

1) Medium Combustion Plants

1.1) What is in scope of the Medium Combustion Plants Directive (MCPD)?

The regulations will give effect to the Directive requirements, which apply emission controls to combustion plants with a rated thermal input equal to or greater than 1 MWth and less than 50 MWth (MCPs), irrespective of the type of fuel they use (which could include solid, liquid or gaseous waste). However, there are a number of exclusions (listed under Article 2 of the Directive), such as for plant subject to Chapter III (Large Combustion Plant) or Chapter IV (waste incineration/co-incineration plant) of the Industrial Emissions Directive, and for specific types of plants.

1.2) What will be required in order to comply with the MCPD?

Operators will need to ensure:

- They hold a permit for operational plant by the relevant deadlines (the earliest is 20 December 2018 for new plant);
- they monitor emissions to demonstrate compliance with the applicable emission limit values; and
- they keep records of operation of the plant for at least six years to demonstrate compliance.

1.3) What plant benefit from transitional arrangements?

Plant put into operation before 20 December 2018 or for which a permit was granted before 19 December 2017 pursuant to national legislation provided that the plant is put into operation no later than 20 December 2018 are defined as 'existing plants' and benefit from later dates for permitting and compliance with emission limit values.

1.4) What do operators need to do if an MCP is exempt from the ELVs set out in Annex II of the Directive but it requires a permit?

The operation of the MCP will require a permit from the applicable date in the draft regulations and the operator should make an application in sufficient time to ensure this requirement can be met. A pre-application discussion with the regulator and/or examination of the regulator's guidance may be helpful in this regard. The operator will need to include a signed declaration in their permit application, in accordance with Annex I of the Directive.

1.5) Which mobile plants are in scope of the MCPD?

The MCPD exempts plants used in the propulsion of a vehicle, ship or aircraft, as well as engines covered by Directive 97/68/EC relating to non-road mobile machinery. Engines are deemed covered by Directive 97/68/EC (or by Regulation 2016/1628, which replaces the previous directive)¹ and therefore exempt from the MCPD if they have been subject to placing on the market emission standards. Any other mobile plants are in scope of the MCPD.

1.6) How will mobile MCPs be permitted?

The plant operator must hold a permit and must comply with the permit conditions. The operator will be required to notify the regulator before deployment, although there will be a procedure to enable urgent deployment. Detailed rules are being developed in discussion with stakeholders and will be provided in guidance from the regulator.

1.7) How will the operating hours criterion be applied to MCPs?

The draft regulations apply the criterion to individual MCPs.

¹ A summary of these placing on the market standards is available at <https://www.dieselnet.com/standards/eu/nonroad.php>

2) Generator controls

2.1) What is the scope of the controls?

Generators

The regulations will apply controls to combustion plant used to generate electricity ('Generators') between 1 and 50MWth; generators are single plants or a group of plants at a site which are operated by the same operator and for the same purpose, so in effect individual generators under 1MWth can be in scope if they aggregate at a site to over 1MWth. In addition, generators that are under 1MWth and used for the purposes of delivering capacity agreement obligations or balancing services are also in scope.

Mobile Generators and excluded Generators

Mobile Generators are outside the scope of the Generator controls, unless attached to completed permanent infrastructure or to the electricity transmission/distribution system (in effect providing a service that could otherwise be provided by a stationary Generator). A range of other Generators, termed 'excluded Generators' in the draft regulations, are also outside of scope. These include back-up Generators that are tested for no more than 50 hours a year, Generators with a defined nuclear safety role in a nuclear site licence issued by the Office for Nuclear Regulation, Generators subject to the provisions of Chapter II or Chapter III of the Industrial Emissions Directive and Generators on offshore platforms and gas storage and unloading platforms. 'Back-up Generator' is defined in the draft regulations as a Generator operated for the sole purpose of maintaining power supply at a site during an on-site emergency.

Specified Generators

Individual Generators within scope, and collections of Generators within scope, are referred to as 'Specified Generators' (so a Specified Generator may be an individual Generator or it may be a collection of two or more Generators, depending on the circumstances). Where the Specified Generator is formed by a collection of two or more Generators (this happens where that collection of Generators is on the same site, with the same operator and the same purpose), the draft regulations have the effect of subjecting *all* the Generators in that collection to permitting from the earliest of the dates prescribed in the draft regulations in relation to the component Generators. By contrast, the standard permitting requirements and the transitional arrangements (see paragraphs 5 and 6 or Schedule 25B of the draft regulations) are applied individually to each component Generator (see further on this below).

2.2) How will the emission controls be applied?

The draft regulations apply a set of standard permit requirements to the Specified Generator, as set out in paragraph 5 of Schedule 25B. Where the Specified Generator comprises more than one Generator, the standard permit requirements are applied individually to each component Generator by the draft regulations (see paragraphs 3 and 5 of Schedule 25B). Regulator guidance, to be developed in discussion with stakeholders, will address such matters in detail.

2.3) Which generators will benefit from transitional arrangements in respect of the emissions controls?

Transitional arrangements (later application of the requirement for a permit and the standard permit conditions, see paragraphs 3 and 6 of Schedule 25B) will apply individually to the component Generators of a Specified Generator and the criteria relating to operating hours and pollutant emission concentrations will be applied on this basis. Only Generators that were in operation when the controls were announced and some Generators providing services to the electricity transmission/distribution system, as described in the bullets below, will benefit from the transitional

arrangements. These are termed 'Tranche A Generators' in the draft regulations. During the application of the transitional arrangements, higher-risk Tranche A Generators will be subject to controls to the extent necessary to ensure the protection of NO₂ Limit Values (paragraph 6(3) of Schedule 25B) set out in the Air Quality Standards Regulations 2010.

The application of transitional arrangements differs between 1-50MWth and sub-1MWth Generators because the controls were announced at different times. A Generator with a rated thermal input equal to or greater than 1MWth and less than 50MWth (this generator may be comprised of several individual generators under 1MWth) will benefit from transitional arrangements if:

- (a) it came into operation before 1st December 2016; or
- (b) it is the subject of a capacity agreement arising from the 2014 or 2015 capacity auctions, or
- (c) it is the subject of a Feed-in Tariff preliminary accreditation application that was received before 1st December 2016.

A Generator with a rated thermal input of less than 1MWth will benefit from transitional arrangements if:

- (d) it is the subject of a capacity agreement arising from the 2014, 2015 or 2016 capacity auctions; or
- (e) it is the subject of a balancing services agreement entered into before 31 October 2017; or
- (f) it is the subject of a Feed-in Tariff preliminary accreditation application that was received before 1st December 2017.

A Generator that does not meet the definition of Tranche A Generator will be a 'Tranche B Generator'. Tranche B Generators do not benefit from the transitional arrangements.

2.4) What are the restrictions to use of Tranche A generators for continuing to benefit from transitional arrangements? Why have you put these conditions in place?

A Tranche A Generator of a type described at (b), (c), (d), (e), or (f) above in relation to which the operator enters a capacity agreement, or an agreement for provision of balancing services, after 31st October 2017 will cease to be a Tranche A Generator and therefore cannot continue to benefit from transitional arrangements. Without this provision, Tranche A Generators would have a competitive advantage over Tranche B Generators when bidding for new agreements as they would not be subject to the same emission controls, so through this provision we are seeking to ensure a level playing field. We do not expect individual Tranche A Generators to pose a risk to air quality but extended use of these Generators beyond the terms of the capacity agreements /Feed-In Tariff applications that render them Tranche A would give rise to an avoidable increase in overall emissions.

The condition for continuing to benefit from transitional arrangements set out in the paragraph above was introduced after considering feedback received in the public consultation and the impact of changes in the energy market introduced by the Department for Business and Industrial Strategy (BEIS) and the Office of Gas and Electricity Markets (OFGEM). We have considered the views of OFGEM and the operator of the national electricity transmission system in ensuring any risks to security of supply and/or system balancing are manageable. This condition is being introduced to provide clarification and close a potential gap in regulation. We have set a cut-off date of 31 October 2017 which gives advance warning of the provision to operators and aligns with the planned timing for laying the legal instrument before the Parliament and the National Assembly for Wales.

2.5) What definition will be used for balancing services?

Balancing services are defined as any services procured by the transmission system operator in order to balance demand and supply, and to ensure the security and quality of electricity supply, across the national transmission system for Great Britain..

3) Approach to permitting

3.1) Who will regulate MCPs and Specified Generators located outside of Installations (as defined in Schedule 1 to the Environmental Permitting (England and Wales) Regulations 2016 – ‘EPR 2016’) in England and Wales?

The Environment Agency (EA) has been appointed as regulator of such plant in England. The regulator(s) in relation to Wales will be announced in due course.

3.2) Who will regulate MCPs and Specified Generators located within Part A installations and Part B Installations in England and Wales?

We are finalising the approach for regulating MCPs and Specified Generators located within Part A installations and Part B Installations. This will require an amendment to Regulation 32 of the EPR and we will share this when finalised. However, plants in such circumstances will be required to comply with the MCPD and generator controls as a minimum, plus any requirements due to being part of an installation.

3.3) If an MCP is also a Specified Generator, will the MCPD definition of ‘new’ and ‘existing’ plant still be applied for determining the permitting deadline and permit conditions?

Yes. If a plant is in scope of the MCPD and Specified Generator controls, it must comply with the emission controls set out in relation to both. It will require a permit from the earliest applicable date and the relevant emission controls, monitoring and data reporting requirements will apply from the dates specified in relation to MCPs and Specified Generators by the regulations.

3.4) In what circumstances will the EA consult Local Authorities on permit conditions?

It is envisaged that, in relation to lower-risk plant, the EA will notify the Local Authority in whose area the plant is located when a permit is issued and, in relation to higher-risk plant, consult that Local Authority when determining permit conditions. The exact approach is being developed by the EA in discussion with stakeholders.

3.5) When will operators be able to apply for a permit?

The EA has not yet specified a date from which the relevant application documentation will be available, but will do so as soon as possible.

3.6) Will there be fees and charges for operators?

The EA will derive an appropriate fees and charges structure based on the costs of discharging their regulatory functions in relation to MCPs and Specified Generators. This will be determined as soon as possible. The EA is also carrying out a strategic review of its overall charging scheme and this is expected to conclude in time for implementation in 2018.

3.7) Will guidance be provided on the circumstances in which air quality modelling is required?

Yes. The EA is developing such guidance in discussion with stakeholders and it will be available as soon as possible.

3.8) How will information that is confidential or a national security risk be handled?

The existing provisions of the EPR 2016 in relation to such information will apply. Discussion with the regulator in advance of making an application may be helpful in this regard.