EXPLANATORY MEMORANDUM TO

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

2015 No. 918

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.

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

2. Purpose of the instrument

2.1 This instrument amends the Environmental Permitting (England and Wales) Regulations 2010 to require operators of certain combustion installations to consider whether the installation of cogeneration (known as CHP in the UK) or waste heat recovery systems would be cost-beneficial, with the aim to increase energy efficiency. This is implemented through a requirement to include in permit applications for new or substantially refurbished installations a cost benefit analysis which considers cogeneration and waste heat recovery options alongside single generation options.

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

3.1 The deadline for all Member States to have legislation in place for transposing the Directive was 5 June 2014. Delays to finalising the regulations following consultation have resulted in this deadline being missed.

4. Legislative Context

4.1 This instrument transposes the requirements of articles 14(5) –(9) of Council Directive 2012/27/EU on energy efficiency and amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC ("the Energy Efficiency Directive").

4.2 The UK is transposing these requirements through an amendment to the existing environmental permitting regime. Environmental Permitting is an established process for regulating the development, operation and refurbishment of industrial installations in England

and Wales. Nearly all of the installations subject to article 14(5) are already subject to the Environmental Permitting (England and Wales) Regulations 2010, as amended.

4.3 Use of this existing system therefore allows implementation of the requirements of these articles in a manner which limits burdens on operators and regulators.

4.4 A transposition note is attached to this document at Annex A.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

5.2 The administrations in Scotland, Northern Ireland and Gibraltar have brought forward separate secondary legislation to transpose the Directive. Scotland has transposed these requirements in their territory by means of The Pollution Prevention and Control (Scotland) Amendment Regulations 2014 SSI 2014 No.267. Northern Ireland is transposing these requirements by means of The Pollution Prevention and Control (Industrial Emissions) (Amendment) Regulations (Northern Ireland) 2014.

6. European Convention on Human Rights

The Secretary of State for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Environmental Permitting (England and Wales) (Amendment) Regulations 2015 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The aim of the Energy Efficiency Directive is to drive improvements in energy efficiency across the EU. It is intended to put the EU on track to reduce energy use by 20% by 2020. Articles 14 (5) – (9) aim to increase the uptake of cost-effective energy efficiency through cogeneration and waste heat recovery. It is estimated that of 18 gigawatts electrical (GWe) of cogeneration potential in the UK, only 8.4GWe will be built by 2020.

7.2 Transposition of articles 14 (5) – (9) will ensure that operators of new, or substantially refurbished, combustion installations with a total thermal input greater than 20 megawatts (MW) consider cogeneration and waste heat recovery options alongside single generations options. This will be achieved by requiring operators of these installations to undertake a cost benefit analysis as part of the existing environmental permit application process.

7.3 The process for permit applications or variation requires the operator to supply a range of information about the installation's technical characteristics. This is then assessed by the regulator to determine whether a permit can be granted. Where cogeneration or waste heat recovery options are shown to be cost-effective, permits to operate will only be given where the cogeneration or waste heat recovery is installed. Where they are then developed, operators will achieve cost savings. There will also be social benefits from reduced carbon emissions and improved security of energy supply.

- Consolidation

7.4 The Department of Environment, Food and Rural Affairs is intending to consolidate the Environmental Permitting (England and Wales) Regulations 2010, as amended, as soon as practicable.

8. Consultation outcome

8.1 The proposed amendments to the Environmental Permitting Regulations were subject to public consultation for six weeks between February and April 2014. This was a shortened consultation period in order to try to meet the transposition deadline of 5 June 2014. Alongside this, meetings had been held with affected operators to provide additional opportunity for operators to comment on proposed approach to transposition.

8.2 There were 20 responses to the consultation. All supported the use of the Environmental Permitting (England and Wales) regulations to transpose the requirements of articles 14 (5)-(9) of the Energy Efficiency Directive. There were a number of concerns raised by respondents regarding the suitability and practicality of the thresholds applied in the instrument, particularly in reference to the maximum appropriate distance between the installations which would make up the network using waste heat. These concerns have been taken on board, and changes have been made to the regulations to reflect this.

9. Guidance

9.1 Guidance is being prepared by the Environment Agency to ensure operators understand the requirements of the cost benefit analysis they must provide in order to meet the requirements of the Energy Efficiency Directive. This guidance has also been subject to public consultation. A summary of responses is available at www.gov.uk.

10. Impact

10.1 Overall, the amendments are estimated to have a total net cost of £12.4m over the ten year appraisal period of the impact assessment, equivalent to between £1.0m and £1.3m per year. Of this, £11.8m will be the costs to operators of undertaking the cost benefit analysis, with the remainder being administration costs split between the operators and regulators. The costs to regulators may be recouped through environmental permitting fees and charges. The impact on business is estimated to be a net cost of £12.1m, or around £1.2m per year.

10.2 The benefits have not been monetised. It is uncertain how many of the operators in scope of this instrument would have undertaken a cost benefit analysis in any case. The outcomes, including the environmental benefits through reduced carbon emissions, will be site dependent and are therefore difficult to quantify. The operators will not be required to take forward cogeneration or waste heat recovery where this cost benefit analysis does not demonstrate this is cost-effective. There is no impact on charities or voluntary bodies.

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 all businesses who operate combustion installations with a thermal rating greater than 20MW. Although this could include small business, most businesses affected are likely to be of medium or large scale. Even where small businesses are caught under the scope of these regulations, the expected annual compliance and administrative costs are considered negligible.

12. Monitoring & review

12.1 Member States are required as part of the Energy Efficiency Directive to report on progress towards the achievement of the national Efficiency Targets.

12.2 The Environmental Permitting (England and Wales) Regulations 2010, contains a requirement on the Secretary of State, in relation to England, to carry out a review of the Environmental Permitting (England and Wales) Regulations 2010 and to publish a report before 6 April 2017, then at intervals not exceeding 5 years. The review will consider in particular whether:

- The objectives intended to be achieved by the regulatory system established by these regulations (which include the provisions transposing articles 14(5)-(9) of the Energy Efficiency Directive) have been achieved
- Overall, the objectives remain appropriate, and, if so, the extent to which they could be achieved with a system that imposes less regulation.

13. Contact

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