

Draft Regulations laid before Parliament and the National Assembly for Wales under section 2(8) and (9)(d) of the Pollution Prevention and Control Act 1999, for approval by resolution of each House of Parliament and of the Assembly.

DRAFT STATUTORY INSTRUMENTS

2015 No.0000

**ENVIRONMENTAL PROTECTION, ENGLAND AND
WALES**

**The Environmental Permitting (England and Wales)
(Amendment) Regulations 2015**

Made - - - -

Coming into force in accordance with regulation 1(2)

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, have in accordance with section 2(4) of the Pollution Prevention and Control Act 1999^(a) 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 that Act.

The Secretary of State in relation to England, and the Welsh Ministers in relation to Wales, make the following Regulations in exercise of section 2, and Schedule 1 to, that Act.

(a) 1999 c.24. There are amendments to Schedule 1, but none is relevant to these Regulations. Functions of the Secretary of State under or in relation to section 2, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales, by article 3 (subject to exceptions contained within that article that are not relevant to these Regulations) of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Those functions were subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32). Section 2(4) was amended by the Natural Resources Body for Wales (Functions) Order 2013 (2013/755 W. 90), Schedule 2, Part 1, paragraphs 394, 395(1) and (3).

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2015.

(2) These Regulations come into force on the day after the day on which they are made.

(3) In these Regulations, “the principal Regulations” means the Environmental Permitting (England and Wales) Regulations 2010(a)

PART 2

Amendment of the principal Regulations

Amendment of regulation 3 (interpretation: directives)

2. In regulation 3 of the principal Regulations, after the definition of “the End-of-Life Vehicles Directive”, insert—

““the Energy Efficiency Directive” means Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency(b);”.

Amendment of regulation 35 (specific provisions applying to environmental permits)

3. In regulation 35(2) of the principal Regulations, after sub-paragraph (b) insert—

“(ba) Schedule 8A (efficiency in heating and cooling energy: energy efficiency directive)”.

Amendment of Part 2 of Schedule 1 (activities)

4.—(1) Part 2 of Schedule 1 to the principal Regulations is amended as follows.

(2) In Section 1.1 (combustion activities), after paragraph 1 of “interpretation and application of Part B” insert—

“1A. For the purpose of Part B(a) of this section, where 2 or more appliances with an aggregate net rated thermal input exceeding 20 megawatts are operated on the same site by the same operator, those appliances must be treated as a single appliance with a net rated thermal input exceeding 20 megawatts”.

Amendment of Schedule 8 (Part B installations and Part B mobile plant)

5.—(1) Schedule 8 to the principal Regulations is amended as follows.

(2) In paragraph 1(1), at the beginning insert “Subject to sub-paragraph (1A),”.

(3) After paragraph 1(1) insert—

“1A. Where installations are Part B installations solely because of the aggregation of the rated thermal input of 2 or more appliances in accordance with paragraph 2 of Section 1.1 of Part 2 of Schedule 1, only paragraph 4(1)(a) of this Schedule applies to those installations (in addition to the provisions in Schedule 8A)”.

(a) S.I. 2010/675; relevant amendments were made by S.I. 2013/390, 2013/755 (W.90)

(b) OJ No L 315, 14.11.2010, p1

Insertion of Schedule 8A (Energy Efficiency Directive)

6. After Schedule 8 insert—

“SCHEDULE 8A

Regulation 35(2)(ba)

Energy Efficiency Directive: promotion of efficiency in heating and cooling

Interpretation

1.—(1) In this Schedule—

“cogeneration” means the simultaneous generation in one process of thermal energy and electrical or mechanical energy;

“connection distance” means—

- (a) in the case of a hot water link, the thermal capacity in kilowatts of the source or demand, whichever is smaller, multiplied by 0.0038, or
- (b) in the case of a steam heat link, the thermal capacity in kilowatts of the source or demand, whichever is smaller, multiplied by 0.0012, expressed in kilometres;

“cost-benefit analysis” means a cost-benefit analysis in accordance with Part 2 of Annex IX of the Energy Efficiency Directive;

“economically justified demand” means demand that does not exceed the needs for heating or cooling and which would otherwise be satisfied at market conditions by energy generation processes other than cogeneration;

“high-efficiency cogeneration” means cogeneration meeting the criteria laid down in Annex II of the Energy Efficiency Directive;

“installation” means—

- (a) a stationary technical unit where one or more activities listed in Part 2 of Schedule 1 are carried on; or
- (b) a small waste incineration operation;

“relevant installation” means an installation carrying on—

- (a) an activity described in Part A(1) of Section 1.1 of Part 2 of Schedule 1;
- (b) an activity described in Part A(1) of Section 5.1 of Part 2 of Schedule 1;
- (c) an activity described in paragraph (a) of Part B of Section 1.1 of Part 2 of Schedule 1; or
- (d) a small waste incineration plant operation;

“substantially refurbished” means, subject to sub-paragraph (2)(e), a refurbishment the cost of which exceeds 50 % of the investment cost for a new comparable energy plant.

(2) For the purposes of this Schedule—

- (a) the interpretation of “offshore platform” in paragraph 3 of Part A(1) of Section 1.1 of Part 2 of Schedule 1 shall also include any structure where the principal purpose of the use of the structure is the establishment of the existence of petroleum or the appraisal of its characteristics, quality or quantity or the extent of any reservoir in which it occurs;
- (b) the interpretation of “petroleum” in paragraph 4 of Part A(1) of Section 1.1 of Part 2 of Schedule 1 shall also include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

- (c) a reference to an installation means an installation within the meaning of Part 1 of Schedule 1 which has a net rated thermal input exceeding 20 megawatts;
- (d) where 2 or more small waste incineration plants falling within Schedule 13A with an aggregate net thermal input exceeding 20 megawatts are operated on the same site by the same operator, those small waste incineration plants must be treated as a single installation with a rated thermal input exceeding 20 megawatts; and
- (e) refurbishment does not include the fitting of equipment to carry out the activity described in Part A(1) of Section 6.10 of Part 2 of Schedule 1.

Electricity generating installations

2. An application for the grant of an environmental permit under regulation 13(1) for a relevant installation which generates electricity must contain a cost-benefit analysis which assesses the cost and benefits of providing for the operation of the installation as a high-efficiency cogeneration installation.

3. The regulator must exercise its relevant functions to ensure that an application for a variation of an environmental permit under regulation 20(1) is made before the energy plant of a relevant installation which generates electricity is substantially refurbished.

4. The regulator must ensure that an application for a variation of an environmental permit required by paragraph 3 contains (in addition to the information required by paragraph 2(1)(b) of Schedule 5) a cost-benefit analysis which assesses the cost and benefits of converting the relevant installation to high-efficiency cogeneration.

5. The requirement for a cost benefit analysis in paragraph 2 or paragraph 4 do not apply to peak load and back-up electricity generating relevant installations for which the application for the grant or a variation of an environmental permit states that operation under 1,500 operating hours per year as a rolling average over a period of five years is planned.

6. In the case of a relevant installation to which paragraph 5 applies, the regulator must ensure that, if an environmental permit is granted or varied, it includes conditions ensuring that the operating hours for the installation remain within that constraint.

Installations generating waste heat

7. An application for the grant of an environmental permit under regulation 13(1) for an installation generating waste heat at a useful temperature level, other than a relevant installation falling within paragraph 2, must contain a cost-benefit analysis.

8. The regulator must exercise its relevant functions to ensure that an application for a variation of an environmental permit under regulation 20(1) is made before the energy plant of an installation generating waste heat at a useful temperature level, other than a relevant installation falling within paragraph 3, is substantially refurbished.

9. The regulator must ensure that an application for a variation of an environmental permit under paragraph 8 contains (in addition to the information required by paragraph 2(1)(b) of Schedule 5) a cost-benefit analysis.

10. The cost-benefit analysis required by paragraphs 7 and 9 must include an assessment of the cost and benefits of—

- (a) utilising the waste heat to satisfy economically justified demand, including through cogeneration; and
- (b) the connection of that installation to a district heating and cooling network.

11. Paragraphs 7 to 10 do not apply to an installation, except an installation which forms part of a district cooling network, with any of the following—

- (a) available waste heat of 100 kilowatts or less;
- (b) available waste heat—
 - (i) greater than 100 kilowatts as hot water or steam, where there is no hot water heat demand greater than 100 kilowatts within the search radius from the installation as set out in the table below and located within the connection distance from the centre of the installation; or
 - (ii) greater than 500 kilowatts as steam where there is no steam-based heat demand greater than 500 kilowatts and no hot water heat demand greater than 100 kilowatts within the search radius from the centre of the source installation as set out in the table below and located within the connection distance from the centre of the source installation;
- (c) a heat demand of—
 - (i) 100 kilowatts or less for a hot water heat demand; or
 - (ii) 500 kilowatts or less for a steam-based heat demand;
- (d) a hot water heat demand greater than 100 kilowatts, with no source of available waste heat greater than 100 kilowatts within the search radius from the centre of the demand installation as set out in the table below, located within the connection distance from the centre of the demand installation;
- (e) a steam-based heat demand greater than 500 kilowatts, with no source of steam-based waste heat greater than 500 kilowatts within the search radius from the centre of the installation as set out in the table below, located within the connection distance from the centre of the demand installation.

Search Radios

<i>Installation type</i>	<i>Thermal capacity of heat source/demand</i>	<i>Search radius (kilometres), measured from the centre of the installation</i>
Hot water demand	>100 kilowatts and <3.9 megawatts	0.0038 x H, where H = thermal capacity in kilowatts
	≥ 3.9 megawatts	15
Steam demand	>500 kilowatts and <12.5 megawatts	0.0012 x H, where H = thermal capacity in kilowatts
	≥ 12.5 megawatts	15
Waste heat source (hot water or steam)	>100 kilowatts and <3.9 megawatts	0.0038 x H, where H = thermal capacity in kilowatts
	≥ 3.9 megawatts	15

Heating and cooling networks

12. An application for the grant of an environmental permit under regulation 13(1) for a relevant installation which forms part of a new district heating and cooling network or existing district heating or cooling network, must contain a cost-benefit analysis.

13. The regulator must exercise its relevant functions to ensure that an application for a variation of an environmental permit under regulation 20(1) is made before the energy plant of a relevant installation which forms part of a district heating and cooling network is substantially refurbished.

14. An application for the variation of an environmental permit required by paragraph 13 must contain (in addition to the information required by paragraph 2(1)(b) of Schedule 5) a cost-benefit analysis.

15. The cost-benefit analysis required by paragraphs 12 and 14 must include an assessment of the cost and benefits of utilising the waste heat from nearby installations.

Determination of applications

16. When considering an application for an environmental permit, or for a variation of an environmental permit, in accordance with this Schedule, the regulator must take into account—

- (a) the outcome of the cost-benefit analysis carried out in accordance with this Schedule; and
- (b) after 31st December 2015 the outcome of any comprehensive assessment carried out in accordance with Article 14(1) of the Energy Efficiency Directive.

17. Subject to paragraph 19, where a cost-benefit analysis carried out in accordance with paragraphs 2, 4 and 10 shows that benefits exceed costs, the regulator must ensure that any environmental permit that is granted or varied includes appropriate conditions that will ensure the operation of the installation in a manner shown by that analysis to be cost beneficial.

18. Subject to paragraph 19, where a cost-benefit analysis carried out in accordance with paragraph 15 shows that benefits exceed costs, the regulator must ensure that any environmental permit that is granted or varied contains appropriate conditions that will ensure the operation of the installation, in conjunction with the utilisation of the waste heat from nearby installations, in a manner shown by that analysis to be cost beneficial.

19. Where the cost-benefit analysis carried out in accordance with paragraphs 2,4,10 or 15 shows that benefits exceed costs, the requirement to impose appropriate conditions in accordance with paragraphs 17 and 18 do not apply if, in individual cases, the regulator decides that there are imperative reasons of law, ownership or finance for them not to apply.

20. The regulator must within two months of its decision under paragraph 19 submit a reasoned notification of that decision to the appropriate authority.

21. This Schedule does not apply to—

- (a) installations that need to be located close to a geological storage site approved under Directive 2009/31/EC on the geological storage of carbon dioxide^(a);
- (b) any relevant installation within a nuclear site, within the meaning given in paragraph 1 of Part 2 of Schedule 23, and which is dedicated to the production of nuclear power;
- (c) mobile plant.

22. Nothing in this Schedule affects the application of the Industrial Emissions Directive to installations”.

PART 3

Transitional provisions

Interpretation of Part 3

7. In this Part—

- (a) references to any provision of the principal Regulations are references to those provisions as amended by these Regulations;
- (b) “Part B installation” has the meaning given in Part 1 of Schedule 1 to the principal Regulations;

(a) OJ No L 140, 5.6.2009, p. 114

- (c) “regulated facility” has the meaning given in regulation 2 of the principal Regulations;
- (d) “substantially refurbished” has the meaning given in paragraph 1(1) of Schedule 8A to the principal Regulations (as inserted by regulation 6).

Aggregation of rated thermal input – existing installations

8.—(1) This regulation applies to a Part B installation that is a regulated facility solely as a result of the aggregation of the net rated thermal input of 2 or more appliances in accordance with paragraph 1A of Section 1.1 of Part 2 of Schedule 1 (interpretation and application of Part B) to the principal Regulations.

(2) A Part B installation that was in operation immediately prior to the coming into force of these Regulations is taken to be an exempt facility for the purposes of regulation 8(2) of the principal Regulations.

(3) Paragraph (2) ceases to apply to a Part B installation (so that it is no longer taken to be an exempt facility) if, after the coming into force of these Regulations, the energy plant of the Part B installation is substantially refurbished.

Existing applications for the grant or variation of an environmental permit

9.—(1) Schedule 8A to the principal Regulations (as inserted by regulation 6) does not apply to an existing application.

(2) In this regulation, “existing application” mean a duly made application received by the regulator prior to the coming into force of these Regulations—

- (a) for the grant of an environmental permit pursuant to regulation 13 of the principal Regulations; or
- (b) for the variation of an environmental permit pursuant to regulation 20(1) of the principal Regulations.

	<i>Name</i>
	Parliamentary Under Secretary of State
Date	Department for Environment, Food and Rural Affairs

	<i>Name</i>
	Minister for Natural Resources
Date	One of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) (“the principal Regulations”), to transpose Article 14(5) to (9) of Directive 2012/27/EU on energy efficiency (OJ No L 315, 14.11.2012, p 1). Article 14(5) to (9) of the Directive require Member States to ensure that a cost-benefit analysis is carried out to assess the installation of cogeneration or the utilisation of waste heat from energy producing installations, with the aim to increase energy efficiency.

Regulation 4 amends Part 2 of Schedule 1 to the principal Regulations to provide for the aggregation of the net rated thermal input of appliances operated by the same operator on the same site. Where the aggregated net rated thermal input exceeds 20 megawatts, this means they are

brought within the scope of the definition of ‘Part B installations’ for the purposes of applying the cost-benefit analysis requirements introduced by the new Schedule 8A.

Regulation 6 inserts new Schedule 8A, which provides for a cost benefit analysis to be included in applications for environmental permits and for the variation of environmental permits for specified installations.

The cost-benefit analysis must assess the cost and benefits of installations producing electricity, operating as cogeneration installations. In the case of other installations, the cost-benefit analysis must assess the cost and benefits of utilising waste heat for the purposes of district and cooling networks.

Regulations 8 and 9 contain transitional provisions. Regulation 8 provides that a Part B installation that is a regulated facility under the principal Regulations due to the application of the aggregation provisions in Regulation 4, and is in operation before the coming into force of these regulations, is to be deemed an exempt facility until it is substantially refurbished.

Regulation 9 provides that Schedule 8A does not apply to applications for an environmental permit or for a variation of an environmental permit received by the regulator prior to the coming into force of these regulations.

A full Impact Assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Better Regulation Programme, Department for Environment, Food and Rural Affairs, 17 Smith Square, London SW1P 3JR and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.