

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT ENVIRONMENTAL PERMITTING  
(ENGLAND AND WALES) (AMENDMENT)  
REGULATIONS 2018

*Monday 22 January 2018*

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**The Committee consisted of the following Members:**

*Chair:* STEVE McCABE

- |  |   |
|--|---|
| † Caulfield, Maria ( <i>Lewes</i> ) (Con)  | † Lynch, Holly ( <i>Halifax</i> ) (Lab)                               |
| † Coffey, Dr Thérèse ( <i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i> ) | † McGovern, Alison ( <i>Wirral South</i> ) (Lab)                      |
| † Davies, Mims ( <i>Eastleigh</i> ) (Con)  | † Morris, Anne Marie ( <i>Newton Abbot</i> ) (Con)                    |
| † Debbonaire, Thangam ( <i>Bristol West</i> ) (Lab)  | † Murray, Ian ( <i>Edinburgh South</i> ) (Lab)                        |
| † Gaffney, Hugh ( <i>Coatbridge, Chryston and Bellshill</i> ) (Lab)  | † Pollard, Luke ( <i>Plymouth, Sutton and Devonport</i> ) (Lab/Co-op) |
| † Grant, Bill ( <i>Ayr, Carrick and Cumnock</i> ) (Con)  | † Pow, Rebecca ( <i>Taunton Deane</i> ) (Con)                         |
| † Grant, Mrs Helen ( <i>Maidstone and The Weald</i> ) (Con)  | † Selous, Andrew ( <i>South West Bedfordshire</i> ) (Con)             |
| Hodge, Dame Margaret ( <i>Barking</i> ) (Lab)  | † Watling, Giles ( <i>Clacton</i> ) (Con)                             |
| † Killen, Ged ( <i>Rutherglen and Hamilton West</i> ) (Lab/Co-op)  | Yohanna Sallberg, Clementine Brown, <i>Committee Clerks</i>           |
|  | † <b>attended the Committee</b>                                       |

## Second Delegated Legislation Committee

Monday 22 January 2018

[STEVE McCABE *in the Chair*]

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

6 pm

**The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Dr Thérèse Coffey):** I beg to move,

That the Committee has considered the draft Environmental Permitting (England and Wales) (Amendment) Regulations 2018.

It is a pleasure to serve under your chairmanship, Mr McCabe.

There have been considerable improvements to air quality in recent decades, but we want and need to do more, particularly to bring nitrogen dioxide concentrations to within statutory limits. While actions from the 2017 air quality plan to tackle roadside concentrations are put into effect, we also need to look to other sectors to reduce air pollution, including the energy generation sector.

Through the regulations, we are addressing three matters. First, we will reduce emissions from medium combustion plants and generators, giving effect to the medium combustion plants directive, and going beyond what was agreed by us and other EU nations by introducing emission controls on highly polluting generators.

Secondly, the regulations allow fairer and more proportionate enforcement proceedings related to flooding. Following this amendment, if a landowner damages a river bank while undertaking works, the Environment Agency could accept an offer from them to repair the damage and ensure it does not happen again, rather than prosecuting them. This will reduce costs and speed up the process for businesses, farmers, the court system and the Environment Agency.

Thirdly, the regulations will help us to meet the legally binding limits we agreed through the ambient air quality directive and the agreed statutory targets in the revised national emissions ceilings directive. We estimate that the regulations alone will deliver 43% of the sulphur dioxide emissions reduction, 22% of the nitrogen oxides emissions reduction, and 9% of the reduction in particulate matter needed to meet our 2030 targets.

Medium combustion plants are commonly used to generate heat in hospitals, hotels, offices, prisons and other large buildings, as well as in industrial processes and power generation. The regulations will require new medium combustion plants to reduce emissions from 20 December 2018, and existing medium combustion plants to come within the permitting regime from 2024 or 2029—the deadline will depend on the size of the plant; larger plants must comply sooner than smaller plants.

However, the medium combustion plants directive does not sufficiently tackle pollution from small-scale, flexible generators, which can be highly polluting, and which have proliferated in recent years. That is why we

are taking a tougher stance than required under the directive, and will tackle pollution from diesel generators, which emit on average six times the nitrogen oxides emitted by gas-powered engines. The regulations will require generators to be permitted and to meet a nitrogen oxides emission limit. New generators will need to comply from 1 January 2019. Existing generators and those providing certain services to National Grid will need to comply from a later date, depending on their size, emissions, operating hours and the duration of their agreements with National Grid.

We have gone further than the directive by requiring generators to reduce their emissions irrespective of the number of hours for which they operate; by ensuring that the most polluting generators comply with conditions necessary to protect local air quality from 1 October 2019, irrespective of whether they are classed as existing or new; and by taking a tougher stance on the conditions that must be met in order to benefit from transitional arrangements, and to keep those transitional arrangements. As a result, we will significantly improve the quality of the air we breathe.

I hope the Committee is unified. We believe that the draft regulations will deliver positive environmental benefits, and are a further demonstration of our commitment to improving air quality in this country. I commend them to the Committee.

6.4 pm

**Holly Lynch (Halifax) (Lab):** I join the Minister in saying what a pleasure it is to serve under your chairmanship, Mr McCabe. I am grateful to her for her introductory comments on the regulations.

The Opposition are supportive of the changes aimed at limiting emissions from medium combustion plants, which have a negative impact on air quality, as we have heard. We also support the measures to improve enforcement relating to flood risk activities. We welcome the fact that the Government have chosen to go beyond the controls in the medium combustion plant directive. However, it is clear that the Government's approach to the capacity market has contributed to a fairly recent rapid increase in the use of highly polluting diesel generators; I will outline our concerns about that.

The Labour party is acutely aware that there is a dirty air emergency in the UK. Our analysis of the figures from the Library found that in 2015, around 8.3 million under-18s lived in local authority areas where levels of nitrogen dioxide exceeded legal limits. This means that over 60% of young people in this country live with the risk of health problems caused by pollution. According to the EU, the three pollutants that most significantly affect human health are particulate matter, nitrogen oxides and ground-level ozone. The most significant emissions from medium combustion plants are sulphur dioxide, nitrogen oxides and particulate matter, so it is clear that air quality must be treated as a public health priority, and that action against those types of generators is long overdue.

The Government have estimated that the regulations will affect some 30,000 plants across England and Wales, the equivalent of nearly 50 per constituency. The plants are used for electricity generation, residential heating and cooling, and providing heat for industrial processes. In relation to electricity generation, we have concerns

that Government policies appear to be responsible for the fact that there are now so many small-scale generators in operation—a situation described by Policy Exchange as

“a proliferation of diesel generators”.

For years, the capacity market rewarded small-scale diesel and gas generators in pursuit of the important goal of securing electricity supplies and bringing forward sufficient reliable capacity. Air quality concerns were, to a large extent, overlooked. This process is described in the Government’s impact assessment for these regulations, which I will report in some detail:

“Incentives in the energy market have been encouraging greater use, and an increase in the number of, generators with high emissions of NOx. These generators are primarily diesel fuelled and emit very high NOx emissions relative to other forms of generators. High NOx emitting generators can lead to local NO2 concentrations capable of causing harm to human health and have the potential to cause breaches in hourly NO2 air quality limits set in the Ambient Air Quality Directive (AAQD). The aggregate impact of emissions from all generators also affects national UK emissions totals and compliance with emission ceilings set through the Gothenburg Protocol and National Emission Ceilings Directive.”

To be clear once again, we are glad that action is being taken to tackle pollutants, but I hope lessons will be learned for the future. It appears that air quality concerns were not taken seriously enough when this particular market was designed. As a result, Government incentives have led directly to an increase in harmful pollutants. The need to provide stable capacity was given greater weighting than the merits of air quality. Both are important, yet such an imbalance is regrettable.

We recognise that the regulations originate in action by the European Commission, which carried out a review of EU air quality between 2011 and 2013. This led to the Commission’s clean air package, which included proposals to regulate emissions from medium combustion plants. The Government have decided to transpose the medium combustion plant directive by extending the scope of the permitting regime in the Environmental Permitting Regulations 2016 to include those plants.

We welcome the fact that operators of new medium combustion plants will require a permit to operate plants from 20 December 2018, from which date they will be subject to an emissions cap for certain pollutants. It is also welcome that operators will need to keep a record of operations to demonstrate compliance with their permit conditions for at least six years. We are also pleased to see that the regulations go beyond the medium combustion plant directive, as most diesel generators operate for less than 500 hours and will therefore be exempt from NOx emission controls under the directive.

However, I note the long implementation period for existing medium combustion plants; the Government assert that it will give operators sufficient time to adapt to the new requirements. Operators of existing plants will fall within the permitting regime only from 2024 or 2029, depending on the variations outlined by the Minister. I urge the Minister to bring these plants within the regime much sooner. Does she accept that allowing a transition period of more than a decade for some plants does not reflect the seriousness of the air quality crisis?

I want to push for a little more detail. It is becoming increasingly difficult to distinguish between generators used for back-up and commercial purposes. National Grid has been actively recruiting hospitals and other

organisations to make back-up generators available at peak times to avoid blackouts. Has the Minister considered whether the regulations go far enough in tackling emissions from these generators, which can cause air pollution—in the case of hospitals, in the areas where we can least afford it, though of course we appreciate the vital role of back-up generators in such institutions?

Finally, I have been through the extensive information provided with the regulations, searching for details on the measures to improve enforcement relating to flood risk activities. As shadow Minister with responsibility for flooding and an MP with a constituency affected by flooding, I have a particular interest in this element of the regulations. There is next to nothing in the explanatory notes and impact assessment covering these changes. I very much welcome an empowered Environment Agency, able to take action against those involved in creating or enhancing flood risk, but if the Minister could provide more practical examples of how and when those powers might be used, I would be grateful.

Having sought clarification from the Minister on those points, I will not detain the Committee any longer.

6.10 pm

**Dr Coffey:** I welcome the hon. Lady’s support for what we are doing, and her questions. First, on flood risk, we needed to add certain provisions under section 61 of the Water Act 2014 to the schedule, and this only came into force in April, so we have been looking for an opportunity to present this. On how this activity will be undertaken, from my experience of working with the Environment Agency and landowners, these things are normally quite harmonious, but the Environment Agency would like these extra powers so that if things go wrong, it does not have to build a whole case and take it through to criminal proceedings. It is important that we have a good relationship with our businesses and farmers who undertake these activities, and that they are encouraged and motivated to do the right thing.

I am not aware of specific issues with regard to the impact assessment. I understand that the regulations are not considered to have a particular impact on businesses, but where there has been the odd example of an issue, the regulations will allow the Environment Agency to take appropriate, proportionate action more quickly.

I recognise what the hon. Lady says, and that is why is we are taking action to accelerate work on tackling air pollution from diesel generators. More than once, dare I say it, Governments have focused on a matter—prioritised tackling carbon, say—without necessarily fully considering or knowing about air quality issues. I recognise what she says, and that is why I am pleased that we have taken this action.

On the transition time, the long implementation period is justified because of the very large number of plants in scope. Many operators of these plants will not have previously been part of the environmental permitting regime. In effect, we are talking about raising awareness and getting people to make changes. We are talking about hospitals and schools, which will not be able to switch over suddenly. We believe that instead of seeing retrofitting, which is perhaps the quickest way to tackle some of these challenges, we will start to see wholesale plant replacement, and people will be able to deliver investment cases.

[Dr Thérèse Coffey]

I recognise what the hon. Lady says on other issues, including compliance and bringing down sulphur dioxide, particulate matter and nitrogen oxide emissions. She will recognise that we are in contravention of one measure of NO<sub>x</sub>, and that is on roadside concentration limits. We are within statutory limits in all the other areas that she mentions. That said, she and I, and the House, are keen to ensure that where possible, we do things to improve, and alleviate the challenges of, air pollution, especially in situations like the present one, where we know that people can take abatement measures on existing equipment, or where we can provide an incentive to move to new equipment more quickly.

Do the regulations go far enough? We think that they do, and that they are proportionate. The hon. Lady asked whether things could move more quickly; I hope

that I have explained why we think this is the appropriate pace. Back-up generators used to generate electricity for the National Grid fall under these controls where used only for genuine testing of up to 50 hours; at that point, there may be some exemptions. The industry has challenged us on why we are accelerating this transition. We are determined to take action, and that is why we are happy to stand up to those people who would like us to have an even longer arrangement, or to not have the transition. I am confident that if the regulations are agreed by this Committee, the House will wholeheartedly support the regulations tomorrow, as the Lords did. I expect them to be agreed in Wales tomorrow, too.

*Question put and agreed to.*

6.15 pm

*Committee rose.*