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

Response by Department for Environment, Food and Rural Affairs to letters from Peak Gen, and Reg Power Management

Air pollution is the biggest environmental risk to public health. It shortens lives, reduces quality of life and damages the environment. These draft Regulations, laid before Parliament on 11th December, aim to tackle two largely unregulated sources of air pollution that are often found close to where people live. The Regulations will transpose the medium combustion plant directive (“the MCPD”) and introduce controls for generators that emit high levels of nitrogen oxides, in order to improve air quality. Investing in cleaner air and tackling air pollution are priorities for this government. Our most immediate air quality challenge is reducing the problem of local nitrogen dioxide concentrations, which these Regulations will help to address.

The Government’s commitment to improving air quality across the UK is demonstrated by the fact that we have agreed to meet highly ambitious overall national ceilings for emissions of air pollutants in 2020 and 2030 (these commitments will become legally binding under UK law later this year).

Implementation of these Regulations will provide an estimated 43% of the sulphur dioxide emissions reduction, 9% of the reduction for particulate matter, and 22% of the nitrogen oxides emissions reduction required to meet the 2030 air quality targets. The Regulations will also contribute to reducing local nitrogen dioxide concentrations alongside measures on vehicle emissions identified in the ‘UK plan for tackling roadside nitrogen dioxide concentrations’. These are important regulations that will protect human health and the environment and are a key part of our policy to reduce harmful emissions.

The Regulations are designed to protect air quality whilst minimising impacts on energy security and costs to businesses. We have worked closely with other government departments, including BEIS, as well as the Environment Agency and National Grid, in developing this policy.

Medium Combustion Plants

Medium Combustion Plants (“MCPs”) are used to generate heat for large buildings (offices, hotels, hospitals, prisons) and industrial processes, as well as for power generation. Implementing the MCPD will help to reduce air pollution by bringing in emission controls for combustion plants in the 1-50MWth range. The MCPD was supported by the UK as it will deliver a cost-effective improvement in air quality. The Regulations require all plants in scope to be permitted and sets limits on the levels of pollutants that these plants can emit. It also requires operators to test emissions from their plants to demonstrate compliance with emission limits. The controls will apply to new plants from 20 December 2018. Existing plants must be permitted from 2024 (and comply with requirements from 2025) or 2029 (and comply from 2030), depending largely on size.

Generator controls

There has been rapid growth in the use of low-cost, small scale flexible power generators in the past few years. Some generators are in areas where there are vulnerable people, such as in hospitals in city centres, or in urban areas where high nitrogen dioxide concentrations are going to be tackled through implementation of the UK’s plan (referred to above). Whilst there is a legitimate role for some rapid-responding small-scale generation, there has been a recent growth of (mainly diesel) generators which emit high levels of nitrogen oxides relative to other MCPs and are not currently subject to emission controls. This growth poses a concern for local air quality as well as for meeting future national emission reduction targets.
The MCPD requirements are not sufficient to tackle emissions from the increased use of these generators. Our proposed generator emission controls mean that new generators will be subject to permitting and nitrogen oxides emission limits from 1 January 2019. Existing generators will not need to meet the emission limit until a later date. This date depends on their size, their emissions, and whether they are the subject of a capacity agreement or an agreement for provision of balancing services.

These transitional arrangements will not apply if the operator enters a new capacity agreement or agreement for provision of balancing services after 31 October 2017 (and which remains in place after 31 December 2018). This is to prevent an avoidable increase in emissions of nitrogen oxides from these plants which could arise due to them benefiting from lower emission controls while operating to deliver new agreements, with resultant impacts on air quality. The purpose is to regulate an activity that will cause environmental pollution and will ensure any plant delivering these new agreements are appropriately regulated. It means operators bidding for new agreements will need to meet the same emission controls irrespective of whether they are existing or new generators, and in that sense there will be a level playing field. The Regulations also provide time for the market to adapt as operators can continue to enter new agreements without any impact on their transitional arrangements so long as the new agreement is no longer in force after 31 December 2018. BEIS and National Grid are confident that there will continue to be sufficient liquidity and security of supply will be unaffected.

Transitional arrangements
The above aspect of the controls is the focus of concerns raised by Peak Gen and REG. This aspect of the controls is aligned with the clear policy intention of reducing emissions from a highly polluting source and we believe it is proportionate in its impact on business. It was introduced to avoid an unintended consequence which had been identified: without this aspect of the controls, the Regulation would have the unintended effect of encouraging the use of more polluting plants, as they would have a competitive advantage over newer, cleaner plants, with a resultant impact on air quality.

As we developed these Regulations, we conducted formal consultation and engaged with stakeholders through a variety of means including workshops, meetings and correspondence.

The formal consultation asked for views on allowing existing generators to benefit from transitional arrangements. Supporters noted that such generators were not causing a local air quality problem and their business model relied on the ability to continue to provide services without increased restrictions. However others noted that this would give them a competitive advantage in bidding for provision of services in relation to new generators which would have to comply with the standard emission controls.

The policy approach takes these comments into account and provides time for the market to adapt; if an operator enters a new capacity agreement or agreement for provision of balancing services after 31 October 2017 which only runs until 31st December 2018 or sooner, the generator will continue to benefit from transitional arrangements. We encourage operators to discuss with National Grid what services they could continue to bid for without an impact on their transitional arrangements. We also encourage operators to discuss timescales for fitting abatement with companies that offer this service.

We should remember that one of the purposes of consulting is to identify if there are any areas of policy that need changing. If a loophole or unintended consequence is identified, it is important to act to resolve it. We should also remember that, in accordance with the Government’s consultation principles, consultation is an on-going process and as such not restricted simply to
formal consultation. This was made clear in the consultation response which stated “We are developing the detailed implementation approach and therefore some decisions will be made in the coming months, working closely with stakeholders.”

We have listened to stakeholders as well as BEIS, the Environment Agency and National Grid. Stakeholder workshops were held in summer 2017 where this aspect of the controls was discussed; and the draft statutory instrument was circulated to stakeholders on 7th September 2017. Ministers and officials have also corresponded and met with stakeholders to listen to their views on this aspect of the controls and others. This engagement has included both Ministerial and official correspondence with Peak Gen and REG. Officials also met with the Association for Decentralised Energy, which represents Peak Gen amongst other operators, to listen to their views, and spoke with REG.

*Capacity Market*

These Regulations do not impose a ban on the participation of any technology in the capacity market. Rather they require certain conditions to be met (i.e. lower emissions) by generators securing ‘new’ capacity agreements or balancing service contracts after 31 October 2017 if those agreements remain in force after 31 December 2018.

On the issue of technology neutrality of the Capacity Market (CM) BEIS is clear that they allow all types of capacity to participate provided it complies with relevant legislation – the only capacity excluded from the CM is that which is in receipt of another form of government subsidy. These Regulations are outside the CM’s Regulations and Rules and so are not a relevant consideration when assessing the technology neutrality of the CM’s design itself.

*Permitting*

Regarding permitting, we can assure the Committee that the Environment Agency is developing a permitting system which will be able to handle all applications received.

*Support for the regulations*

We would also like to bring to the attention of the Committee that health stakeholders and the majority of industry stakeholders are supportive of these Regulations. One example can be seen in the form of the letter of support sent to the Environment Secretary from Scottish Power, attached to this note.

In conclusion, we hope that this note has provided reassurance to the Committee that the Government has made these Regulations for the purpose of preventing an activity that will cause environmental pollution, it has followed significant public and bespoke consultation with stakeholders and both security of supply and the impact on business has been taken into account in developing the policy.

We also hope it is clear that these are an extremely important set of regulations which take us some way to improving air quality by tackling a significant source of air pollution, thereby helping to protect both human health and the environment.

*8 January 2018*