents submitted comments, six offshore oil and gas operators, the industry trade association and one health and safety environmental consultancy.

8.3 Three respondents supported the transposition of the MCPD and Chapter III of the IED by amending the 2013 Regulations.

8.4 Concerns were raised over the environmental benefits, as it was considered that costs could outweigh the benefits, because retrofitting abatement technology to ensure compliance would be technically challenging and could be constrained by space limitations on offshore facilities. It was also pointed out that it was not always possible to access exhaust stacks on combustion plant to undertake monitoring. These issues are known to the Department and a pragmatic approach will be adopted where combustion plant is critical to installation operations and abatement and/or monitoring cannot be implemented easily.

8.5 There were also calls for a longer-term derogation process in relation to the setting of emission limit values, in addition to the Directive's time bound derogations. However respondents acknowledged that there is no provision for this in the Directive and this was not included within the transposing Regulations.

8.6 A response to the consultation was published on 23 April 2018 and can be accessed at https://www.gov.uk/government/consultations/policy-proposals-for-offshore-combustion-plant.

9. Guidance

9.1 An updated guidance note on permits under the 2013 Regulations (as amended by this instrument) will be published at https://www.gov.uk/guidance/oil-and-gas-offshore-environmental-legislation. This will explain the legislative requirements in detail. Stakeholders will be engaged in the drafting of the guidance note to ensure that the compliance requirements are clear.

10. Impact

10.1 The impact on business, charities or voluntary bodies is set out in the impact assessment submitted with this memorandum. The cost impact was determined as de minimis as annualised costs are less than £5 million. There are no affected charities or voluntary bodies as these organisations do not operate combustion plant on offshore facilities.

10.2 The impact on the public sector is in terms of the duties carried out by the Department in implementing the instrument. The relevant departmental unit, the Offshore Petroleum Regulator for Environment and Decommissioning (OPRED), is familiar with combustion permitting and will recover costs from permit holders through fees charged under regulation 22 of the 2013 Regulations. Transitional costs to implement the instrument are anticipated to be small, and restricted to costs relating to amending existing permitting and reporting systems as well as training staff.

10.3 A single instrument to implement both Directives' requirements was assessed as the most effective option. The largest costs will be associated with initial compliance, which will require measures to reduce emissions to meet the Directives' emission limit values. Cost in subsequent years will be reduced and related to administration and monitoring, and this has been set out in the impact assessment.

10.4 It is estimated that Chapter III of the IED will only impact two offshore facilities, with five items of qualifying large combustion plant. It is estimated that MCPD will impact 13 existing offshore installations with 24 items of qualifying medium combustion plant.

10.5 The impact assessment submitted with this Memorandum is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses, as the turnover threshold of £10 million is too low to capture the relevant offshore companies.

12. Monitoring & review

12.1 The MCPD requires the European Commission to report upon progress in relation to the energy efficiency of Medium Combustion Plant and to assess the benefits of setting minimum energy efficiency standards in respect of such plants by 1 January 2020.

12.2 The Department will provide information to the Department for Environment, Food and Rural Affairs to allow them to monitor the effectiveness of the UK MCPD implementation measures.

12.3 The 2013 Regulations (as amended by this instrument) will be reviewed in 2023, in line with the existing post-implementation review schedule in the 2013 Regulations. An additional review provision has not been included, as this instrument amends the 2013 Regulations which is already subject to review through regulation 1 of those 2013 Regulations (section 28(3)(e) of the Small Business, Enterprise and Employment Act 2015).

13. Contact

13.1 Paul Batty at the Department for Business, Energy and Industrial Strategy (telephone: 01224 254043 or email: paul.batty@beis.gov.uk) can be contacted for any queries regarding the instrument.