

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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15th Report of Session 2017–19

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

**Correspondence:  
Quality of information provided in  
support of secondary legislation**

Includes 4 Information Paragraphs on 5 Instruments

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### *Secondary Legislation Scrutiny Committee*

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, to scrutinise —

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of these specified grounds:

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives;

(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

(f) that there appear to be inadequacies in the consultation process which relates to the instrument.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

### *Members*

Baroness Blackstone

Lord Haskel

Lord Sherbourne of Didsbury

Lord Faulkner of Worcester

Rt Hon. Lord Janvrin

Rt Hon. Lord Trefgarne (Chairman)

Baroness Finn

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Lord Goddard of Stockport

Baroness O'Loan

### *Registered interests*

Information about interests of Committee Members can be found in the last Appendix to this report.

### *Publications*

The Committee's Reports are published on the internet at [www.parliament.uk/seclegpublications](http://www.parliament.uk/seclegpublications)

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

### *Information and Contacts*

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is [hseclegscrutiny@parliament.uk](mailto:hseclegscrutiny@parliament.uk).

# Fifteenth Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

*Date laid: 12 December 2017*

*Parliamentary procedure: affirmative*

*Summary: In order to tackle air pollution, these Regulations transpose the EU Medium Combustion Plants Directive, introducing a system of registration and permitting for plant, such as boilers, engines and turbines, of between 1 and 50 megawatts. They also introduce domestic emission controls for certain types of electricity generator, primarily diesel-fuelled generators which produce very high emissions of nitrogen oxides. Figures published by the Department for Environment, Food and Rural Affairs show that achieving the proposed emissions reductions will cost operators over £300 million (over a 15-year period), but that these reductions will deliver human health benefits monetised at over £1 billion.*

*Representations that we have received underline the strength of current concerns with air quality and the impact upon it of emissions from combustion plants, albeit that those submitting their comments to us have differing views of the measures now proposed by the Department.*

**We draw these Regulations to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

1. The Department for Environment, Food and Rural Affairs (Defra) has laid these Regulations with an Explanatory Memorandum (EM), Transposition Note and two Impact Assessments (IAs). In the EM, Defra says that, in amending an earlier instrument,<sup>1</sup> the Regulations transpose the EU Medium Combustion Plants Directive (“the MCP Directive”),<sup>2</sup> and introduce domestic emission controls for certain types of electricity generator. Defra says that poor air quality is the largest environmental risk to public health in the UK and that investing in cleaner air and doing more to tackle air pollution are priorities for the UK Government. We sought additional information from Defra about the background to, and impact of, the Regulations, which we are publishing at Appendix 1.

#### *Transposition of the EU Medium Combustion Plants Directive*

2. In the IA relating to the transposition of the MCP Directive, Defra describes (in section 2) the health effects of very high levels of pollutant emissions, in particular, nitrogen dioxide (NO<sub>2</sub>), sulphur dioxide (SO<sub>2</sub>) and ozone (O<sub>3</sub>), and particulates (PM), all of which may cause respiratory and/or cardiovascular disease of varying severity. It explains that the EU has adopted

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<sup>1</sup> The Environmental Permitting Regulations 2016 ([SI 2016/1154](#)).

<sup>2</sup> EU Directive [2015/2193](#) of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants.

a National Emissions Ceilings Directive<sup>3</sup> setting annual limits for each pollutant, including emissions ceilings for 2030, and that this Directive must be transposed by mid-2018. It says that the MCP Directive will introduce cost-effective reductions in pollutant emissions, providing an estimated 43% of the action needed to reduce SO<sub>2</sub>, 9% of the action to reduce PM, and 22% of the action to reduce NO<sub>2</sub> emissions, to meet the 2030 national emission ceilings.

3. In the same IA, Defra states that the MCP Directive will introduce: a system of registration and permitting for plant with a rated thermal input<sup>4</sup> of between 1 and 50 megawatts (MW); emission limits for nitrogen oxides (NO<sub>x</sub>), sulphur dioxide and particulate matter; and mandatory periodic monitoring of emissions by operators. It explains that Medium Combustion Plants (MCPs) typically provide power or heating for industrial sites and large buildings (offices, schools, prisons, hospitals) and include boilers, engines, turbines.<sup>5</sup>
4. Defra states that from 20 December 2018 all new plants will need a permit; from 1 January 2024 existing plants over 5MW will require one; and from 1 January 2029 existing plants between 1 and 5MW will need a permit. All plants operating on solid fuels and those which operate on average more than 500 hours per annum will be required to comply with emission limits: new plants from 20 December 2018, existing plants over 5MW from 1 January 2025, and existing plants between 1 and 5MW from 1 January 2030. The additional information at Q1 in Appendix 1 shows that, in 2011, MCPs were responsible for under 10% of the UK's emissions of SO<sub>2</sub>, and under 5% of emissions of NO<sub>x</sub> and particulates.

*Application of emission controls to high NO<sub>x</sub> generators*

5. In the IA relating to the application of emission controls to high NO<sub>x</sub> generators, Defra says that incentives in the energy market have encouraged greater use of generators which are primarily diesel-fuelled, and which produce very high NO<sub>x</sub> emissions relative to other types of generators. Such generators can lead to local NO<sub>2</sub> concentrations which are capable of causing harm to human health. While generators between 1 and 50MW come under the scope of the MCP Directive, Defra says that the Directive's provisions will not curb the anticipated increase in high NO<sub>x</sub> generators: most diesel generators operate for fewer than 500 hours per annum and would therefore be exempt from the Directive's NO<sub>x</sub> emission controls. The Government see the need for quick action to curb the likely rise in NO<sub>x</sub> emissions, and intend to tackle the issue through additional measures targeted at electricity generating plants. Controls on high NO<sub>x</sub> generators will take effect from 2019. Defra has provided additional information about the measures at Q2 in

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3 EU Directive [2016/2284](#) of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants.

4 "Rated thermal input": the rate at which fuel can be burned at the maximum continuous rating of the appliance.

5 Information from the European Commission states that the MCP Directive "fills the regulatory gap at EU level between large combustion plants (greater than 50 MW)...and smaller appliances (heaters and boilers smaller than 1 MW)" which are covered by other EU legislation. See: European Commission, *The Medium Combustion Plant (MCP) Directive*, June 2016 <http://ec.europa.eu/environment/industry/stationary/mcp.htm> [accessed 9 January 2018]. The Committee drew the Large Combustion Plants (Transitional National Plan) Regulations 2015 ([SI 2015/1973](#)) to the special attention of the House in its 19th Report of Session 2015–16 ([HL Paper 76](#)). In line with EU legislation, those Regulations allowed certain large combustion plants an additional four and a half years to make the necessary investment in emissions abatement technology to achieve compliance with EU emission controls.

Appendix 1, showing that the controls are expected to reduce NO<sub>x</sub> emissions by 2.1 kilotonnes by 2030, equivalent to 0.5% of total UK emissions.

### *Consultation*

6. In the EM, Defra says that it carried out a joint consultation with the Welsh Government over a 12-week period from 16 November 2016 to 8 February 2017. There were 112 respondents: some two-thirds of these were energy or other sectoral companies or representative organisations, while the remainder were local authorities, regulators, and others, including individuals. Defra says that there was strong support for transposing the MCP Directive and introducing the emission controls for generators by amending the earlier Regulations.
7. The Department has published a summary of the responses.<sup>6</sup> This shows in particular that views on some of the proposals for emission controls for generators were mixed. For example, only 52% of the 85 responses supported the timescales proposed for the controls to be applied. Defra says that “some sectors considered the timescale too tight and that it will not allow industry and regulatory bodies sufficient time to prepare for the changes in regulation. Others suggested that the timescale should be more stringent than currently proposed, in part given the immediate threat posed by poor air quality”.
8. The consultation had proposed limits on emissions of NO<sub>x</sub>, but not on particulate emissions. In the summary, Defra says that, while 61% of the 75 respondents agreed, “there was a strong view that PM levels should be part of the required emission monitoring and reporting requirements to ensure confidence in the regime and establish robust data on particulate emissions”. The Department makes it clear, however, that it does not intend to introduce additional PM emission controls for generators “as the overall emission reductions achieved would be modest and, in the majority of cases, not cost-effective.” Defra has commented further on this issue at Q3 in Appendix 1.

### *Costs and benefits*

9. In the IA relating to the transposition of the MCP Directive, Defra gives a figure of £211.2 million as the costs of its proposals (made up of abatement, administration and monitoring costs, falling to operators); and a figure of £1,018 million as the benefits, from emissions reductions (this figure is explained in section 8.2 of the IA, and relates largely to human health benefits, from a reduction both in chronic mortality effects and in morbidity effects).
10. In the IA relating to the application of emission controls to high NO<sub>x</sub> generators, Defra estimates that the costs of its proposals will be £107 million (again made up of abatement, administration and monitoring costs, but also the cost of an anticipated technology switch from diesel to gas for standby plants). The benefits from these emissions reductions are put at £57.7 million (again, principally human health benefits).

### *Representations from interested parties*

11. We have received several representations about the Regulations:

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<sup>6</sup> See: Defra, *Summary of responses to the consultation on reducing emissions from Medium Combustion Plants and Generators*, June 2017: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/626803/mcpd-generator-consult-sum-responses.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/626803/mcpd-generator-consult-sum-responses.pdf) [accessed 9 January 2018]

- Mr Mark Draper, Chief Executive of Peak Gen Power Limited, and Mr Andrew Whalley, CEO of Reg Power Management, wrote to us to express concern about the deadlines now proposed for compliance with emissions controls, in particular the requirement that generators which enter a Capacity Market Agreement<sup>7</sup> that remains in force after 31 December 2018 will have to meet the new controls from 1 January 2019. They also questioned the adequacy of the consultation that was carried out by the Department;
- We asked Defra to comment on these concerns. As regards the deadline of 1 January 2019, it has said that, without this aspect of the controls, the Regulations 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. Defra has also said that, as well as conducting formal consultation, it engaged with stakeholders through a variety of means including workshops, meetings and correspondence. We are publishing both the correspondence received and Defra's full response on our website;
- Mr John Maingay, Director of Policy and Public Affairs at the British Heart Foundation; Dr Penny Woods, Chief Executive of the British Lung Foundation; and Dr Andrew Goddard, Registrar, and Professor Stephen Holgate, special adviser on air quality, of the Royal College of Physicians sent separate submissions. All supported the proposed Regulations, because of the need to reduce air pollution in the interests of public health. We are also publishing these representations on our website<sup>8</sup>.

### *Conclusion*

12. Defra sets the proposals embodied in these Regulations in the context of a recognition that poor air quality is the largest environmental risk to public health in the UK. The proposals that relate to Medium Combustion Plants flow out of EU legislation; the proposed emission controls for high NO<sub>x</sub> generators are additional measures which spring from the Government's wish for quick action to curb the likely rise in NO<sub>x</sub> emissions from diesel generators. The figures put forward by Defra show that achieving the proposed emissions reductions will cost operators over £300 million (over a 15-year period), but that these reductions will deliver human health benefits monetised at over £1 billion. **Representations that we have received underline the strength of current concerns with air quality and the impact upon it of emissions from combustion plants, albeit that those submitting their comments to us have differing views of the measures now proposed by the Department.**

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7 The Government have said that the Capacity Market is intended ensure security of electricity supply by providing a payment for reliable sources of capacity, alongside their electricity revenues, to ensure they deliver energy when needed. Such payments are the subject of Capacity Market Agreements.

8 See: <http://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/publications/>

## CORRESPONDENCE

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### Quality of information provided in support of secondary legislation - “Implementing a more proportionate and streamlined better regulation system”

13. In November 2017, Lord Henley, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy (BEIS), wrote to Meg Hillier, MP, Chair of the Commons Public Accounts Committee (PAC), about changes to the Government’s approach to Impact Assessments (IAs). Lord Henley said that future IAs would have to go to the Regulatory Policy Committee for validation only if they exceeded net £5 million (rather than £1 million, as hitherto). He copied his letter to this Committee (and others).
14. We wrote to Lord Henley on 28 November, stressing our view that, whether or not a formally validated IA was presented alongside a statutory instrument, the accompanying Explanatory Memorandum should contain sufficient information about its impact so that Parliament was enabled effectively to scrutinise the instrument. On 21 December, Lord Henley replied, offering an assurance that guidance being provided to Government Departments would make this clear. We are publishing this correspondence at Appendix 2.

## INSTRUMENTS OF INTEREST

15. The Committee noted with concern that a number of the instruments before us this week were laid close to the Christmas recess and came into effect before the House returned.<sup>9</sup> We regard this as poor practice as it limits the Committee and the House’s ability to comment on the legislation before it comes into effect. We have drawn attention to Departments curtailing the scrutiny period in this way once already this session, in our 2nd Report<sup>10</sup>, and maintain our view that it is a less than ideal result of poor planning by Departments.

### Draft Financial Assistance Scheme (Increased Cap for Long Service) Regulations 2018

16. This instrument relates to the Financial Assistance Scheme (FAS) which is operated by the Board of the Pension Protection Fund (PPF). These Regulations will allow any FAS member who has 21 years’ or more pensionable service within a single pension scheme to have their existing cap increased by 3% for each full year of pensionable service over 20 years subject to a maximum of double the standard FAS cap (that is, a new maximum of £68,458). The FAS provides financial assistance in relation to pension schemes that started to wind up between 1 January 1997 and 6 April 2005. After this date, eligible individuals would instead receive compensation from the PPF. It is Government policy to ensure parity of treatment between members of the PPF and FAS where possible and the change to the long service cap was implemented in the PPF on 6 April 2017.<sup>11</sup> However the Explanatory Memorandum (EM) to this instrument makes reference to a court case before the European Court of Justice which may affect this policy, and supplementary material on this matter is included at Appendix 3 of this Report. **The Committee also questioned whether the implementation costs indicated in the EM were proportionate to the low number of claimants likely to benefit from the change,** the DWP response is also included in the Appendix.

### Draft Human Tissue (Quality and Safety for Human Application) (Amendment) Regulations 2018

### Draft Human Fertilisation and Embryology (Amendment) Regulations 2018

17. These Regulations transpose two European Union (EU) Commission Directives relating to human tissue and cells intended for use in a patient’s treatment (e.g. stem cells, bone, corneas, gametes and embryos) into UK legislation:
- “the coding Directive” (2015/5651) creates a standard “Single European Code” that provides basic information so that the material can be traced from the person who donated it to the patient who receives it;
  - “the import Directive” (2015/5662) introduces measures to ensure that tissue and cells imported from countries outside the EU or European

<sup>9</sup> For example Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 ([SI 2017/1255](#)) and Superannuation (Admission to Schedule 1 to the Superannuation Act 1972) Order 2017 ([SI 2017/1261](#)).

<sup>10</sup> 2nd Report, Session 2017–19 ([HL Paper 8](#))

<sup>11</sup> Pension Protection Fund (Modification) (Amendment) Regulations 2017 ([SI 2017/324](#)).

Economic Area (EEA) meet the same quality and safety standards that exist within the EU.

18. Although the UK has not experienced any major incidents involving problems with identification or traceability in the past, tissue and cells now regularly move between licensed establishments and across international borders, making the need for an internationally recognisable identification code more important in order to mitigate future patient safety risks. The UK already has legislation in place that achieves the aims of the coding and import Directives but needs to amend the existing legislation to be consistent with the rest of the EU and EEA.

**Roads Vehicles (Payment of Duty by Credit Card) (Prescribed Fee) Regulations 2017 (SI 2017/1239)**

19. These Regulations are made in consequence of Directive 2015/2366/EU, the Revised Payment Services Directive (“PSD2”)<sup>12</sup>, which prohibits the charging of fees for certain transactions. The effect of these Regulations is, from 13 January, to remove the requirement to pay a transaction fee to DVLA when paying for Vehicle Excise Duty using a personal credit card. A £2.50 fee will however continue to be applied where Vehicle Excise Duty is paid using a business credit card or business credit card account.

**Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (SI 2017/1301)**

20. HM Treasury (HMT) has laid these Regulations with an Explanatory Memorandum (EM) and Impact Assessment. HMT explains that the instrument provides the Financial Conduct Authority (FCA) with a new role overseeing the anti-money laundering and counter terrorist financing supervision by the 22 self-regulatory organisations (SROs) in the accountancy and legal sectors.<sup>13</sup> As background, HMT says that in October 2015 the Government published the “National risk assessment of money laundering and terrorist financing”<sup>14</sup>, which found that the effectiveness of the UK’s supervisory regime was inconsistent; and that the large number of SROs in some sectors presented a particular challenge. Areas for improvement included supervisors’ understanding and application of a risk-based approach; supervisors’ provision of a credible deterrent; and the sharing of information both among supervisors and between supervisors and law enforcement. These Regulations will provide the FCA with a new role to work with SROs to ensure that they fulfil their obligations.

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12 We published information about the Payment Services Regulations 2017 (SI 2017/752), implementing this Directive, in the 4th Report of this Session (HL Paper 17).

13 The SROs in question are listed in Schedule 1 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692). The Committee drew SI 2017/692 to the special attention of the House in its 2nd Report, Session 2017–19 (HL Paper 8).

14 See: HMRC, *UK national risk assessment of money laundering and terrorist financing*, October 2015: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468210/UK\\_NRA\\_October\\_2015\\_final\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf) [accessed 10 January 2017]

## **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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### **Draft instruments subject to affirmative approval**

- Draft Financial Assistance Scheme (Increased Cap for Long Service) Regulations 2018
- Draft Financial Services Act 2012 (Mutual Societies) Order 2018
- Draft Gambling Act 2005 (Amendment of Schedule 6) Order 2018
- Draft Human Tissue (Quality and Safety for Human Application) (Amendment) Regulations 2018
- Draft Human Fertilisation and Embryology (Amendment) Regulations 2018
- Draft Particulars of Proposed Designation of Age-Verification Regulator

### **Instruments subject to annulment**

- SI 2017/1149 Merchant Shipping (Working Time: Inland Waterways) (Amendment) Regulations 2017
- SI 2017/1239 Road Vehicles (Payment of Duty by Credit Card) (Prescribed Fee) Regulations 2017
- SI 2017/1243 Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2017
- SI 2017/1244 Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017
- SI 2017/1247 Companies Act 1989 (Financial Markets and Insolvency) (Amendment) Regulations 2017
- SI 2017/1250 Independent Office for Police Conduct (Transitional and Consequential) Regulations 2017
- SI 2017/1251 Road Vehicles (Construction and Use) (Amendment etc.) (No. 2) Regulations 2017
- SI 2017/1252 Greater London Authority (Consolidated Council Tax Requirement Procedure) Regulations 2017
- SI 2017/1254 Tuberculosis (Non-bovine animals) Slaughter and Compensation (England) Order 2017
- SI 2017/1255 Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017
- SI 2017/1256 Government Resources and Accounts Act 2000 (Estimates and Accounts) (Amendment) Order 2017
- SI 2017/1257 Football Spectators (2018 World Cup Control Period) Order 2017

- SI 2017/1261 Superannuation (Admission to Schedule 1 to the Superannuation Act 1972) Order 2017
- SI 2017/1301 Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017
- SI 2017/1308 National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) (Amendment) Regulations 2017

## APPENDIX 1: DRAFT ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2018

### Additional Information from the Department for Environment, Food and Rural Affairs

*“Q1: At present, what proportion of the relevant measurement of air pollution is accounted for by emissions from existing Medium Combustion Plants? What reduction in this air pollution is expected from the application of new controls to existing Medium Combustion Plants in 2024 and 2029?”*

A1: The projections in the impact assessment are based on an estimated numbers of plants in 2011 which are based on market intelligence and have been adjusted for a number of factors that determine fuel consumption. These estimates indicate that medium combustion plants (MCPs) emitted 32.67 kilo tonnes (Kt) SO<sub>2</sub>, 41.5 Kt NO<sub>x</sub> and 6.2 Kt of particulate matter in 2011. As a comparison, total emissions in 2011 were 393 Kt SO<sub>2</sub>, 1,061 Kt NO<sub>x</sub> and 318 Kt particulate matter.

Table 1.1 below is taken from the MCPD impact assessment. It provides a summary of the emissions reductions expected to be delivered by the emission controls on MCPs by 2030.

**Table 1.1 Emission reductions delivered in 2030 by proposals assessed in the impact assessment, in kilo tonnes (Kt) and as a percentage of total UK emissions.**

Kt (%)	SO <sub>2</sub>	NO <sub>x</sub>	PM	CO <sub>2</sub>
<b>Option 1</b>	14.5 (12%)	16.9 (3%)	2.6 (3%)	109

*Q2: Can you spell out what are the controls which the Regulations introduce for electricity generators? When will they be applied? What proportion of emissions of nitrogen oxides is accounted for by such small-scale generators? What difference will the new controls make, and when?”*

A2: Within Great Britain, there has been rapid growth in the use of low-cost, small scale flexible power generators in the past few years. Whilst there is a legitimate role for some rapidly-responding small-scale generation, there has been a recent growth of (mainly diesel) generators which emit high levels of NO<sub>x</sub> relative to other MCPs and are not subject to emission controls. This growth poses a concern for local air quality as well as for meeting future national emission reduction targets. These generators have the potential to cause breaches of the hourly NO<sub>2</sub> limit set for the protection of human health within the EU Ambient Air Quality Directive (EU AAQD). If the growth in their use remains unconstrained, this will result in an avoidable increase in national emissions, posing a risk to meeting the ceilings established within the Gothenburg Protocol. Therefore the Government is taking action to ensure the UK population’s exposure to NO<sub>2</sub> is within the maximum levels permitted under EU law.

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 a NO<sub>x</sub> emission limit from 1 January 2019. The regulator is also able to set stricter emission limits if required to ensure compliance with an environmental quality standard, i.e., to protect local air quality. 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 have

an existing agreement with National Grid. These transitional agreements will be removed if the operator signs up to a new agreement with National Grid after 31 October 2017 (which remains in place after 31 December 2018). This is to avoid favouring and encouraging the use of older, more polluting generators, whilst also providing time for the market to adapt. Additionally, existing generators that are very highly polluting (emits 500mg/Nm<sup>3</sup> of NO<sub>x</sub> or more, operates for 50hrs or more per year, and which is 5MWth or larger) may have emission limits set from October 2019 if required to protect local air quality.

Table 1.2 below is taken from the generator controls impact assessment. It provides a summary of the emissions reductions expected to be delivered by the emissions controls on generators by 2030.

**Table 1.2 Emission reductions delivered in 2030 by the controls on high NO<sub>x</sub> generators, in kilo tonnes (Kt) and as a percentage of total UK emissions.**

Kt (%)	SO <sub>2</sub>	NO <sub>x</sub>	PM	CO <sub>2</sub>
<b>Option 1</b>	0.3 (0.2%)	2.1 (0.5%)	0.02 (0.04%)	12

The analysis for the high NO<sub>x</sub> generators uses a baseline scenario in which there is implementation of the MCPD but no emission controls on generators. It is relative to this baseline that the impacts of implementing emission controls on high NO<sub>x</sub> emitting generators are assessed.

*Q3: How do you explain the divergence between respondents' views on the issue of particulate emissions, and the Government's own view? Are the Government not concerned about the point made, in relation to ensuring confidence in the regime and establish robust data on particulate emissions?*

A3: Particulate matter emissions are a potential concern only for older, unabated or poorly maintained generators. As a result it was not proportionate to set emission limits for all generators and require periodic monitoring to demonstrate compliance. Instead we have provisions which enable the regulator to set additional emission controls if required to protect local air quality. We also have maintained the prohibition on persistent emissions of black smoke as set out in the Clean Air Act. It's also important to note that black smoke from diesel engines will occur only briefly at start up or shut down, or if something is badly wrong with the generator."

**21 December 2017**

## APPENDIX 2: QUALITY OF INFORMATION PROVIDED IN SUPPORT OF SECONDARY LEGISLATION - “IMPLEMENTING A MORE PROPORTIONATE AND STREAMLINED BETTER REGULATION SYSTEM”

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### Letter from Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee, to The Rt Hon. Lord Henley, Parliamentary Under Secretary of State for the Department for Business, Energy and Industrial Strategy

#### *Implementing a more proportionate and streamlined better regulation system*

Thank you for copying to me your letter of 22 November 2017 to Meg Hillier, MP, Chair of the Public Accounts Committee in the House of Commons. It was helpful to be kept informed of the changes which you are implementing in the process for scrutiny of Impact Assessments (IAs) by the Regulatory Policy Committee.

We welcome the statement in your letter that, where the impact of a measure is less than the de minimis threshold which you describe, the Department’s analysis should be more proportionate to the scale of the regulation’s impact; but that Departments will continue to provide Parliament with appropriate analysis in support of such statutory instruments. This is a key concern for us.

You may know that, in October 2015, we had an exchange of correspondence with the Rt Hon. Matt Hancock MP, then Minister for the Cabinet Office. We noted that we had recently considered a number of statutory instruments where the information provided had been inadequate for the Committee to fulfil its scrutiny task. We also made the point that the cost/benefit analyses provided in Explanatory Memoranda often fell short of what was required, given that Impact Assessments were apparently being presented less often than in earlier sessions. In his reply, the Minister confirmed that, where Departments have delegated responsibility to decide on the level of appraisal, they were nonetheless expected to consider the needs of Parliament. We published this correspondence in our 11th Report of Session 2015–16.

You may also know that, following this exchange, in July 2016 and September 2017 we took evidence from Elizabeth Gardiner, First Parliamentary Counsel, Jonathan Jones, Treasury Solicitor, and Sir Chris Wormald, Permanent Secretary in the Department of Health.

Our discussions with the Permanent Secretaries were about the need for improvements in the support given by Departments to the process of Parliamentary scrutiny of secondary legislation. We have been encouraged by their recognition of the need for adequate information to be provided, and by the steps that they have taken to bring this about. We commented on the latest state of play in this improvement process in our 6th Report of the current Session.

We trust that the approach that you envisage towards a better regulation system is informed by the exchanges described in this letter. Our Committee is very clear in its view that, whether or not a formally validated Impact Assessment is presented alongside a statutory instrument, the accompanying Explanatory Memorandum should contain sufficient information about its impact so that Parliament is enabled effectively to scrutinise the instrument.

We would welcome further confirmation from you that this is the Government's intention.

I am copying this letter to the recipients of yours, as well as to the Rt Hon. Damian Green, MP, Minister for the Cabinet Office.

**28 November 2017**

**Letter from the Rt Hon. Lord Henley, Parliamentary Under Secretary of State for the Department for Business, Energy and Industrial Strategy, to Lord Trefgarne, Chairman of the Secondary Legislation Scrutiny Committee**

*Implementing a more proportionate and streamlined better regulation system*

Thank you for your letter of 28th November 2017, in response to mine to Meg Hillier MP, Chair of the Public Accounts Committee in the House of Commons. I understand fully the concern that Departments should continue to provide Parliament with appropriate analysis in support of statutory instruments.

In developing a more proportionate better regulation system, we have taken into account the needs of Parliament, including building on a very helpful discussion between your Committee's clerks and officials in the Better Regulation Executive.

The proposed guidance for the interim better regulation framework makes clear that while independent scrutiny of the evidence base is not required for measures below the de minimis threshold (+/- £5 million annual net impact on business or charity and voluntary bodies), Departments are still required to carry out proportionate cost benefit analysis to inform policy development and decision-making, and to ensure that Parliament and stakeholders are informed of the impacts of the legislation.

This aligns with the recommendation in the Public Accounts Committee 2016–17 report on Better Regulation, and that of the National Audit Office, for a more proportionate approach that focusses effort on the assessment and validation of those measures with the greatest impact.

As well as increasing the proportionality of the system, we have also introduced a requirement that significant deregulatory measures go through independent scrutiny for the first time. This should provide further assurance to Parliament that its scrutiny of new measures is informed by a strong evidence base on the costs, benefits and risks of important policies.

I am aware of the helpful guidance that the Secondary Legislation Select Committee has prepared for Departments, and intend to make sure that this is linked into any guidance BRE produces on Departments' obligations to Parliament, including ensuring that an Explanatory Memorandum provides sufficient information on the impact of a statutory instrument, if an impact assessment has not been prepared.

My officials would welcome ongoing engagement with your Committee Clerks to ensure that we can identify any areas of concern about changes to the better regulation framework and to enable us to provide support to Departments to meet the expectations of the Committee.

The better regulation framework will provide Departments with the flexibility to operate a proportionate better regulation system that is consistent with the wider requirements of good policy making and accountability to Parliament.

I hope this provides you and the other Committee members with the assurance you were seeking. I am copying this letter to Meg Hillier MP (Chair of the Public Accounts Committee), Lord Blencathra (Chair, Delegated Powers and Regulatory Reform Committee), Andrew Bridgen MP (Chair of the Regulatory Reform Committee) and Derek Twigg MP, (Chair of the Statutory Instruments Committee).

**21 December 2017**

## APPENDIX 3: DRAFT FINANCIAL ASSISTANCE SCHEME (INCREASED CAP FOR LONG SERVICE) REGULATIONS 2018

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### Additional Information from the Department for Work and Pensions

*“Q1: Can you please explain the relevance of the court case, although it is solely directed at the Pension Protection Fund (PPF) are we to assume that if the European Court found against the UK then you would also pay increased sums to claimants under the Financial Assistance Scheme (FAS) due to the principle of parity you mention at para 7.7 of the EM.*

A1: The Hampshire case was mentioned in the Explanatory Memorandum to the FAS long service cap regulations only as potentially relevant background information which might be considered of interest to the Committee, given the parallels between the PPF and FAS caps. The outcome of the case will have no impact on the vast majority of PPF and FAS members (see the answer to question 2 for more information on this point).

Mr Hampshire contends that Article 8 of the EU Insolvency Directive requires the UK to ensure that every pension scheme member gets at least 50% of their accrued benefits in the event of the insolvency of the sponsoring employer. Mr Hampshire further argues that Article 8 of the Insolvency Directive has “direct effect”, ie it confers rights on individuals which are directly enforceable against the PPF, and therefore the PPF cannot accept any scheme valuation under which any member would receive less than the 50% “minimum”. Having been unsuccessful in the High Court, Mr Hampshire appealed to the Court of

Appeal, which referred certain key questions in the case to the Court of Justice of the European Union (CJEU). The case is currently awaiting hearing by the CJEU.

The case concerns the level of protection that the UK is required to provide for pension scheme members’ accrued benefits in the event of the insolvency of scheme’s sponsoring employer. As the FAS, as well as the PPF, is one of the mechanisms by which the UK provides such protection, the CJEU’s ruling could have implications with regard to the compliance of the FAS regime with the Directive.

In the event of an adverse decision, the Government would need to consider the precise terms of the judgement in order to determine what legislative changes might be needed in relation to the rules for both the FAS and PPF.

*Q2: What is the concern about the court case?—the plaintiff seeks that any claimant should receive at least 50% of their pension entitlement in the case of insolvency, but the FAS ensures that members generally receive 90% of their pension accrued at the time of the insolvency—which would appear to be a greater amount. Can you set out what the differential is that concerns the DWP—is it the potential to override the cap or is it the costs of adopting a different method of calculating the benefits due at the point of retirement?*

A2: Both the PPF and FAS pay scheme members 90% of the pension accrued respectively, at the point their scheme entered PPF assessment or began to wind-up, subject to an overall cap. In the case of the PPF these restrictions apply only to members below their scheme’s normal pension age at that time.

The cap is set as at age 65 and is currently £34,229 for FAS payments and £34,655 for PPF compensation. The cap is actuarially reduced if a member opts

to receive their compensation early, so that members who take their compensation at different ages are treated fairly.

There are two reasons for the cap. The first is to limit the costs of the FAS and the PPF. The second is to deter excessive risk taking or malpractice by, for example company directors, who may be tempted to take decisions that result in the insolvency of the company, in the knowledge that their own and colleagues' pension benefits would, in effect, be underwritten.

It is possible for the capped amount of compensation or assistance to be less than 50% of the member's accrued pension, for example where a member has a large pension due to a high salary and/or long service within the same pension scheme. However, we believe the numbers affected to be very low. Only around 400 PPF and 500 FAS members are currently affected by the cap which represents around 0.3% of the total membership of both schemes as at April 2017. We estimate that a very small proportion of these capped members are not receiving at least 50% of their accrued pension and the increased FAS cap for long service will further reduce the number of members affected.

The Government's concerns regarding the position for which Mr Hampshire argues relate to both the potential costs and the undermining of the principle of the cap. The impact on Government, the PPF and pension schemes more generally, in the event of an adverse decision, would depend on the precise terms of the judgment but the implications would likely be significant. Even with relatively few scheme members affected, any requirement to ensure that every member of every scheme receives no less than 50% of their original scheme entitlement could, depending on the terms of the judgment and the nature of any legislative changes made in response, significantly increase the costs for both the FAS, which is funded by the taxpayer, and the PPF, which is funded via a levy on eligible pension schemes.

*Q3: Costs - you state that the change will give rise to additional admin costs of £ 0.5–0.7 million this does not appear to include the payments due to the 290 in back pay and additional future payments. Is that correct?*

A3: Yes the £500,000–£700,000 range is the one-off cost of amending existing IT systems and communicating with eligible FAS members about the increased payments they will receive. The cost is based on estimates provided in 2016 when the policy was agreed. Spending on this project is monitored via quarterly reviews between the PPF (who administer FAS) and DWP and the project is now on target to come in at the lower end of this range. Given the nature of changes required and the need to communicate with FAS members to ensure that they understand what their assistance payments will be going forward, the DWP is content that this change represents value for money.

Increases due to FAS members who are eligible for the long service cap will only take effect from the date that the regulations come into force; payments will not be backdated. The expectation is that the regulations will come into force on 6 April 2018 and therefore increased payments will only apply from this date.

The long service cap will increase the overall cost of FAS by approximately £1.2m per year. Actual costs will depend on a number of factors, including pensioner deaths (which will reduce FAS payments) and new retirements (which could increase costs). As the FAS closed to new schemes on 1 September 2016 the actual costs may be lower than the £1.2 million quoted.

*Q4: Also because the FAS is a legacy scheme the number of affected individuals is fixed and finite—we therefore wonder how administrative costs of £0.7m compare with the estimated additional sums that will be paid to the claimants. We also wonder whether extensive IT changes are proportionate and represent value for money? Do you have any evidence on this and have you considered any alternative solutions—such as manual amendments for that limited cadre?*

A4: Please see our answer to question 3.”

**8 January 2018**

## APPENDIX 4: INTERESTS AND ATTENDANCE

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 9 January 2018, Members declared the following interests:

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

Baroness Blackstone

*Chairman, British Lung Foundation (registered charity)*

### **Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (SI 2017/1255)**

### **Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (SI 2017/1301)**

Lord Janvrin

*Senior Adviser, HSBC Private Bank (UK) Ltd*

### **Attendance:**

The meeting was attended by Baroness Blackstone, Lord Faulkner of Worcester, Baroness Finn, Lord Goddard of Stockport, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury, Lord Trefgarne, and Baroness Watkins of Tavistock.