STATUTORY INSTRUMENTS

2018 No. 110

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

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

Made - - - - 29th January 2018

Coming into force in accordance with regulation 1

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

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

(a) the Environment Agency,

(b) the Natural Resources Body for Wales,

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

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

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

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

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

PART 1

General

Citation and commencement

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

PART 2

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

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

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

Regulation 2 (interpretation: general)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) after paragraph (b) insert—

"(c) mobile medium combustion plant;",

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

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

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

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

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

(2) After paragraph (7) insert—

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

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

Regulation 3 (interpretation: Directives)

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

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

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

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

Regulation 8 (interpretation: regulated facility)

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

(a) after paragraph (1)(j) insert—

"(k) a medium combustion plant;

(l) a specified generator",

(b) after paragraph (4)(g) insert—

"(h) a medium combustion plant;

(i) a specified generator".

Regulation 12 (requirement for an environmental permit)

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

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

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

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

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

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

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

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

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

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

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

Regulation 17 (single site permits etc.)

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

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

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

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

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

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

"(f) a medium combustion plant;

(g) a specified generator".

Regulation 32 (discharge of functions)

10. In regulation 32 (discharge of functions)—

(a) in paragraph (2)—

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

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

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

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

(c) in paragraph (4)—

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

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

(d) in paragraph (5)—

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

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

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

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

(e) after paragraph (5) insert—

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

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

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

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

(5B) Where paragraph (5A) applies—

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

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

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

(5C) In this regulation—

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

(b) "transfer date" means—

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

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

Regulation 35 (specific provisions applying to environmental permits)

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

Regulation 80 (review: England)

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

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

Schedule 5 (environmental permits)

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

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

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

(b) after sub-paragraph (6) insert—