STATUTORY INSTRUMENTS

2015 No. 1973

ENVIRONMENTAL PROTECTION

The Large Combustion Plants (Transitional National Plan) Regulations 2015

Made - - - - 2nd December 2015

Laid before Parliament 4th December 2015

Coming into force in accordance with regulation 1

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972 [F1] in relation to the environment [F2].

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Annotations:

F1 1972 c.68. Notwithstanding section 53(1) of the Scotland Act 1998 (1998 c. 46), the power of the Secretary of State to make subordinate legislation as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972 remains exercisable by virtue of section 57(1) of the Scotland Act 1998. Notwithstanding the provisions of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958), the power of the Secretary of State to make subordinate legislation as regards Wales for the purposes specified in section 2(2) of the European Communities Act 1972 remains exercisable by virtue of section 58(5) of, and paragraph 5 of Schedule 3 to, the Government of Wales Act 2006 (c.32).

F2 S.I. 2008/301.

Citation, commencement and expiry

1.—(1) These Regulations may be cited as the Large Combustion Plants (Transitional National Plan) Regulations 2015.

(2) Save as provided in paragraph (3) these Regulations come into force on 31st December 2015.

(3) Regulation 11 comes into force on 1st April 2016.

(4) These Regulations cease to have effect on 31st October 2020.

Interpretation

2.—(1) In these Regulations—

"the Agency" means the Environment Agency;

"calendar year" means—

(a) in relation to any year from 2015 to 2019 inclusive, the period from 1st January up to and including 31st December; and

(b) in relation to the year 2020, the period from 1st January up to and including 30th June;

"the Chief Inspector" means the inspector constituted to be the chief inspector under regulation 8(3) of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 **F3**;

"the Department of the Environment" means the Department of the Environment in Northern Ireland;

"the Directive" means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast) **F4**;

"emission allowance" means, in relation to a participating plant for a given calendar year, an amount of emissions for each of the LCP pollutants expressed in tonnes or kilotonnes per annum, calculated in accordance with the second and third paragraph of Article 32(3);

"large combustion plant" means a combustion plant to which Chapter III of the Directive applies;

"LCP pollutants" means nitrogen oxides, sulphur dioxide and dust;

"the NRBW" means the Natural Resources Body for Wales;

"participating plant" means a large combustion plant in respect of which the permit contains a TNP provision;

"permit" means—

(a) as regards a plant in England and Wales, the environmental permit under **[**F5the Environmental Permitting (England and Wales) Regulations 2016**]**F6;

(b) as regards a plant in Scotland, the permit granted under Part III of the Pollution Prevention and Control (Scotland) Regulations 2012 **F7**;

(c) as regards a plant in Northern Ireland, the permit granted under Part 2 of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013;

"permitting functions" means—

(a) as regards the Agency and the NRBW, functions under **[**F5the Environmental Permitting (England and Wales) Regulations 2010" substitute "the Environmental Permitting (England and Wales) Regulations 2016**]** ;

(b) as regards SEPA, functions under the Pollution Prevention and Control (Scotland) Regulations 2012;

(c) as regards the Chief Inspector, functions under the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013;

"the register" means the register maintained by the Agency in accordance with regulation 4(1);

"the regulator" means—

(a) the Agency, if the plant in question is in England,

(b) the NRBW, if the plant in question is in Wales,

(c) SEPA, if the plant in question is in Scotland, or

(d) the Chief Inspector, if the plant in question is in Northern Ireland;

"SEPA" means the Scottish Environment Protection Agency;

"TNP provision" means a provision in a permit which identifies a large combustion plant as being a plant within the scope of the Transitional National Plan and so exempt from the requirement to comply with the emission limit values under Article 30(2) in respect of the LCP pollutants;

"Transitional National Plan" means the emission plan prepared under Article 32 by the Secretary of State and submitted to the European Commission on 20th October 2015;

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 [F8].

(2) A reference in these Regulations to a numbered Article is a reference to the Article so numbered in the Directive.

Annotations:

F3 S.R. (NI) 2013 No. 160, amended by S.R. (NI) 2014 No. 304, 2015 No. 14 and 2015 No. 325.

F4 OJ L 334, 17.12.2010, p. 17.

F5 Words in reg. 2(1) substituted (E.W.) (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 101** (with regs. 1(3), 77-79, Sch. 4)

F6 S.I. 2010/675, amended by S.I. 2013/390; there are other amending instruments but none is relevant.

F7 S.S.I. 2012/360, amended by S.I. 2014/469 and 2015/483 and by S.S.I. 2014/267, 2015/100, 2015/101 and 2015/188.

F8 1971 c.80.

Provision of information by the Secretary of State

3.—(1) Within one month of the coming into force of this regulation, the Secretary of State must provide the Agency with the information referred to in paragraphs 1 to 4 of Schedule 1.

(2) The Secretary of State must provide the Agency with such variations to that information as the Secretary of State considers appropriate from time to time after consulting—

(a) the Scottish Ministers;

(b) the Welsh Ministers; and

(c) the Department of the Environment.

Transitional National Plan register

4.—(1) The Agency must establish and maintain a register which contains the information referred to in Schedule 1.

(2) The Agency must enter on the register within 10 working days of receipt—

(a) the information which it receives from the Secretary of State under regulation 3(1); and

(b) any variation to that information which it receives from the Secretary of State under regulation 3(2).

(3) The Agency must maintain the register in electronic form.

(4) The Agency must ensure that the register is clearly displayed on the internet.

(5) The NRBW, SEPA and the Chief Inspector must provide links from their respective websites to the register.

Duty on regulator

5.—(1) The regulator must exercise its permitting functions for the purposes in paragraph (2).

(2) The purposes are—

(a) to ensure that the permit for each plant listed in the Transitional National Plan contains a TNP provision, unless it is a plant in respect of which—

(i) a notice of closure has been received under regulation 8(1)(a);

(ii) a notice of variation has been received under regulation 8(1)(b); or

(iii) the operator has given notice to the regulator that the plant should be exempted from inclusion in the Transitional National Plan under Article 33 (limited life time derogation);

(b) to ensure that the operator of a participating plant notifies the regulator of any closure, or any variation of the operation of that plant which will cause it not to be a large combustion plant; and

(c) to ensure that the operator of a participating plant does not operate the plant so as to exceed the emission allowance for a calendar year as recorded on the register under paragraph 4 of Schedule 1 in respect of that plant, subject to any transfer of emission allowance in respect of that plant recorded under paragraph 5(a) of that Schedule.

Reports of emissions

6.—(1) The regulator must exercise its permitting functions in respect of each participating plant so as to require the operator of each plant to report actual emissions of each of the LCP pollutants from that plant on a quarterly basis.

(2) The regulator (unless it is the Agency) must provide to the Agency—

(a) within one month of the date on which the regulator receives the information, each report made by an operator under paragraph (1); and

(b) by 28th February in each calendar year, details of the reported actual emissions of each of the LCP pollutants for each participating plant in respect of the previous calendar year.

(3) If the regulator considers that the information reported by an operator under paragraph (2) is not accurate, it must—

(a) identify the adjustments which it considers should be made to the information previously reported; and

(b) (unless it is the Agency) provide the Agency with information on those adjustments.

Transfer of emission allowance

7.—(1) Subject to paragraph (2), a part of an emission allowance may be transferred from one participating plant to another at any time during the period comprising—

(a) the calendar year in respect of which the emission allowance has been allocated by the Secretary of State; and

(b) the period of three months following that calendar year.

(2) No transfers of emission allowance may be made concerning a participating plant to the extent that the Transitional National Plan provides that the plant is not allowed to participate in such transfers.

(3) Where a part of an emission allowance is transferred from one participating plant to another participating plant, the operator of each plant must notify the Agency of the transfer by—

(a) correctly completing the form provided by the Agency for the purpose; and

(b) sending it to the Agency within 5 working days of the date on which the transfer is made.

(4) The form referred to in paragraph (3)(a) may be provided by, and, when duly completed, sent to, the Agency electronically.

(5) If the requirements to notify under paragraph (3) are not complied with, the transfer is void.

(6) The Agency must not record a transfer in the register unless it has been notified of the transfer in accordance with this regulation.

(7) The Agency must record a transfer in the register within 10 working days of notification.

(8) No emission allowance in respect of a participating plant may be carried forward from one calendar year to the next.

(9) The transfer of an emission allowance which results in a participating plant having an emission allowance of zero or less than zero is void.

(10) Where an operator of a participating plant wishes to advertise on the register a willingness to acquire or transfer an amount of emission allowance in respect of that plant (or to vary or withdraw such an advertisement previously recorded on the register), the operator must notify the Agency by—

(a) correctly completing the form provided by the Agency for the purpose; and

(b) sending it to the Agency.

(11) The form referred to in paragraph (10)(a) may be provided by, and, when duly completed, sent to, the Agency electronically.

(12) The Agency must record a new advertisement (or a variation to or withdrawal of a previously recorded advertisement) in the register within 10 working days of notification.

Determination of emission allowance on plant closure or plant variation

8.—(1) Paragraph (2) applies where the regulator receives notification by the operator of—

(a) the closure of a participating plant; or

(b) the variation of the operation of a participating plant which will cause it not to be a large combustion plant.

(2) Where this paragraph applies, the regulator must—

(a) determine the amount of the reduction of the emission allowance in relation to the participating plant to which the notification of closure or variation relates for the calendar year in which the closure or variation will take effect; and

(b) vary the permit for the participating plant accordingly.

(3) Where a determination is made by the NRBW, SEPA or the Chief Inspector—

(a) the NRBW, SEPA or the Chief Inspector, as the case may be, must notify the Agency of the closure or variation and the amount of the reduction within 10 working days of the receipt of the notification of closure or variation; and

(b) the Agency must record the closure or variation on the register and amend the emission allowance for the participating plant recorded in the register within 10 working days of receipt of the notification of the amount of the reduction.

(4) Where a determination is made by the Agency, the Agency must record the closure or variation on the register and amend the emission allowance for the participating plant recorded in the register within 10 working days of receipt of the notification of closure or variation.

The Environment Agency's costs of establishing and maintaining the register

9. The Agency may charge SEPA, the NRBW and the Chief Inspector a reasonable proportion of its costs in establishing and maintaining the register.