

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 2 – Senedd

Meeting date: 15 January 2018

Meeting time: 14.30

For further information contact:

Gareth Williams

Committee Clerk

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1 Introduction, apologies, substitutions and declarations of interest
14.30

**2 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3**

14.30

(Page 1)

CLA(5)–02–18 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

**2.1 SL(5)162 – The Non–Domestic Rating (Small Business Relief) (Wales) Order
2017**

**3 Instruments that raise issues to be reported to the Assembly
under Standing Order 21.2 or 21.3**

14.30

Negative Resolution Instruments

**3.1 SL(5)158 – The Ringing of Certain Captive–bred Birds (England and Wales)
Regulations 2017**

(Pages 2 – 13)

CLA(5)–02–18 – Paper 2 – Regulations

CLA(5)–02–18 – Paper 3 – Explanatory Memorandum

CLA(5)–02–18 – Paper 4 – Report

Affirmative Resolution Instruments



3.2 SL(5)161 – The Landfill Disposals Tax (Administration) (Wales) Regulations 2018

(Pages 14 – 68)

CLA(5)–02–18 – Paper 5 – Regulations

CLA(5)–02–18 – Paper 6 – Explanatory Memorandum

CLA(5)–02–18 – Paper 7 – Report

Composite Negative Resolution Instruments

3.3 SL(5)160 – Environmental Permitting (England & Wales) (Amendment) Regulations 2018

(Pages 69 – 216)

CLA(5)–02–18 – Paper 8 – Regulations

CLA(5)–02–18 – Paper 9 – Explanatory Memorandum

CLA(5)–02–18 – Paper 10 – Report

4 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU

14.30

Negative Resolution Instruments

4.1 SL(5)159 – The Agricultural Holdings (Units of Production) (Wales) Order 2017

(Page 217)

CLA(5)–02–18 – Paper 11 – Report

5 Papers to note

14.40

5.1 Welsh Government Statement: The Welsh Government Prosecution Code

<http://gov.wales/legislation/justice/welsh-government-prosecution-code/?lang=en>

<https://consultations.gov.wales/consultations/welsh-government-prosecution-code>

5.2 Trade Bill: Legislative Consent Memorandum

(Pages 218 – 222)

CLA(5)–02–18 – Paper 12 – Trade Bill: Legislative Consent Memorandum

6 Public Services Ombudsman (Wales) Bill: Evidence session 1

14.35

(Pages 223 – 237)

Mark Drakeford AM, Cabinet Secretary for Finance

David Richards, Welsh Government

Nick Howard, Welsh Government

CLA(5)–02–18 –Legal Briefing

[Public Services Ombudsman \(Wales\) Bill](#), as introduced (PDF, 337KB)

[Explanatory Memorandum](#) (PDF, 995KB)

7 Public Services Ombudsman (Wales) Bill: Evidence Session 2

15.30

Simon Thomas AM, Chair of the Finance Committee and Member in Charge of the Bill

Gareth Howells, Assembly Commission

Joanne McCarthy, Assembly Commission

8 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

16.30

9 Consideration of evidence : Public Services Ombudsman (Wales) Bill

10 EU (Withdrawal) Bill: Progress of European Union (Withdrawal) Bill

(Pages 238 – 255)

CLA(5)–02–18 – **Paper 13** – EU (Withdrawal) Bill: Progress of European Union (Withdrawal) Bill

Date of the next meeting

22 January 2018

Statutory Instruments with Clear Reports

Agenda Item 2

15 January 2018

SL(5)162 – The Non-Domestic Rating (Small Business Relief) (Wales) Order 2017

Procedure: Negative

In accordance with section 43(4B) of the Local Government Act 1988, the Order provides for a small business rates relief scheme for Wales (“the scheme”).

The Order provides that hereditaments meeting the conditions set out in articles 7 (rateable value conditions); 8 (child care conditions) or 9 (post office conditions) will receive relief under the scheme.

Parent Act: Local Government Finance Act 1988

Date Made: 6 December 2017

Date Laid: 13 December 2017

Coming into force date: 8 January 2018



Agenda Item 3.1

STATUTORY INSTRUMENTS

2017 No. 1213

WILDLIFE, ENGLAND AND WALES

**The Ringing of Certain Captive-bred Birds (England and Wales)
Regulations 2017**

Made - - - - *4th December 2017*
Laid before Parliament *7th December 2017*
Laid before the National Assembly for Wales *7th December 2017*
Coming into force - - *28th December 2017*

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred on them by section 6(5)(b) and (5B) of the Wildlife and Countryside Act 1981(a).

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Ringing of Certain Captive-bred Birds (England and Wales) Regulations 2017 and come into force on 28th December 2017.

(2) These Regulations extend to England and Wales and apply in respect of any bird included in Part 1 of Schedule 3 to the Wildlife and Countryside Act 1981 which—

- (a) was bred in captivity, and
- (b) has not been lawfully released into the wild as part of a re-population or re-introduction programme(b).

Ringing requirements

2.—(1) This regulation applies for the purpose of determining whether, for the purposes of section 6(5)(b) of the Wildlife and Countryside Act 1981, a bird is ringed in accordance with regulations.

(2) Subject to paragraph (3), a bird is ringed in accordance with regulations if the following conditions are satisfied—

- (a) at least one of the bird’s legs is fitted with a ring by means of which the bird may be identified,
- (b) the ring has no break or join,

(a) 1981 c. 69; section 6(5) (together with section 6(5A) and (5B)) was substituted by section 48(2) of the Natural Environment and Rural Communities Act 2006 (c. 16). By virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), the functions of the Secretary of State in section 6(5)(b) of the Wildlife and Countryside Act 1981, so far as exercisable in relation to Wales, are now vested in the Welsh Ministers.

(b) Section 6(5A), as amended by S.I. 2007/1843, defines “re-population” and “re-introduction” for the purposes of section 6(5) of the Wildlife and Countryside Act 1981 (c. 69).

- (c) the ring has been commercially manufactured for the purpose of being fitted onto birds,
- (d) the ring is no larger than the maximum ring size,
- (e) the ring was obtained from a specified supplier on an application made by the keeper of the bird (or, where the bird had not yet hatched at the time of that application, the keeper of the egg which contains it), and
- (f) the application for the ring included the following information—
 - (i) the age of the bird,
 - (ii) the sex of the bird (if known), and
 - (iii) details of the parents of the bird.

(3) A bird which is hatched outside England or Wales is ringed in accordance with regulations, notwithstanding that any of the conditions in paragraph (2)(d), (e) or (f) is not satisfied, if—

- (a) in the case of a bird hatched in the European territory of any member State, it is ringed in accordance with—
 - (i) relevant provisions of the law of that territory implementing Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds^(a), and
 - (ii) any other relevant provisions of the law of that territory;
- (b) in the case of any other bird, it is ringed in accordance with any relevant provisions of the law of the territory where it was hatched.

(4) In this regulation—

“maximum ring size”, in relation to a bird, means the ring size specified in relation to that bird in column (3) in the table in Schedule 1;

“regulations” means regulations made by the Secretary of State in relation to England and the Welsh Ministers in relation to Wales;

“relevant provisions” means provisions relating to the ringing of birds;

“specified supplier” means a supplier specified in Schedule 2.

Revocation and transitional provision

3.—(1) The Wildlife and Countryside (Ringing of Certain Birds) Regulations 1982^(b) are revoked.

(2) Any bird which is ringed in accordance with the Wildlife and Countryside (Ringing of Certain Birds) Regulations 1982 before these Regulations come into force is to be treated as if ringed in accordance with these Regulations.

Review: England

4.—(1) The Secretary of State, in relation to England, must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations, and
- (b) publish a report setting out the conclusions of the review.

(2) The first review must be published before 28th December 2022.

(3) Subsequent reviews must be carried out at intervals of not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015^(c) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how Articles 2, 5 and 6 of the Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds is implemented in other member States.

(a) OJ No. L 20, 26.1.2010, p. 7, as last amended by Council Directive 2013/17/EU (OJ No. L 158, 10.6.2013, p. 193).

(b) S.I. 1982/1220, amended by S.I. 1997/2971.

(c) 2015 c. 26; section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12).

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a review carried out under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 33 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

4th December 2017

Thérèse Coffey
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

4th December 2017

Hannah Blythyn
Minister for Environment
Under authority of the Cabinet Secretary for Energy, Planning and Rural Affairs
One of the Welsh Ministers

SCHEDULE 1

Regulation 2(4)

Maximum ring sizes in relation to species of birds in Part 1 of Schedule 3 to the Wildlife and Countryside Act 1981

<i>Common name</i>	<i>Scientific name</i>	<i>Maximum ring size (internal diameter, expressed in millimetres)</i>
Blackbird	<i>Turdus merula</i>	4.45
Brambling	<i>Fringilla montifringilla</i>	2.85
Bullfinch	<i>Pyrrhula pyrrhula</i>	2.85
Bunting, Reed	<i>Emberiza schoeniclus</i>	2.67
Chaffinch	<i>Fringilla coelebs</i>	2.67
Duncock	<i>Prunella modularis</i>	3.10
Goldfinch	<i>Carduelis carduelis</i>	2.67
Greenfinch	<i>Carduelis chloris</i>	3.10
Jackdaw	<i>Corvus monedula</i>	7.15
Jay	<i>Garrulus glandarius</i>	6.32
Linnet	<i>Carduelis cannabina</i>	2.67
Magpie	<i>Pica pica</i>	7.15
Owl, Barn	<i>Tyto alba</i>	9.50
Redpoll	<i>Carduelis flammea</i>	2.55
Siskin	<i>Carduelis spinus</i>	2.55
Starling	<i>Sturnus vulgaris</i>	4.45
Thrush, Song	<i>Turdus philomelos</i>	4.26
Twite	<i>Carduelis flavirostris</i>	2.55
Yellowhammer	<i>Emberiza citrinella</i>	2.90

SCHEDULE 2

Specified suppliers

Regulation 2(4)

1. The British Bird Council.
2. The International Ornithological Association.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to England and Wales, have been made for the purpose of section 6(5)(b) of the Wildlife and Countryside Act 1981 (“the 1981 Act”). They implement certain obligations under Articles 2, 5 and 6 of Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds (OJ No. L 20, 26.1.2010, p. 7).

The Regulations provide for the ringing of birds bred in captivity and mentioned in Part 1 of Schedule 3 to the 1981 Act.

Regulation 2 set out the requirements for ringing such birds depending upon where the bird is hatched. Schedule 1 sets out the maximum permitted ring sizes for the species listed and ringed in accordance with regulation 2. Schedule 2 specifies the suppliers of rings for the purpose of regulation 2.

Regulation 3 revokes the Wildlife and Countryside (Ringing of Certain Birds) Regulations 1982 (S.I. 1982/1220) and makes transitional provision in that regard.

These Regulations have been notified in draft to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ No. L 241, 17.9.2015, p. 1).

An 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 Bird Team, Department for Environment, Food and Rural Affairs, Zone 1/14b, 2 The Square, Temple Quay House, Bristol, BS1 6FB and is published alongside the Explanatory Memorandum for this instrument at www.legislation.gov.uk.

Explanatory Memorandum to the Ringing of Certain Captive-bred Birds (England and Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister for Environment's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Ringing of Certain Captive-bred Birds (England and Wales) Regulations 2017.

Hannah Blythyn

Minister for Environment, under authority of the Cabinet Secretary for Energy, Planning and Rural Affairs

7 December 2017

1. Description

These Regulations, which apply in England and Wales, have been made for the purpose of section 6(5)(b) of the Wildlife and Countryside Act 1981 (the '1981 Act'). They revoke the Wildlife and Countryside (Ringing of Certain Birds) Regulations 1982 under that section (S.I. 1982/1220).

The Regulations provide for the ringing of birds bred in captivity and included in Part I of Schedule 3 to the 1981 Act. The Regulations set out the requirements for ringing those birds depending on where the bird is hatched.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This instrument is being made on a composite basis with the Parliamentary under Secretary of State for DEFRA. The 1981 Act transposes Directive 2009/147/EC on the conservation of wild birds (the Wild Birds Directive) into the law in England and Wales and it is desirable to have a common England-Wales regulatory regime covering transposition. Maintaining a consistent approach in Wales with England is considered beneficial for those individuals and organisations wishing to possess and trade captive bred birds and the relevant law enforcement agencies. Furthermore, the policy in Wales on this specific matter is identical to that in England and as such one instrument rather than two with identical (or very similar) text is considered more coherent. A composite instrument removes the potential for confusion that having two separate statutory instruments producing the same legal effect may cause.

As this instrument will be subject to both the National Assembly for Wales and UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually. The instrument is not amending earlier bi-lingual legislation.

Schedule 2 of the Regulations sets out the maximum permitted ring sizes for the species listed and ringed in accordance with regulation 2. These ring sizes, which vary from those specified in S.I. 1982/1220 were agreed in the 1990s between the UK Government and the specified suppliers and have been used ever since. The new sizes ensure close rings are of a size which poses the least welfare risks to captive-bred birds, while also minimising the potential for rings to be fitted on to birds taken unlawfully from the wild. The specification of maximum ring sizes is a technical standard within the scope of the EU Technical Standards Directive (the "TSD").

These Regulations have been notified in draft to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p 1).

3. Legislative background

Section 6(1) of the 1981 Act makes it an offence to sell, offer or expose for sale, possess or transport for the purpose of sale, any wild live bird other than a bird included in Part 1 of Schedule 3 to that Act. For the purpose of section 6, Part 1 of Schedule 3 birds are to be captive-bred and ringed or marked in accordance with regulations made by the Secretary of State (see section 6(5)(b) and 6 (5B)). Functions of the Secretary of State under section 6, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999. These functions now vest in the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

The procedure for making this statutory instrument is prescribed in section 26(2) of the 1981 Act. It is to be subject to the negative procedure.

4. Purpose & intended effect of the legislation

In 2011 the European Commission (“the Commission”) raised concerns regarding an alleged restriction on the free movement of goods by the UK (contrary to Articles 34-36 of the Treaty on the Functioning of the European Union (TFEU)) in respect of the trade in captive-bred wild birds.

The purpose of these Regulations is to implement changes to ensure that requirements for trading captive bred birds are consistently achievable, regardless of whether the bird was hatched in England, Wales or imported from another EU member State. They ensure a consistent regime in Wales in relation to the trade in captive-bred birds included in Part I of Schedule 3 to the 1981 Act in a manner that continues to meet the requirements of the Wild Birds Directive. The effect, therefore, ensures Part I, Schedule 3, birds imported from other countries can be traded in the same manner as those birds that are bred in England and Wales, in so far as they meet the terms of these Regulations.

Specifically, these Regulations provide for the ringing of birds bred in captivity and included in Part I of Schedule 3 to the 1981 Act. The Regulations set out the requirements for ringing those birds depending upon where the bird is hatched.

These Regulations do not change the way in which Part I Schedule 3 birds hatched in England and Wales are regulated, but it will now be easier for imported birds to comply with these Regulations and thus come within section 6(5) of the 1981 Act.

This instrument will affect anyone wishing to trade captive-bred birds included in Part I of Schedule 3 to the 1981 Act in Wales

Failure to implement these changes to the Regulations could result in infraction proceedings by the European Commission due to the principles of EU legislation, which include the "free movement of goods."

5. Consultation

A joint England, Scotland and Wales public consultation was held titled "Captive bred birds: changing how we regulate trading in England, Scotland and Wales". The consultation was launched on 28 January 2015 and was open for views until 24 March 2015.

The consultation sought views on a number of proposed changes to the way the trade in captive-bred birds is regulated in Britain. The options were designed to implement changes to ensure that requirements for trading captive bred birds are consistently achievable, regardless of whether the bird was hatched in Britain or imported from another EU Member State.

The consultation put forward a key proposal; captive-bred birds may be traded in Britain provided they meet the following conditions:

- a) They are of a species that may currently be traded under section 6 of the 1981 Act (i.e. Part I Schedule 3 species) or under a General Licence (unless other conditions/exceptions are specified);
- b) They are ringed in accordance with the requirements of the country in which they were hatched; and
- c) They are fitted with rings that meet the minimum standard for rings as described in the Convention on the International Trade in Endangered Species (in many cases this is likely to be the same ring as required by the Member State).

Views were sought on three options to achieve the key proposal;

- Option One: Amend regulation 3 of the Wildlife and Countryside (Ringling of Certain Birds) Regulations 1982 (SI 1982/1220) ("the Ringling Regulations") to include the proposed new definition of permitted rings
- Option Two: Amend the Wildlife and Countryside Act 1981 so that trade is only permitted through a licensing system
- Option Three: Expand the exception in Section 6 of the Wildlife & Countryside Act 1981 to allow trade in all captive-bred birds currently permitted to be traded under General Licences

A total of 39 responses were received from individual members of the public, non-government organisations, delivery bodies such as Natural England, representative/membership organisations, and small to medium sized businesses.

The majority of respondents, 66%, preferred Option One.

In addition to the Key Proposal, views were welcomed on five further issues that had previously been raised by stakeholders. One of these issues was the maximum ring sizes set out in the Wildlife and Countryside (Ringing of Certain Birds) Regulations 1982.

There has been a history of dissatisfaction around the maximum ring sizes specified in the 1982 Regulations. When the 1982 Ringing Regulations were introduced (containing the maximum ring sizes) they were considered by some to be too small for some species and raised concerns about welfare.

In 1990-92, the (then) Department of the Environment (DoE) and the authorised ring suppliers agreed to trial an interim increase in maximum allowable ring sizes for these species. It was intended that this trial would assess any increased risk to wild specimens of these species being captured unlawfully, ringed, and then sold on as captive-bred as a result of the increased ring sizes. It was anticipated that Schedule 2 to the Ringing Regulations would then potentially be amended, depending on the findings of the research.

However, the validity of the field trials was questioned by conservation bodies, therefore the DoE said it would undertake further research to assess the potential for the larger ring sizes to be fitted to wild birds, before the increased sizes would be enshrined in legislation. This was intended to take place in 1994, but was delayed. The research was subsequently never taken forward, and the legislation never amended.

Therefore for some of these species, the approved ring suppliers have been issuing rings larger than the maximum sizes specified in the 1982 Ringing Regulations, following the agreement of the interim measures to ensure close rings are of a size which poses the least welfare risks to captive-bred birds, while also minimising the potential for rings to be fitted on to birds taken unlawfully from the wild.

Two options were presented in the consultation regarding amending maximum ring sizes:

- Option A – Amend the maximum allowable ring sizes to reflect the ‘interim’ maximum sizes currently being used by the authorised ring suppliers (in line with the approach agreed in 1993) for Part I of Schedule 3 species.
- Option B – Introduce a more general definition of appropriately-sized rings which relies on a form of wording which ensures that rings are small enough that they must be fitted within the first few days of a bird’s life and cannot be removed once the bird has grown, but large enough that they do not cause welfare issues when the bird has fully matured.

The majority of consultation respondents (69%) did not raise any issues or concerns with the interim sizes currently in use. The Government Response in the summary of consultation responses document explained that Welsh

Government intended to pursue Option A – to amend the maximum allowable ring sizes to reflect the sizes as agreed in the interim measures.

A summary of consultation responses has been published on gov.uk, with a link from the Welsh Government consultation webpages ahead of this instrument being laid before the National Assembly for Wales.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509610/captive-bred-birds-consult-sum-resp.pdf

All respondents have been notified of the publication of the summary document and outcome.

6. Regulatory Impact Assessment (RIA)

Having considered the Welsh Ministers' code of practice, a Regulatory Impact Assessment has not been prepared for these Regulations. No impact on the private, public or voluntary sectors is foreseen separate to that already covered by the substantive provisions of the 1981 Act.

SL(5)158 - The Ringing of Certain Captive-bred Birds (England and Wales) Regulations 2017

Background and Purpose

These Regulations have been made for the purpose of section 6(5)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act). They implement certain obligations under Articles 2, 5 and 6 of Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds. The Regulations provide for the ringing of birds bred in captivity which are mentioned in Part 1 of Schedule 3 to the 1981 Act.

Regulation 2 sets out the requirements for the ringing of birds depending upon where the bird is hatched. Schedule 1 states the maximum permitted ring sizes for the species listed.

Regulation 3 revokes the Wildlife and Countryside (Ringing of Certain Birds) Regulations 1982.

Procedure

Negative.

Technical Scrutiny

One reporting point is identified for reporting under Standing Order 21.2(ix) because this instrument has been made in English only.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

The 1981 Act transposes Directive 2009/147/EC on the conservation of wild birds (The Wild Birds Directive) into the law in England and Wales.

The specification of maximum ring sizes is a technical standard within the scope of the EU Technical Standards Directive (the TSD). The Regulations have been notified in draft to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.

The following analysis is based on the European Union (Withdrawal) Bill ("the Bill") as introduced.

These Regulations form part of "EU-derived domestic legislation" under clause 2 of the Bill, therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

The Wild Birds Directive will not automatically form part of domestic law on and after exit day under the Bill. However, where a court or tribunal has recognised, before exit day, that an EU directive confers a right on an individual that the individual can rely on and enforce in law, then that right will form part of domestic law on and after exit day (see clause 4 of the Bill).



Government Response

No government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

9 January 2018



Agenda Item 3.2

Draft Regulations laid before the National Assembly for Wales under section 94(6) of the Landfill Disposals Tax (Wales) Act 2017, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2018 No. (W.)

LANDFILL TAX, WALES

The Landfill Disposals Tax (Administration) (Wales) Regulations 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Landfill Disposals Tax (Wales) Act 2017 (“the 2017 Act”) establishes a new tax, to be known as landfill disposals tax. The tax is to be charged on taxable disposals, which are defined in Chapter 2 of Part 2 of the 2017 Act.

These Regulations make provision in connection with the administration of the tax.

Part 1 provides that the Regulations come into force on the day on which section 2 of the 2017 Act comes into force. This is the day on which the tax will begin to be charged on taxable disposals.

Part 2 makes provision about mixtures of materials that consist entirely of fines. Fines are particles produced by a waste treatment process that involves an element of mechanical treatment.

A mixture of materials that meets requirements 1 to 6 in section 16 of the 2017 Act is ordinarily treated as a qualifying mixture of materials to which the lower rate of landfill disposals tax applies. Where the mixture consists entirely of fines, however, the mixture must also meet the requirements in regulation 4 in order for the lower rate of tax to apply to a taxable disposal of the mixture. These requirements include a requirement relating to loss on ignition (LOI) testing.

Regulation 5 sets out general LOI testing requirements with which operators of authorised landfill sites must comply in order for mixtures of fines to be treated as qualifying mixtures of materials.

Regulations 6 and 7 confer powers on the Welsh Revenue Authority (WRA) in relation to LOI testing, and regulations 8 to 11 make provision in connection with penalties that may be imposed on operators in relation to failures to comply with certain requirements under these Regulations.

Part 3 gives operators of authorised landfill sites an entitlement to a tax credit, known as customer insolvency credit, where a customer becomes insolvent before having paid the operator for carrying out a taxable disposal.

Regulation 14 sets out the requirements that must be met in order for the entitlement to arise. Regulation 18 sets out the manner in which the amount of the entitlement to credit is to be calculated. Regulations 19 and 20 specify the manner in which an amount of credit may be claimed and the manner in which credit may be given.

A person who makes a claim for credit must hold and preserve the evidence specified in regulation 22 and must also keep a customer insolvency credit record in accordance with regulation 23.

A person who has benefited from an amount of credit may be required to make payments to WRA in certain circumstances. Those circumstances are specified in regulations 24 and 25.

Regulations 26 and 27 and the Schedule to these Regulations make a number of amendments and modifications to the Landfill Disposals Tax (Wales) Act 2017 and the Tax Collection and Management (Wales) Act 2016 in connection with tax credits.

A regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy of the assessment can be obtained from the Welsh Treasury, Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is available on the Welsh Government website at www.gov.wales.

Draft Regulations laid before the National Assembly for Wales under section 94(6) of the Landfill Disposals Tax (Wales) Act 2017, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2018 No. (W.)

LANDFILL TAX, WALES

The Landfill Disposals Tax
(Administration) (Wales)
Regulations 2018

Made ***

*Coming into force in accordance with
regulation 1(2)*

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 17, 54 and 93 of the Landfill Disposals Tax (Wales) Act 2017⁽¹⁾.

A draft of these Regulations has been laid before and approved by a resolution of the National Assembly of Wales, in accordance with section 94(6) of that Act.

PART 1

PRELIMINARY

Title and commencement

1.—(1) The title of these Regulations is the Landfill Disposals Tax (Administration) (Wales) Regulations 2018.

(2) These Regulations come into force on the day on which section 2 of the Landfill Disposals Tax (Wales) Act 2017 comes into force.

⁽¹⁾ 2017 anaw 3.

Interpretation

2. In these Regulations, “LDTA” means the Landfill Disposals Tax (Wales) Act 2017.

PART 2

MIXTURES OF MATERIALS CONSISTING ENTIRELY OF FINES

General

Interpretation of this Part

3. In this Part—

“direction” (“*cyfarwyddyd*”) means a direction issued by WRA under regulation 6 that has not been withdrawn;

“LOI percentage” (“*y ganran colled wrth danio*”) means the amount of non-qualifying material contained in a mixture of materials consisting entirely of fines, as indicated by the percentage of the mass of those fines lost on ignition;

“LOI test” (“*prawf colled wrth danio*”) means a test to determine the LOI percentage of a mixture of materials consisting entirely of fines;

“non-qualifying material” (“*deunydd anghymwys*”) means material that is not qualifying material;

“the WRA notice” (“*yr hysbysiad ACC*”) means a notice published by WRA under section 17(5) of LDTA that has not been withdrawn by a subsequent published notice.

Requirements in respect of mixture of materials consisting entirely of fines

4.—(1) The following requirements must be met (in addition to requirements 1 to 6 in section 16 of LDTA) in order for a mixture of materials consisting entirely of fines to be treated as a qualifying mixture of materials.

Requirement 1

The operator of the authorised landfill site at which a taxable disposal of the mixture is made must have taken the steps specified in the WRA notice.

Requirement 2

The operator must hold the evidence specified in the WRA notice regarding the taking of those steps.

Requirement 3

If a LOI test has been carried out on a sample of the taxable disposal, the LOI percentage indicated by the test must not have exceeded 10% (but see paragraph (3)).

Requirement 4

The mixture contained in the taxable disposal must not be prohibited from being treated as a qualifying mixture of materials by virtue of regulation 5(3).

(2) WRA may determine that requirement 2 is to be treated as having been met if it is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the evidence if that requirement had been met, are proved by other documentary evidence provided to it.

(3) The WRA notice may specify circumstances in which a LOI test which indicates that the LOI percentage exceeds 10% may be ignored.

General requirements in respect of LOI testing

5.—(1) The operator of an authorised landfill site must comply with the following requirements in order for mixtures of materials consisting entirely of fines to be treated as qualifying mixtures of materials when they are disposed of at the site.

Requirement 1

The operator must carry out a LOI test on the mixtures—

- (a) at the times and intervals specified in the WRA notice, unless the operator is directed to do otherwise under regulation 6, or
- (b) if the operator is so directed, at the times and intervals specified in the direction.

Requirement 2

The operator must, in carrying out each LOI test—

- (a) heat a sample of the mixture that is being tested to a temperature of 440°C for a minimum of 5 hours, and
- (b) comply with any other requirement in the WRA notice that relates to the carrying out of the test.

Requirement 3

Where—

- (a) a LOI test is carried out on a sample of a mixture, and
- (b) the LOI percentage indicated by the test exceeds 10%,

the operator must take the steps specified in the WRA notice.

Requirement 4

The operator must—

- (a) keep the evidence specified in the WRA notice in relation to each LOI test carried out by the operator, and

- (b) preserve it for the period specified in the notice.

(2) WRA may determine that the operator is to be treated as having complied with requirement 4 if it is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the evidence if the operator had complied with the requirements, are proved by other documentary evidence provided to it.

(3) Where the operator fails to comply with a requirement mentioned in paragraph (1), mixtures of fines contained in taxable disposals of a description specified in the WRA notice are prohibited from being treated as qualifying mixtures of materials.

WRA power to direct operators to carry out LOI tests

6.—(1) WRA may by notice direct the operator of an authorised landfill site to carry out a LOI test on any mixture of materials—

- (a) which appears to WRA to consist entirely of fines,
- (b) which is of a description specified in the direction, and
- (c) which is present at the site.

(2) A direction given under this regulation may be varied or withdrawn by notice at any time.

WRA power to take samples and carry out LOI tests

7.—(1) WRA may—

- (a) take a sample of any mixture of materials at an authorised landfill site which appears to WRA to consist entirely of fines, and
- (b) carry out a LOI test on the sample.

(2) Where WRA does so, it must—

- (a) carry out the test by heating a sub-sample of the sample to a temperature of 440°C for a minimum of 5 hours,
- (b) issue a notice of the LOI percentage determined by the test to the operator of the site,
- (c) retain—
 - (i) no less than 1kg of the sample, and
 - (ii) a record of the LOI test result,
- (d) preserve the retained portion of the sample for a period of 3 months beginning with the filing date for the relevant tax return, and
- (e) preserve the record of the LOI test result for the period that a person who is required to

make a tax return would be required to keep the record under section 38 of TCMA (duty to keep and preserve records).

(3) In paragraph (2)(d), “the relevant tax return” is the tax return for the accounting period in which the tax chargeable on the disposal of the mixture is accounted for.

Penalties

Penalty for failure to comply with requirements relating to evidence

8.—(1) An operator of an authorised landfill site who—

- (a) treats a mixture of materials consisting entirely of fines as a qualifying mixture of materials in accounting for the tax chargeable on a taxable disposal, but
- (b) fails to comply—
 - (i) with requirement 2 in regulation 4 (in relation to that disposal), or
 - (ii) with requirement 4 in regulation 5 (in relation to that mixture),

is liable to a penalty not exceeding £3,000.

(2) But the operator is not liable to a penalty under this regulation in respect of the failure if WRA is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the evidence if the operator had complied with those requirements, are proved by other documentary evidence provided to it.

Assessment and payment of penalties

9.—(1) Where an operator of an authorised landfill site becomes liable to a penalty under regulation 8, WRA must—

- (a) assess the penalty, and
- (b) issue a notice to the operator of the penalty assessed.

(2) An assessment of a penalty may be combined with an assessment to tax.

(3) An assessment of a penalty under regulation 8 must be made within the period of 12 months beginning with the day on which WRA first believed that the operator was liable to the penalty.

(4) An operator of an authorised landfill site to whom notice of a penalty is issued under this regulation must pay the penalty before the end of the period of 30 days beginning with the day on which the notice of the penalty is issued (but see section 182 of TCMA (payment of penalties in the event of review or appeal)).

Supplementary provision about penalties

10.—(1) A person is not liable to a penalty under regulation 8 in respect of anything if the person has been convicted of an offence in relation to it.

(2) If a person liable to a penalty under regulation 8 has died, any penalty that could have been assessed on the person may be assessed on the person's personal representatives.

(3) A penalty assessed in accordance with paragraph (2) is to be paid out of the person's estate.

Other supplementary provision

Supplementary provision about WRA notices and directions

11.—(1) WRA may make different provision for different purposes in—

- (a) the WRA notice, and
- (b) any direction given by WRA under regulation 6.

(2) The provision may include (among other things) transitional provision applicable to operators of authorised landfill sites who, immediately before the day on which section 2 of LDTA comes into force, were registered under section 47 of the Finance Act 1996.

PART 3

CUSTOMER INSOLVENCY CREDIT

General

Customer insolvency credit

12.—(1) This Part makes provision for a tax credit in respect of the tax.

(2) The credit is to be known as customer insolvency credit.

Interpretation of this Part

13.—(1) In this Part—

“claim” (“*hawliad*”) means a claim in accordance with this Part for an amount of customer insolvency credit;

“claimant” (“*hawlydd*”) means a person who makes a claim;

“customer” (“*cwsmer*”), in relation to a taxable disposal, means the person for whom the disposal is made;

“landfill invoice” (“*anfoneb dirllenwi*”) has the meaning given in section 41(8) of LDTA.

(2) References in this Part to a payment from a customer include a payment from another person acting on behalf of the customer.

Entitlement to credit

Circumstances giving rise to entitlement to credit

14.—(1) A person (“the claimant”) is entitled to customer insolvency credit in respect of a taxable disposal if the following requirements are met.

Requirement 1

The disposal has been made at an authorised landfill site.

Requirement 2

The claimant—

- (a) was registered as the operator of the site at the time of the disposal, and
- (b) made the disposal or permitted the disposal to be made.

Requirement 3

The disposal was made for consideration in money for another person (“the customer”) to whom the claimant—

- (a) is not connected, and
- (b) was not connected at the time of the disposal.

Requirement 4

The claimant has issued a landfill invoice to the customer in respect of the taxable disposal—

- (a) within the period of 14 days beginning with the day on which the disposal was made, or
- (b) within any longer period specified in a notice issued to the claimant under section 41(6) of LDTA.

Requirement 5

The claimant—

- (a) has accounted for the amount of tax chargeable in respect of the disposal in a tax return, and
- (b) has paid the amount of tax payable under section 42(1) or (1A) of LDTA in respect of the return.

Requirement 6

The customer—

- (a) has become insolvent within the period of 12 months beginning with the date on which the landfill invoice was issued, and
- (b) has failed to pay the claimant the whole or part of the consideration due in respect of the disposal.

Requirement 7

The claimant has been unable to recover the unpaid consideration, despite having taken reasonable steps to do so.

Requirement 8

The claimant—

- (a) has set off against the amount of unpaid consideration any debt owed by the claimant to the customer which may be set off against that amount, and
- (b) has reduced the amount of unpaid consideration by the value of any enforceable security that the claimant holds in relation to the customer,

but an amount of consideration remains outstanding in respect of the disposal.

(2) Despite paragraph (1), a person is not entitled to customer insolvency credit in respect of a taxable disposal—

- (a) if the person has previously benefited from any amount of customer insolvency credit in respect of the disposal, or
- (b) if a landfill invoice has been issued in respect of the disposal after the end of the later of the periods mentioned in requirement 4.

(3) In this Part, references to outstanding consideration, in relation to a taxable disposal, are references to the amount of consideration mentioned at the end of requirement 8.

Supplementary provision relating to entitlement to credit

15.—(1) This regulation makes supplementary provision for the purposes of regulation 14.

(2) Sections 1122 and 1123 of the Corporation Tax Act 2010⁽¹⁾ (connected persons) apply for the purpose of determining whether or not the claimant is connected with the customer as mentioned in requirement 3, and section 1122 of that Act has effect as if after subsection (8) there were inserted—

“(9) A person (“A”) is connected with any person who is an employee of A or by whom A is employed.

(10) For the purposes of this section, any director or other officer of a company is to be treated as employed by that company.”

(3) Where the customer has made a payment to the claimant, regulation 16 applies for the purpose of determining whether, and to what extent, the payment

(1) 2010 c.4.

is to be treated as being allocated to pay the consideration due in respect of the disposal (and consequently whether the customer has failed to pay the whole or part of the consideration for the disposal as mentioned in requirement 6).

(4) Regulation 17 applies for the purpose of determining whether the customer has become insolvent as mentioned in requirement 6.

(5) In requirement 8, “security” means—

- (a) in relation to Wales, England and Northern Ireland, any mortgage, charge, lien or other security;
- (b) in relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and right of retention (other than a right of compensation or set-off);
- (c) in relation to any country or territory outside the United Kingdom, anything that has an effect corresponding to anything mentioned in sub-paragraph (a) or (b).

(6) Regulation 21(3) applies for the purpose of determining whether the claimant has previously benefited from an amount of customer insolvency credit in respect of the disposal as mentioned in regulation 14(2).

Consideration for taxable disposal: allocation of payments

16.—(1) Where—

- (a) a claimant receives a payment from a customer for whom a taxable disposal has been made, and
- (b) the customer owes a debt to the claimant in respect of the consideration for the disposal,

the payment is normally to be treated as being allocated to that debt.

(2) But where the customer also owes a debt to the claimant in respect of one or more matters (whether or not relating to taxable disposals) other than the consideration for the disposal, the payment is to be treated instead—

- (a) as being allocated to the debt that arose earliest; and
- (b) if the amount of the payment exceeds that debt, as being subsequently allocated to the other debts in the order of the dates in which they arose.

(3) Where the effect of paragraph (2) is to require a payment (or part of a payment) to be allocated to two or more debts arising on the same day, the amount of payment that is to be treated as being allocated to a

particular debt arising on that day is to be calculated in accordance with the following formula—

$$Allocation = TP \times \frac{D}{TD}$$

where—

- (a) “Allocation” is the amount of the allocation;
- (b) TP is the total amount of payment to be allocated under paragraph (2) to the debts arising on that day;
- (c) D is the amount of the particular debt in question;
- (d) TD is the total amount of all of the debts which—
 - (i) arose on that day, and
 - (ii) are owed by the customer to the claimant.

(4) Where a landfill invoice has been issued in respect of more than one taxable disposal, each debt in respect of the consideration for each disposal is to be treated as arising on the same day (namely, the day after that by which the invoice must be paid); and paragraphs (2) and (3) apply accordingly.

Customer insolvency

17.—(1) A customer becomes insolvent for the purposes of regulation 14 if—

- (a) a company voluntary arrangement takes effect in relation to the customer under Part 1 of the Insolvency Act 1986⁽¹⁾;
- (b) an administration order (within the meaning of Schedule B1 to that Act) is made, or a receiver or manager, or an administrative receiver, is appointed in relation to the customer;
- (c) a creditors’ voluntary winding up (within the meaning of Part 4 of that Act), or a winding up by the court under Chapter 6 of Part 4 of that Act, is commenced in relation to the customer;
- (d) a debt relief order is made in relation to the customer under Part 7A of that Act;
- (e) an individual voluntary arrangement takes effect in relation to the customer under Part 8 of that Act;
- (f) a bankruptcy order (within the meaning of Part 9 of that Act) is made in relation to the customer;

(1) 1986 c.45.

- (g) any corresponding event occurs that has effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom.

(2) In this Part, references to an insolvency event are references to an event described in paragraph (1)(a) to (g).

Amount of credit

Calculation of amount of customer insolvency credit

18.—(1) The amount of customer insolvency credit to which a person is entitled in respect of a taxable disposal is to be calculated in accordance with the following formula—

$$Credit = T \times \frac{OC}{C}$$

where—

- (a) “Credit” is the amount of the customer insolvency credit;
- (b) T is the amount of tax which the person has accounted for in respect of the disposal in a tax return, subject to paragraphs (2) and (3);
- (c) OC is the amount of the outstanding consideration in respect of the disposal (see regulation 14(3)), subject to paragraph (3);
- (d) C is the consideration for the disposal, subject to paragraph (3).

(2) Where the amount of tax accounted for in respect of the disposal is increased, the increase is to be ignored.

(3) Where the amount of tax chargeable on the disposal is less than the amount of tax accounted for in respect of the disposal (ignoring any increase)—

- (a) T is the amount of tax chargeable on the disposal;
- (b) C and OC are each to be reduced by an amount equal to the difference between the two amounts of tax.

Claiming credit

Claims by persons carrying out taxable operations

19.—(1) A registered person who is entitled to customer insolvency credit in respect of a taxable disposal may claim the credit in a tax return made in respect of—

- (a) the first qualifying accounting period, or
- (b) any subsequent accounting period.

(2) The first qualifying accounting period is the accounting period in which the period of 6 months, beginning with the date of the relevant insolvency event, expires.

(3) The claim is to be made in the tax return—

- (a) by setting off the amount of the credit against the amount of tax that the person would otherwise be required to pay under section 42(1) of LDTA in respect of the relevant accounting period, and
- (b) if the amount of the credit exceeds that amount of tax, by stating the amount of the excess credit.

(4) Where an amount of excess credit is stated in the tax return in accordance with paragraph (3)(b)—

- (a) WRA may set off that amount against any amount of tax that the person is required to pay but has not yet paid, and
- (b) if any amount of excess credit remains, WRA must pay the person an amount equal to that remaining amount.

(5) But WRA is not required to make a payment under paragraph (4)(b) unless and until each tax return that the person is required to make in respect of the tax has been made.

(6) In this regulation—

“the relevant insolvency event” (“*y digwyddiad ansolfedd perthnasol*”) means the insolvency event that gave rise to an entitlement to credit in respect of the taxable disposal;

“the relevant accounting period” (“*y cyfnod cyfrifyddu perthnasol*”) means the accounting period in respect of which the tax return containing the claim is made.

Claims by other persons

20.—(1) A person who—

- (a) is not registered, and
- (b) is entitled to customer insolvency credit in respect of a taxable disposal,

may claim the credit by making an application to WRA in writing.

(2) An application under paragraph (1) may not be made before the expiry of the period of six months beginning with the date of the relevant insolvency event.

(3) If WRA is satisfied that—

- (a) the person is not registered,
- (b) the person is entitled to an amount of customer insolvency credit, and

- (c) the entitlement to the credit has not been transferred to any other person,

WRA must pay the person an amount equal to the amount of the credit.

(4) In this regulation, “the relevant insolvency event” means the insolvency event that gave rise to an entitlement to credit in respect of the taxable disposal.

Supplementary provision relating to claims

21.—(1) A claim for customer insolvency credit in respect of a taxable disposal must be for the entire amount (as opposed to only part of the amount) of the credit in respect of that disposal.

(2) Where a person is entitled to customer insolvency credit in respect of more than one taxable disposal, a claim may be in respect of each of those disposals, or in respect of only one or some of them.

(3) Where—

- (a) an amount of customer insolvency credit is set off, under regulation 19(3)(a) or (4)(a), against an amount of tax that a person would otherwise be required to pay, or
- (b) an amount equal to an amount of customer insolvency credit is paid to a person under regulation 19(4)(b) or 20(3),

the person is to be treated, for the purposes of this Part, as having benefited from that amount of credit.

Evidence and record keeping

Evidence in support of claims

22.—(1) A claimant must—

- (a) on the day the claim is made, hold the evidence specified in paragraph (2) in respect of each taxable disposal to which the claim relates, and
- (b) preserve that evidence for a period of 6 years beginning with that day.

(2) The evidence is—

- (a) a copy of the landfill invoice issued in respect of the disposal;
- (b) records or other documents showing that the claimant—
 - (i) has accounted for the disposal in a tax return, and
 - (ii) has paid the amount of tax payable under section 42(1) or (1A) of LDTA in respect of the return;
- (c) records or other documents relating to any payment made by the customer in respect of the consideration for the disposal;

- (d) records or other documents relating to—
 - (i) any debt owed by the claimant to the customer, or
 - (ii) any enforceable security held by the claimant in relation to the customer;
- (e) records or other documents relating to any steps taken to recover the outstanding consideration for the disposal.

Customer insolvency credit record

23.—(1) A claimant must maintain an up-to-date record of the claim (a “customer insolvency credit record”) throughout the recording period.

(2) The recording period begins with the day on which the claim is made, and ends with the date that is the sixth anniversary of the later of—

- (a) the day on which the claim was made, and
- (b) the day on which the record of the claim was most recently updated.

(3) The record must contain the following information in respect of each taxable disposal to which the claim relates—

- (a) the amount of tax chargeable on the disposal;
- (b) the consideration for the disposal;
- (c) the tax return in which the disposal was accounted for, and the date on which any tax payable in respect of the return was paid;
- (d) the identifying number of the landfill invoice issued in respect of the disposal, and the date on which it was issued;
- (e) in the case of a disposal of material for which a written description is required by virtue of section 34(1)(c)(ii) of the Environmental Protection Act 1990(1), the written description;
- (f) the amount paid in respect of the consideration for the disposal, including any payment treated as being allocated to that debt by virtue of regulation 16 (whether before or after the making of the claim), and the amount of outstanding consideration;
- (g) any steps taken to recover the outstanding consideration for the disposal.

(4) The record must also contain the following information—

- (a) the total amount of the claim;

(1) 1990 c.43. Section 34(1) has been amended by S.I. 2000/1973, S.I. 2007/3538, S.I. 2010/675 and S.I. 2011/988. There are other amendments to section 34(1) which are not relevant to these Regulations.

- (b) the tax return in which the claim was made;
- (c) the total amount of outstanding consideration in respect of which the claim is made.

(5) Where a claimant makes more than one claim, the records that must be maintained under this regulation must be kept in a single account (to be known as “the customer insolvency credit summary”).

Recovery of credit

Recovery in the event of customer payment

24.—(1) This regulation applies where a claimant—

- (a) has benefited from an amount of customer insolvency credit in respect of a taxable disposal (see regulation 21(3)), and
- (b) subsequently receives a payment from the customer which, by virtue of regulation 16, is treated as being allocated, in part or in whole, to the debt owed in respect of the consideration for the disposal.

(2) The claimant must pay WRA, before the end of 30 days beginning with the day on which the claimant receives the customer payment, an amount calculated in accordance with the formula in paragraph (3).

(3) The formula is—

$$Payment = RCredit \times \frac{P}{OC}$$

where—

- (a) “Payment” is the amount of the payment that must be made to WRA;
- (b) “RCredit” is the relevant amount of customer insolvency credit;
- (c) P is the amount of payment that is treated as being allocated to the debt owed in respect of the consideration for the disposal, as described in paragraph (1)(b);
- (d) OC is—
 - (i) the amount treated as OC for the purposes of calculating the amount of credit in respect of the disposal under regulation 18(1), less
 - (ii) any amount received from the customer that has already been treated as P under this regulation.

(4) The relevant amount of customer insolvency credit is—

- (a) the amount of credit calculated in respect of the disposal under regulation 18(1), less
- (b) any amount that the claimant has already been required to pay WRA in respect of the disposal under this regulation.

Recovery in the event of failure to keep records or other evidence

25.—(1) This regulation applies where a claimant—

- (a) has benefited from an amount of customer insolvency credit as a result of a claim (see regulation 21(3)), but
- (b) has failed to comply with a requirement under regulation 22 or 23 in relation to the claim.

(2) WRA must—

- (a) assess the amount of customer insolvency credit from which the claimant has benefited in respect of the claim, and
- (b) issue a notice to the claimant—
 - (i) specifying the amount assessed, and
 - (ii) requiring the person to pay WRA an amount equal to that amount.

(3) The claimant must pay WRA the amount specified in the notice before the end of the period of 30 days beginning with the day on which the notice is issued.

(4) WRA is not required to issue a notice under paragraph (2) if it is satisfied that any facts that it reasonably requires to be proved, and which would have been proved by the records or other evidence required under regulation 22 or 23, are proved by other documentary evidence provided to it.

(5) A claimant to whom a notice is issued under paragraph (2) is not required to pay WRA the amount specified in the notice if—

- (a) the claimant produces documentary evidence to WRA, within the period of 30 days beginning with the day on which the notice is issued, regarding the facts which would have been proved by the records or other evidence required under regulation 22 or 23, and
- (b) WRA issues a further notice to the claimant stating that the evidence proves, to its satisfaction, the facts that it reasonably requires to be proved.

Amendments and modifications to primary legislation

Amendments to the Landfill Disposals Tax (Wales) Act 2017 and the Tax Collection and Management (Wales) Act 2016

26. The Schedule makes amendments to LDTA and TCMA(1).

(1) 2016 anaw 6.

Modifications to the Tax Collection and Management (Wales) Act 2016

27. Sections 74 to 77 of TCMA (enquiries into claims) apply to claims under regulation 20 as to claims under section 62, 63 or 63A of that Act but as if—

- (a) in section 74, the references to an amendment of a claim were omitted,
- (b) in section 75, subsection (3) were omitted, and
- (c) in section 77(1)(b), the reference to the discharge or repayment of devolved tax were to the payment of an amount in respect of a tax credit.

Cabinet Secretary for Finance, one of the Welsh Ministers

Date

AMENDMENTS TO PRIMARY
LEGISLATION: TAX CREDITS

PART 1

AMENDMENTS TO THE LANDFILL
DISPOSALS TAX (WALES) ACT 2017

1. LDTA is amended as follows.

2. In section 37 of LDTA (cancellation of registration), in subsection (4)—

- (a) the words from “all of the tax that the person is required to pay” to the end become paragraph (a);
- (b) at the end of that paragraph insert “, and
 - (b) all of the tax credit to which the person is entitled and which the person has claimed—
 - (i) has been set off against an amount of tax that the person would otherwise be required to pay, or
 - (ii) has been paid to the person.”

3. In section 42 of LDTA (payment of tax), after subsection (1) insert—

“(1A) But if an amount of tax credit is set off against that amount of tax in accordance with regulations made under section 54, the amount of tax that the person is required to pay by that date is the amount that remains outstanding after the set-off (if any).”

4. In section 43 of LDTA (duty to maintain landfill disposals tax summary), in subsection (1) —

- (a) omit the “and” at the end of the paragraph (a);
- (b) after paragraph (a) insert—
 - “(aa) the amount of tax credit claimed by the person, and”.

5. In section 77 of LDTA (designation of group of companies), in subsection (8)—

- (a) after paragraph (b) insert—
 - “(ba) an amount payable in respect of a tax credit;”;
- (b) in paragraph (c), for “or (b)” substitute “, (b) or (ba)”.

6. In section 83 of LDTA (duties and liabilities of partnerships and unincorporated bodies), in subsection (8)—

(a) after paragraph (b) insert—

“(ba) an amount payable in respect of a tax credit;”;

(b) in paragraph (c), for “or (b)” substitute “, (b) or (ba)”.

7. In section 96 of LDTA (interpretation), in subsection (1), insert at the appropriate place—

“tax credit” (“*credyd treth*”) means a tax credit under regulations made under section 54;”.

PART 2

AMENDMENTS TO THE TAX COLLECTION AND MANAGEMENT (WALES) ACT 2016

8. TCMA is amended as follows.

9. In section 37 of TCMA (overview of Part 3), in paragraph (e), for “where there is no enquiry” substitute “and of amounts payable in respect of tax credits”.

10. In section 44 of TCMA (scope of enquiry), in subsection (1)—

(a) omit the “or” after paragraph (a);

(b) after paragraph (b) insert—

“(c) to the question whether the person who made the tax return is entitled to a tax credit claimed in the tax return, or

(d) to the amount of tax credit to which the person is entitled.”

11.—(1) Section 45 of TCMA⁽¹⁾ (amendment of tax return during enquiry to prevent loss of tax) is amended as follows.

(2) After subsection (1) insert—

“(1A) If, during the period when an enquiry into a tax return is in progress, WRA forms the opinion—

(a) that the amount of tax credit claimed in the tax return is excessive, and

(1) Section 45 was amended by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1), Schedule 23, paragraph 13.

- (b) that, unless the return is immediately amended, there is likely to be a loss of devolved tax,

WRA may by notice issued to the person who made the return amend it so that the amount claimed is no longer excessive.”

(3) In subsection (2)—

- (a) the words from “subsection (1) applies” to the end become paragraph (a);
- (b) at the end of that paragraph insert “, and
 - (b) subsection (1A) applies only so far as the excessive amount is attributable to the amendment.”

(4) In subsection (3), after “subsection (1)” insert “or (1A)”.

12. After section 55 of TCMA insert—

“Assessment in relation to tax credit

55A. If WRA comes to the view that—

- (a) an amount of tax credit that has been set off against an amount of tax that a person would otherwise have been required to pay—
 - (i) ought not to have been set off, or
 - (ii) has become excessive,
- (b) an amount that has been paid to a person in respect of a tax credit—
 - (i) ought not to have been paid, or
 - (ii) has become excessive, or
- (c) an amount that a person is required to pay to WRA in respect of a tax credit has not been paid,

WRA may make an assessment of the amount that ought in its opinion to be paid to WRA in order to remedy that matter.”

13. In section 56 of TCMA (references to “WRA assessment”), for “or 55” substitute “, 55 or 55A”.

14. In section 57 of TCMA (references to the “taxpayer”), in paragraph (b), after “section 55” insert “or 55A”.

15.—(1) Section 58 of TCMA(1) (conditions for making WRA assessments) is amended as follows.

(2) In subsection (1), in paragraph (a)—

- (a) for “three” substitute “four”;

(1) Section 58 was amended by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 18.

(b) for “and (3A)” substitute “, (3A) and (3B)”.

(3) After subsection (3A) insert—

“(3B) The fourth case is where WRA has come to the view that a situation described in section 55A has arisen.”

16.—(1) Section 59 of TCMA(1) (time limits for WRA assessments) is amended as follows.

(2) In subsection (1), after “relevant date” insert “in any case involving a situation mentioned in section 54, 55 or 55A(a) or (b)”.

(3) In subsection (2), for “or 55” substitute “, 55 or 55A(a) or (b)”.

(4) In subsection (3), for “or 55” substitute “, 55 or 55A(a) or (b)”.

(5) After subsection (4) insert—

“(4A) No WRA assessment may be made in a case involving a situation mentioned in section 55A(c)—

(a) if WRA has issued a notice to the taxpayer requiring payment of the amount in question, after the period of 12 months beginning with the day after that by which the payment was required, and

(b) otherwise, after the period of 12 months beginning with the day on which WRA became aware that the taxpayer was required to pay the amount in question.”

(6) In subsection (7)—

(a) in the opening words of the definition of “relevant date”, after “(*dyddiad perthnasol*)” insert “, in relation to a WRA assessment in a case involving a situation mentioned in section 54 or 55,”;

(b) at the end insert—

““relevant date” (*dyddiad perthnasol*), in relation to a WRA assessment in a case involving a situation mentioned in section 55A(a) or (b), means—

(a) where the tax credit in question was claimed in a tax return made on or before the filing date, the filing date;

(b) where the tax credit in question was claimed in a tax return made after the filing date, the day on which the tax return was made;

(1) Section 59 was amended by LTTA, Schedule 23, paragraph 19.

- (c) where the tax credit in question was claimed by any other means, the day on which the claim was made.”

17. In section 81D of TCMA⁽¹⁾ (definitions relating to the general anti-avoidance rule), in the definition of “tax advantage”—

- (a) omit the “and” after paragraph (d);
- (b) at the end of paragraph (e) insert “, and
- (f) tax credit or increased tax credit.”

18.—(1) Section 84 of TCMA (meaning of “tax position”) is amended as follows

(2) In subsection (1), in paragraph (b)—

- (a) after “penalties”, in the first place it occurs, insert “tax credits”;
- (b) after “penalties”, in the second place it occurs, insert “and amounts payable in respect of tax credits”.

(3) In paragraph (c) of that subsection, after “devolved tax” insert “or any amount in respect of a tax credit”.

19. After section 84 of TCMA insert—

“Meaning of “prejudice to the assessment or collection of devolved tax”

84A. In this Part, references to prejudice to the assessment or collection of devolved tax include prejudice to the assessment or collection of any amount payable in respect of a tax credit.”

20. In section 93 (power to obtain contact details for debtors), in subsection (2)—

- (a) omit the “or” after paragraph (c);
- (b) after paragraph (d) insert—
 - “(e) a payment in respect of a tax credit, or
 - (f) interest on a payment in respect of a tax credit,”.

21. In section 100 of TCMA (taxpayer notices following a tax return), in subsection (5)—

- (a) omit the “or” after paragraph (b);
- (b) after paragraph (c) insert—
 - “(d) an amount of tax credit to which the person is not entitled may have been claimed, or

(1) Section 81D was inserted by section 66 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017.

- (e) a claim for tax credit may be or have become excessive.”

22. In section 117 of TCMA (overview of Part 5), in subsection (1), in paragraph (a), after “devolved tax” insert “or amounts payable in respect of tax credits”.

23. In the heading to Chapter 2 of Part 5 of TCMA (penalties for failure to make returns or pay tax), at the end insert “OR AMOUNTS PAYABLE IN RESPECT OF TAX CREDITS”.

24. In section 122 of TCMA(1) (penalty for failure to pay tax on time), in Table A1, in item 2 in column 3, for “stated in” substitute “payable as a result of”.

25. After section 122A of TCMA(2) insert—

“Penalty for failure to pay amount payable in respect of tax credit

Penalty for failure to pay amount payable in respect of tax credit on time

123A.—(1) This section applies where a person is required to pay an amount as a result of a WRA assessment made under section 55A.

(2) The person is liable to a penalty if he or she fails to pay the amount on or before the penalty date.

(3) The penalty date is the day falling 30 days after the day by which the amount was required to be paid.

(4) The penalty is 5% of the amount payable as a result of the WRA assessment.”

26.—(1) Section 126 of TCMA(3) (reasonable excuse for failure to make tax return or pay tax) is amended as follows.

(2) After subsection (2) insert—

“(2A) If a person satisfies WRA or (on appeal) the tribunal that there is a reasonable excuse for a failure to pay an amount payable in respect of a tax credit, the person is not liable to a penalty under section 123A in relation to the failure.”

(3) In subsection (3), in the words before paragraph (a), for “and (2)” substitute “, (2) and (2A)”.

(4) In the section heading, at the end insert “or amount payable in respect of tax credit”.

-
- (1) Section 122 was substituted by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 42.
- (2) Section 122A was inserted LTTA, Schedule 23, paragraph 42 and section 123 was repealed by LTTA, Schedule 23, paragraph 43.
- (3) Section 126 was amended by LTTA, Schedule 23, paragraph 45, and by LDTA, Schedule 4, paragraph 13.

27.—(1) Section 127 of TCMA⁽¹⁾ (assessment of penalties under Chapter 2) is amended as follows.

(2) In subsection (1), in paragraph (c), for “or transaction” substitute “, transaction or amount”.

(3) After subsection (6) insert—

“(6A) A supplementary assessment may be made in respect of a penalty under section 123A if an earlier assessment operated by reference to an underestimate of the amount payable in respect of the tax credit in question.

(6B) If an assessment in respect of a penalty under section 123A is based on an amount that is found by WRA to be excessive, WRA may issue a notice to the person liable to the penalty amending the assessment so that it is based on the correct amount.”

(4) In subsection (7), for “or (6)” substitute “, (6) or (6B)”.

28.—(1) Section 128 of TCMA⁽²⁾ (time limit for assessment of penalties under Chapter 2) is amended as follows.

(2) In subsection (2)—

(a) omit the “or” after paragraph (a);

(b) at the end of paragraph (b) insert “, or

(c) in the case of a failure to pay an amount payable in respect of a tax credit, the penalty date.”

(3) In subsection (3), after paragraph (b) insert—

“(c) in the case of a failure to pay an amount payable in respect of a tax credit, the end of the appeal period for the assessment of the amount in respect of which the penalty is assessed.”

(4) After subsection (4) insert—

“(4A) In subsection (2)(c), “penalty date” has the meaning given by section 123A(3).”

(5) In subsection (5) omit “(a) and (b)”.

29. In section 129 of TCMA (penalty for inaccuracy in document given to WRA), in subsection (2)—

(a) omit the “or” after paragraph (b);

(b) at the end of paragraph (c) insert “, or

(d) a false or inflated claim for a tax credit.”

(1) Section 127 was amended by the Land Transaction and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 46, and by LDTA, Schedule 4, paragraph 14.

(2) Section 128 was amended by LTTA, Schedule 23, paragraph 47.

30. In section 132 of TCMA(1) (penalty for deliberate inaccuracy in document given to WRA by another person), in subsection (2)—

- (a) omit the “or” after paragraph (b);
- (b) at the end of paragraph (c) insert “, or
- (d) a false or inflated claim for a tax credit.”

31. In section 133 of TCMA(2) (penalty for failure to notify under-assessment or under-determination), after subsection (1) insert—

“(1A) A person is also liable to a penalty where—

- (a) a WRA assessment under section 55A understates the amount that the person is required to pay to WRA, and
- (b) the person has failed to take reasonable steps to notify WRA, within the period of 30 days beginning with the day on which the notice of assessment is issued, that it is an under-assessment.”

32.—(1) Section 135 of TCMA (potential lost revenue: normal rule) is amended as follows.

(2) In subsection (1), after “devolved tax” insert “or tax credit”.

(3) In subsection (2)—

- (a) omit the “and” after paragraph (a);
- (b) at the end of paragraph (b) insert “and
- (c) an amount which WRA would have been required to set off against a person’s liability to tax, or to pay to a person, had the inaccuracy or under-assessment not been corrected.”

33. In section 136 of TCMA (potential lost revenue: multiple errors), in subsection (2)—

- (a) for “or transaction”, in the first place it occurs, insert “, transaction or claim for tax credit”;
- (b) for “or transaction, in the second place it occurs, insert “, transaction or claim for tax credit”.

34. In section 139 of TCMA (reduction in penalty under Chapter 3 for disclosure), in subsection (2) —

- (a) omit the “or” after paragraph (b);
- (b) after paragraph (c) insert—

(1) Section 132 was amended by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 49.

(2) Section 133 was amended by LTTA, Schedule 23, paragraph 50.

- “(d) an inaccuracy which is relevant to a person’s entitlement to a tax credit or liability to pay an amount in respect of a tax credit,
- (e) a supply of false information, or withholding of information, which is relevant to a person’s entitlement to a tax credit or liability to pay an amount in respect of a tax credit, or
- (f) a failure to disclose an under-assessment in respect of a person’s liability to pay an amount in respect of a tax credit.”

35. In section 141 of TCMA(1) (assessment of penalties under Chapter 3), in subsection (1), in paragraph (c), for “or transaction” substitute “, transaction or claim for tax credit”.

36.—(1) Section 151 of TCMA (tax-related penalty for failure to comply with information notice or obstruction) is amended as follows.

(2) In subsection (1), in paragraph (c)—

- (a) the words from “the amount of devolved tax” to “is likely to pay,” become sub-paragraph (i);
- (b) at the end of that sub-paragraph insert “or
 - (ii) the amount that the person has paid, or is likely to pay in respect of a tax credit.”.

(3) In subsection (3)—

- (a) the words “the amount of devolved tax” become sub-paragraph (i);
- (b) at the end of that sub-paragraph insert “, or
 - (ii) the amount in respect of a tax credit.”.

37. After section 157A of TCMA(2) insert—

“Late payment interest on amounts payable in respect of tax credit

157B.—(1) This section applies to an amount payable in respect of a tax credit.

(2) If the amount is not paid on or before the date by which it is required to be paid, the amount carries interest (referred to in this Part as “late payment interest”) at the late payment interest rate for the period—

(1) Section 141 was amended by Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 51.
 (2) Section 157A was inserted by LTTA, Schedule 23, paragraph 58.

- (a) beginning with the late payment interest start date, and
- (b) ending with the date of payment.

(3) Where the amount is payable as a result of a WRA assessment in a case involving a situation mentioned in section 55A(a) or (b), the late payment interest start date is—

- (a) if the tax credit in question was claimed in a tax return, the day after the filing date for the tax return;
- (b) if the tax credit in question was claimed by any other means, the day after that on which an amount equal to the amount was paid to a person in respect of the claim.

(4) Where the amount is payable as a result of a WRA assessment in a case involving a situation mentioned in section 55A(c), the late payment interest start date is the day after that by which the amount was required to be paid.

(5) But where section 160 applies, the late payment interest start date for the purposes of this section is the date specified in that section.”

38. In section 158 of TCMA(1) (late payment interest: supplementary, in subsection (1), for “and 157A” substitute “, 157A and 157B”.

39. In section 160 of TCMA (late payment interest start date: death of taxpayer), in subsection (1), in paragraph (a), for “chargeable to an amount of devolved tax or penalty relating to devolved tax” substitute “who is—

- (i) chargeable to an amount of devolved tax or penalty relating to devolved tax, or
- (ii) required to pay an amount in respect of a tax credit,”.

40.—(1) Section 161 of TCMA (repayment interest on amounts payable by WRA) is amended as follows.

(2) In subsection (2)—

- (a) omit the “or” after paragraph (a);
- (b) at the end of paragraph (b) insert “, or
- (c) an amount in respect of a tax credit.”

(3) In subsection (4), in paragraph (b), for “(2)(a) or (b)” substitute “(2)(a), (b) or (c)”.

41. In section 164 of TCMA (meaning of “relevant amount” in Part 7), after paragraph (d) insert—

(1) Section 158 was substituted by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, Schedule 23, paragraph 58.

- “(e) an amount payable in respect of a tax credit;
- (f) interest on an amount payable in respect of a tax credit.”

42.—(1) Section 169 of TCMA(1) (proceedings in magistrates’ court) is amended as follows.

- (2) In subsection (4)—
 - (a) after “a penalty” insert “or an amount payable in respect of a tax credit”;
 - (b) for “or penalty” substitute “, penalty or other amount”.
- (3) In subsection (5)—
 - (a) after “a penalty” insert “or on an amount payable in respect of a tax credit”;
 - (b) for “or penalty” substitute “, penalty or other amount”.

43. In section 172 of TCMA(2) (appealable decisions), in subsection (2), after paragraph (k) insert—

- “(l) a decision relating to a tax credit in respect of landfill disposals tax.”

44. In the heading to Chapter 3A of Part 8 of TCMA, after “DEVOLVED TAX” INSERT “ETC”.

45. After section 181I(3) insert—

“Application of this Chapter to amounts payable in respect of tax credit

181J.—(1) This Chapter applies to the payment and recovery of amounts relating to tax credits—

- (a) as if references to an amount of devolved tax (including amounts of landfill disposals tax) were references to an amount payable in respect of a tax credit,
- (b) as if references to interest on an amount of devolved tax were references to interest on an amount payable in respect of a tax credit, and
- (c) as if references to devolved tax being charged or chargeable on a person were

(1) Section 169 was amended by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 60.
(2) Section 172(2) was amended by LTTA, Schedule 23, paragraph 62, and by LDTA, sections 24, 38, 58 and 80 and Schedule 4, paragraph 16.
(3) Chapter 3A (including section 181I) was inserted by LTTA, Schedule 23, paragraph 63.

references to an amount being payable by a person in respect of a tax credit.”

46. In section 183A of TCMA(1) (suspension of repayment pending further appeal), in subsection (1), in paragraph (a)—

- (a) the words from “an amount” to “repaid by WRA,” become sub-paragraph (i);
- (b) after that sub-paragraph insert “or
 - (ii) an amount paid by a person in respect of a tax credit is to be repaid by WRA,”.

47. In section 192 of TCMA(2) (interpretation), in subsection (2), insert at the appropriate place —

““tax credit” (“*credyd treth*”) means a tax credit under regulations made under section 54 of LDTA;”.

48. In section 193 of TCMA(3) (index of defined expressions), insert at the appropriate place—

Tax credit (“ <i>credyd treth</i> ”)	section 192(2)
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(1) Section 183A was inserted by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”), Schedule 23, paragraph 65.

(2) Section 192 was amended by LTTA, Schedule 23, paragraph 70 and by LDTA, Schedule 4, paragraph 19.

(3) Section 193 was amended by LTTA, Schedule 23, paragraph 71 and by LDTA, Schedule 4, paragraph 20.

Explanatory Memorandum to The Landfill Disposals Tax (Administration) (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by Welsh Treasury, Tax Strategy, Policy and Engagement Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Landfill Disposals Tax (Administration) Regulations 2018 and I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM
Cabinet Secretary for Finance
Ysgrifennydd y Cabinet dros Gyllid

12 December 2017

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THE LANDFILL DISPOSALS TAX (ADMINISTRATION) (Wales) REGULATIONS 2018

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PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1. The Landfill Disposals Tax (Administration) (Wales) Regulations 2018 (“the regulations”) are being made under the Landfill Disposals Tax (Wales) Act 2017 (“LDT Act”)¹. The LDT Act sets out the operational arrangements for landfill disposals tax which will replace UK landfill tax in Wales when it is devolved in April 2018.
- 1.2. The regulations also make amendments to the Tax Collection and Management (Wales) Act 2016 (“TCM Act”)² which sets out the arrangements for the collection and management of devolved taxes in Wales.
- 1.3. The regulations deal with administrative matters relating to landfill disposals tax in Wales. In particular:
 - they set out arrangements for qualifying mixtures of materials of waste fines³ including loss on ignition (LOI) testing and;
 - they establish a customer insolvency credit.
- 1.4. Subject to the will of the Assembly, the regulations will come into force on 1 April 2018, the same date the Welsh Revenue Authority (WRA)⁴ will begin collecting and managing the tax.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1. There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

- 3.1. The regulations are being made pursuant to sections 17, 54 and 93 of the LDT Act:
 - Section 17 gives the Welsh Ministers powers to make regulations in respect of qualifying mixtures of materials of waste fines (as defined at section 17(3));
 - Section 54 gives the Welsh Ministers powers to make regulations in respect of tax credits;

¹ <http://www.legislation.gov.uk/anaw/2017/3/contents/enacted>

² <http://www.legislation.gov.uk/anaw/2016/6/contents>

³ Fine particles of waste produced as a result of a waste treatment process that involves mechanical treatment

⁴ <https://beta.gov.wales/welsh-revenue-authority>

- Section 93 gives the Welsh Ministers powers to make consequential and transitional provision.

3.2. The regulations are subject to the affirmative procedure.

4. Purpose and intended effect of the legislation

4.1. The Welsh Ministers' purpose in bringing forward the regulations is to:

- set out additional requirements to assist landfill site operators to determine the correct tax liability of waste fines, including loss on ignition (LOI) testing and/or confer the powers necessary to enable a WRA notice to do so and;
- establish a customer insolvency credit which a landfill site operator may claim in circumstances where their customer becomes insolvent before having paid the landfill site operator for carrying out a taxable disposal.

4.2. In September 2017, the Welsh Government published its national strategy *Prosperity for All*⁵. One of its four key themes is 'Prosperous and Secure'; a key objective of which is to drive sustainable growth and combat climate change. The introduction of landfill disposals tax including these regulations will contribute towards this objective and the national well-being goals, in particular through actions to promote a low carbon economy and develop a more resource efficient economy, building on our success in recycling and reducing the environmental impacts of production and consumption.

4.3. Section 91 of the LDT Act places a duty on the Welsh Ministers to have regard, amongst other factors, to the objective of reducing landfill disposals in Wales when exercising their powers and duties under the LDT Act. In developing the regulations consideration has been given to how this requirement supports reducing waste to landfill. Introducing additional arrangements for mixtures of materials of waste fines including LOI testing is expected to encourage waste producers to maintain and improve their efforts to sort and separate waste in order to qualify for the lower rate of tax. In doing so it is expected greater levels of waste may be diverted from landfill and recovered, re-used or recycled.

4.4. The regulations seek to update, clarify or bring together the most appropriate elements of the existing legislation and guidance and make changes to better reflect Welsh circumstances and needs.

4.5. In developing landfill disposals tax for Wales including the regulations, the Welsh Government has applied its principles for the development of devolved tax policy and legislation to:

⁵ <http://gov.wales/docs/strategies/170919-prosperity-for-all-en.pdf>

- be fair to businesses and individuals who pay them;
- be simple, with clear rules which seek to minimise compliance and administrations costs;
- support growth and jobs that in turn help tackle poverty; and
- provide stability and certainty for taxpayers.

Qualifying mixtures of fines including LOI testing

Background and current position

- 4.6. UK and Scottish landfill tax both include bespoke requirements and arrangements for when landfill site operators wish to claim the lower rate of tax in relation to a disposal consisting of a mixture of waste fines. These have evolved over time and are contained in various pieces of legislation and guidance.
- 4.7. This includes LOI testing arrangements which were introduced in April 2015 for UK landfill tax and in October 2016 for Scottish landfill tax. An LOI test involves taking a sample of the fines and testing it under laboratory conditions, so as to determine the biodegradable and/or combustible element of the waste, which is indicative of the likely pollution potential of the material⁶. The result of a LOI test is then used (alongside other requirements) to determine whether or not a mixture of waste fines qualifies for the lower rate of tax.
- 4.8. In the 2015 consultation *Landfill Disposals Tax*⁷, the majority of respondents broadly welcomed introducing similar requirements and arrangements in Wales when landfill tax was devolved. The Welsh Government has liaised with HMRC and Revenue Scotland to learn from their experiences, particularly with regards to compliance.
- 4.9. Section 15 and Schedule 1 of the LDT Act set out which materials can be eligible for the lower rate of landfill disposals tax and what conditions they need to meet and section 16 sets out a list of additional requirements that a mixture of materials needs to meet in order to qualify for the lower rate of landfill disposals tax. Six of the seven requirements at section 16 apply to all mixtures of materials but the seventh envisages the possibility of there being additional requirements that apply to mixtures of waste fines. This is intended to assist landfill site operators in determining the correct amount of tax chargeable and to safeguard the revenue for investment in public services in Wales.

⁶ The combustible material will include organic material that, when landfilled, will produce methane (a powerful greenhouse gas) and leachate. This organic material is typically contained in standard rate wastes (i.e. non-qualifying material). Waste policy aims to reduce the landfilling of this material, to help reduce greenhouse gas emissions from landfill.

⁷ <http://gov.wales/betaconsultations/finance/landfill-disposals-tax/?lang=en>

- 4.10. Section 17 of the LDT Act builds on this seventh requirement by setting out the enabling powers for regulations that can be made in relation to qualifying mixtures of waste fines. Section 17(2) and (3) set out the provisions that could be included in secondary legislation and section 17(5) allows for the possibility of certain provisions being made by way of a WRA notice which has the force of law.
- 4.11. This approach seeks to ensure that the Welsh Ministers are able to afford WRA an appropriate amount of flexibility to respond to learning which emerges over time in a new policy area. As technological and scientific developments are allowing for more precise testing of loads of waste fines, it is appropriate to be able to respond to these and incorporate suitable requirements and safeguards around entitlement to the lower rate.

Purpose and intended effect

- 4.12. The regulations use the enabling powers at section 17 of the LDT Act to introduce additional requirements for waste fines and to give WRA powers to build on these requirements by way of a notice. This includes LOI testing requirements, in a similar vein to LOI testing arrangements that are in place in the context of UK and Scottish landfill tax at present.
- 4.13. Regulation 4 of the regulations contains the requirements that all mixtures of waste fines material must meet (in addition to those at requirements 1-6 of section 16 of the LDT Act) in order to qualify for the lower rate, including: pre-acceptance checks for mixtures of materials delivered to the landfill site; record keeping requirements; and the maximum LOI percentage threshold of 10%. Many of the requirements will be further detailed in a WRA notice to enable them to have substantive effect.
- 4.14. Regulation 5 is about the LOI testing requirements in relation to certain mixtures of material if they are to be eligible for the lower rate and sets some fundamental test conditions around the temperature at which a sample must be heated and for how long. Further detail regarding the LOI test will be covered within the WRA notice including: the testing cycle, sample preparation, testing methodology, calculating the LOI percentage, action following a failed LOI test and record keeping requirements.
- 4.15. Regulations 6 and 7 are about WRA powers to ask landfill site operators to carry out a LOI test outside the normal cycle or for the WRA to take a sample and carry out its own LOI test. These are intended to support compliance activity and ensure the correct amount of tax is being applied.
- 4.16. Regulations 8, 9 and 10 contain information about specific record-keeping penalties (of up to £3,000) in relation to waste fines and how they can be assessed and recovered. This approach is consistent with the assessment of penalties in the LDT Act (Part 5, Chapter 4).
- 4.17. Regulation 11 enables a WRA notice or direction to make different provision for different scenarios and allows WRA to make provision for

transitional arrangements, so as to cater for landfill site operators who were operating under the UK landfill tax regime before 1 April 2018.

Customer Insolvency Credit

Background and current position

- 4.18. Section 54 of the LDT Act sets out the powers the Welsh Ministers have to make provision for the circumstances in which a person is to be entitled to a tax credit in respect of LDT. Section 54(2) sets out the provisions that may be included in regulations; among other things provision could be made which specifies the conditions that must be met for an entitlement to a credit to arise and the procedure for claiming a credit.
- 4.19. The existing landfill tax system includes a credit known as 'Bad Debt Relief'. The processes and procedures for applying this credit has evolved over time and are contained in various pieces of legislation and HMRC guidance.
- 4.20. The Landfill Tax (Scotland) Act 2014 and the Scottish Landfill Tax (Administration) Regulations 2015 follow to a significant extent UK landfill tax provisions for the purposes of Scottish Landfill Tax, although the bad debt relief has been redefined to only apply where the customer who owes the debt has become insolvent.
- 4.21. In the 2015 consultation *Landfill Disposals Tax*, the majority of respondents did not want bad debt relief to be offered at all and others suggested that the circumstances for the credit should be limited to an insolvency event. The views of respondents have been taken on board in our regulations.

Purpose and intended effect

- 4.22. The policy intent is to create a tax credit that is linked to customer insolvency. It is intended that an entitlement to such a credit will arise where a landfill site operator has accounted for and paid landfill disposals tax in respect of a disposal but has not received payment from the customer behind that disposal due to an insolvency event. The credit recognises that there may be circumstances in which, although a liability to landfill disposals tax has arisen, and a payment has been made to WRA in satisfaction of that liability, there are wider factors at play that mean that it will be appropriate to allow a tax credit to be claimed (provided certain conditions are met), so that the revenue is effectively refunded.
- 4.23. The regulations give landfill site operators an entitlement to a tax credit, known as customer insolvency credit, where a customer becomes insolvent before having paid the operator for carrying out a taxable disposal.

- 4.24. Introducing a customer insolvency credit will encourage waste businesses to employ good business management practices and will ensure landfill sites are not adversely affected if their customers go insolvent.
- 4.25. Regulation 14 of the regulations sets out the requirements that must be met in order for the entitlement to arise. Regulation 18 sets out the manner in which the amount of the entitlement to credit is to be calculated. Regulations 19 and 20 specify the manner in which an amount of credit may be claimed and the manner in which credit may be given.
- 4.26. A person who makes a claim for credit must hold and preserve the evidence specified in regulation 22 and must also keep a customer insolvency credit record in accordance with regulation 23.
- 4.27. A person who has benefited from an amount of credit may be required to make payments to WRA in certain circumstances. Those circumstances are specified in regulations 24 (where the customer has subsequently made a payment) and 25 (where there is a failure to keep records by the claimant).
- 4.28. Regulations 26 and 27 and the Schedule make a number of amendments and modifications to the LDT Act and the TCM Act 2016 in connection with tax credits.

5. Consultation

- 5.1. Details of consultation undertaken are included in the Regulatory Impact Assessment in Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Impact of establishing The Landfill Disposals Tax (LDT) (Administration) (Wales) Regulations 2018

Options

- 6.1. Three options have been considered in relation to this regulation:
- Option 1 - do nothing (do not introduce the regulations)
 - Option 2 - replicate existing UK landfill tax arrangements
 - Option 3 - develop 'Welsh specific' arrangements
- 6.2. A brief description of each option and their anticipated impact is outlined below followed by an analysis of the costs and benefits at section 7.

Option 1: Do Nothing (do not introduce the regulations)

- 6.3. The do nothing option would involve not introducing additional arrangements for qualifying mixtures of fines including LOI testing or a customer insolvency credit.
- 6.4. By not introducing these regulations requirements to determine tax liability including pre-acceptance checks and a LOI test could not be implemented for mixtures of waste fines. Instead reliance would be placed on the landfill site operator's judgement (subjective) on inspection of the load and other such evidence such as the waste transfer note.
- 6.5. This could create some confusion, particularly for waste businesses along the Wales-England border as they will be operating within two different systems in relation to waste fines. It is unlikely to be welcomed by stakeholders, particularly landfill site operators who advocated the introduction of LOI testing in UK landfill tax in 2015 to provide certainty and consistency about the tax treatment of waste fines. It may also undermine efforts to encourage tax compliance and positive environmental behaviours.
- 6.6. By not introducing the regulations landfill site operators would not be entitled to any reimbursement, whether in the form of bad debt relief or a credit in circumstances where their customer becomes insolvent before having paid the operator for carrying out a taxable disposal. Whilst the majority of respondents to the 2015 consultation on landfill disposals tax did not think reimbursement should be offered; landfill site operators have raised concerns at its potential removal.

Option 2: Replicate existing landfill tax arrangements

- 6.7. The do minimum option is to introduce regulations which replicate the existing landfill tax arrangements for waste fines including LOI testing and bad debt relief. This would mean that the new tax system being created

would be recognisable to landfill site operators and there would be similar processes which would provide stability and reassurances to businesses.

- 6.8. A clear message from stakeholders was the need to implement a replacement tax which provides consistency, certainty and stability for businesses. Replicating the existing UK landfill tax in these areas could achieve this.
- 6.9. However, stakeholders also commented there are areas of confusion with the existing UK landfill tax legislation and greater clarity would be welcomed. In addition, there is evidence UK landfill tax is susceptible to some tax evasion, particularly around the misclassification of waste in order to achieve the lower rate of tax.
- 6.10. Further, in relation to bad debt relief, the majority of respondents to the 2015 consultation on landfill disposals tax did not think it should be offered with others suggesting that the conditions in which it was made available should be tightened and linked to an insolvency event.

Option 3: Develop 'Wales specific' arrangements

- 6.11. This option would broadly replicate UK arrangements thereby maintaining similar processes which would provide stability and reassurance for landfill site operators but would also introduce some changes to clarify and simplify existing areas of confusion within the legislation and address key policy issues highlighted by stakeholders as mentioned above.
- 6.12. The changes seek to make the arrangements in each of these areas more transparent, pragmatic, workable and proportionate. In doing so this approach seeks to tighten up arrangements to safeguard them from abuse; ensure that compliance is straightforward so that landfill site operators can meet their tax obligations and; enable the WRA to identify those who have failed to adhere to these rules and take appropriate enforcement action.
- 6.13. Under option 3, changes would be sought to:

Mixtures of waste fines including LOI testing

- The regulations introduce two record-keeping penalties in relation to waste fines. In doing so, they also allow the WRA to take account of other documentary evidence when determining compliance with record-keeping requirements. This is consistent with the approach to non-disposal areas in the LDT Act.
- Unlike the UK and Scotland, the regulations specifically confer powers on the revenue authority (WRA) to direct that a landfill site operator carries out an LOI test and empowers the WRA to take a sample of fines and carry out its own LOI test. This provides greater clarity around compliance arrangements.

Customer Insolvency Credit

- Create a tax credit that is linked to customer insolvency. It is intended that an entitlement to such a credit will arise where a landfill site operator has accounted for and paid LDT in respect of a disposal but has not received payment from the customer behind that disposal due to an insolvency event. We have also defined more broadly the definition of insolvency than Scotland (regulation 17).
- Set out requirements which will have to be met in connection with a disposal before an entitlement to a credit can arise. For example, the disposal must have taken place on an authorised landfill site, the landfill site operator must have paid and accounted for LDT on that disposal and a landfill invoice must have been issued to the customer by the operator.
- Prescribe a clear set of timescales that need to be adhered to, in order to be entitled to the credit. This option would specify a time limit in which the customer is to become insolvent (a period of 12 months beginning with the date on which the landfill invoice was issued) and a time limit for the landfill site operator to claim the credit (6 months from the insolvency event compared to 12 months in UK and Scottish landfill tax).

7. Costs and Benefits

- 7.1. The costs and benefits associated with each option have been produced using the best available information at the time. This information has been prepared through discussion with stakeholders including taxpayers (landfill site operators), the wider waste industry, tax experts and professional industry bodies.
- 7.2. The preferred option is for the Welsh Government to introduce arrangements specific to Wales (option 3).

Option 1: Do nothing (do not introduce the regulations)

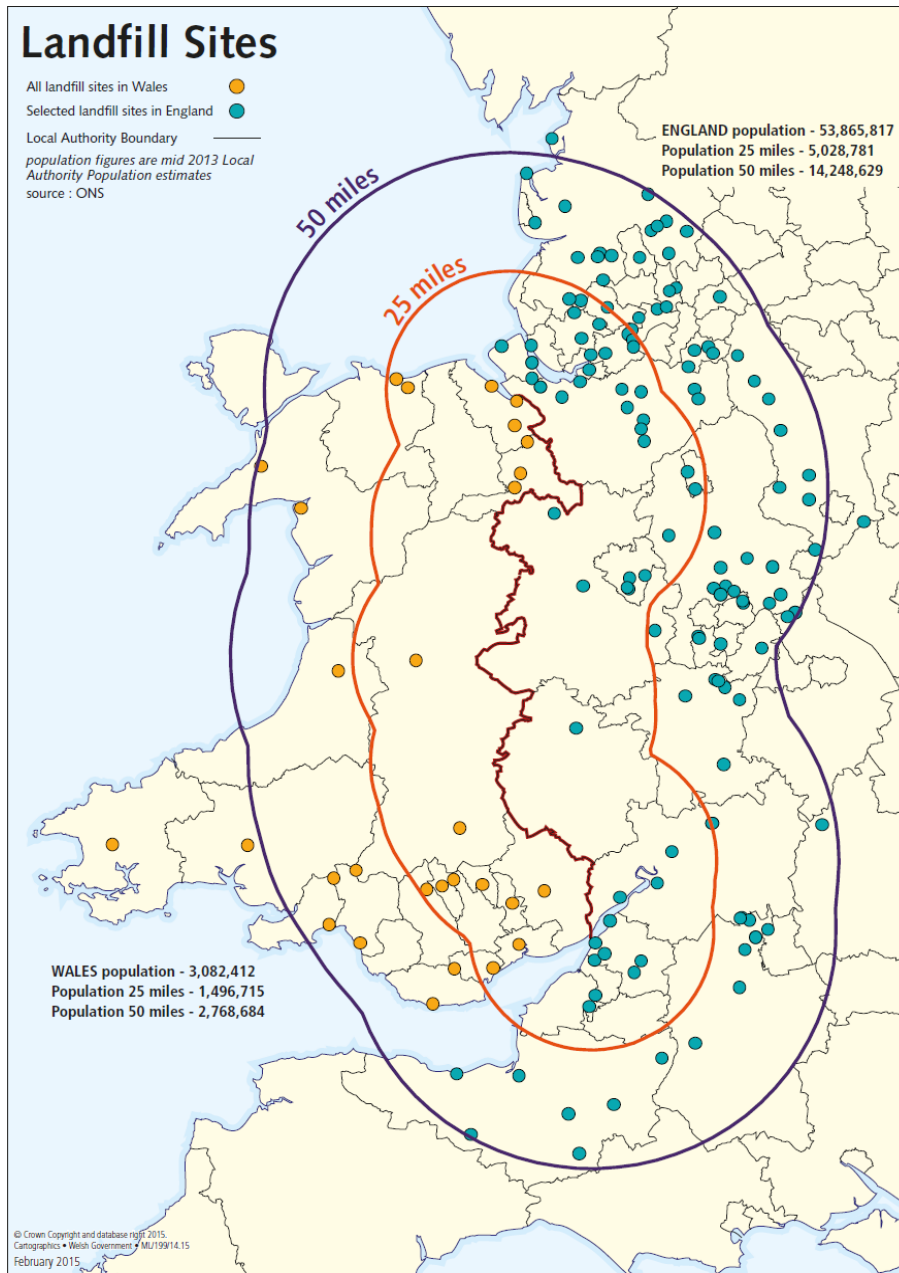
Mixture of waste fines including Loss on Ignition (LOI) testing

- 7.3. Without these regulations there would not be any obligation to complete a pre-acceptance questionnaire on mixtures of waste fines to better understand how they had been produced and their content and no obligation to carry out a LOI test.
- 7.4. Compared to the current situation, this would result in cost-savings for waste businesses producing fines waste as the average cost of an LOI test, which is passed on to them by the landfill site operator, is £30. Under UK landfill tax, in normal circumstances the LOI test must be completed 1 in every 1,000 tonnes. A business producing 50,000 tonnes of waste fines per year could save £1,500.

- 7.5. However, it could also increase non-compliance with standard rate material either unintentionally or deliberately being mixed with lower rate waste fines leading to the lower tax rate being incorrectly applied. This would result in less tax being collected to invest in public services in Wales. The financial implications of misclassification of waste can be significant given the current lower rate of tax is £2.70/tonne and the standard rate of tax is £86.10/tonne. An industry report⁸ noted in 2014 that revenue lost as a result of misclassification of waste could be as much as £200m across the UK. Misclassification of waste can be difficult to detect and without these regulations it would considerably weaken the compliance tools available to the WRA.
- 7.6. Compliant landfill site operators welcomed the introduction of LOI testing in 2015 as it helped to create a fairer playing field and provided greater confidence in determining the tax liability of waste fines. Not introducing these regulations would be widely considered a backwards step.
- 7.7. Analysis produced when determining the tax rates suggested that small changes in tax rates could encourage cross-border movement of waste. There may be a similar response if there were no regulations to assist with determining the correct rate of tax. This could lead to a higher amount of waste being disposed of in Wales as waste businesses seek to avoid the cost of the LOI test in England and less rigorous compliance arrangements. The Wales/England border is populous and has a range of waste management businesses including landfill sites along both sides which can be seen at Figure 1.
- 7.8. An increase in waste being disposed of in Wales would have wellbeing and environmental impacts for communities, for example, an increase in waste, travelling further distances on major roads and through residential areas; increased disruption for residents near landfill sites and waste transfer stations; increased carbon footprint of waste disposal and; increased pressure on existing landfill capacity.
- 7.9. This option would also remove an incentive to separate and sort waste for disposal in order to secure the lower rate of tax which can have added benefits of enabling more waste to be recovered, re-used and recycled and reduce the amount of waste going to landfill.
- 7.10. In summary, this option would be inconsistent with Welsh Government priorities set out in its National Strategy and wider waste policies of working towards a zero waste Wales. It would also sit uncomfortably with the duty at section 91 of the LDT Act for the Welsh Ministers to have regard, amongst other factors, to the objective of reducing landfill disposals in Wales when exercising their powers and duties under the LDT Act.

⁸ http://www.esauk.org/esa_reports/ESAET_Waste_Crime_Tackling_Britains_Dirty_Secret_LIVE.pdf

Figure 1 - Landfill Sites and Populations – Wales/England Border ⁹



⁹ Location of landfill sites based on HMRC data 2012
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageExcise_ShowContent&id=HMCE_PROD_009941&propertyType=document

Customer Insolvency Credit

- 7.11. The majority of the respondents to the 2015 consultation on landfill disposals tax were not in favour of offering bad debt relief with respondents commenting that operators should be encouraged to implement best business practices and put in place appropriate contracts with their customers. Some also commented that other industries are not supported in this way. As such, this option would be generally welcomed by a range of stakeholders. Further, by not introducing the regulations there may be an increase in the revenue as WRA would not be reimbursing landfill site operators for these unpaid costs.
- 7.12. However, landfill site operators did raise concerns with this option and given the economic climate the Welsh Government believes it is fair and appropriate to offer some form of reimbursement. To not do so could contribute to financial difficulties for the landfill site operator and in a worst case scenario it could contribute to the closure of the landfill site. An unplanned reduction in landfill capacity in Wales could also lead to an increase in waste being disposed of illegally. Consequently, this could result in additional financial pressures for the Welsh Government, local authorities and the environmental regulator.

Option 2: Replicate existing landfill tax arrangements

- 7.13. Landfill tax is a well established tax which has been in operation since 1996. This option would mean that the new tax system being created would be familiar to landfill site operators and there would be similar processes which would provide stability and reassurances to businesses. As it would involve replicating the current regime therefore there will not be any changes that incur an additional cost to landfill site operators, waste businesses or WRA.
- 7.14. However, it would be a lost opportunity to make changes, for example where stakeholders have said greater clarity would be welcomed. Further, stakeholders were not supportive of replicating the existing landfill tax arrangements for bad debt relief and raised some issues regarding the practical implementation of the LOI testing arrangements.

Option 3: Develop 'Wales specific' arrangements

*Costs previously identified in the LDT Act Regulatory Impact Assessment (RIA)*¹⁰

- 7.15. As reported in the LDT Act RIA there will be a cost to landfill site operators and tax experts for the time required to familiarise themselves with the legislation including these regulations, estimated to be £6,600 and £13,000 respectively. The cost will be incurred in 2017-18.

¹⁰ <http://www.assembly.wales/laid%20documents/pri-ld10839-em-r/pri-ld10839-em-r-e.pdf>

7.16. The WRA will delegate compliance and enforcement functions to Natural Resources Wales (NRW) who have existing relationships with the landfill site operators and extensive knowledge of the waste industry. Compliance will be undertaken on a risk basis as is currently the case with UK landfill tax. The funding allocated to NRW to carry out these functions (including the compliance and enforcement costs related to these regulations) is included in the operating costs of the WRA. The total budget for the WRA has recently been reviewed, implementation costs and operational running costs is £6.3m for 2017/18 and for 2018/19 and subsequent years will be £6m.

Mixture of waste fines including Loss on Ignition (LOI) testing

7.17. This option builds on established practices around pre-acceptance checks and LOI testing and does not introduce any new additional costs. The legislation also introduces a number of new penalties to deal with cases of non-compliance. These provisions will only impose costs on those individuals or businesses that choose to operate outside of the law. At this stage, levels of non-compliance are not known and so these costs cannot be quantified.

7.18. The detail of the arrangements will be set out in a WRA Notice; the expectation is that the testing cycle will remain consistent with existing arrangements and so there should not be additional costs to landfill site operators. Furthermore, transitional arrangements will allow landfill site operators to carry over arrangements for existing customers, rather than setting up new LOI testing arrangements from 1 April 2018.

7.19. These regulations provide a “Welsh specific” solution. The key benefit of introducing the LOI testing regime is to provide certainty and stability for the landfill site operators, by broadly enabling consistency with how waste fines are treated in England and Scotland and reducing the risk of cross-border movement of waste. It also ensures that the benefit of the tax revenue can continue to be secured for investment in public services in Wales.

7.20. The main changes made in response to the concerns raised by stakeholders has been to introduce an LOI testing regime with which they are familiar and which provides consistency for all landfill site operators, whilst better reflecting established practices. The LOI tests should give landfill sites operators’ confidence in determining the tax liability. This will also give the WRA and NRW clear tools and guidelines in their compliance and enforcement role and assurances that the right amount of tax is being paid which will contribute to public services in Wales.

Customer Insolvency Credit

7.21. The main benefit for introducing the customer insolvency credit is it provides stability and certainty for landfill site operators. It also encourages good business practice and that proper contracts are in place between the landfill site operator and their customers. It will also ensure landfill sites are not adversely affected if their customers go insolvent. Given the economic

- climate the Welsh Government believes it is fair and appropriate to offer a credit in relation to 'bad debt' where the customer has become insolvent.
- 7.22. This option also seeks to tighten and clarify existing legislation establishing a clear set of steps for when the credit is available, which supports businesses but also seeks to protect the revenue.
- 7.23. It is difficult to forecast the cost of this to landfill site operators in Wales as data is currently provided on an England and Wales basis. There may be some minor additional costs for landfill site operators and WRA in ensuring that all steps required to be taken for the credit have been met and that the landfill site operator has registered as a creditor.
- 7.24. There are also some cost benefits for the landfill site operator as the time period for when the credit can be claimed has been shortened to assist landfill site operators in managing their cash flow. They will be entitled to claim the credit at an earlier date than in the rest of the UK (after 6 months instead of 12 months). This approach was supported by respondents to the 2015 consultation landfill disposals tax and is consistent with VAT provisions.

Summary of the preferred option

- 7.25. The preferred option is Option 3, to develop Wales' specific regulations. This will be achieved by the Landfill Disposals Tax (Administration) (Wales) Regulations 2018, subject to the will of the Assembly and is expected to come into force from 1 April 2018 when landfill tax will be dis-applied in Wales.
- 7.26. The key benefit is to provide certainty and stability for the waste industry, by broadly enabling consistency with how landfilled waste is treated in England and Wales and the risk of cross border movement of waste is reduced. It also ensures that the benefit of the tax revenue can continue to be secured for investment in public services in Wales.
- 7.27. Wider benefits include supporting the delivery of the Welsh Government's National Strategy Prosperity for All and its wider waste and environment policies. In particular, continuing to enable the Towards Zero Waste Strategy and helping to deliver the goals set out in the Environment (Wales) Act 2016, Climate Change *Strategy for Wales*.
- 7.28. In drafting the regulations we have sought to update, clarify or bring together the most appropriate elements of the existing legislation and made changes to better reflect Welsh circumstances and needs.

8. Consultation

- 8.1. The Welsh Government published a consultation *Landfill Disposals Tax*¹¹ in February 2015. The consultation sought views on proposals to help inform the policy and structure of landfill disposals tax.
- 8.2. The consultation received 279 responses from a range of stakeholders: individuals and various organisations representing different sectors from across Wales and the UK including the waste industry, environmental bodies and the third sector as well as tax professionals. The consultation closed in May 2015 and a summary of the responses was published in September 2015.
- 8.3. The consultation responses and engagement events were particularly helpful in highlighting areas where it was important to maintain consistency with arrangements in the rest of the UK; and where there were opportunities for clarifying and updating the existing legislation and making changes to better reflect Welsh circumstances and needs.
- 8.4. Responses to some questions of specific relevance to the regulations are summarised as follows:
 - *Should bad debt relief be offered and if so, in what circumstances is it appropriate?* The majority of respondents did not want bad debt relief to be offered at all, with others suggesting the circumstances in which it should be offered be limited to an insolvency event. A number of respondents also advocated shortening the timescale for claiming bad debt relief from 12 months to 6 months which is consistent with VAT. Given the economic climate it was felt fair and appropriate to offer a credit in relation to 'bad debt' where the customer has become insolvent.
 - *Would you support the introduction of a Welsh Loss on Ignition (LOI) test when Landfill Tax is devolved? Please explain your reasons.* The majority of respondents supported the introduction of a LOI test with several respondents supportive of the Welsh Government's intention to monitor the outcome of the UK and Scottish Governments' approaches. Of those in favour of a Welsh LOI test, one recurrent theme was regarding the importance of maintaining "cross-border consistency", to avoid cross-border movement of waste.
- 8.5. In order to inform policy and legislative proposals a Technical Experts Group was established with representation from NRW, the Welsh Local Government Association, tax professionals and the waste industry. In addition, Welsh Government officials regularly meet with landfill site operators and have visited several landfill sites and met operators' finance teams to better understand how UK landfill tax is administered. As part of this engagement, landfill site operators were sent a questionnaire seeking more details and views on the existing LOI testing regime. There has also

¹¹ <http://gov.wales/betaconsultations/finance/landfill-disposals-tax/?lang=en>

been regular engagement with HMRC, Scottish Government and Revenue Scotland and their knowledge and experience has been taken into account.

- 8.6. On customer insolvency credit, detailed and extensive discussions with landfill site operators and technical experts have highlighted the careful balance that needs to be struck between a policy preference to ensure that landfill waste is deposited appropriately at a landfill site even if the financial situation of the waste producer is challenging, and encouraging landfill site operators to implement robust contract management and good business relationships with their customers. External stakeholder discussions suggested that an approach that retained a credit but narrowed the circumstances in which it is available under UK legislation to something more akin to the approach taken by the Scottish Government would be appropriate for Wales.

9. Competition assessment

- 9.1. See **Appendix A**

10. Post implementation review

- 10.1. The effect of the LDT Act will be assessed in a number of ways. Regarding these specific regulations the following activities will take place:

- An independent review of the LDT Act and regulations will be completed within 6 years of the tax being devolved to Wales;
- Data will be collected as part of LDT tax returns and these will provide an evidence base from which evaluation of a number of Welsh Government policies can be undertaken. The data will include information on the:
 - amount of customer insolvency credit claimed as well as who is claiming the credit;
 - Number of LOI tests undertaken by LSOs and more detailed information on the failed LOI tests (requiring a separate form to be submitted to the WRA);
 - An assessment of compliance with the loss on ignition tests will take place once a reasonable period of time has elapsed. Implementation and compliance reviews by HMRC and Revenue Scotland will also be considered as part of this work.

- 10.2. The WRA notice setting out the detailed arrangements to assist landfill site operators to determine the tax liability of waste fines will be reviewed annually, and updated as and when necessary. This will provide the WRA with flexibility to update its requirements in this area through evaluating implementation of a new policy area; and taking on board any technological developments in the field of environmental waste.

- 10.3. Any post implementation assessment of more qualitative aspects of landfill disposal tax' introduction will require the collection of further data. For

example, direct engagement with landfill site operators (meetings/surveys etc.). Assessing the impact of operational matters is the responsibility of WRA although there is potential for collaborative evaluation with the Welsh Government.

- 10.4. The Welsh Government and WRA will also work closely with the UK and Scotland to learn from their experiences and to establish best practice.

APPENDIX A

The Competition Assessment

There are two stages to the Competition Assessment. The first is a quick filter that assesses whether there is a risk of a significant detrimental effect on competition. The results of the competition filter are presented in the table below:

The competition filter test for landfill site operators	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The competition filter test for Laboratories that will be carrying out Loss on Ignition Tests

Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

SL(5)161 - The Landfill Disposals Tax (Administration) (Wales) Regulations 2018

Background and Purpose

The Landfill Disposals Tax (Wales) Act 2017 (the Act) establishes a new tax to be known as landfill disposals tax. The tax is to be charged on taxable disposals (as defined in the Act).

The Regulations make provision in connection with the administration of the tax.

The Regulations set out additional requirements intended to assist landfill site operators to determine the correct tax liability of waste fines, including loss on ignition testing and/or confer the powers necessary to enable a Welsh Revenue Authority (WRA) notice to do so.

The Regulations also establish a customer insolvency credit which a landfill site operator may claim in circumstances where their customer becomes insolvent before having paid the landfill site operator for carrying out a taxable disposal.

Procedure

Affirmative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 (ii) (that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly) in respect of this instrument.

There is no definition of 'ACC' in Welsh (or 'WRA' in English). The same applies to 'DCRhT' in Welsh (or 'TCMA' in English). Both definitions should be included in Regulation 2.

Although these definitions are included in section 96 of the Act, they should be included in the Regulations.

Implications arising from exiting the European Union

None.

Government Response

A government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

9 January 2018



PART 1

General

Citation and commencement

1. These Regulations may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2018 and come into force on the day after the day on which they are made.

PART 2

Amendment of the Environmental Permitting (England and Wales) Regulations 2016

Amendment of the Environmental Permitting (England and Wales) Regulations 2016

2. The Environmental Permitting (England and Wales) Regulations 2016(a) are amended as set out in this Part.

Regulation 2 (interpretation: general)

3.—(1) In regulation 2(1) (interpretation: general)—

(a) after the definition of “coastal waters” insert—

““combustion plant” means any technical apparatus in which fuels are oxidised in order to use the heat generated;”,

(b) in the definition of “emission”, at the end insert—

“(i) in relation to a medium combustion plant, the release of substances from the plant into the air;

(j) in relation to a specified generator, the release of substances from the plant into the air;”,

(c) after the definition of “main river” insert—

““medium combustion plant” has the meaning given in paragraph 2(1) of Schedule 25A;”,

(d) after the definition of “mining waste operation” insert—

““mobile medium combustion plant” means a medium combustion plant that is—

(a) designed to move or be moved whether on roads or other land, and

(b) is not Part B mobile plant;”,

(e) in the definition of “mobile plant”—

(i) for “either” substitute “any”,

(ii) after paragraph (b) insert—

“(c) mobile medium combustion plant;”,

(f) in the definition of “Part B installation”, after “subject to” insert “paragraph (8) and to”,

(g) after the definition of “solvent emission activity” insert—

““specified generator” has the meaning given in paragraph 2(1) of Schedule 25B;”,

(h) in paragraph (a) of the definition of “waste”, for “17 and 19” substitute “17, 19, 25A and 25B”.

(2) After paragraph (7) insert—

(a) S.I. 2016/1154.

“(8) From the transfer date any medium combustion plant or specified generator does not form part of a Part B installation unless the operation of the plant is itself a Part B activity.

(9) In paragraph (8), “transfer date” has the meaning given in regulation 32(5C).”.

Regulation 3 (interpretation: Directives)

4. In regulation 3 (interpretation: Directives), after the definition of “the Landfill Directive” insert—

““the Medium Combustion Plant Directive” means Directive 2015/2193/EU of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants(a);”.

Regulation 7 (interpretation: operate a regulated facility and operator)

5. In regulation 7 (interpretation: operate a regulated facility and operator), in paragraph (a) of the definition of “operate a regulated facility”, for “or mobile plant” substitute “, mobile plant, a medium combustion plant or a specified generator”.

Regulation 8 (interpretation: regulated facility)

6. In regulation 8 (interpretation: regulated facility)—

(a) after paragraph (1)(j) insert—

“(k) a medium combustion plant;

(l) a specified generator”;

(b) after paragraph (4)(g) insert—

“(h) a medium combustion plant;

(i) a specified generator”.

Regulation 12 (requirement for an environmental permit)

7. After regulation 12(1) (requirement for an environmental permit) insert—

“(1A) Paragraph (1)(a) does not apply in relation to the operation of a medium combustion plant, mobile medium combustion plant or a specified generator comprising—

(a) a new medium combustion plant, before 20th December 2018;

(b) an existing medium combustion plant with a rated thermal input greater than 5 megawatts, before 1st January 2024;

(c) an existing medium combustion plant with a rated thermal input of less than or equal to 5 megawatts, before 1st January 2029;

(d) a specified generator, before the permitting date,

unless that medium combustion plant, mobile medium combustion plant or specified generator, is required to have a permit by virtue of forming part of another class of regulated facility.

(1B) For the purposes of paragraph (1A)—

(a) “existing medium combustion plant” and “new medium combustion plant” have the meanings given in paragraph 2(1) of Schedule 25A;

(b) “permitting date” has the meaning given in paragraph 3(2) of Schedule 25B.”.

(a) OJ No L 313, 28.11.2015, p. 1–19.

Regulation 17 (single site permits etc.)

8. In regulation 17(2) (single site permits etc.), at the end insert—

- “(g) of more than one medium combustion plant on more than one site,
- (h) of more than one specified generator on more than one site,
- (i) of more than one Part B installation that contains at least one medium combustion plant on more than one site”.

Regulation 24 (notification of the surrender of an environmental permit)

9. In regulation 24(1) (notification of the surrender of an environmental permit), after sub-paragraph (e) insert—

- “(f) a medium combustion plant;
- (g) a specified generator”.

Regulation 32 (discharge of functions)

10. In regulation 32 (discharge of functions)—

- (a) in paragraph (2)—
 - (i) after “in relation to waste mobile plant” insert “and mobile medium combustion plant”,
 - (ii) in sub-paragraph (c)(i), after “waste mobile plant” insert “or mobile medium combustion plant”,
 - (iii) in sub-paragraph (c)(ii), for “waste mobile plant” substitute “that waste mobile plant or mobile medium combustion plant”,
 - (b) in paragraph (3), after “waste mobile plant” in each place where it occurs insert “or mobile medium combustion plant”,
 - (c) in paragraph (4)—
 - (i) for “Schedule 23” substitute “Schedule 22”,
 - (ii) after “waste mobile plant” insert “or mobile medium combustion plant”,
 - (d) in paragraph (5)—
 - (i) at the beginning insert “Subject to paragraph (5A),”,
 - (ii) in sub-paragraph (a), after “installation” insert “but not, from the transfer date, in respect of any medium combustion plant or specified generator, in so far as they are carried on at the installation”,
 - (iii) after sub-paragraph (b)(iv) insert—
 - “(v) from the transfer date, a medium combustion plant or specified generator;”,
 - (e) after paragraph (5) insert—
 - “(5A) In the case of a Part B installation—
 - (a) where the only activity carried on at that installation is a medium combustion plant or a specified generator, or both, and
 - (b) which has been authorised by an environmental permit granted by a local authority before the transfer date,
- the permit is deemed to have been granted by the appropriate agency immediately before the transfer date.
- (5B) Where paragraph (5A) applies—
 - (a) anything (including, without limitation, legal proceedings) which, at the transfer date, is in the process of being done by a local authority in exercise of, or in

connection with, a function that is being transferred may be continued by or in relation to the appropriate agency;

- (b) anything done by or in relation to a local authority before the transfer date in the exercise of, or in connection with, a function that is being transferred is, so far as is required for continuing its effect on and after that date, to have effect as if done by or in relation to the appropriate agency;
- (c) any reference to a local authority (and any reference which is to be read as a reference to a local authority) in any document constituting or relating to anything to which the provisions of paragraph (5A) apply, is so far as it is required for giving effect to those provisions, to be treated as a reference to the appropriate agency.

(5C) In this regulation—

- (a) any reference to a medium combustion plant or to a specified generator includes any directly associated activity (as defined in paragraph 1(2) of Part 1 of Schedule 1) that, but for that medium combustion plant or specified generator, would not form part of an installation;
- (b) “transfer date” means—
 - (i) in relation to a medium combustion plant, the date specified in paragraph 1(a) or (b) of Schedule 25A, as appropriate,
 - (ii) in relation to a specified generator, the “permitting date” described in paragraph 3(2) of Schedule 25B.”

Regulation 35 (specific provisions applying to environmental permits)

11. In regulation 35, for “25” in both places where it occurs, substitute “25B”.

Regulation 80 (review: England)

12. In regulation 80(2) (review: England), after sub-paragraph (i) insert—

“(ai)the Medium Combustion Plant Directive.”

Schedule 5 (environmental permits)

13. In paragraph 5 of Part 1 of Schedule 5—

(a) at the end of sub-paragraph (1) insert—

“(f) a medium combustion plant or a specified generator, unless the regulator determines that the operation of the medium combustion plant or specified generator may have significant negative effects on human beings or the environment”,

(b) after sub-paragraph (6) insert—

“(7) When assessing whether the operation of a medium combustion plant or a specified generator may have significant negative effects on human beings or the environment, the regulator must consider only its emissions to air.”

Schedule 15 (large combustion plants: Industrial Emissions Directive)

14. In paragraph 2(1) of Schedule 15, omit the definition of “combustion plant”.

Schedule 24 (efficiency in heating and cooling energy: Energy Efficiency Directive)

15. In paragraph 1(1) of Schedule 24—

(a) in the definition of “installation”—

(i) after paragraph (a) omit “or”,

- (ii) after paragraph (b) insert—
 - “; or
 - (c) a medium combustion plant”,
- (b) in the definition of “relevant installation”—
 - (i) after paragraph (c) omit “or”,
 - (ii) after paragraph (d) insert—
 - “; or
 - (e) a medium combustion plant operation”.

Schedule 25A (medium combustion plants: Medium Combustion Plant Directive) and Schedule 25B (specified generators)

16. After Schedule 25 insert—

“SCHEDULE 25A Regulation 35(1)

Medium Combustion Plants: Medium Combustion Plant Directive

PART 1

General

Application

1. This Schedule applies—
- (a) in relation to every new medium combustion plant from 20th December 2018,
 - (b) in relation to every existing medium combustion plant from the date specified in regulation 12(1A)(b) or (c), as appropriate.

Interpretation

- 2.—(1) In this Schedule—
- “existing medium combustion plant” means a medium combustion plant—
- (a) put into operation before 20th December 2018, or
 - (b) for which an environmental permit was granted before 19th December 2017, provided that the plant is put into operation no later than 20th December 2018;
- “the MCPD” means the Medium Combustion Plant Directive;
- “medium combustion plant” means a combustion plant with a rated thermal input equal to or greater than 1 megawatt but less than 50 megawatts, and any combination of combustion plants referred to in article 2(2) or article 4 of the MCPD, provided that—
- (a) it does not fall within Article 2(3) or (4) of the MCPD,
 - (b) it is not installed on an offshore platform situated on, above or below those parts of the sea adjacent to England and Wales from the low water mark to the seaward baseline of the United Kingdom territorial sea,

- (c) it is not installed on a gas storage or unloading platform as defined in regulation 2 of the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013(a);

“new medium combustion plant” means a medium combustion plant which is not an existing medium combustion plant.

(2) In sub-paragraph (1), “offshore platform” means any fixed or floating structure which—

- (a) is used for the purposes of or in connection with the production of petroleum, and
- (b) in the case of a floating structure, is maintained on a station during the course of production,

but does not 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.

(3) In sub-paragraph (2), “petroleum” includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

(4) When interpreting the MCPD for the purposes of this Schedule—

- (a) an expression that is defined in Part 1 of these Regulations has the meaning given in that Part;
- (b) “permit” means environmental permit;
- (c) the competent authority is the regulator;
- (d) “general binding rule” means a standard rule published under regulation 26.

Applications for the grant of an environmental permit

3.—(1) The regulator must ensure that every application for the grant of an environmental permit—

- (a) includes the information specified in Annex I to the MCPD;
- (b) specifies which (if any) of paragraphs 7 to 11 of this Schedule is considered relevant to the application.

(2) Subject to sub-paragraph (3), the regulator must start the procedure for determining an application for the grant of an environmental permit within one month of the operator providing the information referred to in paragraph (1) and must inform the operator of the start of the procedure.

(3) Sub-paragraph (2) applies only when the operator has submitted a duly made application.

Exercise of relevant function

4.—(1) The regulator must exercise its relevant functions so as to ensure compliance with the following provisions of the MCPD—

- (a) Article 4;
- (b) Article 5(1) and (2);
- (c) Article 5(6);
- (d) Article 6(1);
- (e) Article 6(2);

(a) S.I. 2013/971.

- (f) Article 6(7);
- (g) Article 6(13);
- (h) Article 7 (except Article 7(8));
- (i) Article 8(2) and (3);
- (j) Article 9.

(2) In exercising its relevant functions, the regulator must ensure that there is no persistent emission of dark smoke, where “dark smoke” has the meaning given in section 3(1) of the Clean Air Act 1993^(a).

(3) In exercising its relevant functions so as to ensure compliance with Article 6(1), (2), (7) or (13) of the MCPD, the regulator must ensure that environmental permits include emission limit values set in accordance with the provisions of Part 2 of this Schedule.

PART 2

Emission Limit Values

Interpretation of this Part

5. In this Part—

“Ambient Air Quality Directive” means Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe^(b);

“Annex I” means Annex I of the MCPD;

“Annex II” means Annex II of the MCPD;

“biomass”, “dust”, “emission limit value”, “micro isolated system”, “nitrogen oxides”, “operating hours”, “small isolated system” and “zone” have the respective meanings given in article 3 of the MCPD;

any reference to emissions expressed in mg/Nm³ is to those emissions defined in accordance with the first paragraph of Annex II.

Emission limit values

6.—(1) Sub-paragraphs (2) to (4) apply, subject to paragraphs 7 to 11.

(2) From 20th December 2018, emission limit values applicable to a new medium combustion plant, for emissions into the air of sulphur dioxide, nitrogen oxides and dust, are the corresponding emission limit values set out in Part 2 of Annex II (but with the modification that footnote (3) in Table 2 of that Part is to be read as if for “may be” there were substituted “are”).

(3) From 1st January 2025, emission limit values applicable to an existing medium combustion plant with a rated thermal input greater than 5 megawatts, for emissions into the air of sulphur dioxide, nitrogen oxides and dust, are the corresponding emission limit values set out in Tables 2 and 3 of Part 1 of Annex II.

(4) From 1st January 2030, emission limit values applicable to an existing medium combustion plant with a rated thermal input of less than or equal to 5 megawatts, for emissions into the air of sulphur dioxide, nitrogen oxides and dust, are the corresponding emission limit values set out in Tables 1 and 3 of Part 1 of Annex II.

(a) 1993 c.11.

(b) OJ No L 152, 11.6.2008, p1.

Limited operating hours – existing medium combustion plants

7.—(1) An existing medium combustion plant which operates for no more than 500 operating hours per year, as a rolling average over a period of five years, is not required to comply with the emission limit values set out in Tables 1, 2, and 3 of Part 1 of Annex II, provided that the operator has signed a declaration in accordance with paragraph 7 of Annex I.

(2) An existing medium combustion plant is not required to comply with the emission limit values set out in Tables 1, 2, and 3 of Part 1 of Annex II where it operates for no more than 1,000 operating hours per year, as a rolling average over a period of five years to—

- (a) provide backup power production in islands connected to an electricity transmission system or distribution system, in the event of an interruption of the main power supply to an island; or
- (b) produce heat in cases of exceptionally cold weather events,

provided that the operator has signed a declaration in accordance with paragraph 7 of Annex I.

(3) Subject to sub-paragraph (4), where an existing medium combustion plant firing solid fuels falls within sub-paragraph (1) or sub-paragraph (2), an emission limit value for dust of 200mg/Nm³ applies.

(4) In the case of an existing medium combustion plant falling within sub-paragraph (2)(b), the emission limit value for dust in sub-paragraph (3) only applies during any period which has been notified by the appropriate authority to the regulator as an exceptionally cold weather event.

(5) For the purposes of sub-paragraph (2)(a), “transmission system” and “distribution system” have the meanings given in section 4(4) of the Electricity Act 1989(a).

Limited operating hours - new medium combustion plants

8.—(1) A new medium combustion plant which operates for no more than 500 operating hours per year, as a rolling average over a period of three years, is not required to comply with the emission limit values set out in Part 2 of Annex II, provided that the operator has signed a declaration in accordance with paragraph 7 of Annex I.

(2) Where a new medium combustion plant firing solid fuels falls within sub-paragraph (1), an emission limit value for dust of 100mg/Nm³ applies.

Small and micro isolated systems – existing medium combustion plants

9. Existing medium combustion plants which are part of a small isolated system or a micro isolated system are only required to comply with the emission limit values set out in Tables 1, 2 and 3 of Part 1 of Annex II from 1st January 2030.

Plant at gas compressor stations – existing medium combustion plants

10. An existing medium combustion plant—

- (a) with a rated thermal input greater than 5 megawatts; and
- (b) which is used to drive gas compressor stations required to ensure the safety and security of a national gas transmission system,

is only required to comply with the emission limit values for nitrogen oxides set out in Table 3 of Part 1 of Annex II from 1st January 2030.

(a) 1989 c.29. Section 4(4) was amended by section 28(3) of the Utilities Act 2000 (c.27) and by section 135(4) of the Energy Act 2004 (c.20).

Temporary derogations – existing and new medium combustion plants

11.—(1) This sub-paragraph applies in relation to a medium combustion plant which normally uses low sulphur fuel, where the operator is unable to comply with the relevant emission limit values for sulphur dioxide in paragraph 6 because of an interruption in the supply of low-sulphur fuel resulting from a serious shortage.

(2) Where sub-paragraph (1) applies, the regulator may grant a derogation from the obligation to comply with those emission limit values for such period, up to a maximum of six months, as the operator satisfies the regulator is justified under the circumstances.

(3) This sub-paragraph applies in relation to a medium combustion plant using only gaseous fuel where—

- (a) the plant has to resort exceptionally to the use of other fuels because of an interruption in the supply of gas; and
- (b) as a result of using those other fuels, the plant would need to be equipped with secondary abatement equipment in order to comply with the relevant emission limit values for sulphur dioxide, nitrogen oxides and dust in paragraph 6.

(4) Where sub-paragraph (3) applies, the regulator may grant a derogation from the obligation to comply with the relevant emission limit values in paragraph 6—

- (a) for a maximum of 10 days; or
- (b) for such longer period as the operator satisfies the regulator is justified under the circumstances.

(5) Where the regulator grants a derogation under sub-paragraph (2) or (4), the regulator must inform the appropriate authority immediately.

SCHEDULE 25B

Regulation 35(1)

Specified generators

Application

1. This Schedule applies in relation to every specified generator from the permitting date.

Interpretation – specified generators

2.—(1) In this Schedule—

“generator” means any combustion plant which is used for the purpose of generating electricity, but does not include any generator that is mobile unless it is connected to—

- (a) an electricity transmission system or distribution system, or
- (b) other apparatus, equipment or appliances at a site, and is performing a function that could be performed by a generator that is not mobile;

“specified generator” means—

- (a) a generator, other than an excluded generator, with a rated thermal input—
 - (i) more than or equal to 1 megawatt and less than 50 megawatts, or
 - (ii) in the case of a generator used to meet a capacity agreement or an agreement to provide balancing services, less than 50 megawatts;
- (b) where two or more generators falling with paragraph (a)(i) or (ii) are operated—
 - (i) on the same site,
 - (ii) by the same operator, and
 - (iii) for the same purpose,

those generators together, provided that the rated thermal input of those generators together is less than 50 megawatts; or

- (c) where two or more generators, other than excluded generators—
 - (i) are operated as set out in paragraph (b)(i) to (iii), and
 - (ii) together have a rated thermal input more than or equal to 1 megawatt and less than 50 megawatts, even if one or more of the generators has a rated thermal input of less than 1 megawatt,

those generators together.

(2) For the purposes of paragraph (1)—

“excluded generator” means—

- (a) generators subject to the provisions of Chapter II or Chapter III of the Industrial Emissions Directive,
- (b) generators operating with a defined nuclear safety role under a nuclear site licence issued by the Office for Nuclear Regulation^(a),
- (c) back-up generators operated for the purpose of testing for no more than 50 hours per year,
- (d) generators installed on an offshore platform situated on, above or below those parts of the sea adjacent to England and Wales from the low water mark to the seaward baseline of the United Kingdom territorial sea,
- (e) generators installed on a gas storage or unloading platform as defined in regulation 2 of the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013;

“mobile”, in relation to a generator, means designed to move or be moved whether on roads or other land.

(3) In sub-paragraph (2), “offshore platform” means any fixed or floating structure which—

- (a) is used for the purposes of or in connection with the production of petroleum, and
- (b) in the case of a floating structure, is maintained on a station during the course of production,

but does not 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.

(4) In sub-paragraph (3), “petroleum” includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

Interpretation – relevant dates and permitting dates

3.—(1) The “relevant date” in relation to a generator means—

- (a) 1st January 2019, in the case of a Tranche B generator;
- (b) 1st October 2019, in the case of a Tranche A generator with a rated thermal input greater than 5 megawatts which—
 - (i) has an emission of nitrogen oxides of equal to or greater than 500mg/Nm³, and
 - (ii) operates for more than 50 hours per year;

(a) The Office for Nuclear Regulation was established by section 77(1) of the Energy Act 2013 (c.32).

- (c) 1st January 2025, in the case of a Tranche A generator with a rated thermal input greater than 5 megawatts which—
 - (i) has an emission of nitrogen oxides of less than 500mg/Nm³, or
 - (ii) operates for less than or equal to 50 hours per year;
 - (d) 1st January 2030, in the case of a Tranche A generator with a rated thermal input equal to or less than 5 megawatts.
- (2) The “permitting date”—
- (a) in relation to a specified generator falling within paragraph 2(1)(a), is the relevant date in relation to that specified generator;
 - (b) in relation to a specified generator falling within paragraph 2(1)(b) or (c), is the earliest of the relevant dates in relation to the generators comprising that specified generator.
- (3) For the purposes of sub-paragraph (1)—
- “Tranche A generator” means a generator—
- (a) with a rated thermal input equal to or greater than 1 megawatt and less than 50 megawatts—
 - (i) which came into operation before 1st December 2016,
 - (ii) which is the subject of a capacity agreement arising from the 2014 or 2015 capacity auctions (whether or not the generator came into operation before 1st December 2016), or
 - (iii) for which a Feed-in Tariff preliminary accreditation application was received by the Gas and Electricity Markets Authority^(a) before 1st December 2016;
 - (b) with a rated thermal input of less than 1 megawatt—
 - (i) which is the subject of a capacity agreement arising from the 2014, 2015 or 2016 capacity auctions (whether or not the generator came into operation before 1st December 2016),
 - (ii) for which a Feed-in Tariff preliminary accreditation application was received by the Gas and Electricity Markets Authority before 1st December 2017; or
 - (iii) which is the subject of an agreement to provide balancing services entered into before 31st October 2017,

provided that a generator ceases to be a Tranche A generator if it is the subject of a capacity agreement, or an agreement for provision of balancing services, where that agreement is entered into after 31st October 2017 and remains in force after 31st December 2018;

“Tranche B generator” means any generator which is not a Tranche A generator or an excluded generator (and includes a specified generator which has ceased to be a Tranche A generator).

(4) For the purposes of sub-paragraph (1), in the case of a generator which is comprised in a specified generator falling within paragraph 2(1)(b) or (c), the generator is deemed to have the total rated thermal input of all the generators comprised in the specified generator.

Interpretation - general

4. In this Schedule—

“back-up generator” means a generator operated for the sole purpose of maintaining power supply at a site during an on-site emergency;

(a) The Gas and Electricity Markets Authority was established by section 1(1) of the Utilities Act 2000 (c.27).

“balancing services” means 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;

“capacity agreement” has the meaning given in regulation 30 of the Electricity Capacity Regulations 2014(a);

“capacity auction” means an auction under Part 4 of the Electricity Capacity Regulations 2014;

“distribution system” has the meaning given in section 4(4) of the Electricity Act 1989;

“emission limit value” means the maximum permissible quantity of a substance contained in the waste gases from a generator which may be discharged into the air during a given period;

“Feed-in Tariff preliminary accreditation application” means an application for preliminary accreditation made under Part 3 of the Feed-in Tariffs Order 2012(b);

“nitrogen oxides” means nitric oxide and nitrogen dioxide;

“nuclear site licence” has the meaning given in section 1 of the Nuclear Installations Act 1965(c);

“transmission system” has the meaning given in section 4(4) of the Electricity Act 1989;

“transmission system operator” means the person operating the national transmission system for Great Britain;

any reference to emissions expressed in mg/Nm³ is to those emissions defined in accordance with the first paragraph of Annex II of the Medium Combustion Plant Directive.

Environmental permit conditions: general

5.—(1) Subject to paragraph 6, the regulator must exercise its relevant functions in relation to specified generators so as to ensure that they are operated, from the permitting date, in such a way that—

- (a) there is compliance with an emission limit value for nitrogen oxides of 190mg/Nm³;
- (b) where secondary abatement is required to ensure compliance with the requirement in paragraph (a), the emission limit value for nitrogen oxides is met—
 - (i) in the case of a Tranche A generator or a Tranche B generator which was, but has ceased to be, a Tranche A generator, within 20 minutes of the specified generator commencing operation, or
 - (ii) in the case of any other Tranche B generator, within 10 minutes of the specified generator commencing operation,and in every case emissions must be monitored at least every three years;
- (c) there is no persistent emission of dark smoke, where “dark smoke” has the meaning given in section 3(1) of the Clean Air Act 1993.

(2) Where compliance with air quality aspects of an environmental quality standard requires stricter conditions for the operation of a specified generator, or a generator comprised in a specified generator falling within paragraph 2(1)(b) or (c), from the permitting date the regulator must include additional or stricter measures in the permit to comply with those standards, including (if necessary) a stricter emission limit value than that specified in paragraph (1)(a).

(a) S.I. 2014/2043, as amended by S.I. 2014/3354, 2015/875, 2015/1974 and 2016/742.

(b) S.I. 2012/2782, as amended by S.I. 2013/1099, 2014/1601, 2015/35, 2015/1659, 2015/2045, 2016/319 and 2017/131.

(c) 1965 c.57. Section 1 was substituted by paragraph 17 of Schedule 12 to the Energy Act 2013 (c.32).

(3) In the case of a specified generator falling within paragraph 2(1)(b) or (c), the requirements of sub-paragraph (1) must be met by each generator comprising that specified generator only from the relevant date relating to that generator.

Exceptions to environmental permit conditions

6.—(1) Paragraph 5 does not apply in relation to a specified generator falling within paragraph 2(1)(a), or a generator comprised in a specified generator falling within paragraph 2(1)(b) or (c), that is—

- (a) used at a site which it is not reasonably practicable to connect to the distribution system;
- (b) a back-up generator in respect of which, in the opinion of the regulator, the operator has demonstrated a genuine need to carry out routine testing for more than 50 hours per year.

(2) Paragraph 5 does not apply—

- (a) until 1st January 2025 in relation to a Tranche A generator not falling within sub-paragraph (1)—
 - (i) with a rated thermal input greater than 5 megawatts,
 - (ii) with nitrogen oxide emissions of 500mg/Nm³ or greater, and
 - (iii) that operates for more than 50 hours per year;
- (b) in relation to a Tranche A generator—
 - (i) with a rated thermal input greater than 5 megawatts,
 - (ii) with nitrogen oxide emissions of 500mg/Nm³ or greater,
 - (iii) that operates for more than 50 hours per year, and
 - (iv) that is operated only for the purpose of a capacity agreement entered into before 1st December 2016,
for the period in which that capacity agreement remains in force, or until 1st January 2025, whichever is later.

(3) Where a generator falls within sub-paragraph (1) or (2), the regulator must exercise its functions from the relevant date to ensure that the operation of the generator will not give rise to an exceedance of the limit values for nitrogen dioxide specified—

- (a) in the case of a generator operated in England, in Schedule 2 to the Air Quality Standards Regulations 2010(a), and
- (b) in the case of a generator operated in Wales, in Schedule 1 to the Air Quality Standards (Wales) Regulations 2010(b).

(4) Paragraph 5 does not apply in relation to a Tranche A generator—

- (a) with a rated thermal input greater than 5 megawatts which—
 - (i) has an emission of nitrogen oxides of less than 500mg/Nm³, or
 - (ii) operates for no more than 50 hours per year; or
- (b) with a rated thermal input greater than or equal to 1 megawatt but no greater than 5 megawatts,

where it is operated only for the purpose of a capacity agreement entered into before 1st December 2016, during the period in which that capacity agreement remains in force.

(5) Paragraph 5 does not apply in relation to a Tranche A generator with a rated thermal input of less than 1 megawatt where it is operated only for the purpose of a capacity

(a) S.I. 2010/1001, as amended by S.I. 2016/1184.

(b) S.I. 2010/1433.

agreement entered into before 31st January 2017, during the period in which that capacity agreement remains in force.

(6) For the purposes of sub-paragraphs (2), (4) and (5), a generator comprised in a specified generator falling within paragraph 2(1)(b) or (c) is deemed to have the total rated thermal input of all the generators comprised in that specified generator.”.

Schedule 26 (Enforcement undertakings)

17. In Schedule 26, omit paragraph 1(2).

PART 3

Amendment of other Regulations

Amendment of the Air Quality Standards Regulations 2010

18.—(1) The Air Quality Standards Regulations 2010 are amended as follows.

(2) In regulation 26—

(a) after paragraph (5) insert—

“(5A) The air quality plan must include an assessment of the need to apply lower emission limit values for individual medium combustion plants than those set out in Directive 2015/2193/EU 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 (“the Medium Combustion Plant Directive”) provided that, in the opinion of the Secretary of State, applying such emission limit values would effectively contribute to a noticeable improvement of air quality.

(5B) In considering whether to impose lower emission limit values, the Secretary of State must take into account the results of the information exchange referred to in Article 6(10) of the Medium Combustion Plant Directive.”,

(b) after paragraph (7) insert—

“(8) In this regulation—

“emission limit values” has the meaning given in paragraph 5 of Schedule 25A to the Environmental Permitting (England and Wales) Regulations 2016, and

“medium combustion plants” has the meaning given in paragraph 2(1) of Schedule 25A to those Regulations.”.

Amendment of the Air Quality Standards (Wales) Regulations 2010

19.—(1) The Air Quality Standards (Wales) Regulations 2010 are amended as follows.

(2) After regulation 20(8) insert—

(a) in the English language text—

“(9) The air quality plan must include an assessment of the need to apply lower emission limit values for individual medium combustion plants than those set out in Directive 2015/2193/EU 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 (“the Medium Combustion Plant Directive”) provided that, in the opinion of the Welsh Ministers, applying such emission limit values would effectively contribute to a noticeable improvement of air quality.

(10) In considering whether to impose lower emission limit values, the Welsh Ministers must take into account the results of the information exchange referred to in Article 6(10) of the Medium Combustion Plant Directive.

(11) In this regulation—

“emission limit values” has the meaning given in paragraph 5 of Schedule 25A to the Environmental Permitting (England and Wales) Regulations 2016, and

“medium combustion plants” has the meaning given in paragraph 2(1) of Schedule 25A to those Regulations.”,

(b) in the Welsh language text insert—

“(9) Rhaid i’r cynllun ansawdd aer gynnwys asesiad o’r angen i gymhwyso gwerthoedd terfyn allyriadau is ar gyfer gweithfeydd hylosgi canolig unigol na’r rhai a nodir yng Nghyfarwyddeb 2015/2193/EU Senedd Ewrop a’r Cyngor ar 25 Tachwedd 2015 ar gyfyngu ar allyriadau llygryddion penodol i’r aer o weithfeydd hylosgi canolig (“y Gyfarwyddeb Gweithfeydd Hylosgi Canolig”) ar yr amod, ym marn Gweinidogion Cymru, y byddai cymhwyso gwerthoedd terfyn allyriadau o’r fath yn cyfrannu’n effeithiol at welliant amlwg yn ansawdd yr aer.

(10) Wrth ystyried a ddylid gosod gwerthoedd terfyn allyriadau is, rhaid i Weiniogion Cymru ystyried canlyniadau’r cyfnewid gwybodaeth y cyfeirir ato yn Erthygl 6(10) o’r Gyfarwyddeb Gweithfeydd Hylosgi Canolig.

(11) Yn y rheoliad hwn—

mae i “gwerthoedd terfyn allyriadau” yr un ystyr ag a roddir i “emission limit values” ym mharagraff 5 o Atodlen 25A i Rheoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr) 2016; ac

mae i “gweithfeydd hylosgi canolig” yr un ystyr ag a roddir i “medium combustion plants” ym mharagraff 2(1) o Atodlen 25A i’r Rheoliadau hynny.”.

Name

Parliamentary Under Secretary of State

Date

Department for Environment, Food and Rural Affairs

Minister for Environment under the authority of

Date the Cabinet Secretary for Energy, Planning and Rural Affairs, one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Environmental Permitting (England and Wales) Regulations 2016 (“the principal Regulations”) provide a consolidated regime of environmental permitting in England and Wales. They replaced the Environmental Permitting (England and Wales) Regulations 2010 and its amending instruments. These Regulations amend the principal Regulations, and come into force on the day after the day on which they are made.

Part 2 of these Regulations amends the principal Regulations to add provisions relating to medium combustion plants (“MCPs”). It transposes the Medium Combustion Plant Directive, which lays down rules to control emissions of sulphur dioxide, nitrogen oxides and dust from MCPs. A MCP is a combustion plant, or a combination of combustion plants, with a rated thermal input equal to or greater than 1 megawatt but less than 50 megawatts. As such, some MCPs were already within scope of the environmental permitting regime in the principal Regulations, and in those cases the provisions inserted by Part 2 will impose additional requirements.

The amendments made by Part 2 provide that no MCP brought into operation after 20th December 2018 can operate without a permit. In relation to MCPs already in operation as at that date, those with a rated thermal input above 5 megawatts are brought within the permitting regime from 1st January 2024, and those with a rated thermal input of 1 to 5 megawatts are brought within the permitting regime from 1st January 2029. The amendments require MCPs to comply with emission limit values for sulphur dioxide, nitrogen oxides and dust, subject to specified exceptions.

It also amends Schedule 26 to the principal Regulations to remove the disapplication of the availability of enforcement undertakings in respect of offences in relation to a flood risk activity, as access to enforcement undertakings is now available under the Regulatory Enforcement and Sanctions Act 2008, and it makes a minor change to regulation 32 to amend an incorrect cross reference.

Part 2 further amends the principal Regulations to introduce provisions in relation to certain generators (“specified generators”). Generators are electricity generating combustion plants, and some will already be within scope of the environmental permitting regime. These Regulations impose additional requirements in relation to specified generators, to further limit emissions of nitrogen oxides.

Part 3 makes amendments to the Air Quality Standard Regulations 2010, and the Air Quality Standard (Wales) Regulations 2010, as part of the transposition of the Medium Combustion Plant Directive. The amendments require that when preparing an air quality plan, the Secretary of State, or the Welsh Ministers, must consider whether to include measures imposing lower emission limit values for MCPs than those set out in the Medium Combustion Plant Directive, if that would make a noticeable improvement to air quality.

Full impact assessments of the effect that the Environmental Permitting (England and Wales) Regulations 2010 and its amending instruments where appropriate will have on the costs of business and the voluntary sector are available from the Air Quality and Industrial Emissions Team at the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR or at www.legislation.gov.uk.

Two impact assessments of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector are available from the Air Quality and Industrial Emissions Team at the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR. An updated transposition note is submitted with the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

A draft of these Regulations was notified to the European Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p.1).

Title: Amendments to environmental permitting regulations to improve air quality by transposition of the Medium Combustion Plant Directive IA No: DEFRA2039 Lead department or agency: Department for Environment, Food and Rural Affairs Other departments or agencies: Department for Business, Energy, & Industrial Strategy, Welsh Government	Impact Assessment (IA)				
	Date: December 2017				
	Stage: Final IA				
	Source of intervention: EU				
Type of measure: Secondary legislation					
Summary: Intervention and Options					RPC Opinion: Green (fit for purpose)

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB 2014 prices)	In scope of One-In, Three-Out?	Measure qualifies as
£806.8m	-£209.8m	£15.9m	Out of Scope	Non-qualifying provision

What is the problem under consideration? Why is government intervention necessary?
 Poor air quality is the largest environmental risk to public health in the UK, exacerbating the impact of pre-existing health conditions, especially for the elderly and children. Government has legal obligations on air quality including reducing emissions of pollutants; meeting limits on local concentrations of pollutants; and implementing regulations on particular pollutant sources. The Medium Combustion Plant Directive (MCPD), "the Directive" will apply emission controls to combustion plants between 1 and 50MW (medium combustion plants, MCPs). MCPs are a major source of air pollutants which can cause harm to human health and at present are largely unregulated in the UK. Government intends to implement the Directive to deliver cost-effective emission reductions which will improve air quality (reducing overall emissions and local concentrations of pollution), and to avoid infraction and any associated fines.

What are the policy objectives and the intended effects?
 The objective of the measures proposed is to improve air quality. These measures will reduce emissions and concentrations of key pollutants harmful to human health and the environment. We intend to ensure that the directive is fully transposed as this will make a valuable contribution to the UK complying with the legal obligations to meet EU and internationally agreed maximum emission levels. In doing so we will also ensure that unnecessary regulatory burdens, including reporting and other compliance arrangements, are minimised.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
Option 0 - Do nothing: Continue with unrestricted use of MCPs, resulting in high levels of emissions
Option 1- Transpose the MCPD into domestic legislation, making use of available flexibilities and exemptions where appropriate, and adopt a risk based approach to permitting, compliance and enforcement. Option 1 is preferred as it will deliver significant benefits to public health and the environment - avoiding potential breach of EU and international air quality limits and standards.

Will the policy be reviewed? Yes If applicable, set review date: 12/2019					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: 0.03	Non-traded: 0.6	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence Policy Option 1

Description: Transposition of Medium Combustion Plant Directive (MCPD)

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2018	Time Period Years 15	Net Benefit (Present Value (PV)) (£m)		
			Low: 178.60	High: 2367.21	Best Estimate: 806.80

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	0.4	10.7	114.8
High	0.4	40.7	435.2
Best Estimate	0.4	19.5	211.2

Description and scale of key monetised costs by ‘main affected groups’
 For the implementation of Option 1 proposals, all monetised costs in this assessment are treated as direct costs to business. While some enforcement and administration costs will fall to regulators, we propose that they recover costs from operators through permitting and subsistence fees. Monetised costs comprise costs of making plant compliant with emission limits (abatement costs), emissions monitoring, reporting and permitting and annual enforcement fees. The full impact of MCPD applies from 2030, when all plant must meet its requirements and all Emission Limit Values (ELVs) are in force. For operators required to comply with emission limits, the present value (PV) abatement cost over the assessment period is £138.0m (2018-2032). For all MCPs within scope (also including those exempt from ELVs) additional costs faced over the assessment period include administration (£30.4m, PV), and inspections and monitoring (£42.8m, PV).

Other key non-monetised costs by ‘main affected groups’
 For some impacts evidence is not available or collecting it would be disproportionately costly. These include transitional costs such as communications, guidance, training of regulators and operators, and creating tools for permitting and monitoring. The costs are considered to be relatively small and uncertain so are not monetised.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	0.0	59.0	613
High	0.0	238.4	2483.0
Best Estimate	0.0	97.7	1018.0

Description and scale of key monetised benefits by ‘main affected groups’
 The Directive will reduce emissions of air pollutants resulting in an improvement in air quality for everyone, given that air pollution travels, and particularly for those living or working close to medium combustion plants. Monetised benefits represent the benefits of improved air quality on human health and from reduced greenhouse gas emissions. The central PV benefit is £1018m over the whole appraisal period, capturing benefits from reduced emissions of NOx (£346.7m), particulate matter known as PM or dust (£439.1m) and Sulphur dioxide (SO2) (£193.6m), and greenhouse gases namely carbon dioxide (CO2) £35.5m). Benefits relate to plants within scope of this IA (England and Wales only), but implementation of the Directive across the rest of the EU will also improve air quality in England and Wales.

Other key non-monetised benefits by ‘main affected groups’
 The monetised benefits are likely to substantially underestimate the full social benefit. Reducing emissions of air pollutants will benefit natural ecosystems, biodiversity and the wider environment which cannot be monetised. It is not possible to monetise all health impacts either. The health impacts included here purely set out the impact on mortality; however we know that there is also a significant societal cost arising from morbidity, which is largely missed from the damage costs used in the analysis. Other secondary impacts that have not been monetised include supporting innovation in abatement equipment/green technologies and revenue for monitoring companies.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
Plant numbers are uncertain: low and high estimates indicate the associated uncertainty in total compliance costs. Low and high benefits represent the uncertainty in health benefits from improved air quality (damage costs). The high NPV combines low plant numbers (low cost) with high damage cost valuation (high benefits), and the low NPV combines high plant numbers with low damage cost valuation. Full compliance with the Directive by operators is assumed.		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: 0.0
Costs 16.0	Benefits: 0.1	Net: -15.9	

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1. Executive Summary

Poor air quality is the largest environmental risk to public health in the UK, exacerbating the impact of pre-existing health conditions, especially for the elderly and children. Long term exposure reduces life-expectancy, mainly due to increased risk of mortality from cardiovascular and respiratory causes and from lung cancer. COMEAP's research notes that short-term exposure to NO₂ has been linked to some direct effects on morbidity while long term effects suggest impacts on respiratory and cardiovascular mortality, children's respiratory symptoms and lung function.¹ Air pollution also damages biodiversity and reduces crop yields.

The Government has a legal commitment to improving the air we breathe and reducing the emissions and concentrations of harmful pollutants. The Government's plan to improve air quality by reducing nitrogen dioxide levels in the UK published in July 2017 includes measures to achieve this objective.

The Medium Combustion Plants Directive ("the Directive"), which came into force in December 2015 introduces measures to reduce emissions from combustion plants with thermal rated inputs between 1 and 50MW (MCPs). These are a currently largely unregulated source of emissions of air pollutants (Oxides of Nitrogen- NO_x, PM, Sulphur dioxide- SO₂). Implementation of the Directive will reduce the levels of air pollution from such plants, improving environmental and human health. Plant owners will have to fit technology to abate emissions from their plants and will be required to regularly test emissions from their plants to ensure standards are maintained. However, we expect some plants to switch to the use of cleaner fuels instead of fitting technology to reduce emissions from their plants. The UK negotiated a number of important flexibilities to ensure no disproportionate impacts on operators and we have taken advantage of some of these where appropriate.

This impact assessment considers options for transposing the Directive. Scotland, Northern Ireland and Gibraltar are laying equivalent legislation. We have compared the baseline where no emission controls are introduced with Option 1 where the MCPD is transposed making use of available flexibilities and exemptions where appropriate and adopting a risk-based approach to permitting, compliance and enforcement.

Following the responses received on the consultation and further analysis, Option 1 is chosen as the preferred option as this will introduce the necessary level of environmental and public health protection whilst avoiding any disproportionate impacts on operators and industry. The impact assessment has been updated since the consultation to reflect the impact of changes announced by the Ofgem to the payments and exemptions they provide to embedded generators and latest advice from COMEAP on the damage costs associated with air pollutants.

There will be no transitional arrangements for biomass and district heating. In the consultation we proposed to allow transitional arrangements until 2030, but the vast majority of responses objected to this approach, pointing out that the savings to operators were much smaller than the damage to air quality caused by the additional emissions. BEIS agreed to this approach and is reviewing the impact of MCPD implementation on uptake of the Renewable Heat Incentive (RHI) and viability of existing plants under the RHI.

Plants which operate on average no more than 500 hours per annum will be exempt from compliance with emission limit values but will be required to notify the regulator if they exceed 500 hours of operation in any given year. This will have a negligible additional cost to operators and assist regulators in ensuring compliance.

The Environment Agency is appointed as the regulator in England. There was a similarly strong level of support between options A where the regulator role was split between the EA and Local Authorities, and option B, where the EA would be the sole regulator. However, we have considered that option B provides greater clarity on roles, consistency in implementation and greater flexibility for regulating mobile plants and multiple sites with a single operator. For the higher risk plants, where the impact on local air quality must be assessed to determine permit conditions, Local Authorities will be consulted. EA will consult on fees and charges to recover their costs.

The rationale for choosing Option 1 as well as the methodology used are discussed in detail in sections 6 and 7.

We intend to transpose the Directive by amending the Environmental Permitting (England and Wales) Regulations 2016² (EPR) which will result in over 10,000 plants becoming subject to emission limits. The EPR currently regulates some medium combustion plants, including those over 20MW and will therefore offer an approach to implementation, which is already well understood thus providing clarity for operators.

New plants will be required to comply with emission controls from 20 December 2018. Plants already in operation by that date will be given longer to comply with the ELVs recognising the high number of plants affected and to allow operators time to make the necessary changes. We will also allow later compliance dates for gas compressor plants supporting the national grid, where earlier retrofitting will be very difficult to achieve. We will exempt from

¹ COMEAP (2010) The Mortality Effects of Long-Term Exposure to Particulate Air Pollution in the United Kingdom. Committee on the Medical Effects of Air Pollutants. Available from: <https://www.gov.uk/government/publications/comeap-mortality-effects-of-long-term-exposure-to-particulate-air-pollution-in-the-uk>

² <https://www.legislation.gov.uk/uksi/2016/1154/contents/made>

ELVs plants which operate up to on average 500 hours per annum, because they are responsible for a very small proportion of emissions and in many cases the costs of abatement would not be justified by the emissions reduction achieved. We will also extend this exemption to 1000 hours for plants operating in an emergency when providing support for remote islands. We tested the application of the 1000h exemption in the event of exceptionally cold weather during the consultation and the findings indicate that it is prudent to retain the ability to apply this exemption where it is justified by extreme meteorological conditions; however it will not be required on a regular basis. We will be applying the flexibility for a higher NO_x ELV for engines operating between 500-1500 hours; however these engines are subject to emission controls assessed in a separate IA.

This impact assessment has been updated in light of consultation responses. The analysis has also been amended to reflect (I) updates to the damage costs associated with air pollutants from the Committee on Medical Effects of Air Pollutants (COMEAP), (II) reductions in payments (of embedded benefits) that Ofgem provide to diesel generators for supporting the national grid during peak times and (III) measures to simplify capacity market auctions by the Department for Business, Energy and Industrial Strategy. The updated damage costs result in lower health benefits from reductions in air pollutants than was previously assumed. The Ofgem change means that few diesel generators are included in our baseline compared to the pre-consultation impact assessment reducing monitoring costs.

Results for the preferred option (Option 1)

The forecasted reductions in emissions from a national level as a result of these controls are presented for the preferred option in Table 1.1, below.

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

Kt (%)	SO ₂	NO _x	PM	CO ₂
Option 1	14.5 (12%)	16.9 (3%)	2.6 (3%)	109

The full costs and benefits are presented in Table 1.2.

Table 1.2 Costs and benefits of Option 1 (£m, discounted)

2018-2032	LOW (£m)	HIGH (£m)	CENTRAL (£m)
Costs (cost to operators)			
Abatement costs	285.6	73.9	138
Administration costs	61.2	18	30.4
Monitoring costs	90.7	23.2	42.8
<i>Total</i>	437.5	115.1	211.2
Benefits (emissions reductions)			
Air Quality pollutants	595.3	2,429.30	982.4
CO2 (Traded)	0.7	2.3	1.4
CO2 (Non-Traded)	17	51.6	34.1
<i>Total</i>	613	2,483.20	1,018.00
NPV	175.5	2,368.10	806.8

*Please note any differences due to rounding.

Table 1.2 presents the costs and benefits that have been monetised. However, while as far as practicable all the impacts have been quantified and monetised, some impacts have not been quantified. The key impacts which were not quantified are the wider environmental societal benefits through improvements to ecosystems due to the reduction in emissions and some impacts on human health.

2. Introduction

Poor air quality is the largest environmental risk to public health in the UK, exacerbating the impact of pre-existing health conditions, especially for the elderly and children. Some of the health effects caused by exposure to elevated levels of pollution are outlined in Table 2.1.

Table 2.1 Health effects for very high levels of pollutant emissions

Pollutant	Health effects at very high levels
Nitrogen Dioxide (NO₂),	Collated research by COMEAP into the health impacts of NO ₂ has shown that it is reasonable to associate NO ₂ in outdoor air with adverse effects on health, including reduced life expectancy. As part of this report, it was established that there were likely to be short term and long term effects as short-term exposure to NO ₂ has been linked to some direct effects on respiratory morbidity, while studies of long-term exposure to NO ₂ report associations with all-cause, respiratory and cardiovascular mortality, children's respiratory symptoms and lung function.
Sulphur Dioxide (SO₂) and Ozone (O₃)	Sulphur Dioxide and Ozone are respiratory irritants that can cause constriction of the airways, inflammation of the respiratory tract and irritation of the eyes, nose and throat, potentially exacerbating asthma in susceptible people.
Particulates (PM, which includes PM₁₀ and PM_{2.5})	Fine particulate matter can penetrate deep into the lungs and other tissues, including the brain. Research in recent years has strengthened the evidence that both short-term and long-term exposure to PM _{2.5} are linked with a range of negative health outcomes including shortening the lives of susceptible individuals through cardiovascular disease, stroke, cancers, respiratory and other diseases.

Air pollution is measured and regulated in two different ways: by concentrations and total emissions. The Ambient Air Quality Directive (AAQD) sets limits for both short term and annual pollution concentrations. The AAQD is already transposed into law in England by the Air Quality Standards Regulations. Total emissions were first regulated by the 1999 Gothenburg Protocol, under which States agreed to cap their annual emissions of certain pollutants by 2010 as a reduction from 1990 levels. The Protocol amendment of May 2012 set more stringent targets for reducing emissions and added new limits for other airborne pollutants, as a percentage of 2005 levels by 2020.

Air quality has improved significantly over recent decades through action taken by successive governments and newer technologies. From the 1970s onwards, regulatory controls, and the development of cleaner technologies, have seen significant reductions in the main air pollutants, and national emissions of nitrogen oxides (NO_x) reduced by over 19% between 2010 and 2015.

However more action is needed to meet the UK's legal obligations to reduce emissions under the National Emissions Ceiling Directive and to meet the statutory limit values for NO₂ concentrations. In July the Government published "The UK Plan for Tackling Roadside Nitrogen Dioxide Concentrations" and announced an additional £255m for local councils to accelerate their air quality plans. Whilst the Plan notes that the dominant source of NO₂ at roadsides is emissions from road vehicles, it included transposition of the Medium Combustion Plants Directive as one of the measures that will protect public health by tightening emissions from medium combustion plants. We will also be publishing a Clean Air Strategy for consultation in 2018. This will set out how we will work towards our air quality goals, including our ambitious targets to reduce emissions of five damaging air pollutants by 2020 and 2030.

Because pollution travels with the wind, air quality is a transboundary issue which needs to be addressed at an international level, by reducing emissions from all sources. The Directive will reduce the risk to the public of being exposed to emissions from MCPs which are currently largely unregulated as these plants fall between the scope of Industrial Emissions Directive (which regulates plants and sites over 50MW) and the Eco-design Directive (which applies to certain combustion appliances not exceeding 500KW).

The EU National Emissions Ceilings (NEC) Directive is the European legislation that implements the limits agreed under The Gothenburg Protocol. The Directive initially set annual limits for each pollutant, including NO_x, which Member States had to achieve by 2010. The NEC Directive was amended in 2016 by setting 2020 ceilings (in accordance with the revision to the Gothenburg Protocol) and additional 2030 emissions ceilings - the continuing aim being to reduce the significant impacts air pollution can have by reducing domestic and transboundary emissions. The NEC Directive must be transposed by mid-2018.

The Medium Combustion Plants Directive is supported by the UK as it will introduce cost effective reductions in pollutant emissions as well as improving public health. As an indication, it will provide an estimated 39% of the action needed to reduce SO₂, 17% to reduce NO_x emissions, and 7% to reduce PM emissions to meet the 2030 national emission ceilings. The Directive also provides important flexibilities and exemptions where costs are deemed to be disproportionate, overly burdensome or pose a risk to energy security. Implementing the Medium Combustion Plants Directive will make a significant contribution towards the reductions in emissions required to meet our emissions ceilings.

Existing legislation and controls (see Figure 2.1 for overview)

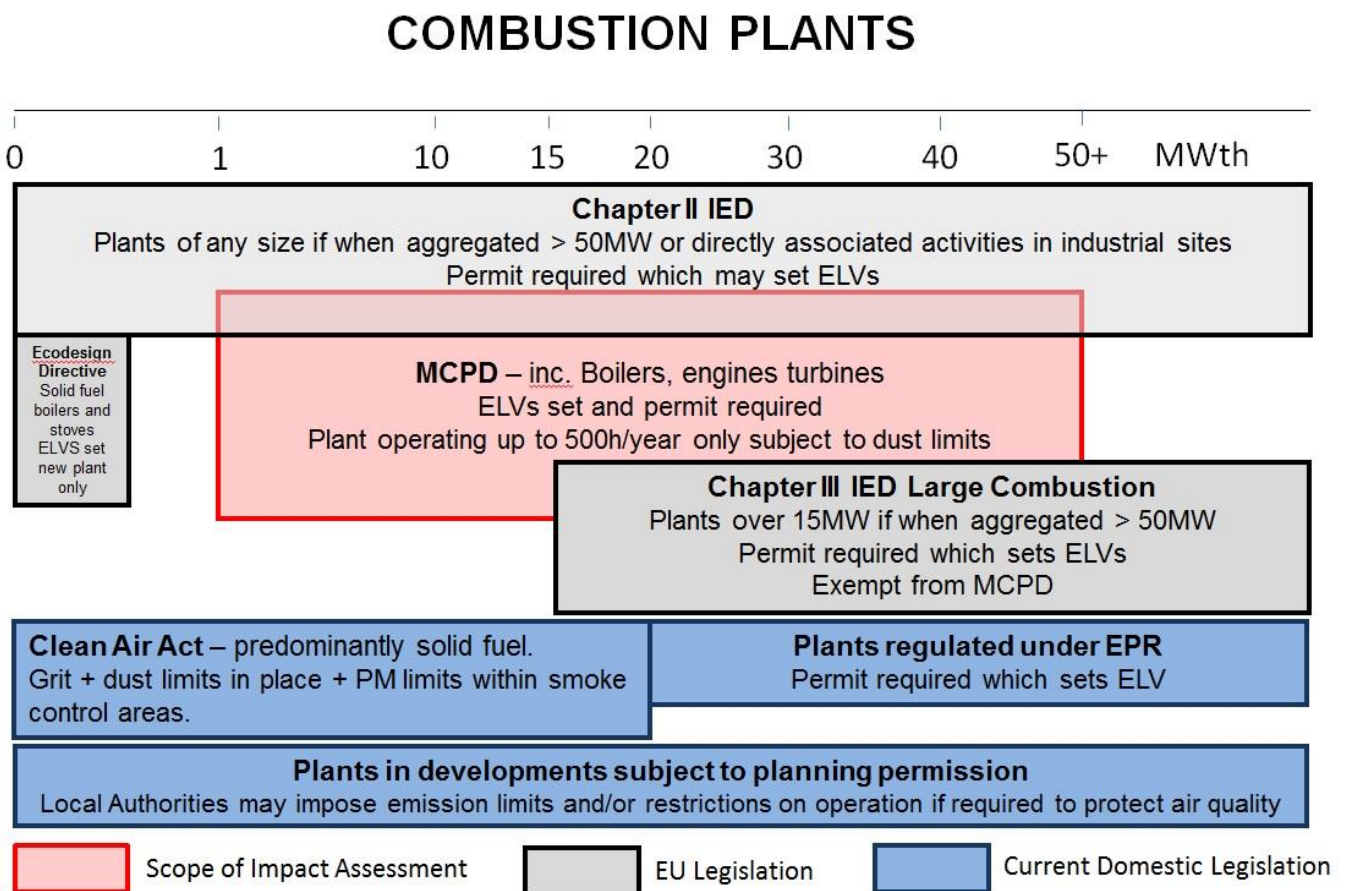
Combustion activities are a large source of air pollution and so are already subject to some emission controls. Figure 2.1 demonstrates how the proposals considered in this impact assessment fit within current EU and domestic emission controls.

Emissions from some combustion plants, including all those over 20MW, are currently regulated under the Environmental Permitting (England and Wales) Regulations 2016 (EPRs). These regulations transpose the Industrial Emissions Directive which applies to industrial sites including all sites where combustion plants have an aggregated power over 50MW, and implement domestic provisions for plant between 20 and 50MW. The EPRs requires all plants in scope to have a permit, which set controls on emissions to air and requires operators to regularly test emissions and be subject to regular inspections.

The Clean Air Act 1993 controls the emission of dark smoke and places restrictions on the type of fuel and appliance which can be used in smoke control areas. The Act also specifies minimum stack heights for some plant.

In addition, installation of combustion plants may be subject to planning permission, where their impact to local air quality is assessed. If the assessment indicates that air pollutant concentrations at a sensitive receptor (e.g. a location where people are likely to be present or a sensitive habitat) are likely to exceed those set in the Ambient Air Quality Directive, local authorities may require these plants to mitigate their impact on local air quality.

Figure 2.1 Regulatory landscape for Combustion Activities



New proposal

MCPD

The Directive (*Annex I*) will introduce a system of registration/ permitting for 1-50MW plant, emission limits for nitrogen oxides, sulphur dioxide and particulate matter and mandatory periodic monitoring of emissions by operators. MCPs typically provide power or heating for industrial sites and large buildings (offices, schools, prisons, hospitals) and include boilers, engines, turbines. Through negotiations, the UK secured a number of exemptions and flexibilities e.g. for offshore plant, remote islands when connection to the power grid fails, gas compressors supporting the National Grid and the smaller most prolific plant, to minimise burdens and mitigate impacts on energy security. The Directive also allows an exemption from emission limits for plants which operate less than 500 hours a year, given that abatement costs may outweigh the benefits provided by the small emission reduction due to the limited operating hours. In addition the Directive allows Member States to establish National systems and rules for managing permitting, enforcement and compliance.

Permitting will be required for operation of all plants in scope of the Directive. From 20 December 2018 all new plants will need a permit and from 1 January 2024 existing plants over 5MW and from 1 January 2029 existing plants between 1 and 5MW must be permitted. 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 - from 20 December 2018 for new plants, from 1 January 2025 for existing plants over 5MW and from 1 January 2030 for existing plants between 1 and 5MW. Periodic emissions monitoring will be required for all plants – for carbon monoxide and for the pollutants where emission limits apply. Several flexibilities and exemptions apply to certain types of plants, as presented on Table 6.3.

Proposed legislative approach

Option 0 is the baseline: In this scenario there is no implementation of the Directive. However, this will not result in the realisation of the health benefits expected as a result of its implementation.

Option 1: we intend to transpose the Directive by amending the existing EPRs to include a new schedule for MCPs and address any overlapping requirements in the main body of the Regulations.

Amendments to the EPRs will be designed to comply with requirements of the Directive, and plant operators will be required to hold a permit for plants which fall within the scope of the Directive.

Devolved Administrations

This Impact Assessment covers joint amendment of the EPRs by England and Wales to transpose the Directive. Scotland, Northern Ireland and Gibraltar are laying their own legislation to transpose the Directive.

2.1 Definitions

Described below are the definitions of key terms used through this document. A full glossary of terms can be found in Annex F.

New and existing plant - Definitions for new and existing plants are provided in Article 3 of the Directive. These are important as the emission limit values that apply to each, and date of application, differ between the two.

- **An existing combustion plant** is defined as one that is “*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 19 December 2018.*”
- **A new combustion plant** is defined as any plant other than an existing combustion plant i.e. any plant put into operation after 19 December 2018.

Plant type: Articles 6(3) and 6(8) allow for different treatment of plant that operates fewer than 500 hours per annum. However within this hourly limit plants can be broadly split into 2 categories based on their role for energy security and overall contribution to total emissions, so for the purpose of this assessment plants have been identified as follows.

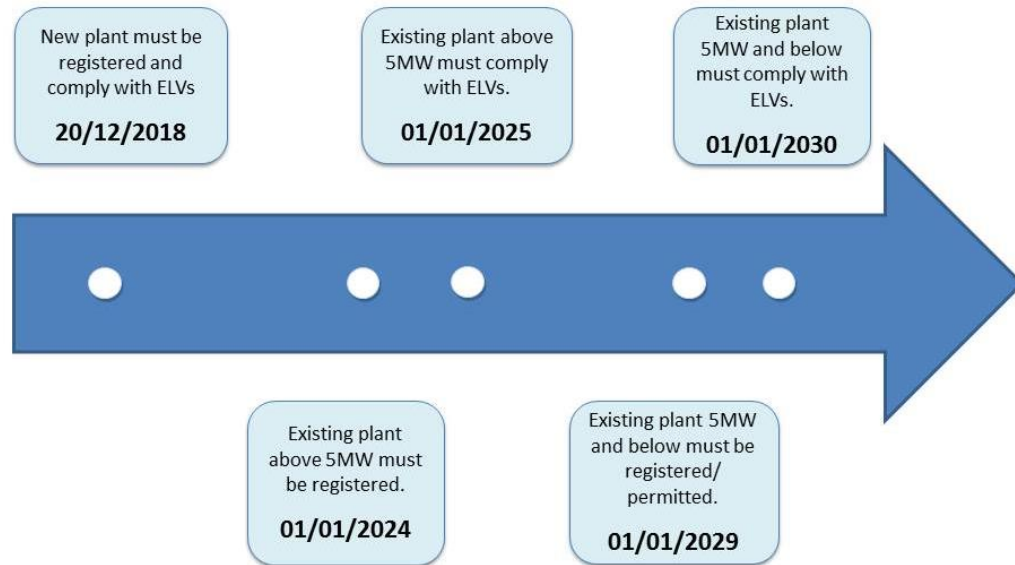
- **Working plant** = those operating on average more than 500 hours per year which are subject to compliance with emission limits.
- **Stand-by plant** = plant installed alongside working plant to provide for additional demand at peak times or in case of shut down of the main working plant, and operating fewer than 500 hours per year.
- **Back-up plant** = plant installed to provide emergency electricity generation in times of interruption to supply of mains grid electricity, operating rarely and normally much less than 500 hours per year (assumed to be less than 50 hours).

Abatement technology refers to techniques and technologies used to reduce pollutant emissions. Primary abatement prevents formation of pollutants and includes a switch to fuels which result in lower emissions, retrofitting of existing plant (e.g., by changing the burners) and selection of new plant with lower emission technology (e.g., lean burn engines). Secondary abatement removes pollutants from the exhaust gases, such as filters for dust or selective catalytic reduction to destroy NO_x.

MW; Megawatts – in this Impact Assessment unless otherwise stated this refers to Mega Watts of thermal input.

2.2 Directive Key Dates

Figure 2.2 Timescale for implementation of the Directive



2.3 Key Obligations

2.3.1 Operator

Operators are required to:

- Obtain permits for plants by set deadlines and update them as required; monitor emissions within four months of registration/permitting dates. An existing permit (e.g., issued under Chapter II of IED) can be updated or combined to include Directive requirements.
- Monitor emissions at a set frequency, ensure plants meet ELVs and keep non-compliance to a minimum.
- Record information regarding operation of plants.
- Keep records or information proving the effective continuous operation of secondary abatement.
- Keep start up and shut down periods as short as possible.
- Report certain non-compliances with ELVs to the regulator, and cease operation if requested by the regulator, when plants are causing significant degradation to local air quality.

2.3.2 Regulator

Regulators are required to:

- Set up a system for permitting or registration of combustion plants.
- Determine which permit conditions apply based on plant characteristics. Update or combine existing permits. Update the permit notified by the operator of any planned change to MCP which would affect the applicable emission limits.
- Establish a regime of compliance checks to enforce the Directive
- Publish, including on the web, a register with information about combustion plants permitted.
- Require operator to take any measures necessary to ensure that compliance is restored without undue delay.
- Order suspension of plant operation when non-compliance with emission limits is causing a significant degradation to air quality.

- Report data to Defra as required and to enable meeting reporting requirements to the Commission.
- Judge whether multiple new plants on an installation should be aggregated.
- Deal with reports from operators (e.g. lack of low sulphur fuels, non-compliance due to equipment faults) and set conditions for continued operations (e.g. adjustments to reduce emissions, time-bound exemption from compliance with ELVs).
- Set out a system for requesting data and information held and retained by operators for compliance with the Directive and in response to access to information requests by the public.

2.3.3 Member State

Member states are required to:

- Implement the Directive, and make decisions on whether and how to apply the flexibilities and exemptions allowed.
- Submit reports to the Commission with estimates of annual pollutant emissions from MCPs in 2021 (CO only) 2026 and 2031 (all pollutants).
- Report use of derogations from compliance with emission limits.
- Assess the case for applying stricter emission limits in zones which are non-compliant with the Ambient Air Quality Directive (following the provision of a report by the Commission for which no date has been set).

2.4 Plant numbers

By 2030, up to 9,400 working plants are expected to need to comply with emissions limits under the Directive with around 90% in the 1-5MW range, running in the main on natural gas, but also solid and liquid fuels, including biomass and biogas. In addition, up to 5000 plants are estimated to be stand-by and up to 9,000 backup plant, both of which are mostly exempted from Directive emission limits but nonetheless required to carry out some administrative tasks limited emission monitoring and undergo enforcement measures.

3. Problem under consideration

Addressing air pollution and its attendant health and environmental impacts requires action at local, national and international level, to address both hotspots and background pollutant concentrations. Indeed, about one third of air pollution is transboundary which requires joint action across Europe. Existing domestic legislation already places emission limits on medium combustion plants, mostly those above 20MW, while EU Ecodesign legislation applies emissions standards for some combustion plant up to 500KW. The controls assessed in this document are designed to deliver cost-effective emission reductions for plants with thermal input above 1MW and less than 50MW which will deliver improved air quality and public health benefits by introducing emission controls and driving a move towards low emissions technology.

The vast majority of plants that will fall within scope of the Directive are plant in the 1-5MW range, a significant proportion of which are low risk gas boilers with low levels of emissions.

The Directive should be transposed in a way which maximises benefits to air quality and public health. This will require plant operator's to comply with their permit conditions, while avoiding disproportionate costs to operators and regulators. In transposing Directive Member States are required to:

- a) Decide whether to implement the exemptions provided.
- b) Implement National systems or approaches in terms of permitting, enforcement and compliance.

Our proposed approach to transposition is presented in Section 6, including application of the allowed exemptions and flexibilities.

4. Rationale for Intervention

Combustion plants emit air pollutants (NO_x, SO₂, and PM) that can have a harmful impact on human health and the environment. However, plant operators are often not aware of or, necessarily impacted by these impacts. This is known as a negative externality. If combustion plants were impacted by the true cost of their operations (i.e. taking account of the cost of the pollution), they might operate in a manner more likely to benefit the environment and public health.

One of Defra's key objectives for 'Creating a Better Place for Living' is to ensure a cleaner and healthier environment, including cleaner air. In July the Government published "The UK Plan for Tackling Roadside Nitrogen Dioxide Concentrations". The rationale for intervention is reflected by the drive to deliver health and environment benefits through cost-effective improvements to air quality, ensuring operators of medium combustion plants have sufficient time to make the transition to comply with controls on their plants. In order to ensure that emissions from these plants continue to protect human health, Article 6 of the Directive requires Member States to ensure that plant operators carry out monitoring of emissions as a minimum in accordance with the requirements set out in Annex III. The health impacts are discussed in further detail in section 7.5.

Some plants, mostly those with capacities above 20MW are already subject to emission controls in the UK and in the future solid fuel plants up to 500KW will be subject to the requirements of the EU Ecodesign Directive. However, this will leave a wide regulatory gap which the Directive aims to plug. Emission controls under the UK Clean Air Act are focused on burning solid fuels in urban areas only, which is relevant only for a small minority of MCPs. Furthermore as the original Clean Air Act is now 60 years old, with the exception of smaller wood burners, the limits are such that most modern plants easily meet the requirements and therefore are not driving change towards cleaner emissions technologies. Regulation is therefore required to apply appropriate emission controls for this important source of air pollution in order to incentivise the development and uptake of cleaner technology and protect public health.

5. Policy Objectives

The policy objective is to improve air quality across the UK and protect public health. This assists in meeting both the requirements of the Ambient Air Quality Directive, which is already transposed into law in England by the Air Quality Standards Regulations, and the revised National Emissions Ceilings Directive, which we will be transposing by 1st July 2018.

Effective transposition of the Directive will also reduce the risk of infraction and, due to transboundary impacts, implementation by the rest of the EU will further improve air quality in the UK. The Directive allows a number of flexibilities, which Member States may choose to apply. It also allows Member States to determine the appropriate approach towards enforcement, monitoring and permitting. We intend to apply a number of exemptions and flexibilities to ensure transposition is not disproportionate for our operators to ensure they remain competitive with operators in other countries (our approach to applying the flexibilities is set out in Table 6.3). We will also adopt a risk based approach to enforcement and permitting to keep costs and burdens to a minimum whilst still protecting public health by improving air quality. Operators demonstrating compliance with the requirements will benefit from a light touch approach, whilst operators who fail to comply with their obligations will be subject to more stringent controls. We have consulted widely with stakeholders on our proposed approach to implementing the Directive. A summary of consultation responses and actions taken is presented in Annex E.

6. Analysis of Options

This section describes option 0 (baseline) and option 1 (Implementation of the MCP Directive in England and Wales). Under option 1, the detailed implementation approach is described, and where alternative approaches were possible, the approach selected is justified with the analysis (presented in section 8), informed by the responses to the public consultation (presented in Annex E).

6.1 Option 0: Baseline

A baseline scenario in which there is no implementation of the Directive is estimated. It is relative to this baseline that the implementation impacts are assessed. The detailed methodology for estimating the number of plants and their emissions in the baseline scenario can be found in Section 7.1, but a summary of estimated plant numbers in 2011, 2018 and 2030 is presented in Table 6.1 below.

Table 6.1 Estimated numbers of working, standby and back-up combustion plants

Plant type	2011	2018	2030
Working	9,930	9,983	9,414
Standby	4,891	5,856	5,413
Backup	8,940	8,940	8,936

The table above shows that an overall reduction in number of working plants is expected under business as usual between 2011 and 2030. This reduction reflects assumptions in the projections of energy efficiency improvements and a shift to renewable energy in line with the UK Carbon Budgets.

6.2 Option 1: Implementation of the MCP Directive in England and Wales

Under this option, the MCP Directive is implemented in England and Wales.

Error! Reference source not found. **Scope of MCPD**

Table 6.2 set out the scope and requirements in the Directive. Many of the requirements are fixed and will simply be 'copied out' into domestic transposing legislation. However as noted in Section 3, there are a number of exemptions to the directive requirements which Member States may choose to apply and areas of flexibility where Member States can implement a national system or scheme. In this section we will present the implementation approach and explain how we will be dealing with exemptions and flexibilities provided in the Directive and the rationale behind this approach. The implementation approach was informed by public consultation – we present a summary of the feedback received in the consultation and changes made to the approach in the Annex E. Other sub-options that were considered are presented and discussed in the Annex A.

Table 6.2 MCPD operator requirements and timescale of application

Average Annual Operating Hours	Plant age	Plant Size (MW)	Permit needed for operation	Applicable ELVs and deadline for compliance (see Annex II of the Directive and table 6.4 for exceptions)	Monitoring Need for CO and pollutant for which ELVs apply within 4 months of permitting and then:	
Up to 500hours	New	1-5	From 20/12/2018	Only plants using solid fuels must comply with ELVs,	From 20/12/2018	Every 1,500h of operation, or at least every 5 years.
		5-20				
		20-50				

More than 500hours	Existing	1-5	From 1/01/2029	and for dust only.	From 1/01/2030	Every 1,500h of operation, or at least every 5 years.	
		5-20					
	New	20-50	From 1/01/2024		From 1/01/2025	Every 500h of operation, or at least every 5 years.	
		1-5					
		5-20	From 20/12/2018		From 20/12/2018		Every 3 years
		20-50		As set out on Annex II of the Directive			Annually
Existing	1-5	From 1/01/2029		From 1/01/2030	Every 3 years		
	5-20						
		20-50	From 1/01/2024		From 1/01/2025	Annually	

In presenting the preferred approach we have grouped the requirements into 4 key themes:

- 1) Abatement costs – costs incurred by operators which employ abatement techniques to comply with the emission limits set out in the Annex II of the Directive for both new and existing plant
- 2) Administrative costs – costs incurred by regulators and operators for plant permits, data reporting, maintaining and updating data records.
- 3) Compliance checks – costs incurred by the regulator and operator when carrying out compliance checks.
- 4) Emissions monitoring – costs incurred by operators to meet the emission monitoring requirements in the Directive.

6.2.1 Abatement costs

The abatement costs for operators are determined according to the emission limit values (ELVs) applied and when these come into force. The Directive presents a number of options where Member States can implement ELVs that are less stringent or only apply at a later date for specific sub-categories of MCP. Our approach is to transpose all ELV flexibilities (except the cold weather, solid biomass and district heating exemptions) as set out in Table 6.3, and the impact of applying these flexibilities is presented in Table 8.15.

Table 6.3 Proposed approach for application of ELV flexibilities allowed in the MCP Directive and how they are included in the Impact Assessment

Flexibility	Proposed approach and rationale	Incorporated in analysis?
1) Exemption from Annex II ELVs for existing plant operating up to 500 hours per year as a five year rolling average	Applied in full – in line with government policy. For most plant operating a limited number of hours, compliance with ELVs is not proportionate considering the limited emission reductions achieved. If an operator exceeds 500h of operation in any year, this must be notified to the regulator.	Yes
2) Extension of time exempted in 1) above to 1000h for plant supplying heating in exceptionally cold weather.	Retain ability for Ministers to grant this flexibility in exceptional circumstances, but not expected to be used regularly. Only limited anecdotal of the need for this flexibility was received in the consultation, so it is prudent to retain the flexibility to apply it but in a way which will not make compliance checks more difficult and onerous.	No - no data is available on numbers or types of plants which will benefit from this exemption, but expected to be small and infrequent.

3) Extension of time exempted in 1) above to 1000h for plants in islands when the power supply is interrupted.	Applied in full – this is expected to be a very rare event where additional flexibility in the exemption from compliance to ELVs may be needed to allow power supply to be restored.	No – very rare event so probability and impact have not been quantified.
4) Delay in requirements for existing plant in Small and Micro Isolated Systems (SIS and MIS)	Applied in full – this would mainly concern small islands not connected to the grid and operating MCPs. We consulted with stakeholders who confirmed there are a very small number of such plants in England and Wales. The flexibility enables plants in such difficult locations longer time to achieve compliance.	No - disproportionate to estimate costs and benefits.
5) Delay in requirements for certain existing plant supplying heat to public district heating networks	Not applied – this will affect a low number of plants which would at best benefit from a 5 year delay in investment to comply with emission limits, but in return be subject to higher permitting costs. So the saving to operators would be very small and disproportionate to the impacts on air quality.	Yes
6) Delay in requirements for certain plant firing solid biomass	Not applied – this will affect very few plants which would at best benefit from a delay in investment to comply with emission limits, but in return be subject to higher permitting costs. So the saving to operators would be very small and disproportionate to the impacts on air quality.	Yes
7) Delay in requirements for certain plant used to drive compressor stations in national gas transmission system	Applied in full – this flexibility is required to allow enough time for upgrading the national gas grid, but impacts a very small number of plants (around 30). UK argued strongly for this requirement during negotiations.	No - disproportionate to estimate costs and benefits.
8) Exemption from Annex II ELVs for new plants operating up to 500 hours per year as a 3 year rolling average	Applied in full, – in line with government policy. For most plant operating a limited number of hours, compliance with ELVs is not proportionate considering the limited emission reductions achieved. If an operator exceeds 500h of operation in any year, this must be notified to the regulator.	Yes
9) Increase in NO_x ELV for new engines operating between 500-1500 hours provided they are applying primary abatement measures	Applied in full, in line with government policy (to note that this will be superseded by the additional controls on high NO _x generators, assessed in a separate IA).	Yes

Abatement technology requirements excluded from the analysis

It has been necessary to exclude some requirements relating to abatement technologies from the analysis as described below:

- The less stringent ELVs or later application of ELVs for plants firing solid woody biomass, straw, coke oven gas, heavy fuel oil, blast furnace gas, biogas; gas turbines operating less than 70% load; plant in Micro Isolated Systems (MIS) or Small Isolated Systems (SIS)³ and slow speed engines (<1200 rpm) were not incorporated into the analysis as the baseline plant estimates do not distinguish these sub-categories of plant and given that the numbers of such plant are considered to be low the impact of these exceptions is anticipated to be negligible (well within the wider uncertainties and more likely to be within the rounding differences of the results) and the resources required to incorporate these into the analysis is disproportionate. The exclusion of these exceptions means the results will very slightly over state the compliance costs and the emission reductions (benefits) of the Directive.
- The Directive requires that Member States assess the need to apply more stringent ELVs in zones or parts of zones where air quality limits are exceeded. Application of such ELVs will be informed by a report to be produced by the European Commission for which there is no publication date. Government is implementing a plan for reaching compliance with air quality limits within the shortest possible time. As a result, the number

³ Defined in Directive 2009/72/EC concerning common rules for the internal market in electricity as:

'small isolated system' means any system with consumption of less than 3 000 GWh in the year 1996, where less than 5 % of annual consumption is obtained through interconnection with other systems;

'micro isolated system' means any system with consumption less than 500 GWh in the year 1996, where there is no connection with other systems;

of plants potentially subject to more stringent ELVs will decrease over time and it is not possible to estimate the impact of this provision. Therefore it was excluded from the analysis.

- Application of fuel consumption weighted ELVs when plants use multiple fuels are excluded from analysis due to the uncertainty and complexity in establishing the range of possible fuel mixes, resulting emissions and ELVs applicable. The results of the analysis could under or over-state the compliance costs and benefits as a consequence of this are not being considered.
- Some MCPs are already subject to environmental permitting in the UK, either because they come in scope of the Industrial Emissions Directive or because they are regulated under domestic provisions (20-50MW plant) - for all these plants, there is a requirement to apply the Directive ELVs as a minimum. Plants regulated under IED are estimated to represent 5% of total MCPs but emission controls applied depend on type of industrial installation and where they are located, how they are used and number of operating hours, so it was disproportionate to review what current controls are being applied and as a result the analysis is likely to overestimate costs and benefits of implementing the MCPD.
- For plants regulated under domestic provisions (around 100 at present) it is proposed that any stricter limits currently applied for existing plant be retained because they have been proven cost effective and plant are already in compliance. For new plant, the emission limit for dust in biomass plant is slightly more stringent in domestic provisions than in the Directive, so we intend that these plants will require bespoke permits to allow application of the most appropriate ELV. All other Directive ELVs are more stringent than those currently required under domestic provisions. Due to the small number of plant, the costs and benefits of this approach have not been quantified.

6.2.2 Administrative costs

Choice of regulator and cost recovery

Member States are required to determine the regulators or competent authorities for the Directive. We consulted on whether this should be shared between EA and LAs to maintain the current status quo i.e. high risk plant regulated by EA and lower risk plant by LAs. Following the consultation we have decided that the sole-regulator will be the EA. This will result in lower transitional costs for training and development of tools to implement the Directive as well as provide greater consistency in implementation and clarity on who is the regulator.

In line with other sectors regulated under EPR, we expect that regulators will recover most of their costs from the operators in the form of permitting and subsistence fees. Costs have been estimated for this assessment however the actual fees and charges to be applied will be developed in discussion with the regulator, and subject to consultation with stakeholders. In addition, the regulator will have the following costs which cannot be recovered from operators and are not quantified in this assessment:

- a) Setting up costs – staff training and development of guidance to operators and systems for permitting, managing compliance checks and publication of the public on line register of plant as required by the Directive.
- b) Dealing with non-compliance – the proposals are designed to maximise compliance and so the costs associated with non-compliance are not quantified.

Approach to permitting

The Directive allows for a registration or permitting system to be adopted. Following consultation with regulators, we propose that MCPs will be subject to environmental permitting since this enables cost recovery in the form of a permitting charge and subsistence fees. However, we will follow a risk based-approach where, for the large majority of plants (including those exempted from compliance with ELVs), the permitting process will involve submission of the information specified in the Directive, which will automatically determine the permit conditions needed to comply with the Directive requirements. This permitting approach is not expected to create an additional burden in relation to a registration approach (other than the collection of enforcement fees) and provides clarity to operators regarding their obligations. For a small number of high risk plant, permits with bespoke conditions will be required to ensure their conditions protect local air quality. This goes beyond minimum requirements of the Directive for high risk plant but is required for compliance with air quality standards and to enable application of domestic emission controls already in force for 20-50MW plant where they are stricter than those applied under the MCPD. Where a plant in scope of the MCPD is already covered by a permit issued by the EA, the permit will be amended to ensure compliance with the MCPD. Where a plant in scope of the MCPD is already covered by a permit issued by a LA, the LA permit conditions applicable to the plant will cease to apply and the operator will be required to apply to the EA for a new permit.

6.2.3 Compliance check costs

Member States must set up a system of environmental inspections or other measures to ensure compliance with the Directive. Based on consultation with operators and regulators, routine site inspections were deemed unnecessary to enforce the Directive for all but the high risk 20-50MW (which are already subject to this type of inspection under the EPRs). During desk-based compliance checks regulators will be expected to check data and documentation submitted by the operator covering emissions testing, operation of abatement equipment and reporting of operating hours. Compliance check frequency will be tailored to plant risk, as is currently the case for activities already regulated under EPR. For the purpose of the impact assessment, assumptions were made ahead of development of the risk categorisation, which will be part of enforcement guidance and done in discussion with stakeholders.

The following 2 compliance check scenarios have been analysed:

- Scenario 1: all MCPs are subject to scheduled compliance checks supported by mandatory reporting of data to enable the checks;
- Scenario 2: all MCPs are subject to random compliance checks for which regulators request operators to submit data;

The frequency of compliance checks under both scenarios is presented on Table 6.4. Random compliance checks are assumed to be more effective to promote compliance, therefore the frequency of checks is reduced under Scenario 2. The risk categorisation and frequency of checks may be adjusted to reflect eventual certification schemes developed by industry. This is tested for Option 1 in Section 8.4 as this is a key impact of implementing the MCPD (Scenario 1 was selected as the preferred option which was used for estimating implementation costs).

Non-compliance

The burden for regulators and operators from non-compliance with the Directive is not estimated; non-compliance may result in operators moving to a higher risk category, which will lead to more frequent compliance checks, recovered through annual fees. The legislation will contain powers for criminal prosecution, but it is anticipated that these will act as a deterrent and be used only in very rare instances where operators persistently fail to achieve compliance with the Directive, particularly when this impacts on local air quality.

Member states are required to specify when non-compliance with ELVs must be reported by operators to the regulator, and how. This provision is required to enable regulators to order a plant to cease operation if it is causing significant degradation to air quality. We will restrict reporting of non-compliances with ELVs only to those which may cause a problem to local air quality. These are expected to be rare events, so its administrative cost has not been estimated.

Table 6.4 Frequency⁴ of compliance checks for the two scenarios

Checks per annum ⁵	High risk ⁶ 1 working plant ⁷	Medium risk 1104 working plants	Low risk 8079 working plants (plus those defined as back-up/stand-by)
Scenario 1 – scheduled compliance checks			
Plant required to comply with ELVs	20-50MW 1 site inspection	20-50MW 1 remote check	20-50MW 0.5 remote check
	1-20MW 1 remote check	1-20MW 0.3 remote check	1-20MW 0.3 remote check
Plant exempt from compliance with ELVs (to note the current proposal is to deem all low risk)	20-50MW 1 remote check	20-50MW 0.5 remote check	20-50MW 0.3 remote check
	1-20MW 0.5 remote check	1-20MW 0.3 remote check	1-20MW 0.2 remote check
Scenario 2 – random compliance checks ²			
Plant required to comply with ELVs	20-50MW 0.5 site inspection 0.5 remote check	20-50MW 0.5 remote check	20-50MW 0.2 remote check
	1-20MW 0.5 remote check	1-20MW 0.3 remote check	1-20MW 0.17 remote check
Plant exempt from compliance with ELVs (to note the current proposal is to deem all low risk)	0.17 remote check		

6.2.4 Emissions Monitoring Costs

Operators are required to monitor emissions every three years for 1-20MW plants and every year for plants over 20MW. The Directive also allows Member States to lower frequency of monitoring for plants which are exempt from compliance with Annex II ELVs and we intend to apply this flexibility as these plants will be operating less than 500 hours as standby only and therefore their risk to air quality will be low. Member states are required to determine the monitoring standards and we are working with industry and regulators to establish a suitable approach. For the purpose of this impact assessment the cost of emissions monitoring is estimated based on monitoring standards currently applied to plant over 50MW in the UK i.e. MCERTs. However, for the majority of MCPs (those using natural gas and gas oil) which are only required to monitor NO_x and CO emissions this standard is considered disproportionate. Therefore we are working with industry to agree less burdensome methods possibly utilising existing plant maintenance systems. For the purpose of this impact assessment we have assumed that MCERTs is required for all plant and therefore the monitoring costs are significantly overestimated.

Member States must also decide whether to require continuous monitoring. Continuous monitoring was considered expensive by stakeholders and it was felt it should not be required. However, where operators choose to use continuous monitoring it will be considered an acceptable alternative.

⁴ Frequencies are indicative

⁵ 0.5 = one check every two years; 0.3 = one check every 3 years; 0.2 = 1 check every 5 years; 0.17 = 1 check every 6 years.

⁶ For the purpose of this assessment, 20-50MW plant operating on solid fuels were assumed high risk, remaining plant using solid and liquid fuels other than gas oil were assumed medium risk, and all other plant (those using gas oil and gaseous fuels) were assumed low risk.

⁷ Number of operating plants in 2030

7. Methodology

The controls on combustion plants aim to achieve beneficial impacts for the environment and human health. The intended benefits of these controls would be delivered via reductions in emissions of air pollutants, and the costs would fall mainly on operators.

The following section sets out the methodology used to assess the impacts of implementing the MCPD. The impacts can be split into the categories summarised below, which are detailed fully in the remainder of Section 7.

The Impact Assessment has a 15 year assessment period which begins in 2018, when the first costs arising from implementation of the Directive will be incurred (transitional costs to set up the register), and involves a calculation of the total net present value for the period. This 15 year appraisal period is needed to cover full implementation of the Directive (complete in 2030). A longer assessment period was not selected due to the uncertainty in future technologies and the remaining operating life of existing plant.

From 2030 onwards, all plant in scope of the Directive will be subject to permitting and compliance with emission limit values and monitoring, so the impacts will have reached a steady state and in future years will differ only as a result of new plants replacing existing plants on reaching the end of their operating life. As such, a 2030 annualised steady state figure is presented to indicate the potential impact in subsequent years beyond the appraisal period.

Regulator costs were estimated based on the activities required for enforcement, in dialogue with the regulator– the Environment Agency.

COST IMPACTS

- **Emission Abatement Costs** – These are the costs that will be incurred by plants which will require abatement to meet the emission limits - for purchasing, fitting and operating abatement technology. (see **Section 7.2**)
- **Administrative, Monitoring and Compliance Costs** will consist of permitting, reporting, monitoring and compliance checks (inspections). These costs will fall to both plant operators and regulators; however, most of these costs will be recovered from operators. These costs will be incurred by all plants falling in scope of the MCPD and vary by type, size and complexity of the plant (see **Sections 7.3** and **7.4**). Costs relating to start-up (registration process, raising awareness for new regime), training of regulators and some of the costs of non-compliance cannot be recovered and will be funded through Defra's delivery budget.

Under the MCPD, working plants would need to comply with ELVs if necessary, and complete all of the administrative and compliance requirements. Plant exempt from ELVs (predominantly back-up and stand-by plant) will need a permit (under administration costs), monitor emissions for carbon monoxide (CO) only and be subject to compliance (inspection) checks. The distinction between new and old, and size of plant governs the date from which they have to carry out requirements (as set out in Section 6.2).

BENEFITS TO THE ENVIRONMENT AND HUMAN HEALTH

- **Monetised Benefits** – The emissions limits will reduce air pollution from MCPs. This provides monetised benefits to society, mainly as improved human health. There are also co-benefits between air quality and (GHGs) greenhouse gases (CO₂) which have been monetised and included.
- **Non-monetised benefits** – Damage costs do not capture all health benefits so there are additional health impacts that are non-monetised. In particular, morbidity impacts are largely not included within the damage costs. Furthermore, there are also wider environment benefits from reduced emissions such as improvements to ecosystems but these benefits are not possible to monetise.

The costs and benefits from changes in emissions are calculated as the difference between the implementation of the MCPD against a baseline where the Directive is not implemented. The baseline is introduced in section 6.1 and the methodology for its calculation is explained in Section 7.1. This policy ensures operators comply with relevant ELVs, fitting abatement technology where needed.

7.1 Baseline

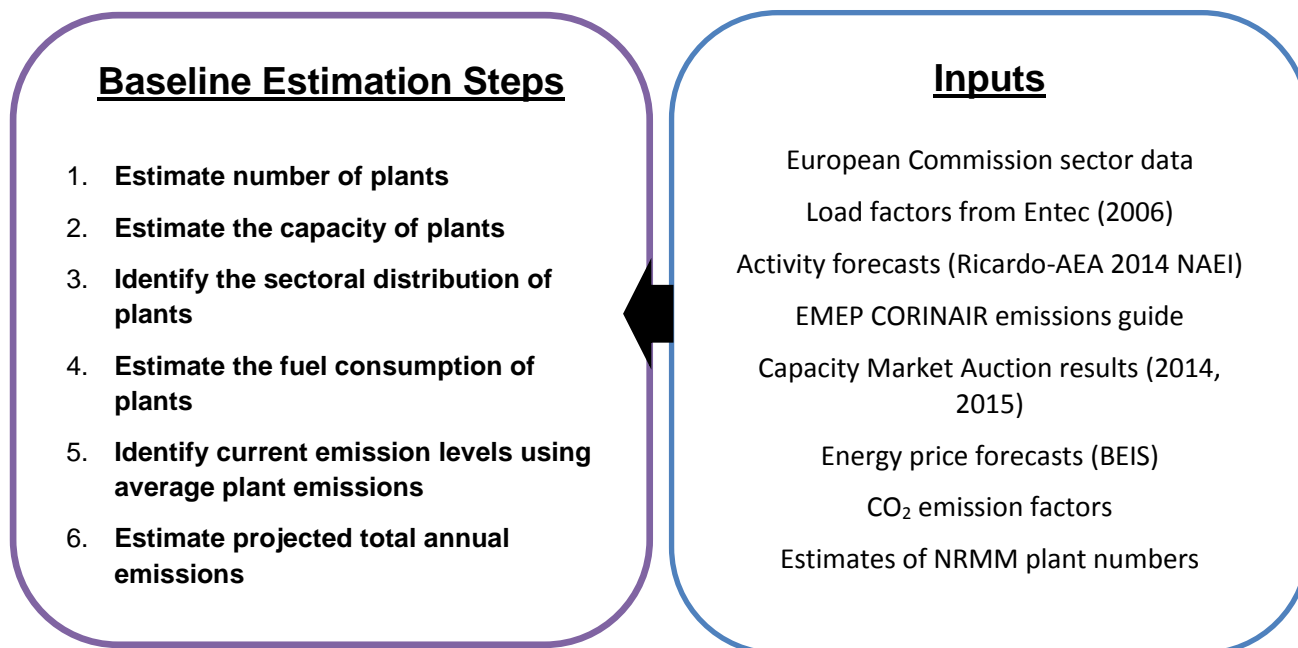
As the plants under consideration are not generally regulated at present (unless connected to an IED regulated installation or in the range 20-50MW), numbers and type of plant had to be estimated.

The estimation is based on fuel consumption and projections from the NAEI/BEIS, incorporating assumptions about size, technology type (boiler, engine, turbine), and operating hours from EU averages, supplemented by estimates of NRMM plant numbers. The majority of the analysis is based on data gathered and/or derived for the Commission MCPD study (Amec Foster Wheeler, 2014). The assumptions and data are based upon the best available evidence (Figure 7.1), however it must be noted that it came from a diverse range of sources, which introduces some uncertainty. The baseline is also adjusted to take into consideration reductions in payments (known as embedded

benefits) that Ofgem make to small diesel generators for producing electricity at peak times and BEIS measures to improve capacity markets.

The remainder of this subsection details the estimation process.

Figure 7.1 Baseline steps and corresponding inputs



Step 1: Estimate number of plants

A baseline scenario in which there is no implementation of the MCPD is estimated. It is relative to this baseline that the impacts of implementing MCPD are assessed.

The baseline scenario was created through estimation of the number of MCPs currently operating in England and Wales, with associated capacity, sectoral distribution, average operating hours and unabated emissions. National fuel consumption data and average plant size and working hours per sector were used to estimate plant numbers per fuel.

The estimated plant numbers and assumptions about operating hours and unabated emissions by plant type, size and fuel used were used to estimate total emissions from 2011 through to 2030, against which the emission reductions achieved by transposing the MCPD were calculated. Sections below detail the methodology used to calculate the base year and projected baseline demonstrated in Table 7.1. Please note that this table presents the number of plants in scope of the regulation at a given point in time; therefore, the increase in years 2024 and 2029 correspond to timings of the MCPD.

Table 7.1 Plant numbers by capacity size and category

Number of plants	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Plant numbers by capacity and age															
Existing 1-5 MW	-	-	-	-	-	-	1,155	1,110	1,071	1,031	992	953	914	875	837
Existing 5-50 MW	-	-	-	-	-	-	-	-	-	-	-	15,140	14,757	14,146	13,534
New	-	662	381	1,256	2,132	3,007	3,883	4,515	5,156	5,798	6,439	7,081	7,721	8,360	8,999
Total	-	662	381	1,256	2,132	3,007	5,037	5,625	6,227	6,829	7,432	23,174	23,393	23,381	23,370
Plant number by category															
Working	0	267					2,316	2,534				9,191	9,414	9,406	9,398
Stand-by	0	146					1232	1354				5,047	5,043	5,039	5,036
Back-up	0	248					1,489	1,738				8,936	8,936	8,936	8,936

2011 baseline

Table 7.2 provides a summary of the number of plants for the 2011 baseline estimate in scope of the MCPD in England and Wales, with a summary of the estimated emissions from these plants in 2011. From 2018, when MCPs start to register, more accurate plant numbers will become available, which will be utilised for subsequent post implementation assessments.

There is reasonable data on current plants over 20MW because they are already subject to environmental permitting in the UK and registered under the EU Emissions Trading Scheme, however these represent a small number of the plants in scope. Data on number and location of plants smaller than 20MW was very incomplete and so the number was estimated following the methodology described in this report. Additionally, much of the dataset used in this study has been based upon the Impact Assessment which underpinned the Commission MCP Directive Proposal (Amec Foster Wheeler, 2014). The public consultation was used to address the uncertainty in plant numbers, however no significant evidence was collected from stakeholders. It appears at this stage that aggregated data on the number of plants smaller than 20MW is not available, and that the assumptions presented are based on the best available evidence.

Table 7.2 Summary of England and Wales baseline dataset (estimation for 2011)

Source	Number	Total Capacity (MWth)	Fuel consumption (PJ)	SO ₂ emissions (t)	NO _x emissions (t)	PM emissions (t)
Working plants	9,930	31,102	370	31,123	38,950	5,813
Standby	4,891	15,319	9	818	1,023	153
Backup	8,940	21,233	2	723	1,550	194

2030 baseline projection

Using supplementary data from the NAEI team and European data (Amec Foster Wheeler, 2013), it was possible to split plants into size category (capacity class) by fuel type (gas, oil, solid fuels and biomass).

Less information was available for plants running shorter hours, which are categorised as standby plants. Although they are exempt from compliance with ELVs under the MCPD, these plants will face administrative and monitoring costs. Therefore, following consultation with National Grid on the capacity available in existing energy balancing market revenue streams (600MWe), specifically short run hour streams such as STOR (Short Term Operating Reserve), the figures from the European data were deemed too low for diesel and gas plants, and were updated accordingly. This existing capacity was sense checked with results of 2014 and 2015 Capacity Market auctions where plants bidding identified as existing or new build. The vast majority of these are assumed to be 1-5MW, which is typical of plants with shorter operating hours.

The total number of plants in operation was projected to 2032 using growth figures for each fuel type derived from data provided by the NAEI team (in 2013). A growth threshold of 10% was assumed; meaning that a change in activity less than 10% could be met by the existing number of plants as part of the flexibility in their working output capacities. A change beyond the threshold would result in a decrease or increase in number of plants needed.

Whilst the main dataset has been derived for three main capacity classes, data from the NAEI team was used to help categorise the plants. The number of gas and diesel engines in the capacity market in 2018 and 2019 was estimated using auction data from 2014 and 2015 and the model's assumptions on the proportion of plants in each size category (i.e. 1-5MW, 5-20MW, 20-50MW) and on the average plant size in each of these categories.

Plant growth for 2020 was estimated using BEIS's (then DECC) assumptions on the future growth of the capacity market (central scenario). These assumptions were produced before the OFGEM embedded benefits announcements and BEIS changes to the capacity markets.

The decision to reduce the embedded benefits will affect the generation mix of new capacity over the assessment period. As a result, the growth of diesel and gas engines in the capacity market has been revised down. This impact is estimated based on the difference between the 'status quo' (i.e. the current arrangement) and the announced change. The new capacity of reciprocating diesel and gas engines were revised down by 70% up to 2026 and 90% thereafter (2027-2032) relative to the estimates published in the consultation IA. The BEIS change to the capacity markets is likely to have a much smaller impact. The number of new gas and diesel engines in the capacity market has been further adjusted to reflect the policy change.

In addition, further analysis was performed on non-road mobile machinery (NRMM) plants, as it was identified that some of them would not be captured by estimations of plant numbers based on NAEI fuel consumption data. This led to the addition of 230 working plants in the 1-5MWth category in 2030, 90% of these plants being projected to be diesel engines.

Incorporating the evidence specified and with additional consultation with stakeholders, it is therefore estimated that in 2019, there will be around 146 standby plants in scope of the regulation, which increases to around 5,000 by 2030.

It is also estimated that by 2030 there will be up to 8,936 back-up plants based on industry consultation throughout the appraisal period.

Under this regulation, back up and standby plants will need a permit, face monitoring for CO and will be subject to compliance (inspection) checks. The rest are assumed to be working plants.

The projected number of plants and their age was based on estimating the renewal rate associated with an estimated lifetime of 36 years. Lifetime was assumed to be twice the average plant age (18 years) as indicated by data from the consultation. This approach resulted in an estimation of 33% of plants classified as new and 67% as existing in 2030 for working plants as categorised by the MCPD definition.

The forecast dataset for working plants for 2030 is presented in Table 7.3 separating the number of new and existing plants.

Table 7.3 Summary of England and Wales baseline working plant dataset (projection for 2030)

Numbers of existing plants	Numbers of new plants	Total Capacity (MW)	Fuel consumption (PJ)	SO ₂ emissions (t)	NO _x emissions (t)	Dust emissions (t)	CO ₂ emissions (t)
6,353	3,061	29,133	346	23,047	39,491	4,521	18,567,224

This table shows that an overall reduction in number of working plants and emissions is expected under business as usual between 2011 and 2030. This reduction reflects assumptions in the projections of energy efficiency improvements and a shift to renewable energy in line with the UK Carbon Budgets.

Step 2: Estimate the capacity of plants

The estimation of the total capacity of combustion plants has been undertaken using the EU average capacity per plant shown in Table 7.4 below⁸, multiplied by the numbers of projected plants in 2030. The average plant size in each capacity class was determined from complete data gathered from Member States both on numbers of plants and the capacity per plant in Amec Foster Wheeler (2012) and the more recent study published in February 2014 from the European Commission. The EU averages and data sets include Member States who already regulate MCPs.

Table 7.4 Assumed average capacity per plant

Capacity Class	Assumed EU average plant capacity (MW)
1-5MW	2.4
5-20MW	9.5
20-50MW	29.5

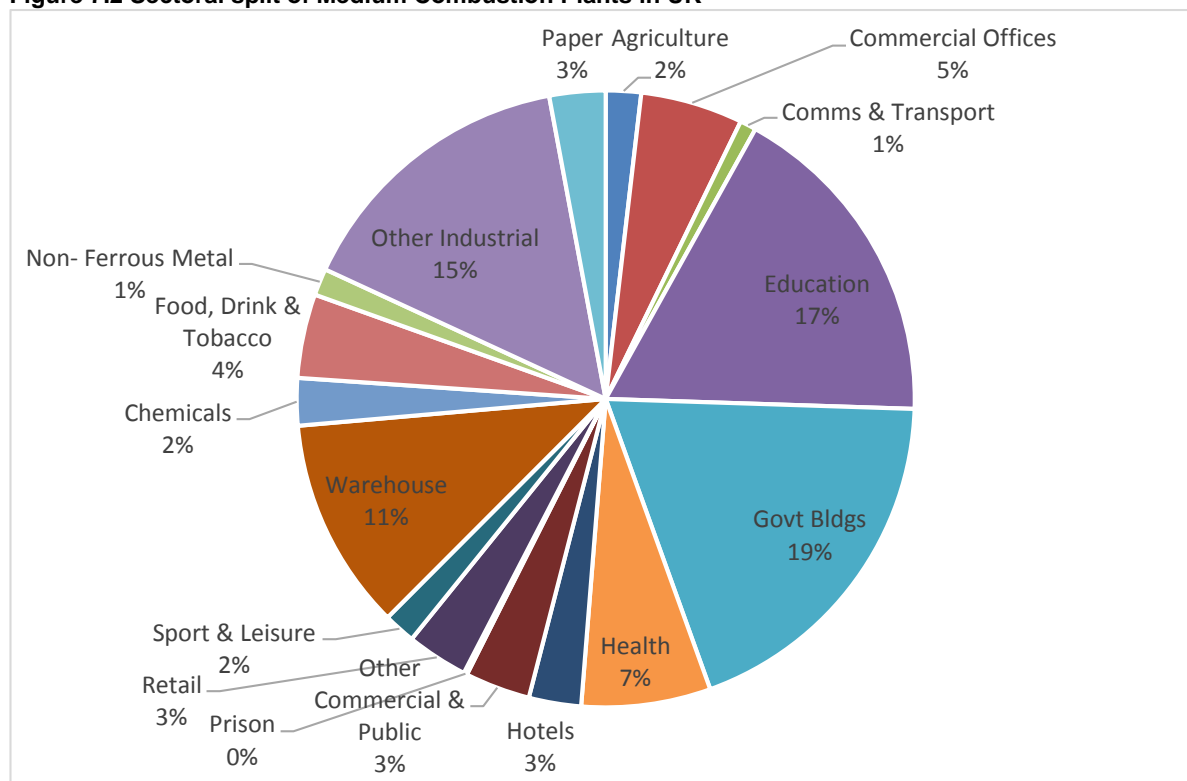
For working plants, an additional sensitivity scenario has been performed to demonstrate the impact of varied numbers of plants. An upper estimate for plant numbers is estimated by applying the bottom end of each capacity range (i.e. 1, 5 and 20MW) as more plants would be needed to keep the capacity consistent. The lower estimate for plant numbers has been estimated by applying the top end of each capacity range (i.e. 5, 20 and 50MW) as higher capacity per plant would result in fewer numbers of overall plants. This is presented towards the end of the results section.

Step 3: Identify the sectoral distribution of plants

Information on the number of MCPs operating in the UK across different business sectors was developed in collaboration with Ricardo; this is illustrated in Figure 7.2. This information was used to develop the assessment on distributional effects, as presented later in this report. Section 11 details the business impact assessment.

⁸ Amec Foster Wheeler (2012)

Figure 7.2 Sectoral split of Medium Combustion Plants in UK



Source: Ricardo-AEA, 20 October 2014.

Step 4: Estimate the fuel consumption of plants

Total fuel projections and capacity etc. are used to estimate plant numbers as above. Once plant numbers are estimated, their fuel consumption must be estimated in order to calculate emissions.

Fuel consumption has been estimated by using:

- Projected number of plants as estimated above, average capacity data from the Commission study, and;
- An assumed average load factor of 37% under 8,760 hours i.e. 3,241 hours per year

The average load factors were calculated using the same data regarding utilisation of MCPs in different industrial sectors used by Ricardo to derive the initial plant numbers. This approach assumes the emission factors remain constant over time as there is no reason for this to change under business as usual (BAU).

Step 5: Identify current emission levels

Current annual emissions from MCPs in the UK have been derived based on assumed operating hours and emission rates from these plants. These emissions are based on a combination of the “general case” ELVs developed and applied in the Commission study (essentially the maximum values applied to national legislation across Europe), emission factors derived from the EMEP CORINAIR emissions guidebook (primarily for biomass SO₂ emissions) and data that have been returned by stakeholders as part of the informal consultation for this study.

It should be noted that natural gas boilers are the largest and most common contributors to NO_x emissions from MCPs. As existing and new plants have different ELVs, the split was done for these two categories separately. Information is based on real plant performance, and what percentages of each type of plant (new/old and size) have BAU emission levels already below the MCPD ELVs. The data was collated in 2014, and assumed to apply for all years 2018-2032 as without MCPD. Annex B provides the number of each abatement technology actually fitted by 2030 to plant that need to abate in order to meet ELVs and the scale of how many are already compliant with emissions limits. This is also introduced further in section 7.2.

Additionally, consultation with industry identified that for gas standby plants; there are many examples of plants operating higher than the base case ELV proposed in the MCP Directive. In order to correct for this, 20% of gas engines and turbines are assumed to have higher base case emission of 1500mg/Nm³. This is a conservative approach as on average, gas emissions are typically lower.

Step 6: Estimate total annual emissions

Base case emissions have been estimated based on projected fuel consumption, the emission levels described above and application of specific flue gas volumes.

These basecase emissions are demonstrated in Table 7.5 below.

Table 7.5 Basecase emissions of all plants under the MCPD

	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Quantity SO₂ (t/yr)	23,862	22,342	22,050	21,757	21,464	21,172	20,879	20,893	20,893	20,893	20,893	20,620	23,316	23248	23,180
Quantity NO_x (t/yr)	37,183	36,605	36,222	35,839	35,456	35,074	34,691	34,427	34,254	34,081	33,908	33,735	39,581	39408	39,236
Quantity PM (t/yr)	4,460	4,186	4,127	4,069	4,010	3,952	3,893	3,888	3,878	3,867	3,856	3,846	4,576	4565	4,554

The results section presents the impact of the controls on combustion plants on emissions reductions. This impact is additional to existing legislation such as the Gothenburg Protocol, EU legislation and UK legislation.

7.2 Abatement Costs

The base case emission levels for each capacity class, fuel and combustion plant type are compared against the scenario limit values to determine the required emission reductions. This indicates whether additional abatement measures would need to be implemented in order to meet the scenario limit values.

Abatement costs come from the best available evidence sourced by Amec Foster Wheeler, which includes the recent Amec Foster Wheeler study for the Commission (Amec Foster Wheeler, 2014). The modelling identifies the most suitable abatement measure for each sub-group of plant. Suitability for each sub-group depends on the necessary emissions reduction required for each pollutant, the type of combustion plant technology (boiler, engine, or turbine), whether it is new or old, and its fuel type and capacity class. The study considers both primary abatement (such as cleaner burners or fuel switch) and secondary abatement measures (e.g. SCR, SNCR, etc.). Annex B presents the methodology in further detail with the list of abatement measures and associated uptake frequency. The summary in the results section presents this on a per plant basis.

Plants that are required to change their behaviour in order to comply with MCP have all been assumed to fit the most cost-effective abatement technologies or switch to cleaner fuel to meet ELVs. Please see Annex D for details supporting this assumption. The number of MCPs potentially affected is presented in Table 7.6. Not all of the plants will need to fit abatement or switch fuel as some are able to comply with the MCP ELVS already under business as usual, so for those plants the compliance costs are zero in the averages and year-on-year impacts (Annex B details the estimated scale). As discussed in the remainder of this section, they will nonetheless incur admin (registration, reporting etc.) and monitoring costs.

It is possible for plants (and units) with an input of less than 50MW to be covered by the IED in situations where the aggregated capacity on site is more than 50MW or if they are "directly associated activities with a technical connection" to other IED activities. Exact data on the numbers that are "directly associated" in the UK are not readily available. We have included an approximate estimate based on findings in Amec Foster Wheeler (2013) (5% of 1-5MW, 10% of 5-20MW and 40% of 20-50MW) for use in the administrative burdens assessment as it is assumed that they will incur lower costs due to the plant already being covered by a permit. (See impacts for administration burden in section 7.3).

Table 7.6 Number of MCPs affected by size and type and their share as IED installations (2030)

Capacity	Turbines	Engines	Boilers	Total	Share of total	Proportion of MCPs that are directly associated to an IED installation	Number of IED associated plants
1-5 MW	41	15,199	10,965	26,204	95%	5%	1,310
5-20 MW	57	323	1,101	1,482	5%	10%	148
20-50 MW	2	1	13	16	<1%	40%	7
Total	100	15,523	12,079	27,702			1,465

However, abatement costs are assumed to still be incurred as, whilst a plant may be included in a permit, it does not necessarily have to meet any minimum ELVs. If there are instances where directly associated MCPs are set ELVs then the results of the analysis may be over-estimated, depending how strict those ELVs are.

Some types of plant, namely natural gas boilers are assumed to reach compliance with the ELVs set and therefore do not face the cost of abatement. For a small number of plants, they can meet limits by just switching fuel. The cost of the switch is included in the analysis.

Annex B lists the cost of abatement technology considered in this study, along with the number of working plants that will need to fit each abatement technology in 2030 to comply with MCP. Section 8.3 in the results section presents the associated present value costs.

7.3 Administrative costs

Administrative burden

The permitting, compliance check and reporting elements set out in Articles 5, 8 and 11 of the Directive will result in a range of one-off and recurring activities by regulators and MCP operators. Costs associated with different elements of administrative burden will depend on the actions required, the number of MCPs affected for each action, and the associated timing, frequency and level of expertise (tariff per hour) required in those actions.

Plants that are estimated to need a bespoke permit include:

- 20-50MW plant using solid fuels
- Plants in non-compliant zones or part of zones

All other plants need a standard permit. MCPs that fall under the 500 operating hours' exemption are required to record hours of operation. The administrative cost of this has been considered in all scenarios run by the model.

The complexity and consequent time estimated for issuing a bespoke permit is higher than standard registration. The costs are therefore higher for bespoke permits.

In instances where existing MCPs are already covered by an IED permit, costs associated with record keeping and compliance check requirements are assumed to be covered under the business as usual administrative costs. For permitting related activities, 70% of costs are assumed to be covered by business as usual administrative burdens, as the majority of the information required in the Annex I would have been already provided in the permit and so be readily available.

When available, assumptions on administrative costs are based on estimates provided by the Environment Agency, the appointed regulator. In other cases, costs are based on estimated time required to carry out the tasks (Amec Foster Wheeler estimates) and tariffs per hour estimates.

Key assumptions used to calculate tariff per hour are summarised in Table 7.7 and have been validated with regulators. These have been uplifted to 2014 prices using the GDP deflators available from HM Treasury. Non-wage costs include all costs that companies pay when they employ staff in addition to the wage (e.g. pension contributions, benefits in kind paid by the employer etc.). Overhead costs are other costs such as office space, laptops, equipment, etc.

Table 7.7 Tariff per hour (2014 prices)

Elements of total tariff	Public administration	Energy sector	Source
Hourly wage	15.34 £/h	16.93 £/h	ONS UK. Patterns of Pay: Results from the Annual Survey of Hours and Earnings (ASHE), 1997 to 2012; table: Full-time employees' pay by industry sector (SIC 2007)c, United Kingdom, April 2008 - 2012; data: Median hourly earnings excluding overtime (£); sector - Public administration and defence; compulsory social security and Electricity, gas, steam and air conditioning supply, 2012p
Overhead costs per hour	30%	30%	Amec Foster Wheeler assumption and ASHE
Non-wage costs per hour	30%	30%	Amec Foster Wheeler assumption ⁹
Total tariff per hour	£24.25	£26.76	

⁹ Based on Eurostat (2015): Labour cost, wages and salaries, direct remuneration (excluding apprentices) - NACE Rev. 2 [lc_ncost_r2]. According to this, in the UK 2012 total labour cost was higher than wages and salaries by 27% in the electricity, gas, steam and air conditioning supply sector and by 29% in public administration and defence; compulsory social security.

A list of activities associated with administrative burden imposed on operators and regulators by the Directive including estimated time required to carry out the tasks is detailed in Annex C of this document, where the key categories of activity per plant are listed.

Where ranges are presented, the specific hours within the range depend upon whether bespoke or standard, size, and whether new or old plant.

One-off (costs provided by the EA)

- Permitting: notification to the EA by operator and production of a permit, depending on plant type and risk category (costs per plant):
 - High risk plants (bespoke permit including dispersion modelling): **£5,500**
 - Low risk plants (standard permit): **£412**
 - Back-up and stand-by plants (exemption permit): **£113** and **£169**
- Development of the MCP register by the Environment Agency: **£380k**. This is considered a transitional cost in the analysis.

Recurring (costs based on Amec Foster Wheeler estimates)

- Data reporting¹⁰. **2.5 – 50 hours for operators, and 1-25 hours for regulators.**
- Record keeping. **7.5 hours for operators.**
- Reporting: three reports to the Commission (2021, 2026 and 2031). **Regulator 37.5 hours.**

The Directive requires three reports to be submitted to the European Commission over the course of 10 years. Associated costs were assumed to be spread equally over this time period. No explicit cost estimates were developed for notifications of malfunctions and planned changes, as the potential number of MCPs affected is highly uncertain. However, in both instances the additional administrative burden costs are likely to be very small and will fall to Defra and the regulator.

Additional administration estimation assumptions:

The administrative costs are based on a paper-based communication channel between the regulator and operator. It is likely that an online system would be in operation which is likely to be less costly and therefore the costs included in this assessment should be considered the maximum (worst case). If an operator is responsible for multiple MCPs of the estimated average size, the administrative costs would scale up proportionately.

The regulator may seek to develop a centralised and digital based central portal by the time the MCP directive comes into force. This approach would make data more readily available, to meet publication and reporting requirements in the Directive. This approach would deliver savings in administration costs for regulators when processing permit applications, and may reduce administration costs for industry.

Compliance Checks

In the context of compliance checks (i.e. inspections) administrative burden was estimated in accordance with different approaches:

- Approach 1: all MCPs are subject to scheduled compliance checks supported by mandatory reporting of data to enable the checks;
- Approach 2: all MCPs are subject to random compliance checks for which regulators request operators to submit data;

Non-compliance

The burden for regulators and operators from non-compliance with the Directive is not estimated; non-compliance may result in operators moving to a higher risk category, which will lead to more frequent compliance checks, recovered through annual fees. The legislation will contain powers for criminal prosecution, but it is anticipated that these will act as a deterrent and be used only in very rare instances where operators persistently fail to achieve compliance with the Directive, particularly when this impacts on local air quality.

Member states are required to specify when non-compliance with ELVs must be reported by operators to the regulator, and how. This provision is required to enable regulators to order a plant to cease operation if it is causing significant degradation to air quality. We will restrict reporting of non-compliances with ELVs only to those which may cause a problem to local air quality. These are expected to be rare events, so its administrative cost has not been estimated.

¹⁰ The directive requires record keeping for at least 6 years and data reporting will be required for compliance checks.

Table 6.4 in Section 6.2 outlines the compliance (inspection) check approach, and how it depends on the risk categorisation of the plant. The underlying assumptions on hours and activities are set out in the table in Annex C. After consultation, scheduled compliance checks (Approach 1) were selected as the preferred approach.

Summary of administration and compliance check costs

Table 7.8 presents total one-off upfront costs of administration and compliance (inspection costs). Of these costs, 61% are incurred by the operator while 39% are directly paid by the regulator. The regulator may recover the costs incurred through fees and charges levied on the operator.

Table 7.8 One-off administrative costs to operators and regulators for working and standby plants (£k, 2014 prices)

One-off administrative burden costs, £k 2014			Equivalent annual costs 2030, £k 2014		
MCP operators	Regulators	Total	MCP operators	Regulators	Total
2,560	1,705	4,265	222	148	370

Table 7.9 and Table 7.10 show the recurring, annualised administration cost faced by each plant size in 2030, when the legislation is fully in place. Table 7.9 presents the costs of inspections and remote checks for each scenario, based on the previous assumptions on frequency, required time and tariff per hour. Table 7.10 presents the other administration costs that contribute to the total overall admin burden by plant size.

Table 7.9 Annualised inspections and remote checks costs in 2030 by plant size (£k, 2014 prices, discounted).

Capacity (MW)	Annual inspections and remote checks burden - Approach 1			Annual inspections and remote checks burden - Approach 2		
	MCP operators	Regulators	Total	MCP operators	Regulators	Total
1-5	0	1,064	1,064	0	457	457
5-20	0	64	64	0	24	24
20-50	0	1	1	0	0	0
Total	0	1,128	1,128	0	481	481

Table 7.10 Annualised other administrative costs (without inspections and remote checks) in 2030 by plant size (£k, 2014 prices, discounted)

Annual administrative burden (without inspections and remote checks)			
MCPs size	MCP operators	Regulators	Total
1-5 MW	4,594	675	5,269
5-20 MW	297	43	341
20-50 MW	3	1	4
Total	4,894	720	5,614

The preferred inspection approach is scheduled checks i.e. Approach 1. This approach imposes an administrative burden on the regulator which may be passed on to operators in the form of higher charging and permitting fees.

Please note that the average includes all plant (working, back-up and standby in 2030). As such, back-up and standby plant which are exempt from compliance with ELVs would pay below the average, working plant requiring a standardised permit a small multiple above the average, and plants requiring a bespoke permit potentially a multiple of the average. This is because of the level of complexity and consequent effort for compliance checks, reporting, and other administration differs by plant category.

We propose charging operators appropriate fees to recover regulator costs, which is consistent with the Environmental Permitting Regulations and other cost recovery schemes, thus avoiding additional burdens on public finances.

As an indication, the authority will charge an upfront and annual subsistence fee; to recover the regulator costs outlined above, where up front could cover the one-off and annual subsistence the recurring amount. The specifics of the charges will fall under the remit of a separate review Defra is conducting into local authorities recharging structures.

For the estimation in this impact assessment, all costs to regulators are considered direct costs to business as per BEIS guidance on fees and permitting. This is detailed in the EANCB section (Section 11.3).

The one-off cost of setting up the register is considered transitional and outlined in the front sheets. The other transitional costs are not quantified in this impact assessment as it was deemed disproportionate to conduct primary research and obtain estimates given the relatively small expected impact. They include communications, guidance, training of regulators and setting up tools for permitting and carrying out compliance checks.

Guidance will be developed by the EA as part of their role in support of Defra policy, and we are working with trade bodies and regulators to raise awareness, and familiarity, and ensure operators are aware of the requirements and guidance.

7.4 Monitoring costs

In order to ensure that plants would comply with the advised ELVs and continue to protect human health, Article 6 of the Directive requires Member States to ensure that MCP operators carry out monitoring of emissions in accordance (as a minimum) with the requirements set out in Annex IV. We are applying the monitoring frequencies as set out in

Table 6.2, which meet the requirements of Annex IV of the Directive.

The proposed monitoring costs are estimated based on the number of MCPs affected, pollutants monitored and data on monitoring costs. The type of pollutants to be monitored by MCP operators depends on whether an ELV is set down in Annex II for the plant concerned. Overall:

- Natural gas fired plants (engines, gas turbines and other plants) are required to monitor NO_x emissions only;
- Plants fired by gaseous fuels other than natural gas are required to monitor NO_x and SO₂ emissions only; and
- Plants using other fuels (liquid or solid depending on the type of MCP) are required to monitor NO_x, SO₂ and particulate matter.
- Standby plants using biomass and other solid fuels are required to monitor PM only
- CO monitoring is required for all plants including those exempt from meeting emissions limits under MCP.

Information on the number of MCPs estimated to be affected per capacity band, type and frequency of monitoring required is summarised in Table 7.11.

Table 7.11 Monitoring requirements and assumptions (number of plants in 2030)

Capacity	CO and NO _x emissions (natural gas fired plants)	CO, NO _x and SO ₂ emissions (plants firing gaseous fuels other than natural gas)	CO, NO _x , SO ₂ and PM emissions (plants firing other liquid and solid fuels)	Frequency	CO and PM emissions (biomass and other solid fuels standby and back-up)	CO emissions (gaseous and liquid fuels standby and back-up)	Frequency
1-5 MWth	6,792	60	1,647	Every 3 years(1)	210	17,726	Every 5 years(1)
5-20 MWth	774	7	123	Every 3 years(1)	36	541	Every 5 years(1)
20-50 MWth	9	0	1	Annually	0	5	Annually*

*Biannually and triennially will be considered for the final implementation.

Information on the costs of monitoring and meeting MCERTS was provided by an MCERTS accredited monitoring consultancy (anonymous for commercial confidentiality) and was deemed reasonable by regulators and operators engaged. MCERTS is the UK Monitoring Certification Scheme for Environment Agency of England (EA) & Natural Resource Wales (NRW). It provides the framework for businesses to meet quality requirements. Compliance with MCERTS gives the EA confidence in the monitoring of emissions to the environment.

The monitoring costs cover the sampling by an accredited UK monitoring company and provision of an emissions monitoring report to the operator. These monitoring costs and the main underlying assumptions are detailed in Table 7.12.

Table 7.12 Monitoring cost data and assumptions (£)

Capacity (MW)	NO _x , SO ₂ & PM monitoring costs (£, 2014 per activity)*	NO _x & SO ₂ monitoring: share in total costs**	NO _x & SO ₂ monitoring costs (£, 2014 per activity)	NO _x monitoring: share in total costs***	NO _x monitoring costs (£, 2014 per activity)	Additional costs of monitoring CO (£, 2014 per activity)****	Assumptions
1-5	£2,133	75%	£1,600	50%	£1,066	£600	Assumed average plant size of 3MW, 1 hour of measurements for NO _x and SO ₂ , 3 samples for dust and

							other parameters also measured (oxygen, temperature and pressure).
5-20	3,555	75%	£2,666	50%	£1,777	£600	Assumed average plant size of 12.5MW, 2 hours of measurements for NO _x and SO ₂ , 3 samples for dust and other parameters also measured (oxygen, temperature and pressure).
20-50	6,297	75%	£4,723	50%	£3,198	£600	Assumed average plant size of 35MW, 4 hours of measurements for NO _x and SO ₂ , 3 samples for dust and other parameters also measured (oxygen, temperature and pressure).

* Independent estimate (2013). Figures provided by MCERTS accredited monitoring consultancy (anonymous for commercial confidentiality).
 **Plants fired by gaseous fuels other than natural gas are required to monitor NO_x and SO₂ emissions, in which case 75% of the costs are assumed.
 ***For natural gas fired plant only monitoring of NO_x is necessary, in which case only 50% of the costs is assumed.
 ****Amec Foster Wheeler assumption - refers to the cost of monitoring CO simultaneously with the monitoring of the other pollutants.
 The plants already covered under an IED permit are assumed to still be required to carry out emissions monitoring activities under the Directive as they do not necessarily have to be monitored under business as usual.

The figures should be interpreted as a maximum cost, because MCERTS was developed for larger, more complex plants than those under consideration in this impact assessment. At present there is no viable alternative however. industry may seek to develop lower cost methods which are acceptable to meet standards under the requirements of MCPD.

The monitoring costs also reflect the fact that most plant will determine SO₂ emissions from fuel sulphur content rather than monitoring.

Table 7.13 below demonstrates the annualised monitoring costs for each plant type. These costs are from 2030 when all stages of the MCP Directive are implemented. All working plants would be affected, whereas standby and backup plants are required to monitor for CO, and only standby plants fired with solid fuels are required for PM as well as CO emissions.

Table 7.13 Total annual monitoring costs to operators including CO for 2030 (£k, 2014 prices)

Capacity (MW)	Working natural gas fired plants, CO and NO _x	Working plants fired by gaseous fuels other than natural gas, CO, NO _x and SO ₂	Working plants fired by other solid or liquid fuel, CO, NO _x , SO ₂ and PM	Standby plants firing solid fuels CO and PM	Standby plants firing gas and liquid fuels, CO	Backup plants firing gas and liquid fuels, CO	Total
1-5 ⁽¹⁾	3,735	43	1,485	70	1,055	1,072	7,461
5-20 ⁽¹⁾	607	7	169	17	65	0	866
20-50	36	0.4	10	1	1.6	0	48
Total	4,378	51	1,664	88	1,121.60	1,072	8,374

Monitoring costs occurrence frequency assumed to be 0.33 per year for working plants sized 1-20MW and 1 for working plants sized 20-50MW. For standby and backup plants, the frequency is assumed to be 0.2 per year for plants sized 1-20MW and 0.5 for plants sized 20-50MW. Table 7.14 presents this per plant on an annualised basis.

Table 7.14 Per plant annual monitoring costs from 2030 to operators including CO (£k, 2014 prices)

Capacity (MW)	CO and NO _x emissions (natural gas fired plants)	CO, NO _x and SO ₂ emissions (plants firing gaseous fuels other than natural gas)	CO, NO _x , SO ₂ and PM emissions (plants firing other liquid and solid fuels)	CO and PM emissions (biomass and other solid fuels standby)	CO emissions (gaseous and liquid fuels standby and back-up)	Frequency
1-5	0.5	0.7	0.9	0.3	0.1	Every 3 years ⁽¹⁾

5-20	0.8	1.1	1.4	0.5	0.5	Every 3 years ⁽¹⁾
20-50	3.8	5.3	6.9	1,9	0.3	Annually

7.5 Benefits to the Environment and Human Health

Emission Reductions

Total emissions reduced for SO₂, NO_x and PM are estimated by applying abatement efficiencies to the fuel specific emissions.

The abatement efficiencies are those from the specific abatement measures selected in the compliance modelling. Specifically, the model compares the baseline (unabated) emission concentration for the plant type against the relevant MCPD ELV to determine if a reduction in emission concentration is required, and if so, what percentage reduction is needed. The model then selects the relevant measure to achieve the required reduction; for example, if a reduction of 50% is needed and there are measures suitable for that category of plant able to achieve 40% reduction or 70% reduction, then the measure achieving 70% reduction is applied to ensure compliance. Consequently, the emission reduction modelled is higher than would be needed purely to comply. For most abatement measures, this is a realistic situation. A small number of measures (FGD, SCR and SNCR) could in practice be set up to only achieve the required reduction without an overshoot, and reduce slightly the operational costs.

Monetised Benefits - Air Quality

The beneficial impact is considered in terms of the damage avoided if emissions reductions are achieved. This 'damage' avoided is calculated in money terms using a damage cost. The IGCB damage cost functions form official government Green Book guidance on valuing impacts from Air Quality. They predominantly capture the health benefits from reduced emissions. The analysis in this IA is based on forthcoming updated damage costs by the COMEAP which reflect the latest advice and takes a consistent approach to that used in support of the government's recently published 'Air quality plan for nitrogen dioxide'.

As damage costs are sensitive to factors such as geographic location of emission sources and meteorology, there are damage cost functions for particulate matter (PM) and NO_x that are categorised by geographic area. For the purpose of the MCP analysis, we have calculated a weighted average damage cost specific to each pollutant that is based on the sectors involved (based on sectoral split as per Figure 7.1). This is to enhance representativeness of damage costs in relation to specific MCP impacts.

Table 7.15 below presents the damage cost weighted by the average of the sectors involved.

Table 7.15 Damage Cost Functions for SO₂, NO_x and PM (£2014 per tonne of pollutant reduced)

	Central Estimate	Low Central Range ^b	High Central Range ^b
NO _x ^c	£4,269	£3,546	£11,762
SO ₂	£2,375	£1,208	£5,053
PM ^c	£29,470	£13,885	£70,775

a) Based on IGCB damage cost functions (IGCB, 2012 for SO₂ and PM – Defra, 2015 for NO_x).

b) Variation between the central values reflects uncertainty about the lag between exposure and the associated health impact.

The damage cost functions have been inflated to 2014 prices (using GDP deflators), and additionally uplifted by 2% per annum until 2014. In years beyond 2014, they are only uplifted by 2% per annum when applied to future year emission reductions. The uplift captures the higher willingness of the population to pay, and therefore value of health benefits as incomes (economic growth) rises. The variation between the damage costs reflects uncertainty about the lag between exposure and associated health impacts. The damage costs are higher in the 'High Central Range' where the lag between the associated health impacts and benefits is assumed to be shortest.

Greenhouse Gases (GHGs)

A change in greenhouse gas emissions was also calculated from a change in fuel consumption. The implementation of abatement also results in the abatement of greenhouse gases, mainly carbon dioxide. We have monetised the environmental benefit of reduced CO₂ using the central BEIS traded and non-traded carbon values to calculate the impact. The traded value is used for larger plants over 20MW that fall into the scope of the EU Emissions Trading System, while the non-traded value of carbon is used for smaller plants.

Non-monetised Benefits

It is important to note when applying and interpreting damage cost functions that a number of impacts are not taken into account in the quantification; this includes impacts on ecosystems and cultural heritage. The damage costs largely exclude morbidity impacts arising from air pollution. Therefore, the benefits estimated through the application of damage cost functions may be underestimated.

Not all impacts can be fully monetised; there are additional benefits that are non-monetised associated with reductions in soil and surface water contamination, reducing acidity. The monetised air quality health impacts also do not include all benefits to human health. Therefore there are also additional impacts to human health not captured in monetised benefits.

7.6 Operating hour exemption

Article 6(3) and (8) of the Directive includes exemption from ELVs for existing and new MCPs operating less than 500 hours per year unless firing solid fuel. In order to assess the impact of this exemption, we estimated how many plants would be above and below 500 hours on average per year. We have estimated that up to 8,936 plants will be back-up and standby by 2030 (see section 7.1), in both cases operating fewer than 500 hours per year, and thereby exempt.¹¹

7.7 Further assumptions and uncertainties

The analysis assumes that most working plants operating in England and Wales will have to meet the standard ELVs for existing and new MCPs as set out in Annex II of the Directive and otherwise (see Section 6.2). Footnotes to these tables in the directive have been reflected in the model where different ELVs are set for the size-fuel-plant type categories used within the model. Other footnotes present different ELVs for specific fuel or plant types which form a sub-section of the categories within the model. Those have not been reflected in the analysis given the uncertainty in the number of plants which fall into such sub-categories. Therefore, in some cases further separate analysis has been performed to consider some of these footnotes and incorporate them into the results presented in this report.

A more comprehensive discussion on key risks and assumptions is discussed in Section 9, along with results from sensitivity testing key assumptions. Section 9 also presents a full assumptions log.

7.8 Quality Assurance

Quality assurance refers to processes which can help ensure the analysis' inputs and outputs meet its quality requirements, manage risk of errors and ensure the analysis is fit-for-purpose. It is a key means of ensuring analysis is robust. A high level of quality assurance was considered proportionate for the modelling supporting this analysis. As such, the process set out in the official HM Treasury Aqua Book was fully completed. This involved checks throughout the analytical life cycle by analysts, commissioners of analysis, those supporting the assurance effort, and stakeholders. Specific checks performed for this analysis include:

- (a) *Specification Confirmation* - Defining what a piece of analysis should deliver, the deadlines and quality requirements, along with recording any changes to scope.
- (b) *Developer Testing (including validation and verification)* - Reviewing and checking of the analysis during development, primarily by the analytical team.
- (c) *Input Data Checks* - An understanding of the data needed to shape the development process. Its definition, availability, timeliness, quality and quantity
- (d) *Input Assumptions Checks* - Ensuring that all assumptions are transparent, clearly understood and are agreed by stakeholders.
- (e) *Independent Validation* - Validation was focussed on checking that the analysis will meet the customer's actual needs. I.e. that we are doing the right analysis.
- (f) *Independent Verification* - Reviewing, inspecting, testing, checking, auditing, or otherwise establishing, and documenting, whether the analysis conforms to the specified requirements. I.e. checking we doing the analysis right.
- (g) *Documentation* – The resources (including this IA) that assist in recording the problem, the analysis and the associated uncertainty to other analysts and customers.
- (h) *Communicating Uncertainty* - Disseminating analytical risks and unknowns in a piece of analysis and its outputs to decision makers. This includes the details of section 9 of this IA and the high/low scenarios presented throughout.

¹¹ However, there are emissions controls for PM for plant firing solid fuel running below 500 hours, which is included in this assessment.

8. Results

8.1 Overview

Table 8.1 demonstrates the total impacts of the MCPD implementation. Monetised health and environmental benefits across the 15 year appraisal period, relative to do nothing (Baseline option) are £1,018m, against costs of £211m, in present value (today's terms). The next subsection 8.2 summarises each cost and benefit category.

Table 8.1 Cost and benefits for Option 1 (£m, PV)

2018-2032	Low Scenario (high costs/low benefits) (£m)	High Scenario (low costs/high benefits) (£m)	CENTRAL (£m)
Costs (costs to operators)			
Abatement costs	285.6	73.9	138.0
Administration costs	61.2	18.0	30.4
Monitoring costs	90.7	23.2	42.8
Total	437.5	115.1	211.2
Benefits (emission reductions)			
Air Quality pollutants	595.3	2,429.3	982.4
CO₂	17.7	53.9	35.5
Total	613.0	2,483.2	1,018.0
NPV	175.5	2,368.1	806.8

*Please note any differences due to rounding.

8.2 Key costs and benefits of implementing the MCP Directive

Overview

This section details the estimated costs, emission reductions and wider administrative requirements for MCPs in England and Wales following the implementation of the MCP Directive. The results present the outcome over a 15 year assessment period. The assessment begins in 2018, when the first costs will be incurred, and ends in 2032, where it would be anticipated that the MCP Directive will have been implemented in full.

Year-by-year results (i.e. annualised costs for individual years) are presented throughout this section, to show the staging of the MCP directive requirements on different types of plant. However, from 2030 onwards, the impacts will be similar for future years given that there are no further changes to MCP Directive requirements from that year - the only changes will be as a result of the closure of existing plants on reaching the end of their operating life and opening of new plants, and changes in the projected use of different fuel types. As such, a 2030 annualised¹² steady state figure is presented throughout this section to indicate the potential impact in subsequent years beyond the appraisal period.

The main ranges around the central estimate represent the two key sensitivities. The first is the number of plants, which due to the lack of data, is the main sensitivity surrounding the total cost impacts of the directive. The second is the variation in the damage cost values attributed to benefits reduced emissions. It is standard HMT Green Book practise to present the uncertainty in valuing human health. It should be noted that the benefits range is independent to plant numbers as it is assumed that total emissions reductions are the same in all plant number scenarios, they are just spread over more or less plants. Alongside these key sensitivities, further assumptions and flexibilities are sensitivity tested where presented but are not included in the main ranges. For example, the results of two inspection

¹² Total annualised cost = annualised CAPEX + annual OPEX

Where:

$$\text{Annualised CAPEX} = \text{CAPEX} \times (\text{discount rate} / (1 - ((1 + \text{discount rate})^{-\text{lifetime}})))$$

Where:

discount rate = 3.5% (Green Book)

lifetime = 15 years (assumed for all measures)

To calculate the total annualised cost for 2030, we identify what abatement measures are required in 2030 and sum up the total annualised cost. This is known as the equivalent annual cost (EAC). It is the cost per year of owning and operating an asset over its entire lifespan, and is appropriate to compare against annual benefits in a specific year to determine the economic cost effectiveness.

options are presented in the inspection section, but only the preferred option is carried forward in all other headline figures.

All prices are in 2014, and a 3.5% discount rate has been used in present value figures as per Green Book guidance. The base year for the NPV is 2018.

In the remainder of this section, each of the following monetised impacts is discussed in more detail:

COSTS

- **Emissions abatement costs for plant operators** – Compliance with the MCP will lead to additional costs for plants between 1-50MW if they need to fit abatement in order to reduce their NO_x, PM and SO_x emissions to meet the ELVs set in the MCP. These costs will vary depending on the plant type and the age of the plants with the most cost effective abatement measure chosen. This will result in an additional cost to operators of between £73.9m and £285.6m in present value terms over the first 15 years. Our central estimate is this will lead to an additional cost of £138m in present value terms for businesses.
- **Administrative and Compliance costs** – These costs include operator and regulator time and effort for processing an environmental registration/permit, compliance (inspection) checks, and data reporting (the costs borne by regulators are anticipated to be mostly passed on to operators). The Directive is flexible in how these inspection requirements are carried out so a range of options were sensitivity tested. We estimate the implementation of the MCP Directive will result in an administrative cost to business of between £18.0m and £61.2m in present value terms over the first 15 years. Our central estimate is this will lead to an additional cost of £30.4m in present value terms.
- **Monitoring costs** – The costs include the fees for an accredited consultant to conduct the monitoring surveys and prepare a monitoring survey report to the operator annual or tri-annually in order to meet the Directives monitoring requirements. This will result in an additional cost to operators of between £23m and £91m in present value terms over the appraisal period. Our central estimate is this will lead to an additional cost of £42.m NPV for businesses.

MONETISED BENEFITS TO THE ENVIRONMENT AND HUMAN HEALTH

- **Monetised air quality benefits** – The main benefit of the implementation of the MCP directive will arise from the reduction in air pollutant emissions. By reducing the number of plants operating without abatement, encourage investment in lower emission plants capable of meeting emission limits, and ensuring that these plants are monitored for their emission levels, this will improve air quality and benefit human health and the environment. We estimate human health benefits in terms of emissions reduced of NO_x, SO₂, and PM of between £595.3m and £2,429.3m in present value terms, with a central estimate of £982.4m for England and Wales. This figure captures the reduction in both chronic mortality effects (which consider the loss of life years due to air pollution) and morbidity effects (which consider changes in the number of hospital admissions for respiratory or cardiovascular illness).
- **Monetised Green House Gas (CO₂ Emissions) Benefits** – Certain measures intended to reduce emissions of air quality pollutants also affect CO₂ emissions from UK plants. As some of the larger plants would fall into the scope of the EU Emissions Trading System (ETS), the reduction in costs to UK businesses of purchasing extra EU ETS allowances from abroad is assessed. Therefore, any change in CO₂ emissions in the UK is valued using the traded cost of carbon. Smaller plants will fall under the non-traded value of carbon, where although they are not traded as part of the EU ETS, the emissions still contribute to the global carbon value and need to be considered and as other industries may not need to abate as much as a result. We estimate that total reduction in CO₂ emissions will lead to additional present value benefits of between £17.7m and £53.9m, with a central estimate of £35.5m.

8.3 Abatement costs

The abatement costs to plants consist of the cost of abatement technology needed to meet the ELVs within the MCP Directive. As outlined in Section 7.2, the abatement costs represent a collation of best available data on the cost of abatement equipment in order to meet the conditions in the MCP Directive. As this varies depending on data source, a range was created to combine the different estimates. As set out in section 7.2, for working plants that are already compliant with MCP ELVs under business as usual, the abatement costs are set to zero – i.e. only the relevant costs compared to the baseline are included.

The central year on year breakdown is shown in Table 8.2 where the annual total cost of abatement increases over the appraisal period as each stage of the MCP Directive is introduced. The table below also demonstrates where stages with a greater number of plants are impacted (2025, 2029) come into effect, as shown by the higher cost. The final column presents the total cost over the appraisal period in discounted, present value terms.

Table 8.2 Year on year cost of abatement for working plants (£m, 2014 prices, discounted)

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total NPV
Central Cost																
£m	0.00	3.92	3.96	4.14	4.31	4.45	19.14	6.22	6.11	6.10	6.09	50.02	8.04	7.84	7.67	138.01
Low Cost																
£m	0.00	1.87	1.89	1.98	2.05	2.12	9.16	2.97	2.92	2.92	2.91	31.54	3.96	3.86	3.77	73.9
High Cost																
£m	0.00	8.68	8.78	9.17	9.52	9.84	37.72	13.27	13.04	13.06	13.05	98.78	17.31	16.90	16.53	285.6

Note: any differences in totals due to rounding. Low cost plant numbers are halved and in high cost plant numbers are doubled.

Sensitivity of the central cost estimate

The table above also presents differences in totals if the number of plants is changed. The assumptions used in these sensitivity tests are one of the two key sensitivities covered in Section 9 on risks and assumptions.

Table 8.3 below also provides an additional source of uncertainty compared to the central scenario and is separate to the uncertainty on plant numbers. In Table 8.3, the same plant numbers are in all three scenarios, where high and low are presented in the range in brackets. The range illustrates the uncertainty on abatement costs, and demonstrates the abatement cost from various, alternate information sources. It is presented as the average annualised impact from when the full set of ELVs comes into effect (from 2030). The range of total annual abatement costs is between £11.4m and £27.7m annually from 2030, with a central estimate of £19.5m. From this figure, £11.7m is expected from existing plants and £7.8m from new plants. Costs detailed below are annualised and shown separately for existing plants, new plants and total plants across pollutants.

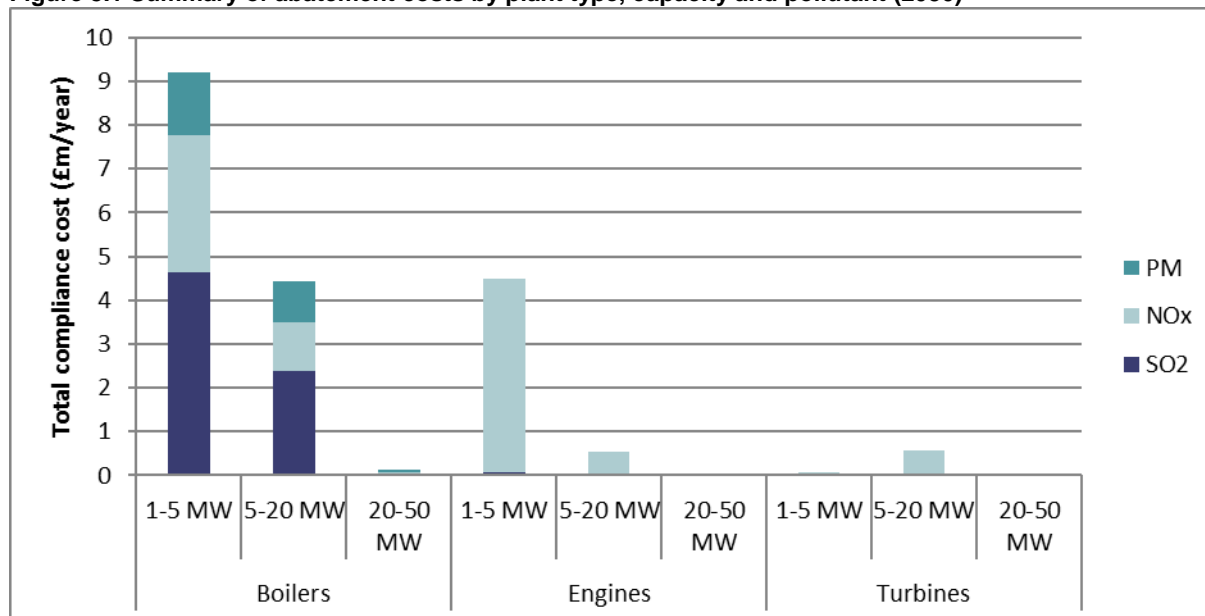
Table 8.3 Average annualised abatement costs in 2030 for existing, new and total plants (£m, 2014 prices, low-high range presented in brackets for totals)

	SO ₂	NO _x	PM	Total
Existing plants	4.7 (4.6-4.7)	5.0 (0.8-9.3)	2.0 (1.5-2.5)	11.7 (6.9-16.5)
New plants	2.5 (2.5-2.5)	4.9 (1.6-8.1)	0.4 (0.3-0.5)	7.8 (4.5-11.2)
All plants	7.2 (7.2-7.2)	9.9 (2.4-17.4)	2.4 (1.8-3.0)	19.5 (11.4-27.7)

The numbers in the table above reflect all working plants and those standby plants with ELVs.

Figure 8.1 further demonstrates the compliance costs by plant type, capacity and pollutant. Note a large proportion of costs are associated with 1-5MW boilers as this is the most common category of MCPs.

Figure 8.1 Summary of abatement costs by plant type, capacity and pollutant (2030)



8.4 Administrative and Compliance (Inspection) costs

The administration costs faced by plants are for operator and regulator time and effort for processing an environmental registration/permit, inspection, and reporting. Registration/permitting, compliance (inspection) checking and reporting activities required under the Articles 5, 8 and 11 of the Directive will result in a range of one-off and recurring costs to regulators and MCP operators. Permitting costs¹³ will affect both working and standby and back up plants. Recurring costs are lower for standby plants, being limited to record keeping, reporting operating hours and light touch compliance (inspection) checks.

The central year on year breakdown is shown in Table 8.4, where the annual total administrative cost increases over the appraisal period as each stage of the MCP Directive is introduced. The final column presents the total cost over the appraisal period in discounted, present value terms.

Table 8.4 Year on year administrative costs for all plants (£m, 2014 prices, discounted)

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total NPV
Central Cost																
£m	0.38	0.54	0.66	0.86	1.05	1.22	1.63	1.81	1.86	1.92	1.97	3.37	4.49	4.38	4.24	30.4
Low Cost																
£m	0.38	0.25	0.33	0.45	0.56	0.67	0.94	1.05	1.07	1.12	1.16	2.08	2.75	2.69	2.60	18.0
High Cost																
£m	0.38	1.28	1.49	1.91	2.30	2.66	3.34	3.65	3.76	3.87	3.97	6.60	8.95	8.70	8.42	61.2

Low cost plant numbers are halved and in high cost plant numbers are doubled.

Sensitivity on the number of plants

The key driver behind the differences in the scenarios in Table 8.4 above is the differences in the number of plants. The assumptions used in these sensitivity tests are one of the two key sensitivities covered in Section 9 on risks and assumptions.

Inspection scenario sensitivity tests

Alongside the one-off costs stated in section 7.3, MCP operators and regulators will incur recurring costs associated largely with compliance check and reporting requirements. The MCP Directive does provide flexibility for the EU member state to set the number of inspections required in order to meet the reporting requirements, therefore the sensitivity in Table 7.8 presents total one-off upfront costs of administration and compliance (inspection costs). Of these costs, 39% is directly incurred by the regulator. The higher costs may be passed on to the operator in the form of higher charging and permitting fees.

Table 7.9 in the methodology section demonstrates estimates of administrative costs for operators and regulators under two different inspection scenarios in order to demonstrate the impact of varying the number of inspections.

8.5 Monitoring costs

The monitoring costs are the costs faced by operators to conduct the monitoring annually or tri-annually in order to meet the Directives monitoring requirements. This may be done in house or via an independent test house. Compliance with the monitoring requirements set out in the Directive would result in costs of £42.8m (NPV, in 2014 prices as shown in Table 8.5). The estimated costs include the fees for an accredited consultant to conduct the monitoring surveys and prepare a monitoring survey report to the operator. Depending on the size and type of MCP, monitoring surveys differ in terms of their frequency and pollutants monitored. The final column presents the total cost over the appraisal period in discounted, present value terms.

¹³ The permitting and reporting costs are based on a worst case scenario. The administrative costs include a paper based communication channel between the regulator and operator. The environment agency intends to develop a central portal that will reduce costs from digitising and automating parts of the process. Therefore, the costs included in this assessment should be considered the maximum (worst case).

Table 8.5 Year on year monitoring costs (2014 prices, discounted)

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total NPV
Central Cost																
£m	0	0.34	0.72	1.07	1.4	1.7	1.98	2.06	3.05	3.96	4.81	5.6	5.54	5.36	5.18	42.79
Low Cost																
£m	0	0.18	0.37	0.55	0.72	0.88	1.03	1.07	1.62	2.13	2.61	3.05	3.08	2.98	2.88	23.16
High Cost																
£m	0	0.77	1.54	2.27	2.94	3.57	4.15	4.32	6.45	8.44	10.28	11.98	11.71	11.32	10.94	90.68

a) In low cost plant numbers are halved and in high cost they are doubled.

Sensitivity on the number of plants

The key driver behind the differences in the scenarios in Table 8.5 above is the difference in the number of plants. The assumptions used in these sensitivity tests are one of the two key sensitivities covered in Section 9 on risks and assumptions.

8.6 Monetised Benefits to the Environment and Human Health

The main benefit of the implementation of the MCP directive will arise from the reduction in air pollutant emissions. By reducing the number of plants operating without abatement and ensuring that these plants are monitored for their emission levels, this will improve air quality and have a positive impact on human health and the environment (including greenhouse gases).

Emissions reductions of air pollutants

Fitting abatement will reduce the level of emissions from each MCP as detailed in Table 8.6 below where, in the year 2030, 14.5kt SO₂, 16.9kt NO_x, 2.6kt PM and 109.1kt CO₂ are estimated to be reduced compared to the baseline. The table shows the total estimated annual emission reductions in 2030 by plant type, which represents the impact when all stages of the MCP have been implemented.

Table 8.6 Total annual emission reductions (kt) from 2030

	SO ₂			NO _x			PM			CO ₂		
	Existing plants	New plants	Total	Existing plants	New plants	Total	Existing plants	New plants	Total	Existing plants	New plants	Total
Total	9.17	5.29	14.46	11.33	5.54	16.87	1.72	0.87	2.59	75.28	33.81	109.10

Combined contributions from both standby and working plant

Carbon emissions

While the fitting of abatement will directly impact the reduction in SO₂, NO_x and PM, CO₂ is reduced largely due to improved efficiencies associated with well managed low NO_x burners (such as fuel efficiencies). Table 8.6 in the previous section summarises CO₂ emissions reduction in 2030.

Table 8.7 shows the disaggregation by fuel and plant type to demonstrate that the vast majority of the CO₂ emission reduction is achieved in boilers using natural gas. The emission reductions achieved by this measure are partially offset by other abatement measures that use parasitic energy, such as Selective Catalytic Reduction (SCR), and therefore increase CO₂ emissions.

Table 8.7 Annual CO₂ emissions reduction in 2030, by plant type and fuel

Emissions change (kt)						
	Biomass	Other solid fuels	Gas oil	Other liquid fuels	Natural gas	Other gaseous fuels
Boilers	0.0	-1.5	-4.9	-5.6	123.4	-0.3
Engines	0.0	0.0	-3.4	0.0	0.0	0.1
Turbines	0.0	0.0	-0.0	0.0	1.3	0.0
Total	0.0	-1.5	-8.4	-5.6	124.7	-0.2

Damage costs

The impact of the reduction in emissions due to the implementation of the MCP Directive has been valued in line with best practice as set out in Green Book Supplementary guidance¹⁴.

The Green Book guidance recommends the impact pathway approach in many circumstances when impacts are above £50m annually. While the bespoke impact pathway approach was considered, however, in this circumstance, the uncertainty around the spatial distribution of plants and their operating patterns meant that damage costs are more appropriate. The damage costs used in these assessments are detailed in the methodology section.

(1) Monetised benefits – Air Quality

Table 8.8 provides a total of the estimated indicative annual benefits associated with the MCP Directive. It is based upon applying the damage cost functions to the volume of emissions reduced over the time period. The range presents the uncertainty associated with valuing health benefits in the damage costs. It is one of the two key sensitivities as presented in Section 9 (the other key sensitivity is the number of plants). Please note that in all three scenarios the level of emissions reduction does not change. The sensitivity captures the uncertainty surrounding the valuation of health benefits for a given level of emissions reduction. The benefits are also independent on plant numbers. This is because total emissions reduced are the same in all three plant number scenarios; they are just spread over more or less plants.

Table 8.8 Indicative annual benefits for existing, new and total plants in 2030 (£m, 2014 prices, low-high range presented in brackets for totals)

Totals	SO ₂	NO _x	Dust	Total
Existing plants	24 (19-27)	176 (70-281)	74 (58-84)	274 (147-392)
New plants	14 (11-16)	86 (34-138)	38 (30-43)	138 (75-197)
All plants	38 (30-43)	262 (105-419)	112 (87-127)	411 (222-589)

The full year on year breakdown is provided in Table 8.9 where the profile of the emission reduction benefits can be seen as each stage of the MCP Directive comes into effect. The table also illustrates that benefits increase across the appraisal period until 2030, where they are largely constant, and subsequently affected only by a reduction in plant in the baseline. The final column presents the total cost over the appraisal period in discounted, present value terms.

Table 8.9 Year-on-year breakdown of emissions benefits (£m, 2014 prices, discounted) Central damage cost values

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total NPV
SO₂	0.0	1.2	2.4	3.4	4.4	5.4	6.2	15.3	15.8	16.2	16.6	16.9	30.6	30.2	29.7	194
NO_x	0.0	2.1	4.3	6.3	8.2	10.0	11.6	20.1	21.5	22.8	24.0	25.1	64.1	63.9	63.7	347
PM	0.0	2.5	4.9	7.1	9.1	11.0	12.7	37.4	38.1	38.6	39.1	39.5	68.0	66.7	65.5	440
Total	0.0	5.9	11.5	16.8	21.7	26.3	30.5	72.8	75.3	77.7	79.8	81.6	162.7	160.8	158.9	982

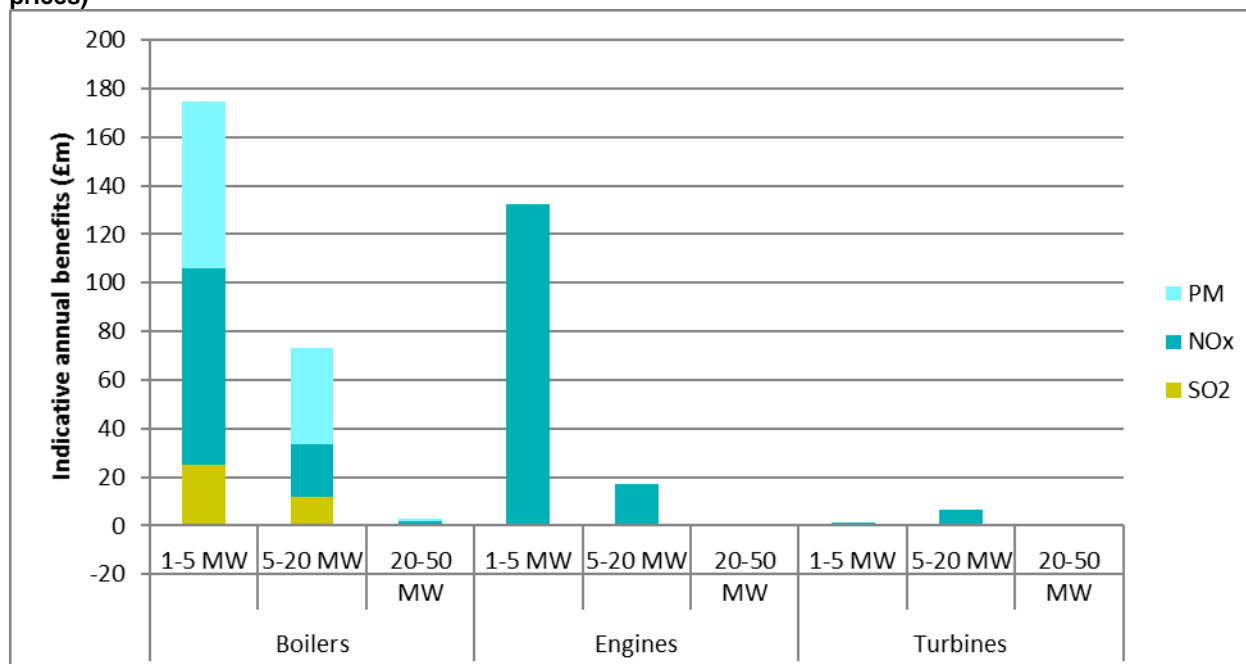
*Any difference in totals due to rounding

The largest volume of air pollutant emissions reduction in 2030 comes from SO₂ as seen in Table 8.6, although the monetised health impact is the lowest. This is because health impacts differ between pollutants as presented in previous tables. It must be noted, however, the absolute volume of emissions reduction makes an important contribution to national emissions ceilings.

Figure 8.2 summarises the benefits for each capacity class disaggregated by pollutant and technology. It can be observed that the majority of benefits are associated with plants ranging 1-5MW, due to the majority of plants being included in this category (as was the case for costs, presented on Figure 8.1). It also highlights how the benefits associated to SO₂ only represent a small proportion of the indicative total benefits.

¹⁴ Damage cost guidance - <http://www.defra.gov.uk/environment/quality/air/air-quality/economic/damage/>

Figure 8.2 Annual benefits in 2030 disaggregated by technology, pollutant and capacity class (£million per year, 2014 prices)



(2) Greenhouse gas monetised benefits

This section breaks the carbon impacts down into traded/non-traded. Table 8.10 and Table 8.11 present year-on-year monetised greenhouse gas benefits, for traded and non-traded respectively. Table 8.12 presents the total of traded and non-traded.

Table 8.10 Traded carbon benefits, discounted (£m, 2014 prices)

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total NPV
Central Benefit																
£m	-	0.00	0.00	0.01	0.01	0.02	0.02	0.08	0.09	0.10	0.11	0.13	0.26	0.28	0.29	1.4
Low Benefit																
£m	-	-	-	0	0	0	0	0	0	0	0.1	0.1	0.1	0.1	0.1	0.7
High Benefit																
£m	-	0.00	0.01	0.02	0.03	0.04	0.05	0.14	0.15	0.17	0.18	0.20	0.40	0.42	0.44	2.2

Table 8.11 Non-Traded carbon benefits, discounted (£m, 2014 prices)

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total NPV
Central Benefit																
£m	-	0.18	0.35	0.50	0.66	0.81	0.95	2.66	2.71	2.74	2.78	2.81	5.37	5.69	5.92	34.1
Low Benefit																
£m	-	0.1	0.2	0.3	0.3	0.4	0.5	1.3	1.4	1.4	1.4	1.4	2.7	2.8	3.0	17.1
High Benefit																
£m	-	0.27	0.52	0.76	0.99	1.21	1.43	3.98	4.06	4.13	4.17	4.23	8.12	8.54	8.92	51.3

Table 8.12 Total carbon benefits, discounted (£m, 2014 prices)

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total NPV
Central Benefit																
£m	-	0.2	0.3	0.5	0.7	0.8	1.0	2.7	2.8	2.8	2.9	2.9	5.6	6.0	6.2	35.5
Low Benefit																
£m	-	0.09	0.18	0.25	0.34	0.41	0.49	1.35	1.40	1.44	1.44	1.49	2.82	2.99	3.14	17.8
High Benefit																
£m	-	0.28	0.53	0.78	1.01	1.25	1.48	4.12	4.21	4.30	4.35	4.43	8.52	8.96	9.36	53.6

Damage cost sensitivity

The assumptions used in these sensitivity tests are one of the two key sensitivities covered in Section 9 on risks and assumptions. The key driver behind the differences in the figures below is the differences in valuing human health in the damage cost calculations, where the high and low in Table 8.13 below represent the uncertainty around the central range.

Table 8.13 NPV per environmental and human health benefits

NPV over 15 years (2018 - 2032)			
Pollutant	Sensitivity		Central Estimate
	Low Benefit	High Benefit	Best
Carbon (traded and non-traded cost saving)	17.8	53.9	35.5
NO _x	289.0	958.7	347.9
SO ₂	98.8	413.3	194.2
PM	207.4	1,057.4	440.3
Total	613.0	2,483.2	1,018.0

*Any differences due to rounding

8.7 ELV flexibilities scenarios

As detailed in Section 6.2, the Directive includes several flexibilities for Member States to apply less stringent ELVs for specific plants. Table 6.3 sets out which flexibilities are being implemented and have therefore been included in the headline costs and benefits. However, the impact of not applying each flexibility has been considered, to see the impact this would have on the costs and benefits of the MCP Directive. The costs and benefits presented in this section are additional to those presented in the main analysis.

The main flexibility is the 500hr exemption which enables those MCPs operating for less than 500 hours per year to be exempt from meeting the ELVs set in the MCP. With an estimated 13,975 plants (back-up and standby) in 2030 affected by this flexibility, there is a significant impact if it is not applied.

If the 500 hour exemption is not implemented (i.e. all standby AND backup plant are required to comply with the ELVs), costs will increase by approximately 300% whereas the benefits (emission reductions) will increase by only 5%. The increase in benefits is very low as these plants only run for a small amount of time and therefore have low emissions. This is predominantly true of back-up plants which are thought to operate for very few hours per year (20 hours or less). The increase in costs is high as there are a large number of such plants that would be required to fit abatement to meet the ELVs, monitor and be subject to reporting and more frequent compliance (inspection) checks. The increase in cost is slightly higher than realistic as the costs are based on an average plant, as opposed to reflecting the characteristics of standby and backup plants. Additionally, costs to the operator are purely incorporated as the full abatement costs with no consideration given to the capacity of some plants generating sufficient revenue to absorb these costs.

Due to the lack of information about these plants, it was deemed disproportionate to fully adjust the costs.

Table 8.14 demonstrates the impact in 2030. For example, total abatement costs would increase by 98.2m, in additional to the 2030 figures for the main scenario in Table 8.18.

Table 8.14 Impact on costs without 500hr exemption in 2030

Change in costs without 500 hour exemption							
Capacity class	Total costs (£m/yr)	abatement	Total admin burden (£m/yr)	Total monitoring cost (£m/yr)	Total costs (£m/yr)	Total monetised benefits (£m/yr)	
1-5 MW		95.4	1.8	9.3	106.6	14.2	
5-20 MW		2.7	0.1	0.3	3.1	4.5	
20-50 MW		0.1	0.0	0.0	0.1	0.2	
1-50 MW		98.2	1.9	9.7	109.8	18.9	

There are additional flexibilities which member states may choose to implement and have a smaller impact. Consideration has been given to what the additional compliance costs and monetised benefits would be if these flexibilities were not adopted. The results are presented in Table 8.15 below. In interpreting the impact and context, reference should be made to Section 6.2, which explains the flexibilities further and identifies those which will be applied in England and Wales.

Table 8.15 Impact on costs and benefits of not applying some of the flexibilities⁴

Flexibility not applied	Year ¹	Number of plants affected ²	Increase in total compliance costs (£m/year)	Increase in total monetised benefits (£m/year)	Reduction in emissions (ktpa)		
					NO _x	SO ₂	PM
District Heating*	2025	22 - 133	0.1 – 0.37	1.8 – 7.1	0-0.2	0.1 -0.4	0 - 0.14
Solid biomass	2025	~40	0.1	1.3 (1.1 – 1.7)	-	-	0.04
NO_x ELV flexibility for engines fitted with primary abatement operating 500 – 1500 hours per annum³	2025	~120	0.7	12.6	0.9	-	-

1) No significant difference between 2025 and 2030 as plant numbers change by <1%

2) There is a high uncertainty in projected plant numbers for these specific sub-categories, which is the main sensitivity for the impact of these specific ELVs

3) In this assessment we are applying this flexibility in full. However it will be superseded by the additional controls on high NO_x generators, assessed in a separate IA

4) Each of the other flexibilities is assessed independently

*Includes solid biomass plants providing district heating and located in AQMAs, since they cannot benefit from the less stringent flexibility applied to biomass plants

8.8 Summary of results

Table 8.16 Present value of central costs and benefits over 15 year appraisal period (2018 – 2030), £m 2014 prices

£m, 2015	Sensitivity		Best estimate
	Low Scenario	High Scenario	Central
PV Costs	437.5	115.1	211.2
PV Benefits	613.1	2,482.80	1018
NPV	175.6	2,367.70	806.8

In all three scenarios, low, high and central, the preferred option for compliance (inspection) and other admin costs is presented. The difference in costs between scenarios is due to different assumed plant numbers, and the difference in benefits due to differences in the valuation of human health for a given level of emissions reduction. The high scenario NPV combines low cost with high benefits, and the low scenario NPV vice versa (high costs and low benefits). A breakdown of the compliance and emissions benefits contribution is provided below.

Costs

The full costs to MCP operators in England and Wales is demonstrated in the table below with a central estimate of £211.0m. Varying the number of plants, we can see the range around this central figure is £115.1m - £437.5m. Fuel consumption is unchanged, and therefore emissions (benefits) would remain constant between scenarios.

Table 8.17 NPV of costs and benefits for the low, high and central scenarios of total plant number

Scenario	Total number of working plants (2030)*	NPV compliance costs (£m)	NPV administrative costs (£m)	NPV monitoring costs (£m)	Total Costs (£m)
Low Costs	4,597	73.9	18.01	23.16	115.09
Central Costs	9,414	138.0	30.4	42.8	211.2
High Costs	21,617	285.6	61.20	90.68	437.53

*The scenarios also increase the number of back-up/stand-by plant. Their impact is smaller as they are exempt from ELVs.

Table 8.18 below presents this on an annualised basis in 2030, when the MCP is fully in place. Table 8.19 presents this on a per plant basis.

Table 8.18 2030 annualised costs and benefits (central scenario) (2014 prices, undiscounted)

Capacity Class	Total abatement cost (£m/yr)	Total admin burden (£m/yr)	Total monitoring cost (£m/yr)	Total costs (£m/yr)	Total monetised benefits (£m/year)
1-5MW	13.8	6.3	7.5	27.6	174.3
5-20MW	5.6	0.4	0.9	6.8	68.8
20-50MW	0.2	0	0	0.2	2.7
1-50MW	19.5	6.7	8.4	34.6	245.8

Table 8.19 Average annualised 2030 cost per plant (2014 prices, undiscounted)

Capacity Class	Number of plants with ELV (working plants+non-wp with ELV)	Average total cost per working plant (inc. compliance, admin burden and monitoring) £k/yr*	Number of all plants	Average total cost per plant (inc. compliance, admin burden and monitoring) £k/yr**
1-5MW	8,709	2.5	32,102	0.86
5-20MW	940	7.0	1,643	4.1
20-50MW	11	21.0	17	14.2
1-50MW	9,660	2.9	33,762	1.0

Please note that averages do not include permitting fees and charges that will be recovered by regulators as set out in Section 7.4

*Column presents average costs for plants required to meet ELVs. For working plants that are already compliant with ELVs under business as usual, the abatement cost is zero.

** Column presents average costs for all plants, including those required and not required to meet ELVs.

The analysis of the impact on Micro and Small Enterprises carried out in section 11 shows that costs incurred by businesses generally represent a small percentage of Gross Operating Surplus (GOS). For the main analysis, it has therefore been assumed that costs will be funded through internal finances, and additional financial costs e.g. borrowing costs were not assessed. However, in practice, some firms would have to fund some of the upfront CAPEX through external financing. Costs as a function of a firm's ability to finance is given consideration in the distributional impacts assessment in section 10.

Devolved Authority Disaggregation

The original analysis was produced for a UK perspective. However, this impact assessment presents plant numbers for England and Wales, emissions reductions and consequent costs and benefits, and not those of the UK. The disaggregation from the UK results was based on 84% of plants being located in England, 7.5% in Scotland, 5.2% in Wales and 3.1% in Northern Ireland. It was assumed that plants are distributed equally regardless of capacity, technology and fuel type.

9. Risks & assumptions

9.1 Key Sensitivities

Key uncertainties and sensitivities are listed below. The quantitative impact of these sensitivities is presented in section 8, where, for each impact category, high and low scenarios are presented in addition to the central estimate in order to reflect the uncertainty.

Plant capacity, and therefore fuel consumption and associated total emissions, are based on mean plant capacity data from EU averages. The same average capacity is assumed for every plant within the same size category, regardless of fuel or technology type. This results in total emission reduction and associated benefits being highly influenced by this assumption.

Number of Plants

Prior to MCP Directive implementation, operators of plants below 20MW have not been required to register the type of their plant or their activities e.g. operating hours. The limited information on the number of plants below 20MW is therefore a key sensitivity in estimating the impact of the implementation of the MCP Directive. When the MCP directive takes effect and plants start to register and permit, the estimations may be improved for the post implementation review.

The number of plants is the basis of the analysis. In general, the overall costs to operators move in proportion to working plant numbers. The share of each plant type in the total also influences the results. The central scenario in the analysis includes 9,414 working plant in 2030. To present impact of the assumptions, the low scenario includes 4,707 working plants – i.e. it halves the number, while the high scenario includes 18,828 plants i.e. it doubles the number. The scenarios also increase/decrease the number of back-up/stand-by plant but their impact is smaller as they are exempt from ELVs.

Relatively limited data was received from stakeholders so the majority of the analysis is based on data gathered and/or derived for the Commission study and estimations in number of plants and projections in activity data from the NAEI.

For the baseline, the main limitation relates to current total emissions by plant type, size and fuel. As these plants are generally not regulated at present (unless connected to an IED regulated installation), in many cases emissions are not monitored. The levels assumed in the baseline influence what further actions are assumed to be required to meet the ELVs (i.e. abatement measure selection and associated costs) and emissions reductions achieved, and therefore the results are significantly influenced by the chosen values. For NO_x emissions from natural gas boilers (which represent a high proportion of total NO_x emissions from MCPs) it was possible to derive emission levels from actual data. However, for the rest non-factual information from consultation with experts and stakeholders was used as a proxy, which increases the level of uncertainty.

The parameter for the current total emissions by plant type, size and fuel emissions is based on fuel consumption which, in turn, is based on assumptions on load factors and a single set of average plant capacity data from EU averages. The same average capacity was therefore assumed for every plant within the same size category, regardless of fuel or technology type. This will be further refined following the registration of these plants as there will be a full data set of number of plants, running hours and emission levels.

The number of back-up plant is less influential because of exemptions applicable to them.

Damage cost functions

When measuring the impact of emissions, an impact pathway approach is preferred in some circumstances. An impact pathway approach models the spatial distribution of changes in emission from a specific source. This approach is time consuming and costly. In the case of the MCP Directive, such an approach is disproportionate.

For this impact assessment, damage costs were used to calculate the indicative impact of emission changes. Damage costs are standardised average values of the impact to society of a given change in emissions. Damage cost values are published in the Green Book guidance, and are used as standard practice throughout government.

A limitation is that damage costs are a UK average, and not specific to the geographical source of emissions change. For example, they don't adjust for the site specific population exposure to the pollution, where reductions in pollutants in a more densely populated region would generate greater benefits. Moreover, damage costs are an underestimate for two reasons. Firstly, they capture partial health impacts, such as those to mortality (cost of life years brought forward) but largely not to those on morbidity (short-term impacts). Secondly, they do not explicitly capture impacts to ecosystems and cultural heritage.

It should be noted the damage costs used to inform this IA have been amended since the consultation. In particular, the damage costs associated with NO_x have been revised down by 63% in our central estimate reflecting the latest advice from the COMEAP.

9.2 Other sensitivities

Abatement measures

Plants are grouped into status categories. Each status category is a specific combination of plant characteristics, such as new/existing, capacity class, technology, fuel and pollutant(s) under consideration. For example, one status category would be existing, 1-5MWh, boiler, natural gas, and NO_x. For each status category, the model is only able to choose one abatement measure; therefore, one abatement measure is selected and applied to all plants within each status category.

In practice, plants that fall within a status category will have different emissions reductions needed to meet an ELV, and therefore a different level of abatement effort, and associated cost than assumed. As a result of averaging and aggregating, the impacts on emissions and compliance cost estimated per plant are expected to be modest. However, in some circumstances, as operators will choose abatement measures which are the most cost effective for their specific plants, costs could be an overestimate.

During consultation we gathered further information which has enabled the quantification of many of these uncertainties. A summary of responses and actions taken is presented in Annex E.

Current emission levels

Assumptions had to be made about current emissions since data available is limited. An average emissions level of each category and type of plant is assumed as individual data on existing plants is not available. Therefore if the actual plants are cleaner or more polluting, the benefits would vary accordingly.

10. Distributional Effects

Small and micro-businesses can be affected disproportionately by the burden of regulation. New regulatory proposals are designed and implemented in a manner aiming to mitigate disproportionate burdens where appropriate. As such, the default assumption set in the Better Regulation Framework Manual (June 2013) is that there will be a legislative exemption for small and micro-businesses where a large part of the measure can be achieved without including small and micro-businesses within the scope of the policy proposal.

The Better Regulation Framework Manual defines micro and small businesses according to a staff headcount. Micro-businesses are those employing up to 10 FTE staff members while small businesses employ between 11 and 49 FTE staff. The Manual provides guidance on Small and Micro-business Assessment including a range of potential mitigation measures if the proposed policy option does have an impact on small and micro-businesses.

10.1 Sectors affected

MCPs are found in a broad range of industrial, commercial, public and non-industrial sectors.

Industrial Sectors

For some of the industrial sectors, Eurostat Structural Business Statistics (SBS) provides data on enterprise size categories thus allowing for a preliminary assessment of Small and Micro Business Assessment (SMBA)-relevance to be made. The key sectors where SMB may be affected include metals, pulp and paper, chemical industry, textiles, food production, car manufacturing etc.

However, a number of factors limited the possibility of a full sectoral mapping by enterprise size:

- Eurostat SBS does not provide sectoral enterprise size data for some sectors (in particular, a number of non-industrial sectors – see below), thus limiting the analysis;
- For those sectors where Eurostat provides enterprise size categories, it is extremely unlikely that the sector-wide average proportion of micro-size enterprises (i.e. 59% to 87%) would be observed for 1-50 MW combustion plants. It is anticipated that this high proportion of micro enterprises relate to much smaller combustion plants (i.e. <1MW) which are outside of the scope of the Directive. Furthermore, in a number of cases, such combustion plants are typically a part of a bigger complex requiring more than 9 employees to maintain and operate, and therefore it is highly unlikely that any micro-size enterprises would operate them. For example, in non-industrial sites, a 1MW boiler would supply space heating and hot water for a building of around 12,500 m² – i.e. an office for about 2,500 people.
- In addition, whilst the dataset developed in this study is based on numbers of individual MCPs, in many cases an enterprise will own and operate more than one MCP. However, no data is available on the average spread of numbers of individual plants by enterprise. This may mean that the numbers of SMEs potentially affected is likely to be overstated. The remainder of this section covers the major sectors where the largest impact is expected.

A number of the plants within 1-50MW are directly associated to an IED regulated installation (particularly the larger ones), which are unlikely to be an SME and are assumed to be large-size enterprises. Furthermore, 20-50MW plants (aggregate level) are already captured under the EU ETS and are unlikely to be micro or small enterprises.

Based on these arguments, it can be, therefore, assumed that no plant operators are micro-sized enterprises, although some of the installations could fall within the small enterprise category. If the assumption doesn't hold, such cases are expected to be so rare that it isn't proportionate to assess further.

Non-industrial and commercial sectors

1-50MW plants can also be found in a very wide range of non-industrial sectors such retail trade and warehousing, hotels, commercial services and telecommunications. Over 28% of the total estimated numbers of MCPs operating in the UK are assumed to operate in these sectors.

Data available suggests that higher proportion of micro enterprises are within these sectors, when compared to manufacturing industries. However, commercial, retail and warehousing properties hosting MCPs larger than 1MW are unlikely to be micro-sized enterprises, although some could potentially fall within the small enterprise category.

Education and health

24% of the total estimated number of MCPs operate in education and health sectors (hospitals, universities, schools etc.) with the large majority of these being public sector entities financed from state budget (e.g. NHS). Furthermore, such organisations typically employ a large number of employees and educational or health premises with a combustion plant on site are likely to be larger than on average.

In some cases, these installations (also those in the private ownership) are operated and owned by specialist companies providing such services. As such, the size of the organisation(s) using the output of a combustion plant (e.g. a hospital) may not be the same as the size of the enterprise operating it. In addition, in many cases, an enterprise owns and operates more than one MCP. It is unlikely that any of these plant operators are micro-sized enterprises although some could potentially fall within the small enterprise category.

Public sector

About 19% of the MCPs operate in government buildings. Operation of these MCPs is not associated with private businesses and the operations are financed from the state budget.

If the building is government occupied rather than government owned we would expect the cost to be passed through by the energy service company or landlord to the tenant (government) so the cost is ultimately borne by the state budget. (The explanation within the health and education section above is also applicable here).

Agricultural sector

Only an estimated 2% of MCPs are operating in the agricultural sector¹⁵. On average, agricultural sector in the UK is characterised by a 4.7 employee per agricultural enterprises. However, agricultural holdings hosting a MCP of 1MW and above are likely to be larger than average enterprises, and therefore more labour intensive. In particular, relevant activities in agricultural sector include heating large poultry farms and horticulture (greenhouses growing salad, tomatoes, cucumbers, peppers and ornamentals), which employ a large number of pickers.

As micro business is defined as having less than 11 employees, the above examples where an MCP would be used wouldn't fit into this employment category due to the labour intensity implied by farms large scale of activities associated with the use of MCPs.

There are, however, estimates of a large number of on-farm driers in cereals production. It is expected that Small and Micro businesses that uses driers, a majority would operate less than 500h per annum on average so would be exempt from the MCPD. Operates exceeding 500h per annum would be expected to be larger enterprises.

10.2 Distribution of health impacts

Benefits are derived from the reduction of emissions to air and associated avoided costs for reduction of damage to society. For this reason it isn't meaningful to distribute these benefits across sectors. The IGCB damage cost functions "*include estimates of the health impacts (both deaths and sickness) of all four pollutants. The PM₁₀ and SO₂ estimates, in addition, include the impact of building soiling and the impact on materials respectively*". (Defra, 2013, *Valuing impacts on air quality: Supplementary Green Book guidance*) so those vulnerable to respiratory and heart disease, i.e. old, young, those with existing conditions, and people living in areas with higher ambient air pollutant concentrations (urban areas) will be more adversely affected and therefore the damage avoided is higher from reducing emissions.

¹⁵ Annual Business Survey (ABS) (2012). SECTION A (PART) - AGRICULTURE, FORESTRY AND FISHING

11. Measurement of the Impact on Micro and Small Enterprises

The impact of the Directive on micro and small enterprises relates to whether the operators are able to meet and absorb the costs of compliance i.e. costs associated with meeting the ELVs as well as the administrative costs associated with the regulation (including compliance (inspection) and monitoring). These costs can then be assessed by comparing the compliance and administrative cost per plant against the level of financial resources available to the operator for investment. Average estimated costs per MCP (annualised) range between £2,400 for each of the MCPs 1-5MW up to £21,000 per 20-50MW MCP (working MCPs and standby MCPs using solid fuel with ELV).

The impact on micro and small enterprises in terms of total costs per plant compared to gross operating surplus (GOS) per operator¹⁶ is assessed. The assessment suggests that in the case of small enterprises (10-49 FTE), the expected annual compliance and administrative cost per enterprise in manufacturing sector when assuming 1 MCP per company ranges from 0% to 3% of GOS for the MCPs of 1-20MW. For the 20-50MW size band, the share increases from 1% to 9% with casting of metals being the most affected sector. Assuming 3 MCPs per small enterprise in manufacturing sectors results in the range of 0% to 9% of GOS (for the MCPs of 1-20MW). For the 20-50MW size band, the share increases to 4% to 27% with casting of metals being the most affected sector.

For commercial sectors the share of total annual costs within GOS is between 0%- 4% (for the MCPs of 1-20MW). For the 20-50MW size band, the share increases from 2% to 11% with retail trade and hotels being the most affected sectors. Similarly, assuming a larger number of MCPs per company (3 MCPs per small enterprise) results in a higher range of 0% to 12% of GOS (for the MCPs of 1-20MW). For the 20-50MW size band, the share increases to 7% to 34% with retail trade and hotels being the most affected sectors.

As would be expected, all of these values increase significantly when 9 MCPs are assumed per enterprise (reaching 103% of GOS for some sectors). However, it must be noted that an enterprise with this many MCPs is very unlikely to qualify as a small enterprise. Whilst the values are relatively high for the 20-50MW MCPs, it is considered extremely unlikely that any of these plants would be operated by small enterprises given total number of such MCPs.

Consideration has been given to excluding small and micro businesses from the scope of the policy however doing so would reduce the benefits of the policy (perhaps by around 15%, based on the market share) and the analysis suggests that this policy will not place a disproportionate burden on these businesses.

Guidance and communications will be developed for plant operators which will be expected to reduce and further minimise any impacts for micro and small business impacts.

11.1 Key sectors

Education, health and public sector

Environmental compliance cost in the public sector, including MCPs operated in the government buildings, prisons, public educational and health care facilities are likely to be covered from the operating and maintenance budgets of these organisations.

Agricultural sector

When considering the average net farm income in England and Wales, compliance cost in agricultural sector would constitute one fifth to six times the average net annual income, suggesting significant burden. It should be noted, however, that agricultural enterprises operating MCPs larger than 1MW are likely to be larger than the average farming companies in the UK.

Furthermore, the absolute majority of the MCPs falling within the scope of the Directive are gas fired boilers and engines of 1-5MW (accounting for 94% of the total number of the MCPs). In this case, the share of the total annual compliance costs in the net farm income for poultry and horticultural farms is 3% and 5% respectively (assuming one MCP per farm). When considering the costs for gas fired engines and boilers within the relevant size band specifically (as opposed to the average annual costs across all plant types and fuels), the share decreases to 2% of the average farm impact.

11.2 Financial and Affordability

While the assessment considers the average annual costs per enterprise, compliance costs would involve upfront capital costs that need to be financed either through own or borrowed resources. If firms seek to spread the upfront

¹⁶ GoS = capital available to companies after paying operating expenses from income, which allows them to repay their creditors, to pay taxes and eventually to finance all or part of their investment¹. Considering that GOS can be used for financing investment, total cost per plant are compared against GOS per operator to assess the economic impacts of proposed regulation. However, the GOS does not take into account depreciation or amortisation. The implication is that GOS may slightly overestimate the funds available for new investment for companies with high existing capital intensity.

capital costs over a number of years, they will have an additional cost of capital financing. This cost is not included in the average annual cost.

11.3 Direct Costs and Benefits to Business Calculations (following One-In-Three-Out methodology)

Following the EANCB requirements, costs and benefits calculated here use a 2014 price base year and a 2015 PV base year. Consistent with the EPR (Environmental Permitting Regime), and other cost recovery schemes, we envisage charging operators appropriate fees to recover regulator costs, thus avoiding additional burdens on public finances. (Please see Section 7.3 for details). As such, the costs to business include all abatement, administration, compliance (inspection) and monitoring costs associated with the MCPD.

The equivalent annual cost to business is estimated to be £15.9m, with only £0.1m equivalent annual benefits to business estimated (in traded carbon reductions). Overall this gives an EANCB of -£16m, a net cost to business. As this is EU driven regulation, and the implementation doesn't go beyond the minimum EU requirement, it is out of scope of 'One-in, Three-out' in accordance with the current methodology.

All costs and benefits have been assessed at 2015 prices and uplifted to 2018 PV base year. However the Equivalent Annual Net Cost to Business (EANCB) figure is calculated at 2014 (real) prices and 2015 Present Value base year. Methodology is consistent with the Green Book and supplementary guidance.

12. Competition assessment

The competition assessment guidelines¹⁷ set out four questions to establish whether a proposed policy is likely to have an effect on competition. In particular, the assessment needs to establish whether the requirement to comply with the emission limit values for the plants with a thermal input of 1-50MW would affect the market by:

- ▶ Directly limiting the number or range of suppliers?
- ▶ Indirectly limiting the number or range of suppliers?
- ▶ Limiting the ability of suppliers to compete?
- ▶ Reducing suppliers' incentives to compete vigorously?

A brief summary of the four questions and a response considering the requirement is presented in Table 12.1.

Table 12.1 Competition Assessment Filter Questions

Do the proposed requirement to carry out a CBA	Response	Comment
Q1. ...directly limit the number or range of suppliers?	No	The proposed requirement to comply with the proposed ELVs does not seek to directly limit the number of suppliers
Q2. ...indirectly limit the range of suppliers?	No	<p>The proposed requirement to comply with the proposed ELVs is not likely to limit the range of suppliers. In particular, the proposed requirement does not prevent entry or exit from the market for any of the sectors affected, e.g. Electricity Supply Industry (ESI), refineries, iron and steel, chemical industry, commercial and public sector entities etc. Furthermore, anticipated compliance and administrative costs are driven by the size of the MCP (1-5MW, 5-20MW and 20-50MW) and apply same requirements across different sectors and ownership models.</p> <p>In terms of suppliers of abatement technologies aiming to reduce pollutant emissions, these are manufactured by a range of companies ranging from the engineering or chemical companies to the energy specialist. For example, the energy giants Siemens (DE), Hitachi (DE) and Alstom (FR) all provide multiple abatement techniques for various pollutants (NO_x, SO_x, PM and others). Other leading engineering European companies such as ABB (CH), Andritz (AT) and Fluor (UK) provide a wide range of abatement technologies such as SCR, FGD and electrostatic precipitators (ESP).</p> <p>Some manufacturers are more specialised. For instance, Howden (UK) is a leading provider of rotary regenerative heat exchangers which are used for FGD and SCR. The British company Johnson Matthey is a leader in providing chemical catalysts. Whilst a majority of the abatement technologies manufacturers are large companies, there is a significant number of SMEs involved in the installations or the fitting of these technologies. Moreover, some more specific (specialist) technologies, particularly relevant for combustion engines, may be developed by smaller manufacturers. Overall, there is no one dominant supplier or dominant approach across the installations affected by the proposed regulation.</p> <p>Furthermore, the requirement to comply with the proposed ELV does not specify application of any particular abatement technology leaving the choice to the operators.</p>
Q3. ...limit the ability of suppliers to compete?	No	The proposed regulation would bring smaller scale combustion processes in line with regulation for combustion plants greater than 50MW, thereby reducing any (potential) perverse effect on these installations at the threshold above and below 50MW.
Q4. ...reduce suppliers' incentives to compete rigorously?	No	The proposed requirement does not seek to limit the incentives for suppliers to compete. In particular, application of the rules across the board would impose similar constraints on all operators.

Overall, the requirement to comply with the ELVs for existing and new MCPs with a thermal input of 1-50MW is unlikely to have adverse impacts on competition.

Additional compliance and administrative costs that companies across different sectors would be facing may result in significant burden affecting profitability and commercial viability of these enterprises. However, application of the new requirements for the MCPs between 1-50MW would impose similar constraints on all operators across the board.

¹⁷ OFT http://www.offt.gov.uk/shared_offt/reports/comp_policy/Quick-Guide1-4.pdf

13. Social impact assessments

In general terms, when an operator is faced with additional compliance and administrative costs, a range of potential responses exist ranging from absorbing the additional cost through reduction of profit margins up to fully passing these on within the prices of products and services. The companies could also aim to reduce their cost base, for instance, by cutting labour and/or other production costs.

13.1 Distributional impact on households

Implementation of this Directive will affect a wide range of manufacturing sectors, such as metal production and processing, chemical industry and manufacturing of refined petroleum products, commercial sector including retail, hotels, warehousing among other sectors and agriculture.

Enterprises faced with additional annual compliance and administrative costs will be aiming to pass on these costs to the fullest extent possible through the prices of their products and services. Potential impacts on electricity and consumer product prices would be of particular relevance to consider.

First of all, it should be noted that the absolute majority of the plants falling within the scope of the Directive are gas fired boilers and engines with the capacity of 1-5MW (working and standby plants). In relative terms, this group of MCPs accounts for 94% of the total number of plants. In practice, these plants will be hosted across a multitude of sectors generating energy for a business' own consumption and acting as standby plants as opposed to being part of the national grid and indirectly affecting electricity prices.

Furthermore, it should be noted that annual compliance and administrative costs as a proportion of GOS for the MCPs between 1 and 5MW range from 0% to 2% (1 MCP per company), 1% to 6% (3 MCPs per company) and 2% to 18% (9 MCPs per company) in the case of manufacturing and commercial sectors.

13.2 Employment and Labour Markets

Overall, implementation of the regulation may have positive secondary impacts on the level of employment in abatement technology suppliers, while potentially having adverse primary impacts in sectors that will incur additional compliance and administrative costs. Secondary impacts (costs and benefits) have not been explicitly monetised in this assessment but primary costs have.

Implementation of regulations requiring fitting of abatement technology will lead to costs for the firms affected whilst also representing income for firms that manufacture and install these technologies. When considering supply of abatement technologies, the UK and EU as a whole has a well-established abatement technology supply chain as the majority of the technologies currently being applied by LCPs are also relevant for these smaller plants. The counter argument is that while the operators of MCPs are expected to be able to pass (some of) the costs of installing necessary equipment on to consumers, additional abatement costs might result in adverse impacts on employment.

It is unclear how these two effects will reach a balance but it might be a reasonable assumption that the effect will in aggregate be fairly neutral. The effects of additional costs on firms might be more pronounced in sectors open to international competition such as metal processing, food production, chemical industries etc. The relative scale of combustion plant within the total operations of the enterprise (and costs) constitutes another important factor that will affect the ability of enterprises to absorb additional costs. Distributional sector analysis suggests that in the case of a company operating one MCP, the proportion of annual compliance and administrative costs within the enterprise's GOS, depending on the size of the MCP, ranges from 1% to 9% in the metal production and chemicals sectors.

14. Conclusions

Poor air quality is the largest environmental risk to public health in the UK, exacerbating the impact of pre-existing health conditions, especially for the elderly and children. Long term exposure reduces life-expectancy, mainly due to increased risk of mortality from cardiovascular and respiratory causes and from lung cancer. COMEAP's research notes that short-term exposure to NO₂ has been linked to some direct effects on morbidity while long term effects suggest impacts on respiratory and cardiovascular mortality, children's respiratory symptoms and lung function. Air pollution also damages biodiversity and reduces crop yields¹⁸.

Combustion plants in the 1-50MWth range (Medium Combustion Plants, MCPs) are a significant, largely unregulated source of emissions of Oxides of Nitrogen- NO_x, PM, Sulphur dioxide- SO₂) which impact on air quality. An important tool for controlling emission from this source- the MCPD came into force in December 2015 and must be transposed within 2 years. The legislation was fully supported by UK during negotiations as it represents a cost effective way of controlling emissions and offers a number of important exemptions and flexibilities necessary to keep burdens on business low and any impacts on energy security to a minimum. Furthermore as AQ is transboundary, effective controls across Europe will benefit to UK population.

This impact assessment has assessed the transposition of the MCPD into domestic legislation, making use of available flexibilities and exemptions where possible and adopting a risk-based approach to permitting, compliance and enforcement. Emissions growth from high NO_x emitting generators continues and has to be dealt with through future policy to avoid non-compliance with emission ceilings and AAQD limit values.

The results of the analysis are presented in Table 14.1 below:

Table 14.1 Central NPV of each impact (2018-2032)

2018-2032	(£m, PV)
Costs (cost to operators)	
Abatement costs	138.1
Administration costs	30.4
Monitoring costs	42.8
Operational/capital cost of technology switch	
<i>Total</i>	211.2
Benefits (emissions reductions)	
Air Quality pollutants	982.4
CO2 (Traded)	1.4
CO2 (Non-Traded)	34.1
<i>Total</i>	1,018.00
NPV	806.8

*Please note any differences due to rounding.

The impacts assessed within the document are based on the best available knowledge of the current MCPs active within the UK along with the assumed behaviour of these plants when faced with these restrictions. We have consulted widely on our assumptions and have refined the analysis accordingly (see Annex E). The remaining uncertainties around the modelling and the implementation and delivery of our preferred option are clearly set out in section 9. We will monitor the effectiveness of the controls primarily through the Environment Agency's implementation plan.

¹⁸ COMEAP (2010) The Mortality Effects of Long-Term Exposure to Particulate Air Pollution in the United Kingdom. Committee on the Medical Effects of Air Pollutants. Available from: <https://www.gov.uk/government/publications/comeap-mortality-effects-of-long-term-exposure-to-particulate-air-pollution-in-the-uk>

Annex

A. Additional options considered for transposition of the MCPD

In addition to the options presented in Table 6.3, Section 6, alternative options for transposing the MCPD could involve (1b) applying controls earlier than required by the directive for new and/or existing plants; and (1c) setting stricter emissions limits than the directive. The options are assessed in the table below.

Annex Table 1 Option selection

Option	Discussion
Apply earlier emission controls for new plant	<p>The MCPD requires new plants to be permitted and in compliance with ELVs from 20 December 2018, one year after the deadline for transposition. This timescale is justified to allow sufficient time for transposition, to develop the processes and guidance required for implementing the Directive, and to raise awareness of the requirements for plant operators, many of which may have not prior experience with environmental permitting. It was therefore considered that earlier application of emission controls for new plants would not be appropriate.</p>
Apply earlier emission controls for existing plant	<p>Application of earlier emission controls to existing plants could deliver earlier improvement to air quality. However, there are a very large number of existing plants (particularly 1-5MW plants) which will require permitting, retrofitting to achieve compliance with ELVs and possibly modifications to the flue to allow monitoring emissions, so a long timescale for implementation is helpful. In addition, this timescale will promote decommissioning of older plants before the deadline for compliance with ELVs and their replacement with new plants using cleaner technology, which typically have to comply with more stringent ELVs.</p>
Application of stricter ELVs	<p>The MCPD ELVs were selected to provide a minimum emission standard which can be applied to the wide variety of combustion plants in scope of the Directive. Application of stricter ELVs would deliver greater emission reductions but they may not be achievable in all situations, and so would require a more bespoke approach to setting emission limits, which would increase permitting costs. However, for existing 20-50MW plant subject to emission controls under domestic provisions which are more stringent than those required by the MCPD, the domestic provisions will be retained because plant are already in compliance.</p> <p>The MCPD states that the European Commission will produce a report on the emission levels achievable applying best available technology, and associated costs, which will have to be considered when setting emission limits for plants in zones or parts of zones non-compliant with the Ambient Air Quality limits. This report will allow reviewing the case for applying stricter ELVs.</p>

B. Abatement measures and Costs methodology

The impact assessment model is based on an abatement matrix which details abatement measures for each pollutant (NO_x, SO₂ and PM), technology type (boiler, engine and turbine), fuel and capacity class, alongside its abatement efficiency and costs. After entering the set of ELVs, the model compares these against baseline emission levels (projected into the relevant year) and calculates the necessary emission reduction needed to achieve the ELVs. Given the reduction needed, the model selects the most cost effective measures and calculates total emission reduction and costs. These figures are based on the data from the abatement matrix, multiplied by the number of plants applying those measures. The process is done separately for new and existing plants. It is done separately because an adjustment factor has been applied to the costs of the abatement measures to reflect the lower cost of installing abatement as part of installation of a new plant when compared to the higher cost of retrofitting a measure to an existing plant.

Compliance costs for potential abatement measures are based on the abatement matrices developed by Amec Foster Wheeler for the Commission in recent studies. A number of literature sources were reviewed in order to compile information on possible abatement measures for MCPs and associated pollution abatement efficiencies and costs. The following sources were reviewed:

- JRC (2007) Small combustion installations: Techniques, emissions and measures for emission reduction. Joint Research Centre;
- AEA (2007) Assessment of the benefits and costs of the potential application of the IPPC Directive (EC/96/61) to industrial combustion installations with 20-50MW rated thermal input. Final Report to the European Commission;
- (Summary of) Best Available Techniques in Small 5-50MW Combustion Plants in Finland;
- EGTEI (2010) Options for limit values for emissions of dust from small combustion installations < 50MW;
- VITO (2011) Beste Beschikbare Technieken (BBT) voor nieuwe, kleine en middelgrote stookinstallaties, stationaire motoren en gasturbines gestookt met fossiele brandstoffen;
- ECN (2008) Onderbouwing actualisatie BEES B: Kosten en effecten van de voorgenomen wijziging van het besluit emissie-eisen stookinstallaties B;
- Amec Foster Wheeler's multi pollutant abatement measures database.

The majority of the costs are taken from VITO (2011), with some additional costs taken from AEA (2007) and Amec Foster Wheeler (2013). Figures are inflated to 2014 prices in all cases¹⁹. The literature sources include a range of costs for measures, which represent the uncertainty around the cost estimates for the abatement measures and variation in installation specific variables, and so a low and high range of costs are used in this analysis. A list of abatement measures is provided on Annex Table 2. For some abatement measures, the low and high costs are the same, which is assumed to reflect a single underlying cost data source; whilst for other abatement measures (SCR and SNCR in particular) there is a significant difference between the low and high costs.

The abatement measure for the reduction of SO₂ emissions from the combustion of other gaseous fuels is assumed to be as per the installation of end of pipe SO₂ treatment at liquid-firing plants (wet and dry FGD). It is known however that some of the plants firing other gases will be at refineries and steelworks where it may be more cost effective to desulphurise fuel feedstock's rather than fit end-of-pipe SO₂ abatement. As such, for this measure, the assumed costs that have been assumed may be an overestimate, and should be considered as conservative.

Identify the abatement measures

Abatement measures and their associated emission reduction efficiencies are based on the abatement matrices developed by Amec Foster Wheeler for the Commission in recent studies (Amec Foster Wheeler, 2014). Annex Table 2 lists a consolidated version of the abatement measures considered in the MCPD Impact Assessment as well as their abatement efficiency and the technologies and fuels affected. Where a range is shown for abatement efficiency this indicates different efficiencies are expected when the measure is applied to different size-fuel-technology type categories. Abatement efficiencies presented are an indication of the emission reduction that the measure can achieve on average and are therefore suitable for modelling the impact across groups of plant; the reduction realised in individual plant could be slightly higher or lower depending on site specific features.

Annex Table 2 List of measures considered in the MCPD IA and their associated abatement efficiency

Technologies that can fit this measure	Fuels affected	NO _x abatement efficiency	SO ₂ abatement efficiency	PM ₁₀ abatement efficiency
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¹⁹ Capital (CAPEX) and operational (OPEX) costs have been identified in the reference sources to allow for flexibility in annualising the data; default values of a 3.5% discount rate and an annualisation period of 15 years have been used in the central case. Costs have been presented in 2014 prices using the GDP deflators available from HMT (ONS June 2015).

Combustion modification - assumed EGR (Exhaust gas recirculation)	Boilers	Biomass, Other solid fuels, Liquid fuels.	30%	-	-
Cyclone	All technologies	Biomass, Other solid fuels, Liquid fuels.	-	-	65%
Dry FGD (flue gas desulphurisation)	All technologies	Other solid fuels, Liquid fuels, Other gaseous fuels	64% - 80%	-	-
ESP (Electrostatic precipitator)	Engines and turbines	Liquid fuels, Natural gas	-	-	97%
Fabric filter	All technologies	Biomass, Other solid fuels, Liquid fuels	-	-	95% - 99%
Fuel switch to 0.1%S Liquid fuels	All technologies	Liquid fuels	-	90%	50%
Fuel switch to natural gas	Boilers	Other solid fuels	50%	100%	99%
Low NO_x burner	Boilers	Natural gas, Other gaseous fuels	30%	-	-
Low NO_x burner / Advanced lean burn	Engines and turbines	Natural gas, Other gaseous fuels	40% - 50%	-	-
SCR (Selective catalytic reduction)	All technologies	All fuels	70% - 90%	-	-
SNCR (Selective non-catalytic reduction)	All technologies	All fuels	35% - 45%	-	-
Water injection	Engines and turbines	Liquid fuels, Natural gas	60%	-	-
Wet FGD	All technologies	Biomass, Other solid fuels, Liquid fuels, Other gaseous fuels	-	94%	99% - 100%

Annex Table 3 List of measures considered in the MCPD IA and their associated uptake frequency

Pollutant	Measure	Number fitted in 2030	
		New	Existing
NO _x	Lean burn / low NO _x burners	1,742	1,325
	water injection	297	4
	EGR	7	308
	SCR	237	325
	SNCR	175	318
SO ₂	WFGD	272	304
	DFGD	0	205
	Fuel switch	7	13
PM	Total cyclone	71	243
	Filters	51	205

Please note the number of fitted is not the number of plants. Some plants need to fit multiple abatement technology to meet ELVs for multiple pollutants. Some plants required to meet emissions limits are already compliant under BAU and therefore do not need to fit abatement technology.

A summary of this information is presented in the abatement matrices (Annex Table 3) for each of the 1-5MW, 5-20MW and 20-50MW capacity classes, for boilers, engines and turbines above. Expanded versions of these abatement matrices are used within the model to automatically identify which abatement measure would be required to achieve compliance with the scenario ELVs. Given that to date the majority of MCPs have not been regulated, there has been no driver to optimise emissions performance. A threshold has been set at 10% emission reduction. Below 10%, it is assumed modifications to existing equipment and operating practice can be implemented to achieve the necessary reduction with minimal additional cost²⁰. If an emission reduction of greater than 10% is required, then the lowest cost measure that can achieve the required reduction is selected.

An adjustment factor has been applied to the costs of the abatement measures to reflect the lower cost of installing abatement as part of installation of a new plant, compared to the higher cost of retrofitting a measure to an existing plant. For primary measures, this premium is assumed to be 60%, consistent with Amec Foster Wheeler's recent modelling for the Commission's impact assessment. For secondary measures, the premium is 40%. This is 60%/40% adjustment is for CAPEX only. The CAPEX/OPEX distinction matters for some measures such as pure fuel switch, where there is no CAPEX in some applications.

Some types of plant, namely natural gas boilers are assumed to reach compliance with the ELVs set and therefore do not face the cost of abatement. As this is also the most frequent type of plant it has been assessed and presented in Annex Table 4.

²⁰ An assumption consistent with the Commission study

Annex Table 4 NO_x average emission level, proportion of plants and relative contribution of NO_x emissions from natural gas boilers already compliant or non-compliant with MCPD.

Capacity Class	Emission Levels (mg/Nm ³)		Proportion of plants		Relative contribution (NO _x)	
	Compliant	Non-compliant	Compliant	Non-compliant	Compliant	Non-compliant
Existing plants						
1-5 MW _{th}	120	280	70%	30%	49%	51%
5-20 MW _{th}	130	230	80%	20%	69%	31%
20-50 MW _{th}	150	280	60%	40%	45%	55%
New plants						
1-5 MW _{th}	70	190	20%	80%	8%	92%
5-20 MW _{th}	80	170	30%	70%	17%	83%
20-50 MW _{th}	70	200	10%	90%	4%	96%

The values in the table above are based on information on real plant performance and what percentages of those have BAU emission levels below the MCPD ELVs. The figures are for data collated in 2014 and assumed to apply for all years 2018-2032 as without MCPD.

C. Administration and compliance activities

Annex Table 5 List of administrative activities considered

Administrative activities	Type of activity	Frequency	Affected party	Time required per operator or regulator per activity (hours) by type of permit	Assumptions*
Permit application to CA by operator (new plants)	one-off		Operators : (per MCP)	Standard: 3.5 Bespoke: 45	Assumed to be electronic and based on readily available information
Permitting: CA to start permitting process within 1 month (new plants)	one-off		Regulator (per MCP)	Standard: 2 Bespoke: 20	Assumed to be electronic and does not include corrections/revisions of submitted information
Permitting: notification to CA by operator (existing plants WHERE annex I information has not been provided before)	one-off		Operators : (per MCP)	Standard: 3.5 Bespoke: 45	Assumed to be electronic and based on readily available information
Permitting: development of the MCP register by CA	one-off		Regulator (total)	15,673	Assumed to cover development of the register template by the CA either as a spreadsheet to be posted on-line (from scratch). It excludes any specific IT costs in this case
Permitting: data reporting	recurring	Variable	Operators (per MCP)	Standard: 2.5 Bespoke: 50	Assumed to be electronic and concise
Permitting: data reporting	recurring	Variable	Regulator (per MCP)	Standard: 1 Bespoke: 25	Assumed to be electronic and does not include corrections/revisions of submitted information
Record keeping (for at least 6 years)	recurring	Once per year	Operators (per MCP)	7.5	Assumed to be electronic using an existing record keeping system (to an extent part of a day-to-day installation management)
Compliance check: environmental inspection	recurring	High risk: (1) once per year (2) once every two years	Regulator (per MCP)	15	Assumed to involve a site visit (with limited travel time). Does not include corrective actions and follow ups/ checks.
Compliance check: environmental inspection	recurring	High risk: (1) once per year (2) once every two years	Operators (per MCP)	7.5	Assumed to involve a site visit. Does not include addressing any corrective actions and follow ups.
Approach 1, Approach 2 - Compliance check: remote check	recurring	Low risk: (1) once every 3 years (2) once every 10 years Medium risk: 1-20MW: once every 3 years, 20-50MW: (1) once per year (2) once every 2 years	Regulator (per MCP)	7.5	
Compliance check: recording of malfunctions	recurring	Once every 5 years	Operators (per MCP)	1	Assumed to be electronic using an existing record keeping tool (to an extent part of a day-to-day installation management)
Reporting: three reports to the Commission (2021, 2026 and 2031)	recurring	As required by reporting year	Regulator (per report)	37.5	Assumed to be based on compilation of readily available information received and stored by the CA. Does not include data checks and corrections (assumed to be part of daily operation)

* It is assumed within the activities set out above, the costs associated with the collection of annual fees is covered.

D. Behavioural response assumptions

The behavioural assumption is supported by a demand for heat by the majority of operators, combined with the fact that boilers will remain the primary supply. This is because district heating systems are not widespread in the UK and it is therefore unlikely to be a viable alternative option for the representative operator to connect to a network to provide their primary heat needs. That is to say, technical barriers matter as well as economic considerations.

For engines and turbines generating electricity, there could be two alternatives to fitting abatement:

1. Stop auto-generating electricity and switch to buying from the grid. This will result in higher cost per unit of electricity and may also require an upgrade to the supply contract and/or physical connection, also at additional cost.
2. To purchase or hire portable gensets, which do not fall under the MCPD but instead have emission limits under NRMM standards. Given the low number of expected cases of such a switch, a comparison of the costs and benefits of the MCPD against the NRMM standards has not been performed.

For engines and turbines operating as cogeneration, the above considerations for heat and electricity both apply. For all plant types nearing the end of their operational life, an alternative to fitting abatement may be early closure and replacement with new compliant plant. This would come with the associated cost premium for compliance with MCPD new plant ELVs and the early write off of remaining asset value. Technological changes that may alter incentives over time would not be anticipated until after the appraisal period of this assessment either.

In specific circumstances, where one of the outlined alternative options is lower in cost than fitting abatement, the option may be taken and therefore the behavioural response for some operators may be different than the one assumed to be representative of the vast majority of operators. Due to the relative small scale and uncertainty it was not considered further.

E. Summary of consultation responses and actions taken

Annex Table 6 Summary of consultation responses and actions taken

Question	Summary of responses	Action taken
Do you agree with the general approach to permitting that is proposed?	Using Environmental Permitting regulations and modifying existing permits was deemed the most straightforward implementation approach. Clear guidance needed alongside the legislation.	Proceed with proposed approach that operators will be required to obtain an environmental permit under the Environmental Permitting Regulations in order to operate an MCP.
Do you agree with the proposed approaches set out in Table 1? If not, why not?	Strong feeling that biomass and district heating should not be exempt to allow equal playing field. Clear guidance needed to clarify scope of flexibilities.	Proceed with proposed approaches for the flexibilities except for District heating and biomass.
What are the practical problems with applying the 3-year and 5-year rolling averages? Should a yearly maximum be applied?	Responses split between considering the rolling averages should be allowed to allow maximum flexibility and those who felt it would be too flexible and difficult to enforce. Annual reporting was proposed as a solution.	Apply rolling average in full; require operators to notify the regulator if 500h exceeded on any calendar year.
Do you have specific examples where applying the extension to exempted hours in exceptionally cold weather is justified?	Majority agreed with the proposal not to apply this flexibility. Some suggested it would be prudent to have flexibility for exceptional circumstances.	Allow Ministers discretion to apply exceptionally cold weather exemption.
For biomass and district heating plants which qualify for later application of Annex II emission limits, do you have views on how emission limits should be set which ensure that no significant pollution is caused and that a high level of protection of the environment as a whole is achieved?	Strong feeling that biomass and district heating should not be exempt to allow a level playing field.	Do not allow late application of ELVs, since MCPD timescale provides very cost effective reduction in pollutants.
What are the practical difficulties with applying the MCPD to compression ignition engines within the MCPD size range which are not used in the propulsion of a vehicle, ship or aircraft and are not subject to 'placing on the market' emission standards under the Non-Road Mobile Machinery Directive?	Respondents asked for clarity on what plants would be in scope and who is responsible for compliance with the directive.	Use existing EPR provisions for mobile plants: operator is responsible for permit.
What approach for compliance checks to you prefer: a) Random compliance checks as described above b) Scheduled compliance checks as described above c) Other – please describe	There was strong support for developing approaches which enable a reduction in frequency, rather than a standard random or scheduled approach.	IA will be amended to assume worst case scenario of scheduled inspections, and we will develop a regime in consultation on guidance with stakeholders and the regulator
Do you agree with the proposed approach for monitoring plants? If not, what are your concerns?	It was widely agreed that continuous monitoring would be excessively costly and disproportionate. Some were concerned the monitoring frequency was too low and other felt in parts it was too onerous.	Proceed with proposed approach that operators are required to monitor pollutant emissions periodically.
Do you have any suggestions for monitoring methods which could be applied to MCPs as an alternative to MCERTs?	Some suggested alternatives to MCERTs could be developed; others suggested that MCERTs could be developed to include standards proportionate to the risk posed by smaller plant.	Proceed with proposed approach on IA; monitoring standards will be developed in guidance.
Do you foresee any challenges to using the Environmental Permitting Regulations for implementing the MCPD and controls on generators?	The majority felt it was right to use the Environmental permitting regulations but where concerned on complexity. There were also lots of concerns around fees and charging if Local Authorities were the regulator.	Proceed as proposed by using the Environmental Permitting Regulations.
We will ensure duplicating and conflicting controls are removed whilst ensuring that the current level of environmental protection is maintained. Do you agree with this approach? If not, please explain	Most agreed it would reduce burden on industry as long as it was clear what the replacing provision is, what it removes and why.	Proceed as proposed: no changes needed for Sulphur Content of Liquid Fuels Directive; retain Clean Air Act provisions on emission of stack heights and emission of dark smoke.
Which of the following approaches do you consider to be the best option for choice of the regulator: A) Plants where regulator must determine the permit conditions to safeguard local air quality and those in Part A1 installations are regulated by EA	It was a close split between the Environment agency and a combination of the Environment Agency and Local authorities. It was asked that whoever was the regulator they provide further clarity.	Option B - EA regulates all plants in England and NRW regulates all plants in Wales. Part B plant permits to be transferred to EA.

<p><i>in England and NRW in Wales, and other plants are regulated by LAs</i></p> <p><i>B) EA regulates all plants in England and NRW regulates all plants in Wales</i></p> <p><i>C) LAs regulate all plants</i></p>		
<p>Are there any situations where you consider the identity of regulator needs to be further clarified?</p>	<p><i>Some asked for further clarity on mobile plants. Another issue was the overlap with waste permits.</i></p>	<p><i>Need to consider situation of waste sites in guidance.</i></p>
<p>Do you agree with the assumptions made/ evidence provided in the policy analysis and associated impact assessment e.g. number of plants, operating hours, emissions?</p> <p><i>If not, please provide details.</i></p>	<p><i>Some noted that some areas were omitted from the impact assessment such as mobile generators.</i></p>	<p><i>Amend the IA to reflect changes of proposals described in this table, and impact on mobile generators.</i></p>

F. Glossary

Terminology	Definition
Abatement technology	<i>In this report</i> refers to techniques and technologies used to reduce pollutant emissions, Primary abatement prevents formation of pollutants and includes a switch to fuels which result in lower emissions, retrofitting of existing plant (e.g., by changing the burners) and selection of new plant with lower emission. Secondary abatement refers to technology which removes pollutants from the exhaust gases, such as filters for dust or selective catalytic reduction to destroy NO _x .
Amec Foster Wheeler	Amec Foster Wheeler Foster Wheeler plc is a British multinational consultancy, engineering and project management company headquartered in London, United Kingdom that provided analysis for this impact assessment
AQ	Air quality
AQMAs	Air Quality Management Areas
Back-up plant	Plant installed to provide emergency electricity generation in times of interruption to supply of mains grid electricity, operating rarely and normally much less than 500 hours per year (assumed to be less than 50 hours).
BEIS	Department of Business, Energy and Industrial strategy
CA	Competent Authority
Capacity Market	The Capacity Market is Government's key policy tool to bring forward sufficient reliable electricity capacity to ensure we maintain a secure supply of electricity.
CAPEX	Capital Expenditure
CO	Carbon Monoxide
CO₂	Carbon Dioxide
Combustion plant	Any technical apparatus in which fuels are oxidised in order to use the heat thus generated
Cyclone	A type of filtration system fitted to abate pollution impacts of Biomass, Other solid fuels, Liquid fuels.
DEFRA	Department for Environment Food and Rural Affairs
DRGD	Dry Flue gas Desulphurisation
EA	Environment Agency
EANCB	Equivalent Annual Net Cost to Business
EGR	Exhaust Gas Recirculation
ELVs	Emission Limit Values; means the permissible quantity of a substance contained in the waste gases from a combustion plant which may be discharged into the air during a given period
EMEP CORINAIR	Emission Inventory Guidebook

Energy Market	Energy market is the trade and supply of energy
EPR	Environmental Permitting Regulations
ESI	Electricity Supply Industry
ESP	Electrostatic Precipitators
ETS	Emissions Trading Systems
FGD	Flue gas Desulphurisation
Filters	Form of abatement where different materials are fitted to plants to filter out particulate pollution
FTE	Full time Equivalent
GB	Great Britain
GHGs	Greenhouse gases
Government	Defra and Welsh Government
GOS	Gross Operating Surplus
IED	Industrial Emissions Directive
IGCB	Interdepartmental group on costs and benefits
Installation	<p>(a) a stationary technical unit where one or more activities are carried on, and</p> <p>(b) any other location on the same site where any other directly associated activities are carried on,</p>
Kt	Kilo tonne
KW	Kilowatt
LA	Local Authority
LCP	Large Combustion Plant
Lean burn/low NO_x burners	A form of abatement using larger quantities of air in the fuel mix for internal combustion engines.
MCERTS	Monitoring Certification Scheme
MCP	Medium Combustion Plant
MCPD	Medium Combustion Plant Directive
Member states	Members of the European Union
mg/Nm³	Milligrams per normalised meter cubed
MIS	Micro Isolated Systems
MS	Member State

MW	Megawatt - a unit of power equal to one million watts Unless otherwise stated the use of MW in this report refers to MW thermal
MWth	Thermal rated input in MW – the maximum fuel energy rate of the combustion plant.
MWe	Megawatts electric - electric output of a power plant in megawatt. The relationship between thermal input and electrical output of a generator depends on its efficiency – an engine that is 33% efficient would have a thermal input 3 times greater than its electrical output.
NAEI	National Atmospheric Emissions Inventory
NO₂	Nitrogen Dioxide
NO_x	Nitrogen Oxide
NPV	Net present value
ONS	Office of National Statistics
OPEX	Operating expense
PJ	Peta joules
PM	Particulate Matter
PM₁₀	Particulate Matter 10 micrometres or less in diameter
PM_{2.5}	Fine particulate matter (2.5 micrometres or less in diameter)
PV	Present Value
Rpm	Revolutions per minute
SBS	Structural business statistics
SCR	Selective catalytic reduction
SIS	Small isolated systems
SMBA	Small and micro business assessment
SME	Small and medium sized enterprises
SNCR	Selective non-catalytic reduction
SO₂	Sulphur Dioxide
Solid Fuels	Refers to fuel made of solid substance, typically coal or wood
SO_x	Oxides of Sulphur
Stand-by plant	Plant installed alongside working plant to provide for additional demand at peak times or in case of shut down of the main working plant, and operating fewer than 500 hours per year.
STOR	Short Term Operating Reserve

t	Tonnes
TRIAD	<p>The Triads are defined as the three half-hours of highest demand on the Great British electricity transmission network between November and February each year. The triad charging system is a tool used by National Grid to smooth demand for electricity at peak times and is used to recover the costs of building and maintaining the electricity transmission network. The cost of electricity for large industrial and commercial users of electricity whose consumption is half hourly metered is determined by their demand during the Triads. Large users of energy therefore have an incentive to reduce their demand during the Triads by running their generators to avoid drawing power from the transmission network during Triads (this is known as Triad avoidance). Generators connected at the distribution level are paid to produce power during the Triad peaks. Some generator operators are contracted by large energy users (or third parties on their behalf) to run during periods when triads are likely. Triads are declared by National Grid retrospectively so generators are run whenever the operator believes a triad is likely to occur.</p>
UK IAM	<p>UK integrated assessment model (UKIAM) he UK integrated assessment model (UKIAM), has been developed using Defra funding by Imperial College London to investigate cost effective strategies for reducing UK emissions which maximise improvements in environmental protection in the UK while complying with future UK emission ceilings imposed to reduce transboundary air pollution in Europe. UKIAM brings together information on projected UK emissions of SO₂, NO₂, NO_x, NH₃, CO₂, N₂O, CH₄, PM₁₀ and PM_{2.5} to calculate the simultaneous effect of abatement measures on a combination of pollutants, and comparison of future scenarios. This includes calculating the effects with respect to changes in greenhouse gas emissions as well as human exposure to air pollution, urban air quality, and the natural ecosystems.</p>
WFGD	Wet Flue gas Desulphurisation
Working plant	Operating on average more than 500 hours per year which are subject to compliance with emission limits.

Summary: Analysis & Evidence Policy Option 1

Description: Transposition of MCPD and introduction of emission controls for generators to enable compliance with AAQD and 2020 National Emissions Ceilings Directive

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2018	Time Period Years 15	Net Benefit (Present Value (PV)) (£m)		
			Low: -66.5	High: 62.3	Best Estimate: -49.03

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	0.0	8.9	110.9
High	0.0	5.5	91.3
Best Estimate	0.0	10.4	107.0

Description and scale of key monetised costs by ‘main affected groups’
 The monetised costs for Option 1 are the costs of implementing controls on generators with high NO_x emissions in order to enable compliance with the 2020 NO_x ceiling and AAQD. Therefore, the total present value costs over the assessment period (2018-2032) include the cost of fitting abatement to comply with proposed emission limits (£50.6m), monitoring and compliance costs (£10.7m), and administration costs (£0.3m). In the energy balancing markets, the measures are expected to incentivise a switch from diesel to gas generators, with higher build costs of £45.4m.

Other key non-monetised costs by ‘main affected groups’
 Some impacts have not been monetised either because the evidence is not available or collecting the evidence would be disproportionately costly. For example, the higher build cost of gas may cause an increase in capacity market costs, however this could be offset by lower wholesale prices during peaks (above), making net impact on bills small; therefore it is deemed disproportionate to monetise. Some plants may also see a reduction in revenue as a result of a restriction on operating hours, however due to the lack of information around individual plant earnings; this has not been possible to monetise.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	0.0	4.3	44.6
High	0.0	14.7	153.9
Best Estimate	0.0	5.5	58.0

Description and scale of key monetised benefits by ‘main affected groups’
 The monetised benefits include the benefits to human health arising from reductions in air quality and greenhouse gas emissions achieved by the controls placed on generators with high NO_x emissions. These benefits are valued based on the reduced emissions from fitting additional abatement technology and the switch from diesel to gas generators. The total PV benefit is £58.0m.

Other key non-monetised benefits by ‘main affected groups’
 The monetised benefits are likely to substantially underestimate the full social benefit. Reducing emissions of air pollutants from high NO_x generators will benefit natural ecosystems, biodiversity and the wider environment which cannot be monetised. It is not possible to monetise all health and welfare impacts either. The health impacts included here set out the impact on mortality; however we know that there is also a significant societal cost arising from morbidity, which is largely missed from the damage costs used in the analysis. Other secondary impacts that have not been monetised include higher sales of abatement equipment/green technologies and increased revenue for monitoring companies and test houses, as well as increased development of low emission technologies.

Key assumptions/sensitivities/risks	Discount rate	3.5%
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Low and high benefits represent the uncertainty in health benefits from improved air quality. An additional key uncertainty for Option 1 is regarding how the controls affect future investment in generators. The low and high scenarios demonstrate two extremes. The high cost assumes no change in the number of projected diesel plants, and the low cost assumes all projected diesel capacity entering the energy market switch to gas. The low NPV combines low benefits (low damage costs) with high costs (100% switch to gas) for plants in energy markets, and the high NPV vice versa.

Costs: 8.1	Benefits: 0	Net: -8.1.	
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1. Executive Summary

Poor air quality is the largest environmental risk to public health in the UK, exacerbating the impact of pre-existing health conditions, especially for the elderly and children. Long term exposure reduces life-expectancy, mainly due to increased risk of mortality from cardiovascular and respiratory causes and from lung cancer. COMEAP's research notes that short-term exposure to NO₂ has been linked to some direct effects on morbidity while long term effects suggest impacts on respiratory and cardiovascular mortality, children's respiratory symptoms and lung function.¹ Air pollution also damages biodiversity and reduces crop yields.

Air pollution also damages biodiversity and reduces crop yields.

The Government has a legal commitment to improving the air we breathe and reducing the emissions and concentrations of harmful pollutants. The Government's plan to improve air quality by reducing nitrogen dioxide levels in the UK published in July 2017 includes measures to achieve this objective.

Incentives in the energy market have been encouraging greater use, and an increase in the number of, generators with high emissions of NO_x. These generators are primarily diesel fuelled and emit very high NO_x emissions relative to other forms of generators. High NO_x 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.

Generators with a thermal rated input between 1 and 50MW come under scope of the Medium Combustion Plant Directive (MCPD). However, the MCPD's provisions will not curb the anticipated increase in high NO_x generators and the consequent expected breaches of the AAQD limits and NO_x emission ceilings for 2020 and 2030, which are set for the protection of human health. For example, most diesel generators operate for less than 500 hours and therefore would be exempt from MCPD NO_x emission controls. Quick action is needed to curb an anticipated but avoidable rise in national NO_x emissions from high NO_x generators. The government intends to tackle this issue through additional measures targeted at electricity generating plants. Taking action early will reduce burdens on businesses by proactively preventing the proliferation of high NO_x generators which would subsequently have to be retrofitted at a high cost to business. It also gives existing operators more time to prepare as waiting until the NO_x ceiling has been transposed in 2018 gives very limited time to consider measures in time to meet the 2020 requirements. Controls on high NO_x generators will take effect from 2019 – once the 2020 ceilings have been transposed.

This impact assessment considers options for applying emission controls to electricity generating plants emitting high levels of NO_x in England and Wales. It has been updated since the consultation to reflect changes announced by Ofgem to the payments and exemptions provided to embedded generators; and to reflect the latest advice from COMEAP on the damage costs associated with air pollutants. The baseline option (Option 0) assumes that no emission controls above the transposition of the MCPD are introduced whereas Option 1 (preferred) introduces emission controls for high NO_x emitting generators, required to enable compliance with air quality limits and to curb avoidable increases in national NO_x emissions due to current energy market incentives.

We intend to regulate emissions from high NO_x generators by amending the Environmental Permitting (England and Wales) Regulations (EPR) 2016². The EPR currently regulates some combustion plants and will be amended to transpose the MCPD, therefore it offers an approach to implementation which is well understood and will provide clarity for operators and promote compliance while keeping enforcement costs low.

Under the baseline, we assume that 1-50MW combustion plant (MCPs) will be subject to MCPD emission controls. These controls require permitting but have a long implementation phase and do not apply NO_x Emission Limit Values (ELVs) to plants which operate up to on average 500 hours per annum. However, because modelling indicates that MCPD emission controls will not be sufficient for addressing the risk to local air quality posed by high NO_x generators, further emission controls have been applied under our preferred Option, Option 1.

Under Option 1 we will require 1-50MW generators to comply with a specific ELV which is more stringent than some ELVs allowed under MCPD, and at an earlier date to deter market entry of high NO_x generators and encourage cleaner alternatives. The controls exempt plants used only to provide power during site emergencies. They also provide certain plant (classed as 'Tranche A') additional time to meet stringent emissions limits. However, any plants with high emissions will be required to meet controls aimed at protecting local air quality unless they run for less than 50 hours per annum. Generators operational after December 2016 (Tranche B generators) would be expected to meet tight emissions standards aimed at protecting local and national air quality

¹ COMEAP (2010) The Mortality Effects of Long-Term Exposure to Particulate Air Pollution in the United Kingdom. Committee on the Medical Effects of Air Pollutants. Available from: <https://www.gov.uk/government/publications/comeap-mortality-effects-of-long-term-exposure-to-particulate-air-pollution-in-the-uk>

² <http://www.legislation.gov.uk/ukdsi/2016/9780111150184/contents>

unless they are exempt e.g. because they operate for less than 50 hours per year or because they are solely used to provide back-up power during site emergencies. These controls should help to enable compliance with national emissions ceilings and the Ambient Air Quality Directive while minimising the impact on energy security.

Under Option 1 we will also apply emission controls to generators less than 1 megawatt thermal rated input (MW_{th}), which are not covered by the MCPD under Option 0, if they are providing balancing services to the National Grid. Provision of National Grid services is usually restricted to market operators who can deliver capacity greater than a particular threshold e.g. roughly 10 MW_{th} (3MW electrical output, $3MW_e$) (). However there is no requirement for these operators to provide a service with generators located at a single site. Third party companies known as “aggregators” work with companies that own diesel generators less than $3MW_e$ electrical out to produce aggregated bids to National Grid services. We have evidence from the National Grid that even generators at sites with an aggregated input smaller than $1MW_{th}$ (roughly $0.3MW_{th}$) are currently being used for this purpose. The current aggregated capacity of these is quite small ($<300MW_{th}$), however there is a large reservoir of small back-up diesel generators in the UK and failing to limit NO_x emissions from generators under $1MW_{th}$ could incentivise aggregators to shift towards using these, potentially undermining some of the benefits of the proposed regulation. Following a consultation we will be extending the controls to plants less than $1MW_{th}$. However, it was considered disproportionate to regulate emissions from all generators under $1MW_{th}$ and so we will regulate only those providing a service to the National Grid or participating in energy markets. The controls also provide Tranche A generators additional time to meet stringent emissions limits.

Changes since the consultation analysis

This impact assessment has been updated in light of consultation responses. The analysis has also been amended to reflect (I) updates to the damage costs associated with air pollutants, provided by the Committee on Medical Effects of Air Pollutants (COMEAP), (II) reductions in payments (of embedded benefits) that Ofgem provide to diesel generators for supporting the National Grid during peak times and (III) measures to simplify capacity market auctions by the Department for Business, Energy and Industrial Strategy. By far the largest impact is from the updated damage costs which result in lower health benefits from reductions in air pollutants than was previously assumed³. The Ofgem change means that fewer diesel generators are included in our baseline compared to the pre-consultation impact assessment. The combined changes to the evidence base have the effect of reducing the quantifiable value for money of taking action to reduce emissions from high NO_x generators. The overall net present value (NPV) of the measures in the central scenario is -£49.03m, within a range of £62.3m to -£66.5m. However, these estimates are only able to reflect a proportion of the actual impact, excluding a range of impacts on public health, welfare, economic performance and the environment. Furthermore, the need to take action to deliver compliance in the shortest possible time does not diminish. The generators for which this regulation applies have the potential to cause breaches of the hourly NO_2 limit set for the protection of human health within the 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_2 is within the maximum levels permitted under EU law.

Results for the preferred option (Option 1)

The forecasted reductions in emissions from a national level as a result of these controls are presented for the preferred option in Table 1.1, below.

Table 1.1 Emission reductions delivered in 2030 by the controls on high NO_x generators, in kilo tonnes (Kt) and as a percentage of total UK emissions.

Kt (%)	SO_2	NO_x	PM	CO_2
Option 1	0.3 (0.2%)	2.1 (0.5%)	0.02 (0.04%)	12

The central NPV estimate of Option 1 is -£49.03m which includes the benefits from implementing controls on generators emitting high levels of NO_x . The full costs and benefits are presented in Table 1.2 below.

Table 1.2 Costs and benefits of Option 1 (£m, discounted)

2018-2032	LOW SCENARIO (£m)	HIGH SCENARIO (£m)	CENTRAL (£m)
Costs (cost to operators)			
Abatement costs	43.2	80.3	50.6
Administration costs	0.2	0.3	0.3

³ The damage cost functions have been revised down by 63% for NO_x relative to those used in the consultation IA to reflect the latest advice from the COMEAP.

Monitoring costs	10.7	10.7	10.7
Operational/capital cost of technology switch	56.7	0	45.4
<i>Total</i>	110.9	91.3	107
Benefits (emissions reductions)			
Air Quality	41	143.2	50.9
CO2 (Traded)	0.1	0.4	0.2
CO2 (Non-Traded)	3.3	10	6.9
<i>Total</i>	44.4	153.6	57.7
NPV	-66.5	62.3	-49.03

*Please note any differences due to rounding.

Table 1.2 presents the costs and benefits that have been monetised. However, while as far as practicable all the impacts have been quantified and monetised, some impacts have not been quantified. The key impacts which were not quantified are the wider environmental societal benefits through improvements to ecosystems due to the reduction in emissions, and a number of human health benefits. Additionally, under Option 1, the revenue loss experienced by the reduced running hours from high NO_x generators in Tranche A, and the benefits to other plants who meet the proposed limits of greater access to revenue streams is not included. As there are costs and benefits to different plants, this is likely to be an economic transfer (revenue loss for one plant in the market is a revenue gain to another plant in the market) and likely to have minimal impact.

2. Introduction

Poor air quality is the largest environmental risk to public health in the UK, exacerbating the impact of pre-existing health conditions, especially for the elderly and children. Some of the health effects caused by exposure to elevated levels of pollution are outlined in Table 2.1 below.

Table 2.1 Health effects for very high levels of pollutant emissions

Pollutant	Health effects at very high levels
Nitrogen Dioxide (NO₂),	Collated research by COMEAP into the health impacts of NO ₂ has shown that it is reasonable to associate NO ₂ in outdoor air with adverse effects on health, including reduced life expectancy. As part of the COMEAP research, it was established that there were likely to be short term and long term effects as short-term exposure to NO ₂ has been linked to some direct effects on respiratory morbidity, while studies of long-term exposure to NO ₂ report associations with respiratory and cardiovascular mortality, children's respiratory symptoms and lung function.
Sulphur Dioxide (SO₂) and Ozone (O₃)	Sulphur Dioxide and Ozone are respiratory irritants that can cause constriction of the airways, inflammation of the respiratory tract and irritation of the eyes, nose and throat, potentially exacerbating asthma in susceptible people.
Particulates (PM, which includes PM₁₀ and PM_{2.5})	Fine particulate matter can penetrate deep into the lungs and other tissues, including the brain. Research in recent years has strengthened the evidence that both short-term and long-term exposure to PM _{2.5} are linked with a range of negative health outcomes including shortening the lives of susceptible individuals through cardiovascular disease, stroke, cancers, respiratory and other diseases.

Air pollution is measured and regulated in two different ways: by concentrations and total emissions. The AAQD, which is transposed in England by the Air Quality Standards Regulations, sets limits for both short term and annual pollution concentrations. Total emissions were first regulated by the 1999 Gothenburg Protocol, under which States agreed to cap their annual emissions of certain pollutants by 2010 as a reduction from 1990 levels. The Protocol amendment of May 2012 set more stringent targets for reducing emissions and added new limits for other airborne pollutants, as a percentage of 2005 levels by 2020.

The EU National Emissions Ceilings (NEC) Directive is the European legislation that implements the limits agreed under The Gothenburg Protocol. The Directive initially set annual limits for each pollutant, including NO_x, which Member States had to achieve by 2010. The NEC Directive was amended in 2016 by setting 2020 ceilings (in accordance with the revision to the Gothenburg Protocol) and additional 2030 emissions ceilings - the continuing aim being to reduce the significant impacts air pollution can have by reducing domestic and transboundary emissions. The NEC Directive must be transposed by mid-2018.

The MCPD is supported by the UK as it will introduce cost effective reductions in pollutant emissions. It will provide an estimated 43% of the action needed to reduce SO₂, 9% to reduce PM and 22% to reduce NO_x emissions, to meet the 2030 national emission ceilings. Following the conclusion of the MCPD negotiations a large number of diesel engines made successful bids into the Capacity Market in 2015. This raised concerns because diesel generators have high NO_x emissions relative to other forms of energy generation applying for the Capacity Market and the projects proposed would not be subject to regulatory emissions controls, even with implementation of the MCPD.

In recent years there has been a significant drop in the amount of reliable, dispatchable generation capacity in the Great British (GB) power system, as coal and nuclear power stations have been decommissioned and replaced by intermittent forms of generation such as wind and solar. The Capacity Market is the key policy tool to ensure we maintain a secure supply of electricity and bring forward sufficient reliable electricity capacity. The Capacity Market operates as an adjunct to the electricity market and other revenues that can be earned from electricity balancing services and network charging arrangements. It is technology neutral, allowing any type of capacity to participate, provided it otherwise complies with relevant legislation. 'T-4' Capacity Market auctions seek to procure capacity four years in advance of the required delivery window, and award 'capacity agreements' to those successful. These agreements have one year duration for existing capacity, and up to 15 years for new generating capacity. A capacity

agreement is not a contract, but it places a number of statutory delivery obligations on the holder in return for an ongoing payment stream over the period of the agreement.

The first two T-4 auctions were held in December 2014 (which awarded agreements for the delivery period starting in October 2018) and in December 2015 (for the delivery period starting in October 2019). Since publication of the consultation on our proposed controls, a third T-4 auction was held in December 2016, followed by the first of the annual 'T-1' auctions in January 2017, which was held one year ahead of delivery, offering 1-year agreements (only) to top-up/fine tune the capacity requirement as needed for the coming delivery year.

Diesel generators can ramp up to full power quickly, have low build costs, partially due to not being required to have a connection to the gas grid. These characteristics mean that diesel generators provide an important energy security function to sites such as hospitals, schools and data centres in the event of emergencies such as power cuts. They are also able to provide frequency response services and additional standby capacity for the National Grid through contracting into services such as Short Term Operating Reserve (STOR)⁴, alongside being able to participate in the balancing mechanism and wholesale market. The use of generators for these "energy balancing" services can be profitable for investors and is a source of flexibility for the System Operator. Additionally, exporting diesel generators with connection capacity below 100MW are eligible to receive payments in the form of 'negative' transmission charges (also referred as Triad avoidance⁵). However, Ofgem's recent decision on 'embedded benefits' is likely to significantly reduce those payments over the next three years.

Capacity Market agreements are awarded to bidders on the basis of price, so diesel generators that can readily access other income streams can be very competitive and are often able to out-compete other less polluting plants – resulting in additional emissions which could be avoided. Modern small gas generators are able to ramp up quickly and could therefore be an effective, lower NO_x emission, alternative to diesel generators in many circumstances.

When the December 2015 T-4 auction results were available, Defra commissioned initial modelling to understand the impact of more high NO_x emitting generators on air quality. The modelling indicated that the 2020 national NO_x emission ceiling agreed under the Gothenburg Protocol could be missed due to the additional emissions from these generators. In addition, it indicated that these generators may pose a risk to local air quality by exceeding concentration limits for hourly levels of NO₂ set by the AAQD. This limit is the same as that advocated by the World Health Organisation in their guidelines for the protection of public health. In response to these findings Defra decided to carry out further analysis with a view to developing regulation to tackle this issue.

In the December 2016 T-4 auction, held after publication of our consultation, there was a marked reduction in bids from diesel generators, likely in response to the proposed emission controls as well as an expected review of embedded benefits by Ofgem. In the absence of policy intervention, the numbers and use of diesel generators would be expected to increase rapidly over the next few years. This is likely to lead to an avoidable increase in national NO_x emissions, which the UK has international (and European) obligations to reduce. The MCPD will not provide the controls required to adequately address this problem, so quick action is needed to address it. The Gothenburg Protocol set a national cap on annual emissions and it is up to countries to decide how these ceilings will be met. The 2020 ceilings agreed in 2012 will come into force when the revised National Emissions Ceiling Directive is transposed (due by mid-2018). The latest emission projections (which have been substantially revised since our consultation) suggest that in 2020 the UK will exceed the NO_x ceiling by 35kt. However, these projections do not take account of the growth in emissions from diesel generators. The additional capacity from the 2014 and 2015 auctions is estimated to result in 0.9kt of additional NO_x emissions in 2019. Therefore the continued growth of high-emitting generators expected without further action will further affect our capacity to comply with the ceiling. Delaying action in this area risks imposing unnecessary burdens on operators who would have little time to deliver reductions before 2020.

The set of incentives behind the growth in high NO_x generators could not have been foreseen when AAQD was first transposed, or when the 2020 emission ceiling was agreed. So it is now necessary to take this additional action on high NO_x generators in order to enable compliance.

In March 2016 BEIS' consultation on further reforms to the Capacity Market highlighted the role of diesel generators in contributing to harmful levels of air pollutants. The document announced Defra's intention to consult in 2016 on options, including legislation, which would set binding emission limit values on relevant air pollutants from diesel engines, with a view to having legislation in force no later than January 2019 and possibly sooner. We do not intend for these additional measures to be implemented until after the ratification of the Gothenburg protocol and transposition of the National Emissions Ceilings Directive.

Existing legislation and controls (see Figure 2.1 for overview)

⁴ <http://www2.nationalgrid.com/uk/services/balancing-services/reserve-services/short-term-operating-reserve/>

⁵ TRIAD is the methodology used to recover the costs of building and maintaining the electricity transmission network

Combustion activities are a large source of air pollution and so are already subject to some emission controls. Figure 2.1 demonstrates how the proposals considered in this impact assessment fit within current EU and domestic emission controls.

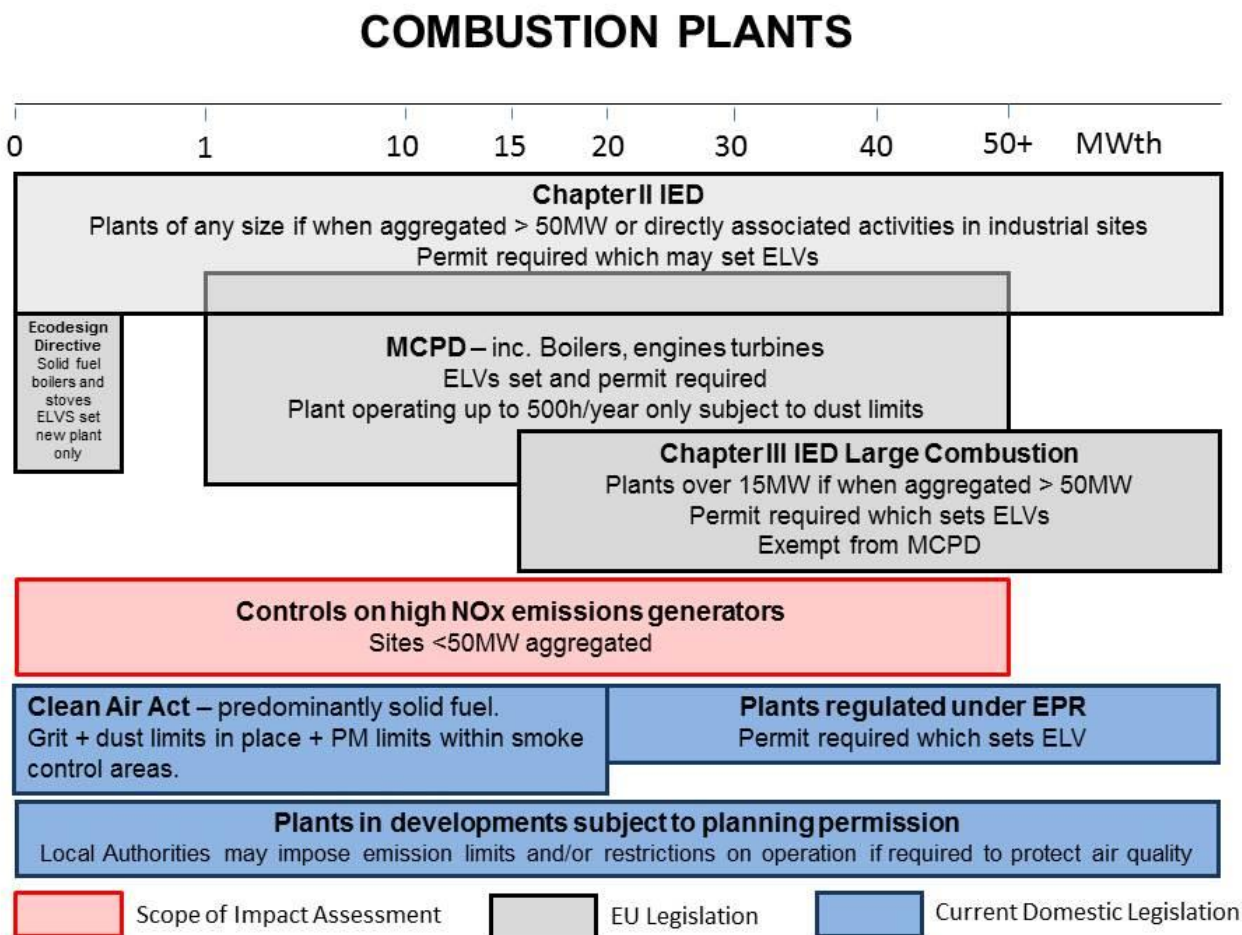
Emissions from some combustion plants, including all those over 20MW, are currently regulated under the Environmental Permitting (England and Wales) Regulations 2010 (as amended) (EPRs). These regulations transpose the Industrial Emissions Directive for plants on industrial sites with aggregated power over 50MW, and implement domestic provisions for plant between 20 and 50MW. The EPR requires all plants in scope to have a permit, which sets controls on emissions to air and requires operators to regularly test emissions and be subject to regular inspections.

The Clean Air Act 1993 controls the emission of dark smoke and places restrictions on the type of fuel and appliance which can be used in smoke control areas. The Act also specifies minimum stack heights for some plant.

In addition, installation of combustion plants may be subject to planning permission, where their impact to local air quality is assessed. If the assessment indicates that air pollutant concentrations at a sensitive receptor (e.g. a location where people are likely to be present or a sensitive habitat) are likely to exceed those set in the AAQD, local authorities may require these plants to mitigate their impact on local air quality.

Generators providing services through the Short Term Operating Reserve⁶ are likely to be subject to a local air quality assessment through the planning process. However, many combustion plants, including diesel generators installed mainly for the purposes of providing back-up and located within existing buildings, are unlikely to be subject to planning requirements.

Figure 2.1 Regulatory landscape for Combustion Activities



⁶ See glossary for definition

Government is introducing controls on generators with high NO_x emissions in order to curb the anticipated increase in national NO_x emissions resulting from domestic energy market incentives and to protect local air quality. The controls will improve our capacity to comply with NO_x emissions ceilings (which will be more stringent in 2020) as well as the hourly concentration limits set in the AAQD, and as such is not gold plating of the MCPD. The controls (outlined in detail in Section 6.2) seek to improve local air quality in order to improve human health and reduce national emissions at a pace which does not undermine energy security. Addressing growth in emissions from high-NO_x generators is necessary to ensure the 2020 emission ceiling in particular is met and controls are also a cost-effective source of emission reductions looking ahead to the 2030 emission ceilings.

It is clear that action will be required to address emissions from high NO_x emitting generators to improve our capacity to comply with our international (and European) obligations. Under Option 1 we propose to bring into force emission controls early, although they will only apply when emission ceilings for 2020 and 2030 are already transposed into domestic legislation. This approach has the advantage of giving operators greater warning of future policy enabling them to make informed investment decisions, which could reduce their overall costs of compliance.

Proposed legislative approach

Option 0 is the baseline: In this scenario there is no implementation of additional controls on high NO_x emitting generators other than transposition of the MCPD.

Option 1 (preferred) introduces further emission controls for high NO_x emitting generators, which are required to enable compliance with the set air quality limits.

Under the preferred option, operators of plants which fall within the scope of the generator controls will be required to hold a permit and comply with the applicable permit conditions, which may include NO_x emission limit values, restrictions on operating hours or regular emissions monitoring. For plants over 1MW, operators will also be required to meet emission controls to comply with the MCPD, but possibly from a later date. Amendments made to the EPRs will seek to:

- 1) Comply with hourly concentration limits set in the Ambient Air Quality Directive
- 2) Stem the projected increase in numbers of heavily polluting plants in favour of cleaner technology, thereby helping the UK to comply with its obligations under the Gothenburg protocol and National Emissions Ceilings Directive
- 3) Comply with requirements of the MCPD.

To make the combined impact of the MCPD and generator controls clear to industry we consulted on the proposals jointly and will introduce them through a single legal instrument.

Devolved Administrations

This Impact Assessment covers joint amendment of the EPRs by England and Wales to introduce controls on generators with high NO_x emissions. Northern Ireland have proposed in their public consultation to introduce controls for generators. Since very few of the Capacity Market diesel generators from the 2015 auctions were located in Scotland, the Scottish Government is still reviewing the case for adopting controls for generators with high NO_x emissions.

2.1 Definitions

Described below are the definitions of key terms used through this document. A full glossary of terms can be found in Annex E.

Plant type: For this impact assessment, plants are categorised according to their hours of operation and based on their role for energy security and overall contribution to total emissions, as follows.

- **Working plant** = those operating on average more than 500 hours per year which are subject to compliance with MCPD Annex II emission limit values.
- **Stand-by plant** = plant installed alongside working plant to provide for additional demand at peak times or in case of shut down of the main working plant, and operating fewer than 500 hours per year.
- **Back-up plant** = plant installed to provide emergency electricity generation in times of interruption to supply of mains grid electricity, operating rarely and normally much less than 500 hours per year (assumed to be less than 50 hours).

- **Generator** = any single stationary electricity generating combustion plant or any group of stationary electricity generating combustion plant located at the same site and providing electricity for the same purpose.

Abatement technology refers to techniques and technologies used to reduce pollutant emissions. Primary abatement prevents formation of pollutants and includes a switch to fuels which result in lower emissions, retrofitting of existing plant (e.g. by changing the burners) and selection of new plant with lower emission. Secondary abatement removes pollutants from the exhaust gases, such as filters for dust or selective catalytic reduction to destroy NO_x.

Megawatts (MW) – in this Impact Assessment unless otherwise stated this refers to Mega Watts of thermal input.

Emissions in mg/Nm³: milligrams per normalised cubic metre. Normalised emissions are converted to reference conditions, which are the same as those used to set Emission Limit Values under the MCPD.

The definitions for **MW, working, standby and backup plants** remain the same as in the MCPD. In addition, plants are further categorised as:

A tranche A generator is any generator that:

- If between 1 and 50MW:
 - comes into operation before 1 December 2016; or
 - is the subject of a Capacity Market Agreement for new capacity arising from the 2014 or 2015 auction (including those which have not come into operation by 1 December 2016); or
 - for which a Feed-in Tariff preliminary accreditation application has been received by Ofgem before 1 December 2016.
- If below 1MW:
 - is the subject of a Capacity Market Agreement for new capacity arising from the 2014, 2015 or 2016 auction (whether or not the generator has come into operation by 1 December 2016); or
 - for which a Feed-in Tariff preliminary accreditation application has been received by Ofgem before 1 December 2017.
 - which is the subject of an agreement to provide balancing services entered into before 31st October 2017

Generators meeting the conditions above will cease to be Tranche A generators if they enter new legally-binding power supply agreements.

Tranche B: Any generators other than Tranche A generators.

Demand Side Response (DSR) = provision of services by reducing electricity demand from the grid upon request. The reduction in demand can be achieved by reducing electricity use on a site or using alternative sources, including diesel generators.

2.2 Plant numbers

Controls for generators with high NO_x emissions will be applied to an estimated 5,520 generators by 2030 (nearly all – over 95% – would be classed as standby i.e. operating for less than 500 hours), although if further plants are projected in the capacity market, then this figure will increase year on year. Calculation of plant numbers is presented in the methodology section, where there is an explanation of how total plant numbers filter through compliance requirements and eligibility for specific exemptions in section 6.2 (Table 6.4).

3. Problem under consideration

Diesel generators (also referred to as compression ignition engines) produce high levels of NO_x emissions but have not previously been regulated because they have typically been used for emergency back-up power and therefore only run for very limited periods. Incentives in the energy market have been encouraging greater use and investment in generators with high NO_x emissions and this trend is projected to rise rapidly over the next few years. Modelling carried out by the Environment Agency indicates that generators of the type and operating pattern used for energy balancing are capable of breaching legally binding hourly local air quality limits set for the protection of human health.

On a MW basis diesel engines are cheap to buy relative to other generation assets, do not rely on a connection to the gas grid and are able to ramp up to maximum power quickly. This profile makes them able to provide a wider range of balancing services and access greater profit than other forms of electricity generation. Furthermore, although their fuel is more expensive, their lower installation cost means diesel generators are outcompeting less polluting alternatives in the Capacity Market (for example the average base case emissions of NO_x from diesel engines is 1200mg/Nm³ compared to a base case of 190mg/Nm³ for gas engines) and this is leading to a rapid increase in their numbers and hours of use which poses concerns for air quality. Although the capacity market is based on 'availability payments' which in themselves do not directly incentivise greater use, operators are encouraged to provide other services to provide a more competitive price.

The Government announced it intended to consult on emission controls for high NO_x generators in March 2016 and published its consultation in November 2016 in order to discourage investment in generators ahead of the December 2016 Capacity Market auction. The controls proposed in the consultation were supported as they would deliver cost-effective emission reductions and protect air quality while safeguarding energy security. There was also support for applying controls to sites under 1MW if providing balancing services to the power grid, to ensure a level playing field and to prevent an increase in use of such sites, which would lead to a preventable increase in national emissions of NO_x.

After consideration of the consultation responses (see Annex D), the proposed controls were amended as follows:

- 1) For plants which require secondary abatement to comply with the 190mg/Nm³ NO_x ELV, the time for meeting the ELV was increased to 20 minutes for Tranche A generators and to 10 minutes for Tranche B generators. This was based on feedback that the 5 minutes originally proposed would not be achievable in many circumstances, and informed by an analysis of the impact on total emissions which benefited from data submissions on running time of the generators affected.
- 2) For Tranche A generators which require a permit from 1 January 2019, the deadline for compliance with permit conditions was moved to 1 October 2019. This will provide operators more time to make decisions on how to meet permit conditions and plan any investment needed, but still apply controls from the beginning of the supply agreements awarded in the 2015 Capacity Market auction.
- 3) Tranche A generators will be subject to the standard permit conditions only when their power supply agreements come to an end (so long as they do not enter new power supply agreements – see point 4). This will allow operators to meet their contractual obligations while protecting local air quality, as sites of concern will be subject to bespoke permits from 2019.
- 4) Operators of any Tranche A generators that wish to enter new power supply agreements after 31st October 2017 will be subject to the standard permit conditions if the new power supply agreement is still in force after 31st December 2018. This amendment will help to ensure a level playing field with investors in cleaner technologies.
- 5) To address concerns from stakeholders, emission controls were extended to generators under 1MW which provide balancing services to the grid, to ensure a level playing field. The timescale for application of such controls was adjusted to ensure investors and operators who entered power supply agreements before the controls are announced will benefit from transitional arrangements.

4. Rationale for Intervention

The rationale for intervention is to deliver health and environment benefits through cost-effective improvements to air quality, while ensuring operators have sufficient time to comply with controls on combustion plants.

The energy market is driving an increase in the use and number of generators with high NO_x emissions, such as diesel engines, because energy services are procured on the basis of cost. Generators emit air pollutants that can have a seriously harmful impact on human health and the environment. However, when deciding how much to use their plant, operators may not be aware of, and are not impacted by, the cost they impose to society of the air pollution from their operations. This is known as a negative externality. If generators were impacted by the true cost of their operations (i.e. taking account of the cost of the pollution), they might operate differently.

The resulting impact is a market failure, where revenue incentives encourage the use of diesel generators by not taking into account the social cost of their operation e.g. damage to public health caused by pollution. Emissions from generators of the type used for energy markets are not regulated at present and the MCPD will not provide sufficient control on emissions from these plants, many of which will be exempt from the ELV requirements due to their short running times. Additional measures are therefore needed for electricity generating plants with high NO_x emissions to correct this market failure.

5. Policy Objectives

The policy objective is to improve air quality across the UK, which will improve human health and assist in meeting the requirements of the AAQD, which is transposed in England by the Air Quality Standards Regulations, and revised National Emissions Ceilings which will be transposed by June 2018. This will be achieved through the introduction of new controls for high NO_x generators which aim to improve local air quality and prevent an increase in national emissions of NO_x by reducing emissions from this source and curbing the increase in the use and number of plants with high NO_x. The controls are designed to avoid a detrimental impact on energy security and seek to increase the incentive for cleaner technologies to replace more polluting generators in the energy balancing market.

6. Analysis of Options

This section describes Option 0 (baseline), which includes implementation of the MCPD in England and Wales) and Option 1, which includes the baseline plus implementation of emission controls for generators. Option 1 describes in detail the emission controls for generators, which were informed by public consultation and the analysis presented in this document. A summary of the consultation responses and actions taken is presented in Annex D.

6.1 Option 0: Implementation of the MCP Directive in England and Wales (baseline)

Under this option (the baseline scenario), the MCPD is implemented in England and Wales. 1-50MW plants are subject to permitting and emissions monitoring to comply with MCPD timescales (see Table 6.1) Generators operating on average up to 500h per annum are not subject to emission limit values (see Table 6.2 and Table 6.3 for details). It is relative to this baseline that the impacts of implementing emission controls on high NO_x emitting generators are assessed. The detailed methodology for estimating the number of plants and their emissions in the baseline scenario can be found in Section 7.1.

Table 6.1 MCPD operator requirements and timescale of application

Average Annual Operating Hours	Plant age ⁷	Plant Size (MW)	Permit needed for operation	Applicable ELVs and deadline for compliance (see Annex II of the Directive and table 6.4 for exceptions)	Monitoring requirement (for CO and pollutant for which ELVs apply within 4 months of permitting and then)	
Up to 500hours	New	1-5	From 20/12/2018	Only plants using solid fuels must comply with ELVs, and for dust only.	From 20/12/2018	Every 1,500h of operation, or at least every 5 years.
		5-20				
		20-50				
	Existing	1-5	From 1/01/2029		From 1/01/2030	Every 1,500h of operation, or at least every 5 years.
		5-20	From 1/01/2024		From 1/01/2025	Every 500h of operation, or at least every 5 years.
		20-50				
More than 500hours	New	1-5	From 20/12/2018	As set out on Annex II of the Directive	From 20/12/2018	Every 3 years
		5-20				
		20-50				
	Existing	1-5	From 1/01/2029		From 1/01/2030	Every 3 years
		5-20	From 1/01/2024		From 1/01/2025	Annually
		20-50				

⁷An existing combustion plant is defined under the MCPD as one that is “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 19 December 2018.” A new combustion plant is defined as any plant other than an existing combustion plant i.e. any plant put into operation after 19 December 2018. To note that these definitions of new and existing plants are used in this table only.

Table 6.2 Baseline assumptions for implementation of the MCPD of relevance to generator controls

Flexibility	Proposed approach	Incorporated in analysis?
Exemption from MCPD Annex II ELVs for existing plant operating up to 500 hours per year as a five year rolling average	Applied in full – if an operator exceeds 500h of operation in any year, this must be notified to the regulator.	Yes
Exemption from MCPD Annex II ELVs for new plants operating up to 500 hours per year as a 3 year rolling average	Applied in full – if an operator exceeds 500h of operation in any year, this must be notified to the regulator.	Yes
Increase in NO _x ELV for new engines operating between 500-1500 hours provided they are applying primary abatement measures	Applied in full.	Yes

Table 6.3 Frequency⁸ of compliance checks for the two scenarios

Checks per annum ⁹	High risk ¹⁰ 1 working plant ¹¹	Medium risk 1104 working plants	Low risk 8079 working plants (plus those defined as back-up/stand-by)
Plant required to comply with ELVs	20-50MW 1 site inspection	20-50MW 1 remote check	20-50MW 0.5 remote check
	1-20MW 1 remote check	1-20MW 0.3 remote check	1-20MW 0.3 remote check
Plant exempt from compliance with ELVs (to note the current proposal is to deem all low risk)	20-50MW 1 remote check	20-50MW 0.5 remote check	20-50MW 0.3 remote check
	1-20MW 0.5 remote check	1-20MW 0.3 remote check	1-20MW 0.2 remote check

6.2 Option 1: Implementation of the MCPD and additional emission controls for generators

Under this option, the MCPD is implemented in England and Wales as set out in the baseline but additional requirements will be placed on high NO_x emitting generators as outlined in the proposals below. These proposals were subject to consultation. Further details of how the proposals outlined below were developed and the comments received in the consultation are provided in Annex A and D.

⁸ Frequencies are indicative

⁹ 0.5 = one check every two years; 0.3 = one check every 3 years; 0.2 = 1 check every 5 years; 0.17 = 1 check every 6 years.

¹⁰ For the purpose of this assessment, 20-50MW plant operating on solid fuels were assumed high risk, remaining plant using solid and liquid fuels other than gas oil were assumed medium risk, and all other plant (those using gas oil and gaseous fuels) were assumed low risk.

¹¹ Number of operating plants in 2030

Table 6.4 Proposals to control emissions from generators

Proposals to control emissions from generators

From 1 January 2019 and subject to the requirements of the MCPD in relation to plant that are MCPs, all generators¹² will require a permit to operate, except:

- a) Back-up generators (generators operating solely to supply power during an on-site emergency e.g. a power cut which do not test for more than 50 hours per year)¹³
- b) Generators operating on a site that is the subject of a nuclear site licence¹⁴
- c) (until 2025) Tranche A generators¹⁵ with a rated thermal input of 5-<50MW and with an emission <500mg/Nm³ and Tranche A generators with a rated thermal input of 5-<50MW and operating <50 hours/year
- d) (until 2030) Tranche A generators under 5MW

Unless otherwise specified below, the regulator will be required to exercise their permitting functions so as to ensure that at least the four following standard requirements are applied to the generator¹⁶ through the permit:

- a NO_x ELV of 190mg/Nm³¹⁷
- where secondary abatement is required to meet the 190mg/Nm³, it must be met within 10 minutes of the generator commencing operation for Tranche B generators, and 20 minutes for Tranche A generators
- there must be no persistent dark smoke emission
- where the generator relies on secondary abatement to meet the 190mg/Nm³ NO_x ELV, emissions must be monitored every 3 years.

Where the regulator considers there may be a risk to air quality standards resulting from the operation of the generator, an operator will be expected to quantify the impact of emissions on sensitive receptors, e.g. by air dispersion modelling, incorporating as necessary, for example, any proposals for appropriate dispersion, abatement and restrictions on operating hours. The regulator, accounting for the results of such assessment, will be required to apply any further or different requirements as are necessary to ensure any breach of AAQD is avoided.

In relation to the generators described at c) and d) above, the regulator will not be required to apply the standard requirements or any additional requirements to safeguard local air quality where operation of the generator is required only for the purpose of a legally binding pre-existing supply contract or agreement¹⁸, in which case the standard requirements and any additional requirements to safeguard local air quality will be applied from the date the contract/agreement expires.

In relation to Tranche A generators which require a permit from 1 January 2019, permit conditions will apply only from 1 October 2019 and the regulator will not be required to apply the standard requirements where operation

¹² "Generator" means:

- any single stationary electricity generating combustion plant; or
- any group of stationary electricity generating combustion plant located at the same site and providing electricity for the same purpose, with a rated thermal input of between 1MWth and 50MWth
- any single stationary electricity generating combustion plant or any group of stationary electricity generating combustion plant located at the same site with a rated thermal input below 1MWth if providing electricity under a power supply agreement.

This definition includes any MCP, but excludes any plant subject to the provisions of Chapter II, Chapter III or Chapter III of Directive 2010/75/EU (the industrial emissions Directive).

¹³ No running time restrictions will apply to these generators when providing power on site during an emergency

¹⁴ Generators operating with a defined nuclear safety role within arrangements approved by the Office for Nuclear Regulation under a Nuclear Site Licence

¹⁵ "Tranche A generator" means any generator that:

- a) for 1-50MW generators:
 - comes into operation before 1 December 2016; or
 - is the subject of a Capacity Market Agreement for new capacity arising from the 2014 or 2015 auction (including those which have not come into operation by 1 December 2016); or
 - for which a Feed-in Tariff preliminary accreditation application has been received by Ofgem before 1 December 2016.
- b) For generators under 1MW:
 - is the subject of a Capacity Market Agreement for new capacity arising from the 2014, 2015 or 2016 auction (including those which have not come into operation by 1 December 2016); or
 - for which a Feed-in Tariff preliminary accreditation application has been received by Ofgem before 1 December 2017.

Generators meeting the conditions above will cease to be Tranche A generators if they enter new legally-binding power supply agreements.

¹⁶ Except:

- any generator used at a site to which it is not reasonably practicable to supply mains power; or
- any back-up generator for which the operator has demonstrated to the regulator a genuine need to carry out routine testing for more than 50 hours per year.
- Any tranche A generator with a rated thermal input 5-<50MW with NO_x emissions 500mg/Nm³ or greater

In these cases, the regulator will exercise their functions as necessary to ensure that the conditions set in permits will ensure that generators will not give rise to a breach of standards specified in Annex XI of the Ambient Air Quality Directive.

¹⁷ under the MCPD reference conditions for engines and turbines (see Annex C)

¹⁸ A contract or agreement to supply capacity or electricity to National Grid made before 1 December 2016

of the generator is required only for the purpose of a legally binding pre-existing supply contract or agreement, in which case the standard requirements will be applied from the date the contract/agreement expires.

Abatement costs

Generators that are required to meet the proposed emissions limit specified (190mg/Nm³) may incur costs for fitting secondary abatement such as Selective Catalytic Reduction. Generators that are required to hold a permit with site-specific conditions to protect local air quality may be required to fit dispersion or abatement equipment or to modify running hours to ensure that hourly air quality limits are not exceeded at sensitive receptors surrounding the generator.

Administrative burden

Generators over 5MW in size with high NO_x emissions (in excess of 500mg/Nm³ for Tranche A and 190mg/Nm³ for Tranche B) are considered to pose a risk of breaching local air quality limits if they operate for more than 50 hours per year and therefore operators for these facilities will be required to hold a permit with site specific conditions unless they are covered by an exemption, and regulators will recover their costs through permitting. Operators of generators that run for more than 50 hours per year may be required to carry out dispersion modelling to ensure that air quality limits are not breached at the sensitive receptors in the vicinity of the generator.

Operators with working and standby generators between 5 and 50MW that would otherwise be required to hold a bespoke permit will be required to prove that the emissions from the site do not exceed the specified limits – in estimating costs we have assumed that this will be done through an emissions test.

Monitoring costs

In addition to the monitoring requirements set out on Option 0, we propose that generators that are required to meet the standard requirements set out in the proposals will at least be required to undertake a single emissions test at the point the plant is commissioned to prove the emissions do not exceed the emissions limit. Generators that rely on secondary abatement to achieve these limits will require a test at least once every 3 years.

Compliance check costs

We have assumed a worst case scenario that scheduled compliance checks should be carried out on generators required to hold a permit as per Table 6.4.

The burden for regulators and operators from non-compliance with the Directive is not estimated; non-compliance may result in operators moving to a higher risk category, which will lead to more frequent compliance checks, and a resulting increase in annual subsistence fees. The legislation will contain powers for criminal prosecution, but it is anticipated that these will act as a deterrent and be used only in very rare instances where operators persistently fail to achieve compliance with the Directive, particularly when this results in an impact to local air quality.

Emissions Testing and Monitoring Costs

The cost of emissions testing is based on meeting current Monitoring Certificate Scheme (MCERTS) standards, which are currently applied to plant over 50MW in the UK. We have assumed;

- that all generators will need to be tested at the point of commissioning and
- that it takes a single day to test all generators in a single site and
- that the same cost will apply to each generator regardless of size or complexity and
- that monitoring will be carried out every 3 years for generators with secondary abatement.

The cost of emission testing may be overestimated, as the regulator will explore with industry the scope for adopting less costly monitoring methods which are sufficient to demonstrate compliance.

7. Methodology

This methodology assesses the impact of implementing specific measures for high NO_x generators, to help avoid breaches of hourly limits for NO₂ set under the AAQD as well as an avoidable increase in NO_x emissions.

The overwhelming majority of the plants that would be impacted under the generators controls were classified as standby (categorised as running for less than 500 hours) under the MCPD, so the additional costs and benefits calculated use the characteristics of a standby plant. The proposed controls also apply to some plants with thermal capacity below 1MW if they provide balancing services to the grid, which would not be subject to any requirement under the MCPD.

The Impact Assessment has a 15 year assessment period which begins in 2018, when the first costs arising from implementation of the MCPD (baseline) will be incurred, and involves a calculation of the total net present value for the period. This 15 year appraisal period is needed to cover full implementation of the MCPD (complete in 2030). A longer assessment period was not selected due to the uncertainty of future technologies and the remaining operating life of existing plant.

From 2030 onwards, the large majority of plants in scope of the MCPD and diesel controls¹⁹ will be subject to permitting and compliance with ELVs and monitoring, so the impacts will have reached a steady state and in future years will differ only as a result of new plants replacing existing plants on reaching the end of their operating life.

Regulator costs were estimated based on data provided by the Environment Agency and on the activities required for enforcement.

The impacts can be split into the following areas, which are detailed fully in the remainder of Section 7.

COST IMPACTS

- **Emission Abatement Costs** – These are the costs that will be incurred by plants which will require abatement to meet the emission limits - for purchasing, fitting and operating abatement technology (see **Section 7.2**).
- **Administrative, Monitoring and Compliance Costs** will consist of permitting, reporting, monitoring and compliance checks (inspections). These costs will fall to both plant operators and regulators; however, most of these costs will be recovered from operators. These costs will be incurred by all generators falling in scope of the controls, and vary by type, size and complexity of the plant (see **Sections 7.4** and **7.6**). Costs relating to start-up (registration process, raising awareness for new regime), training of regulators and some of the costs of non-compliance cannot be recovered and will be funded through Defra's delivery budget.

Section 6.2 sets out the controls applied to generators. Compliance with emission limits may require fitting abatement, and operators will also have responsibilities in the other cost categories (monitoring, inspection, permitting etc.). The distinction between new and old, and size of plant governs when they have to comply with the requirements (as set out in Section 6.2).

BENEFITS TO THE ENVIRONMENT AND HUMAN HEALTH

Monetised benefits

- **Health and environment** – The emissions limits will reduce air pollution from generators. This provides monetised benefits to society, mainly as improved human health. There are also co-benefits between air quality and (GHGs) greenhouse gases (CO₂) which have been monetised and included.
- **Infrastructure and operating costs** – for Tranche B plants, the cost of implementing the measures suggests that some projected capacity provided by diesel would instead be supplied by gas as that becomes more cost-effective. This benefit will consider the difference in the cost of constructing and operating a gas plant when compared with a diesel plant. This includes the change in fuel, as plants will face reduced fuel costs from using gas which is cheaper than diesel.
- **Benefits of technology switch** – it is anticipated that some of the forecast plants in Tranche B would become gas (spark ignition engines) instead of diesel (compression ignition engines) as gas is a cleaner technology and would be able to meet the emission limits set in the measures. Gas is significantly cleaner

¹⁹ With the exception of Tranche A generators under capacity market agreements which remain exempt from compliance with standard permitting conditions until the end of their agreements. This represents a small number of plants and the analysis assumes a worst-case scenario in which all these plants are exempt until the end of the assessment period.

than diesel for both NO_x but it also emits lower levels of other pollutants including CO₂, SO₂ and PM resulting in higher benefits from the switch.

Non-monetised benefits

- **Health and environment** – Damage costs do not capture all health benefits so there are additional health impacts that are non-monetised. In particular, morbidity impacts are largely not included within the damage costs. Furthermore, there are also wider environment benefits from reduced emissions such as improvements to ecosystems but these benefits are not possible to monetise.
- **Revenue and fuel savings** – Many generators in Tranche A that do not currently meet the measures set out in Section 6.2, will face the choice between abatement or a reduction in operating hours. Those who choose to reduce their hours will face a reduction in revenue equal to the revenue earned in the baseline with unrestricted running time minus the revenue earned with a reduced 50 hour running time. They will also experience a fuel saving as they will be running for less time. It is assumed, however, that there would be enough existing and new capacity available to fill the hours reduced. There is a minimal risk that due to the complex nature of the electricity generating contracts, it may not be as easy to switch contracts and a shortfall of supply could be anticipated. However, given new capacity forecasted alongside the extended time period for plants in Tranche A to meet the conditions of the additional measures, the risk would be insignificant. As a result, this cost can be considered an economic transfer where the impact will be balanced by one part of the energy market facing a cost in terms of lost revenue (but a saving in fuel) and another plant benefits (from additional revenue but additional fuel costs), so there is no net impact. However, as there is little per plant data available, we were unable to estimate the level of revenue earned by each plant particularly due to the numerous revenue streams which operators have access to and the uncertainty around which ones they would prioritise.
- **Energy security and resilience** – the implementation of a slower period of introduction of a conservative ELV for generators in Tranche A is expected to minimise disruption to the energy market. Many of these plants have agreed contracts which, if they are unable to honour due to ELV restrictions, may lead to a reduction in the total generation capacity. While these plants are not considered to be substantial contributors to the overall capacity, they do play an important role of supporting energy supply in peak times. Therefore ensuring that these plants are able to fulfil their contracts is important, and the extended timeframe should minimise the risk of disruption. It was deemed disproportionate to monetise this as these plants form a small proportion of UK energy generation and with the staggered approach to the measures it is unlikely to cause an impact on energy security.
- The costs and benefits from changes in emissions are calculated as the difference between the introduction of the emission controls on generators, against a baseline where only the MCPD is implemented. The baseline is introduced in section 6.1 and the methodology for its calculation is explained in Section 7.1. These measures ensure operators comply with relevant ELVs, fitting abatement technology where needed. Operators of many of the generators affected by the proposals to limit emissions from high NO_x emitting generators also have the ability to reduce operating hours to ensure compliance.

7.1 Baseline

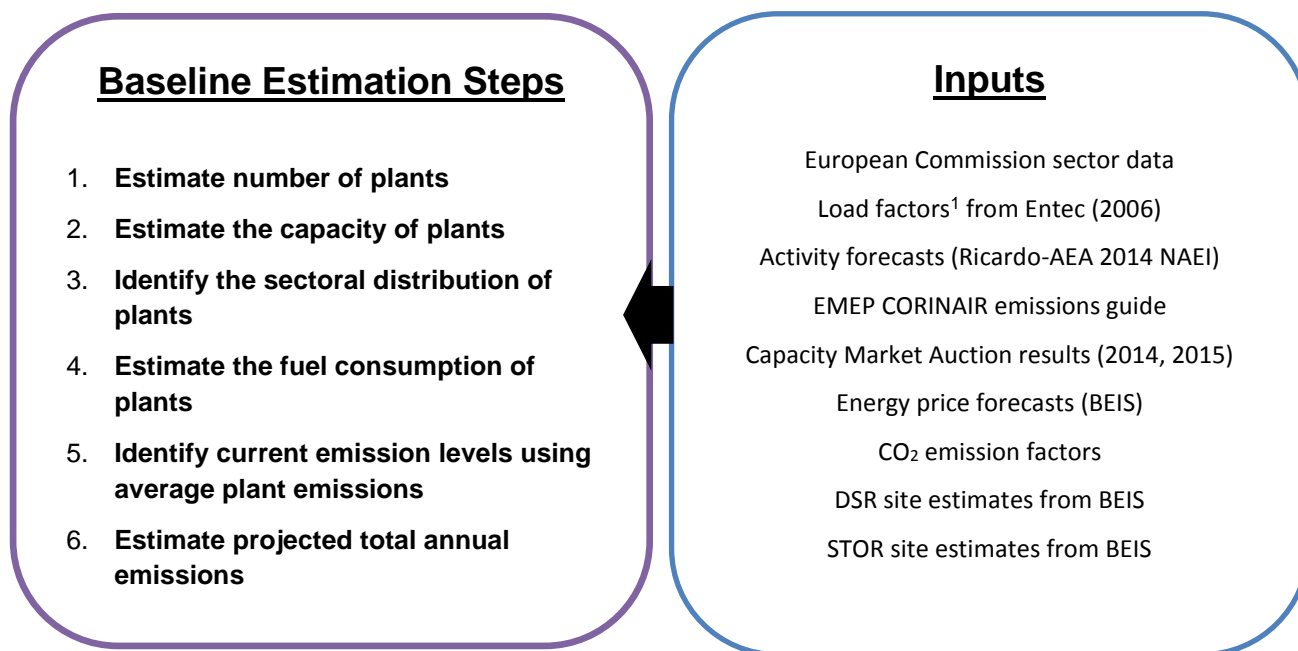
As the generators under consideration are not generally regulated at present (unless connected to an IED regulated installation or in the range 20-50MW), numbers and type of plant had to be estimated.

High NO_x generators under scope of the regulation presented in this impact assessment are a subset of plants in scope of the definition of MCP but the majority are exempt from the MCPD ELVs. Therefore, the method used to estimate the numbers of generators within scope of the controls is largely based on the method used to estimate the numbers of MCPs, as detailed in the MCPD impact assessment.

The estimation is based on fuel consumption and projections from the National Emissions Inventory(NAEI)/BEIS, incorporating assumptions about size, technology type, and operating hours from EU averages. This is supplemented with estimates of generator numbers from Capacity Market auction data, estimates of numbers of STOR plants provided by National Grid and estimates of the number of plants providing demand side response services from BEIS. Most of the analysis is based on data gathered and/or derived for a report produced for the European Commission, henceforth the Commission study (Amec Foster Wheeler, 2014). The assumptions and data are based upon the best available evidence (Figure 7.1), however it must be noted that it came from a diverse range of sources, which introduces some uncertainty.

The remainder of this subsection details the estimation process.

Figure 7.1 Baseline steps and corresponding inputs



Step 1: Estimate number of plants

A baseline scenario in which there is implementation of the MCPD but no emission controls on generators is estimated. It is relative to this baseline that the impacts of implementing emission controls on high NO_x emitting generators are assessed.

The baseline scenario was created through estimation of the number of generators currently operating in England and Wales, with associated capacity, sectoral distribution, average operating hours and unabated emissions. National fuel consumption data and average plant size and working hours per sector were used to estimate plant numbers per fuel.

The estimated plant numbers and assumptions about operating hours and unabated emissions by plant type, size and fuel used were used to estimate total emissions from 2018 through to 2030 with implementation of the MCPD, against which the emission reductions achieved by applying controls on high emission generators were calculated. Sections below detail the methodology used to calculate the base year and projected baseline demonstrated in Table 7.1. Please note that this table presents the number of generators subject to permitting at a given point in time; therefore, the increase in certain years corresponds to timings of the controls.

Table 7.1 Plant numbers by capacity size and category

Number of plants	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Plant numbers by capacity															
Tranche A 0-1MW	0	0	0	0	0	0	0	0	0	0	0	0	1236	1236	1236
Tranche A 1-5 MW	0	0	0	0	0	0	0	0	0	0	0	0	2170	2150	2129
Tranche A 5-50 MW	0	40	41	43	45	46	48	63	62	61	60	59	58	56	55
Tranche B 0-1MW	0	0	0	0	0	0	304	330	330	330	330	431	456	482	507
Tranche B 1-50MW	0	32	227	421	616	810	1005	1104	1203	1302	1401	1501	1600	1699	1798
Total	0	72	268	464	660	857	1357	1497	1595	1693	1791	1990	5520	5623	5726

Plant number by category															
Working	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Stand-by	0	72	268	464	660	857	1357	1497	1595	1693	1791	1990	5520	5623	5726
Back-up	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	0	72	268	464	660	857	1357	1497	1595	1693	1791	1990	5520	5623	5726

2030 baseline projection

Using supplementary data from the NAEI team and European data (Amec Foster Wheeler, 2013), it was possible to split plants into size category (capacity class) by fuel type (gas, oil and biomass).

Less information was available for plants running shorter hours. Therefore, following consultation with National Grid on the capacity available in existing energy balancing market revenue streams (600MWe), specifically short run hour streams such as STOR (Short Term Operating Reserve), the figures from the European data were deemed too low for diesel and gas plants, and were updated accordingly. This existing capacity was sense checked with results of 2014 and 2015 Capacity Market auctions where plants bidding identified as existing or new build. The vast majority (by capacity) of these are assumed to be 1-5MW, which is typical of plants with shorter operating hours. Data on numbers of DSR sites from the National Grid was also used to disaggregate capacity market plant numbers into an additional category: 0-1MW.

The total number of plants in operation was projected to 2032 using growth figures for each fuel type derived from data provided by the NAEI team (in 2013). A growth threshold of 10% was assumed; meaning it was assumed that a change in activity less than 10% could be met by the existing number of plants as part of the flexibility in their working output capacities. A change beyond the threshold would result in a decrease or increase in number of plants needed.

Whilst the main dataset has been derived for three main capacity classes, data from the NAEI team was used to help categorise the plants.

Following the outputs of the 2015 Capacity Market Auction provided by BEIS, additional gas and diesel standby plants have been projected to reflect the increase demonstrated in the auction. This was estimated to be between 500MWe-1000MWe (central estimate of 700MWe) biannually following from 2014/2015 results.

Incorporating the evidence specified and with additional consultation with stakeholders, it is therefore estimated that in 2019, there will be around 70 plants subject to generators controls, which increases to about 5,500 by 2030.

The projected numbers of plants and their age were based on estimating the renewal rate associated with an estimated lifetime of 36 years. Lifetime was assumed to be twice the average plant age (18 years) as indicated by data from the consultation.

Step 2: Estimate the capacity of plants

The estimation of the total capacity of combustion plants has been undertaken using the EU average capacity per plant shown in Table 7.2 below²⁰, multiplied by the numbers of projected plants in 2030. The average plant size in each capacity class was determined from complete data gathered from Member States both on numbers of plants and the capacity per plant in Amec Foster Wheeler (2012) and the more recent study published in February 2014 from the European Commission. The EU averages and data sets include Member States who already regulate generators. For generators sized 0-1MW, the average capacity was calculated from data provided by BEIS.

Table 7.2 Assumed average capacity per plant

Capacity Class	Assumed EU average plant capacity (MW)
0-1 MW	0.3

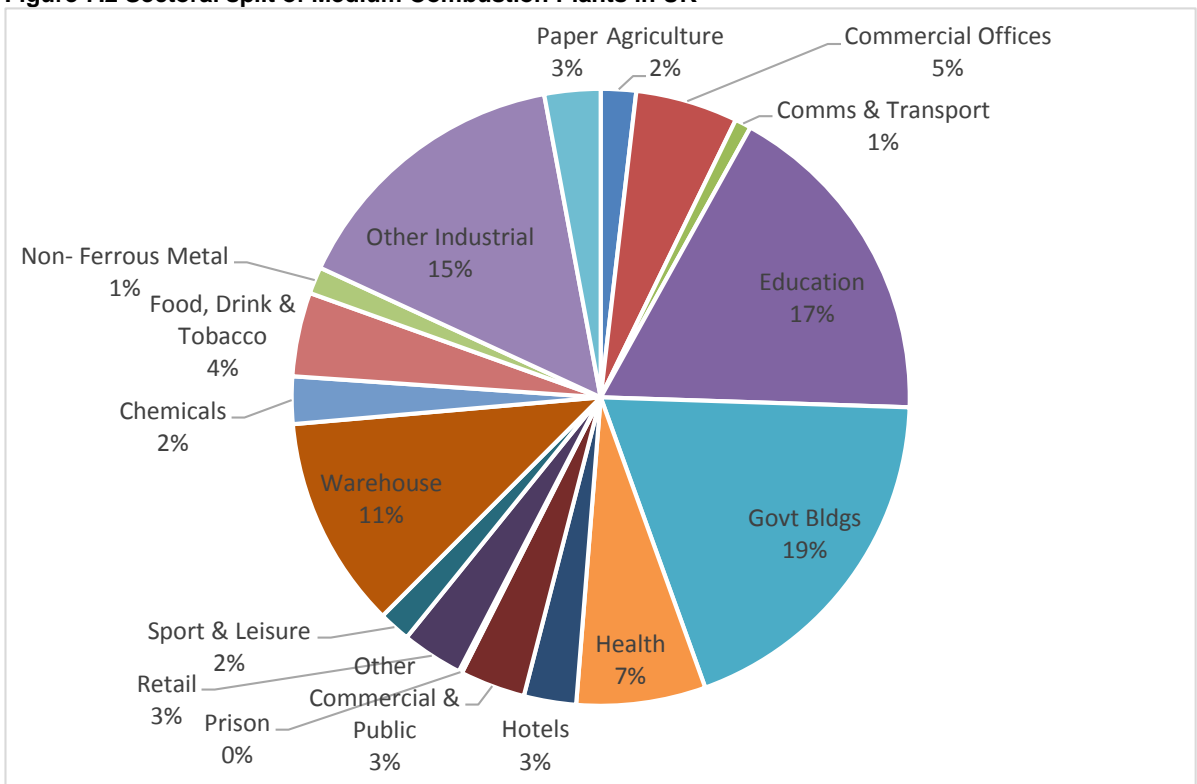
²⁰ Amec Foster Wheeler (2012)

1-5 MW	2.4
5-20 MW	9.5
20-50 MW	29.5

Step 3: Identify the sectoral distribution of plants

Information on the number of generators operating in the UK across different business sectors was developed in collaboration with Ricardo; this is illustrated in Figure 7.2 below. This information was used to develop the assessment on distributional effects, as presented later in this report. The assessment undertaken by Amec Foster Wheeler did not include the additional standby plants assessed under the additional controls as the ELVs set in the MCPD are for plants operating over 500 hours, therefore the cost impact split between industries is based on plants operating for longer hours. However, as there was little data on the specific industries of standby plant ahead of the consultation, we assumed the sector split for stand-by plants would be broadly similar to plants that operate for longer hours. This assumption was consulted upon but no additional data was provided. Section 11 details the business impact assessment.

Figure 7.2 Sectoral split of Medium Combustion Plants in UK



Source: Ricardo-AEA, 20 October 2014.

Step 4: Estimate the fuel consumption of plants

Total fuel projections and capacity etc. are used to estimate plant numbers as above. Once plant numbers are estimated, their fuel consumption must be estimated in order to calculate emissions.

Fuel consumption for high NO_x generators has been estimated by using:

- Projected number of plants as estimated above, average capacity data from the Commission study, and;
- An assumed average load factor of 1% under 8,760 hours i.e. 100 hours per year

Step 5: Identify current emission levels

Current annual emissions from generators in the UK have been derived based on assumed operating hours and emission rates from these plants. These emissions are based on a combination of the “general case” ELVs developed and applied in the Commission study (essentially the maximum values applied to national legislation across Europe), emission factors derived from the EMEP CORINAIR emissions guidebook (primarily for biomass SO₂ emissions) and data that have been returned by stakeholders as part of the informal consultation for this study.

As Tranche A and Tranche B generators have different requirements, the split was done for these two categories separately. Information is based on real plant performance, and what percentages of each type of generator (Tranche A/B and size) have BAU emission levels already below the ELVs imposed by the controls. The data is collated in 2014, and assumed to apply for all years 2018-2032. Annex 0 provides the number of each abatement technology actually fitted by 2030 to plant that need to abate in order to meet ELVs and the scale of how many are already compliant with emissions limits. This is also introduced further in section 7.2 below.

For those generators entering revenue contracts, the run times of the plants are assumed to be lower than regular standby plants. This is because generators, specifically diesel, typically run for less time as they are used for fast response or reserve capacity and often do not need to run for long periods of time. Consultation with industry, National Grid and BEIS has verified the shorter run time; therefore it is assumed that these plants will run for an average of 30-300 hours per year. It is likely that this could be lower for diesel generators where fuel is more expensive and higher for gas generators, where fuel is cheaper therefore an estimate of 100 hours was chosen, which was consulted upon.

Step 6: Estimate total annual emissions

Base case emissions of generators under the emissions controls have been estimated based on projected fuel consumption, the emission levels described above and application of specific flue gas volumes.

These basecase emissions are demonstrated in Table 7.3 below.

Table 7.3 Basecase emissions of all plants under the generators controls

	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Quantity SO ₂ (t/yr)	0	2	11	20	29	38	47	52	57	62	66	71	76	81	85
Quantity NO _x (t/yr)	0	8	52	97	141	186	230	253	276	299	322	345	368	391	414
Quantity PM (t/yr)	0	0	1	1	2	2	3	3	3	3	4	4	4	4	5

The results section presents the impact of the controls on combustion plants on emissions reductions. This impact is additional to existing legislation such as the Gothenburg Protocol, EU legislation and UK legislation.

7.2 Impacts from Abatement Costs

All generators that wish to continue to operate other than in emergencies will be required to meet additional controls.

The base case emission levels for each capacity class and fuel are compared against the scenario limit values to determine the required emission reductions. This indicates whether additional abatement measures would need to be implemented in order to meet the scenario limit values.

Abatement costs come from the best available evidence sourced by Amec Foster Wheeler, which includes the recent Amec Foster Wheeler study for the Commission (Amec Foster Wheeler, 2014). The modelling identifies the most suitable abatement technology for each sub-group of plant. Suitability for each sub-group depends on the necessary emissions reduction required for each pollutant, whether the plant is new or old, and its fuel type and capacity class. Annex 0 presents the methodology in further detail with a list of measures and assumptions.

If a plant chooses to fit abatement, the costs faced are expected to be lower than for larger plants and those that operate for longer hours (covered by the MCPD). This is because the abatement equipment for smaller plants costs less and because abatement requires reagent to operate effectively - the amount of reagent used will increase as the operating hours and size of the plant increase. If plants need to fit abatement to meet the requirements, the majority of which would be diesel, original operating costs would apply to plants that run for 2000 hours per year. Plants (generators) that enter revenue streams would typically run for shorter times of an estimated 100 hours on average²¹. Therefore for these plants, the cost of operation (not installation cost) was reduced down to 1/20th of the cost to ensure consistency with their shorter run times.

It is assumed that the cost of the abatement fitted would have to be outweighed by the benefit of the revenue streams possible in order for plants to choose to fit the abatement.

²¹ As these plants aren't required to register, there is little information available around operating hours. Discussions with National Grid suggest that plants in revenue streams such as TRIAD can operate between 30 – 200 hours. Therefore 100 hours is assumed as an average that is applied to all standby plants in energy balancing markets, which was tested during consultation.

7.3 Operating and construction costs

The controls to protect human health from high NO_x emitting plants will result in additional costs for diesel generators such as additional abatement costs or reduced operating times; therefore some of the forecasted diesel capacity would be taken up by gas plants.

Following consultation with industry stakeholders and BEIS, it has been identified that there are different construction costs for diesel and gas plants²². Other plants were not considered as a significant proportion of the bids into the capacity market were from diesel and gas sites. Diesel plants are typically cheaper to install, although due to the high fuel costs, they are more expensive to run. For gas plants, the price of gas means they are inexpensive to run but the build costs are relatively higher.

In order to capture this difference, industry and other government departments have provided initial cost estimates on the build costs of a diesel or gas plant. Due to the sensitivity of the data, an annualised cost for each plant size has been provided and shown in Table 7.4 below. There is limited information on the fixed costs for smaller plants, such as infrastructure costs, which account for a substantial part of the overall plant costs. However these assumptions were subject to consultation and did not raise specific concerns.

It is assumed that the infrastructure cost would be split over the site (it would only require one gas line to be built etc.) therefore the cost would be split between the plants on this site.

Using BEIS fuel forecast estimates for gas and diesel, Table 7.4 demonstrates the difference in cost per year over an expected 15 year plant lifetime. The difference between diesel and gas is relatively high for plants below 20-50MW. This, in part, can be explained by the fixed costs being appropriate to a larger plant but also because of the assumed run time of the plant. A direct switch has been assumed so this cost difference required diesel and gas to run for the same period of time, 100 hours. In reality, gas is likely to run for longer periods (400- 500 hours), so a comparison for this run time would increase the price of diesel versus gas.

Table 7.4 Operating and Construction Costs

	Diesel engines annualised cost (£/year)	Gas engine annualised cost (£/year)	Cost increment Gas vs Diesel (£k/year)
0-1MW ²³	n/a	n/a	7.81
1-5MW	£61,614	£69,420.	7.81
5-20MW	£234,440	£258,453	24.01
20-50MW	£594,439	£593,586	-0.85

7.4 Impacts from administrative costs

Under the MCPD, standby plants are already assumed to face permitting costs, monitoring CO and NO_x and light-touch compliance (inspection) checks; these costs are detailed in the MCPD impact assessment. However, generators (the majority standby) under the proposed emission controls will face additional administration costs compared to those only covered by the MCP Directive. These additional costs are presented in the following section.

It should be noted the administration for HNGs will utilise the register developed by the Environment Agency. The upfront transitional cost of setting up the register is captured in the MCPD impact assessment, and therefore forms the baseline of this impact assessment.

Permitting costs

One-off permitting costs

We have assumed that Tranche A electricity generating plants operating for longer than 50 hours in 2018 would face a standard emissions test in order to see if they breach 500mg/Nm³ELV. This cost is annualised over a lifetime of 15 years. If this is the case, plants will be required to get a permit and undertake dispersion modelling to assess if they are likely to cause a breach. The costs for these actions are outlined in Table 7.5 below.

²² Where diesel plants are referred to this means compression ignition engines and where gas plants are referred to it means spark ignition engines or turbines

²³ Data was not available for 0-1MW plants so the incremental cost was assumed to be the same as for 1-5MW. This is probably an overestimate.

Table 7.5 Additional administration costs for electricity generating plants breaching proposed ELV's

	One-off permit costs (2014 £)
Standard Emissions Test	1,000
Permitting + Bespoke Modelling	6,621
Total	7,621

The population data demonstrates that 50% of plants are likely to be in an urban location. Therefore, it is assumed that only the plants in rural locations would choose to obtain a permit with site-specific conditions in order to operate for longer hours because they will be less likely to impact on local receptors and would see the cost of applying for the permit to be outweighed by the revenue to be generated.

In 2024, it is assumed that those generators with a permit with site-specific conditions that operate in excess of 50 hours are operating for energy balancing markets or would otherwise be affected by MCPD and would therefore reduce hours rather than meeting the lower ELV which would require them to fit abatement at a greater cost. As a result, the permit costs are annualised over a seven year period as those plants that hold a bespoke permit would only hold them until 2025 or until the end of their power supply agreements.

These costs would be on a site by site basis as often standby plants are not individual units on sites but can be clusters of three or more. Additionally, the emissions of a site (e.g. an installation as defined in the Environmental Permitting Regulations) should be considered together rather than individually as this would change the level of emissions faced by local receptors and could cause a greater impact on health. The Capacity Market outputs suggest an average site size of 20MW therefore it is assumed that these costs would be spread between ten plants (to represent a site) as average diesel plants are 1-5MW, so a midpoint of 2MW is assumed. For larger sites, three plants per site are assumed as demonstrated by data collected for assessment of working plants affected by the MCP Directive (see Table 7.6).

Table 7.6 Number of plants assumed per site estimate

Capacity	Plants per permit
0-1MW	10
1-5MW	10
5-20MW	3
20-50MW	3

Recurring permitting costs

For those plants which become operational after 1 December 2016 that choose to fit abatement, a permit would be required to operate from January 2019. New diesel plants are the only engine type that are likely to breach the ELV as new diesel engines are forecast to continue to have high basecase emissions of 1200mg/Nm³. These plants will be treated in the same way as high risk plants under the MCPD proposals, as outlined in Section 6.1 (Table 6.3).

Estimates of permitting costs are based on figures provided by the Environment Agency, the appointed regulator. All costs would be borne by the regulator in the permitting process and are assumed to then be passed onto the operator.

As with the one-off costs of permits, the costs of the permit are applied on a site by site basis. The costs in Table 7.7 below are converted into a per plant cost using the same assumption of numbers of plants per site as above. These costs are different to the costs for working plants as they reflect the lower number of operating hours expected by these standby plants (100 hours instead of >500hours), and therefore lower resource to verify as part of the permitting process.

Table 7.7 Annualised recurring permitting costs per site, 2030

Capacity (MW)	Annual recurring costs per site (£,2014 prices)
0-1	1,725
1-5	1,725
5-20	1,725
20-50	2,891

7.5 Impacts from loss of operating hours – revenue and fuel savings (Non-monetised)

Tranche A plants that operate for longer than 50 hours per year, are near to a sensitive receptor and are unable to comply with the ELV of 500mg/Nm³ in 2018 will be subject to an assessment and may be required to disperse or abate emissions or may choose to reduce operating hours. This reduction in hours represents a potential revenue loss for these plants.

Additionally, the revenue earned by plants in Tranche B has the potential to dictate their behaviour in terms of whether forecasted plants will remain as diesel. If the cost of abatement to meet the proposed ELV's outweighs the potential revenue earnings, then cleaner technology that can meet the ELVs more cost-effectively is likely to replace diesel.

There is limited publicly available information on the amount each plant earns from participating in electricity generating services. Therefore, we consulted with industry experts and National Grid to give an indication of the potential revenue available. Table 7.8 demonstrates the conclusion of this data gathering exercise, and highlights the multiple options available to plants. Following this consultation, there was a clear consensus that plants operating in these streams are likely to be able absorb the cost of fitting standard abatement to meet the proposed ELVs.

Table 7.8 Revenue streams available to electricity generating plants (estimates from National Grid and industry experts)

Service/revenue stream	Definition	Capacity of diesel in service (MWe)	Availability payment (£/MWe) ¹	Hours Available/ annum*	Utilisation payment £/MWh ¹	Utilisation Hours	Total payment (diesel) /kW/yr
FFR	Plants that operate for Firm Frequency Response provide a fast balancing service for fluctuations in frequency. Plants are paid for hours available and hours utilised.	200	£7/or less assume £4 off-peak	20/day	£69-1600/MWh	5 (est.)	£33 (est.)
STOR	Plants that operate for Short Term Operating Reserves are typically contracted. Paid for hours available and hours utilised.	650 (450 Short Term 200 Long Term)	£3-8/MW per hour [£3 only not operating over winter, £8 all year)	10.5/day [3,860 hours of availability]	£130-150/MWh Short term, £235/MWh Long term	13835MWh (diesel total 2014) 20 hrs Short term, Long term STOR runs very infrequently (assume 1 hr)	£14.18 (est.)
Triad Avoidance (TNUoS)	During Nov-Feb, when energy use is high, generators connected to the distribution network are paid if they use their generators during "Triads" (the three half hour periods of peak demand for energy). Large industrial and commercial users run their generators to	420	(TRIAD payments for specific hour(TRIAD payments for specific hours)	(TRIAD payments for specific hours)	£69-1600/MWh ²⁴	30-250	£45 (est.)

²⁴ These are negative charges or avoided charges for not using the network distribution system.

	avoid drawing power from the transmission network during Triads to avoid transmission charges.						
DUoS	DuoS (Distribution Use of System) charges are levied by the UK's regional DNOs (Distribution Network Operators) and go towards the operation, maintenance and development of the UK's electricity distribution networks. Payments for specific hours run.	Not confirmed	n/a (TUoS payments for specific hours)	n/a (TUoS payments for specific hours)	£56-94/MWh	Min 5hrs	Not confirmed

However, in order to prevent high concentrations of NO₂ and reduce overall NO_x emissions from generators providing these services, NO_x abatement needs to be met quickly. This is because emissions of NO_x build up quickly within the first 20 minutes of operation and the running time of diesel generators acting for these services can be fairly short. The limit for compliance with the NO_x ELV of 20 minutes for Tranche A and 10 minutes for Tranche B generators may limit the ability for plants to fit appropriate abatement, particularly Tranche A generators which are less likely to see abatement as a cost effective decision over their remaining lifetime.

In order to continue to operate, some generators in Tranche A will therefore choose to reduce their hours to 50 (the average operating time of standby plants in revenue streams is assumed to be 100 hours based on stakeholder consultation and National Grid information) if they consider the cost of abatement higher than the revenue loss incurred.

As there is little information around the location of generators in relation to a sensitive receptor, population data has been used in the UKIAM model²⁵ to categorise the geographical distribution of sites of diesel units, based on the 2015 plants from the 2015 capacity auction. This demonstrated that approximately 50% would be in a rural or suburban location where there is likely to be less risk of a sensitive receptor in close proximity to the generator. Therefore it could be assumed that 50% of generators would cause undue health impacts due to their position near sensitive receptors and would therefore reduce their hours. A lower ELV of 190mg/Nm³ for generators that are not exempt in 2025 would mean that any plant which could benefit from an exemption from permitting (in particular back-up generators providing power on-site during an emergency) would reduce their hours in 2025. We have therefore assumed that the remaining 50% of generators would reduce their hours in 2025²⁶ as this action would be more cost effective than fitting abatement that would be active within 20 minutes. Arrays of diesel engines located on sites with no power demand will not be able to benefit from this exemption and would be required to fit suitable abatement to operate for any purpose other than to fulfil a contract or agreement made before 1 December 2016. Information on how many generators are in sites of this kind is relatively weak so it is possible the costs of abatement are underestimated, however no further data was received during the consultation.

We have assumed arrays of generators on sites with no power demand which choose to reduce operating hours to avoid fitting secondary abatement would incur a revenue loss by reducing their hours available from 100 to 50, along with a fuel saving from the reducing running hours (greater savings for diesel as the fuel cost is higher). Consultation with BEIS and industry experts has suggested that it is very likely that they can continue to operate profitably with more limited hours, and this would be a cheaper option than fitting abatement.

It is worth noting that we do not assume that capacity overall will reduce due to the new capacity projected to come through, therefore revenue can be treated as a transfer from one area of the energy market to another. This is

²⁵ For more detail on the UKIAM - <https://www.imperial.ac.uk/environmental-policy/research/environmental-quality-theme/current-projects/iau/iam/ukiam/>

²⁶ To the exception of plants with capacity market agreements going beyond 2025

because other generators which meet the emission limits will be able to benefit from these available revenue streams and will be paid to provide this capacity. However, in the short term diesel is viewed as relatively cheap due to low build costs, although running costs (from fuel) are higher. Therefore if new capacity (Tranche B) is being filled by alternative generators such as gas, which can be more expensive to build, there may be a very marginal increase in the cost to consumer in the short term. This is detailed in Section 13.

Overall, the cost to the generator running shorter hours will be a benefit to those generators that will take up the requirements of the contract, which demonstrates a redistribution of income from one plant to another with no net societal cost faced.

We consulted on the number of revenue streams each generator is in or will be able to enter and have monetised the impact in this final IA.

7.6 Monitoring costs

Generators covered by the controls already incur monitoring costs under the MCPD, which are presented in the MCPD impact assessment. This section only presents the additional monitoring costs incurred by generators captured by the controls. As those plants would now be expected to meet the proposed ELV of 190mg/Nm³, monitoring in addition to that expected in the MCPD will be required to ensure that this limit is being met. Therefore any plant choosing to fit technical abatement would need to monitor emission levels to demonstrate compliance. Specifically, in addition to all concerned plants needing to initially complete a test, they will subsequently also need to regularly monitor emissions.

The costs of monitoring for these generators would extend to monitoring NO_x along with the cost of CO monitoring, which is required by all standby plants in the MCPD. All relevant plants will monitor and record emissions of CO every five years under the MCPD requirement, whereas the NO_x monitoring must be done every three years for generators using abatement equipment to achieve the required ELV. Each plant must be monitored rather than each site, as the ELVs apply to stacks (to monitor emissions at the flue) not sites. The costs have been calculated as for plants under the MCPD, scaled for smaller individual plants with shorter operating hours, and are demonstrated in Table 7.9 below.

Note these costs do not capture those anticipated in MCPD (e.g. PM monitoring) aside from CO monitoring, which is included as it is applicable to all standby plants.

Table 7.9 Additional monitoring costs per generator under emission controls

Plant Size	NO _x and CO only monitoring costs (£, 2014)
0-1MW	£188
1-5MW	£1,666
5-20MW	£2,377
20-50MW	£3,798

7.7 Benefits to the Environment and Human Health

Emission reductions from abatement

Total emissions reduced for SO₂, NO_x and PM are estimated by applying abatement efficiencies to the fuel specific emissions.

The abatement efficacies are those from the specific abatement measures selected in the compliance modelling. Specifically, the model compares the baseline (unabated) emission concentration for the plant type against the relevant measures to meet energy balancing markets to determine if a reduction in emission concentration is required, and if so, what percentage reduction is needed. The model then selects the relevant measure to achieve the required reduction; for example, if a reduction of 50% is needed and there are measures suitable for that category of plant able to achieve 40% reduction or 70% reduction, then the measure achieving 70% reduction is applied to ensure compliance. Consequently, the emission reduction modelled is higher than would be needed purely to comply. For most abatement measures, this is a realistic situation. A small number of measures (e.g. Selective Catalytic Reduction, SCR) could in practise be set up to only achieve the required reduction without an overshoot, and reduce slightly the operational costs.

Emission reductions from reduced hours and change in fuel type

Alongside the emission reductions estimated as a result of the additional restrictions for existing plants within the energy balancing markets choosing to apply abatement efficiencies, there are additional emission reductions from reduced operating hours, compared to base case emissions.

For plants operational before December 2016 and those with 2014/15 Capacity Market agreements, it is assumed that a proportion choose to reduce their hourly run time as it would be more cost effective for the plant than fitting abatement. This reduction in hours therefore reduces the level of emissions. This reduction is modelled by calculating the difference in the annual waste gas flow rate multiplied by the level of emissions in the base case of 100 hour run time compared to the scenario of reduced run time of 50 hours. Please see section 6.2 for details of ELVs under the option.

For plants which become operational after 1 December 2016, it has been assumed that a proportion of the forecasted diesel capacity would be replaced by gas as the measures for high NO_x generators would deter diesel from entering the energy balancing market. While we assumed that there would be no additional benefit in the NO_x reductions from an abated diesel generator and a gas generator (both assumed to meet 190mg/Nm³), gas generators have lower SO_x, PM and CO₂ emissions as gas is a cleaner fuel for multiple pollutants and GHG's. These additional benefits have been captured as part of the assumed technology switch from diesel to gas.

Monetised Benefits

(1) Air Quality

The Green Book guidance recommends the impact pathway approach in many circumstances when impacts are above £50m annually. The bespoke impact pathway approach was considered, however, in this circumstance, the uncertainty around the spatial distribution of plants and their operating patterns meant that damage costs are more appropriate.

The beneficial impact is considered in terms of the damage avoided if emissions reductions are achieved. This 'damage' avoided is calculated in money terms using a damage cost. The IGCB damage cost functions form official government Green Book guidance on valuing impacts from Air Quality. They predominantly capture the health benefits from reduced emissions. Since the consultation, our central estimates of damage costs associated with reductions in emissions have been amended and in particular revised down by 15% for NO_x emissions. The analysis in this IA is based on forthcoming updated damage costs by the COMEAP which reflect the latest advice and takes a consistent approach to that used in support of the government's recently published 'Air quality plan for nitrogen dioxide'.

As damage costs are sensitive to factors such as geographic location of emission sources and meteorology, there are damage cost functions for particulate matter (PM) and NO_x that are categorised by geographic area. For the purpose of the MCP analysis and additional measures for high NO_x generators, we have calculated a weighted average damage cost specific to each pollutant that is based on the sectors involved (based on sectoral split as per Figure 7.1). This is to enhance representativeness of damage costs in relation to specific MCP and generators impacts.

Table 7.10 below presents the damage cost weighted by the average of the sectors involved.

Table 7.10 Damage Cost Functions for SO₂, NO_x and PM (£2014 per tonne of pollutant reduced)

	Central Estimate	Low Central Range ^b	High Central Range ^b
NO _x	£4,269	£3,546	£11,762
SO ₂	£2,375	£1,208	£5,053
PM ^c	£29,470	£13,885	£70,775

a) Based on IGCB damage cost functions (IGCB, 2012 for SO₂ and PM – Defra, 2015 for NO_x).

b) Variation between the central values reflects uncertainty about the lag between exposure and the associated health impact.

The damage cost functions have been inflated to 2014 prices (using GDP deflators), and additionally uplifted by 2% per annum until 2014. In years beyond 2014, they are only uplifted by 2% per annum when applied to future year emission reductions. The uplift captures the higher willingness of the population to pay, and therefore value of health benefits as incomes (economic growth) rises.

The potential benefits of the reduced emissions from the assumed reduced hours and change in fuel are also calculated using the application of damage cost functions as outlined above. The same weighted average of the damage costs has been applied to capture the spread of plants across different industries and locations. This is something we consulted upon as there was little data available, but no further data was provided

(2) Greenhouse Gases (GHGs)

A change in greenhouse gas emissions was also calculated from a change in fuel consumption. The implementation of abatement also results in the abatement of greenhouse gases, mainly carbon dioxide. We have monetised the environmental benefit of reduced CO₂ using the central BEIS traded and non-traded carbon values to calculate the

impact. The traded value is used for larger plants over 20MW that fall into the scope of the EU Emissions Trading System, while the non-traded value of carbon is used for smaller plants.

The environmental benefit of reduced CO₂ from the assumed reduced hours and change in fuel was also calculated using the central BEIS traded and non-traded carbon values.

Non-monetised Benefits

It is important to note when applying and interpreting damage cost functions that a number of impacts are not taken into account in the quantification; this includes a number of human health impacts (in particular morbidity), as well as impacts on ecosystems and cultural heritage. Therefore, the benefits estimated through the application of damage cost functions may be underestimated.

Not all impacts can be fully monetised; there are additional benefits that are non-monetised associated with reductions in soil and surface water contamination, reducing acidity and the potential for these substances to bio-accumulate in the food chain and humans. Reduction in the emissions of organic substances should also lead to a downward trend in the release of carcinogens.

7.8 Further assumptions and uncertainties

A more comprehensive discussion on key risks and assumptions is discussed in Section 9, along with results from sensitivity testing key assumptions. Section 9 also presents a full assumptions log.

7.9 Quality Assurance

Quality assurance refers to processes which can help ensure the analysis' inputs and outputs meet its quality requirements, manage risk of errors and ensure the analysis is fit-for-purpose. It is a key means of ensuring analysis is robust. A high level of quality assurance was considered proportionate for the modelling supporting this analysis. As such, the process set out in the official HM Treasury Aqua Book was fully completed. This involved checks throughout the analytical life cycle by analysts, commissioners of analysis, those supporting the assurance effort, and stakeholders. Specific checks performed on this analysis include:

- (a) *Specification Confirmation* - Defining what a piece of analysis should deliver, the deadlines and quality requirements, along with recording any changes to scope.
- (b) *Developer Testing (including validation and verification)* - Reviewing and checking of the analysis during development, primarily by the analytical team.
- (c) *Input Data Checks* - An understanding of the data needed to shape the development process. Its definition, availability, timeliness, quality and quantity
- (d) *Input Assumptions Checks* - Ensuring that all assumptions are transparent, clearly understood and are agreed by stakeholders.
- (e) *Independent Validation* - Validation was focussed on checking that the analysis will meet the customer's actual needs, i.e. that we are doing the right analysis.
- (f) *Independent Verification* - Reviewing, inspecting, testing, checking, auditing, or otherwise establishing, and documenting, whether the analysis conforms to the specified requirements, i.e. checking we are doing the analysis right.
- (g) *Documentation* – The resources (including this IA) that assist in recording the problem, the analysis and the associated uncertainty to other analysts and customers.
- (h) *Communicating Uncertainty* - Disseminating analytical risks and unknowns in a piece of analysis and its outputs to decision makers. This includes the details of section 9 of this IA and the high/low scenarios presented throughout.

8. Results

8.1 Overview

Table 8.1 demonstrates the total impacts of implementing the controls on high NO_x generators. Monetised health and environmental benefits across the 15 year appraisal period, relative to the baseline are £58m, against costs of £107m, in present value (today's terms). The next subsection summarises each cost and benefit category.

Table 8.1 Cost and benefits (£m, PV)

2018-2032	LOW SCENARIO (£m)	HIGH SCENARIO (£m)	CENTRAL (£m)
Costs (cost to operators)			
Abatement costs	43.2	80.3	50.6
Administration costs	0.2	0.3	0.3
Monitoring costs	10.7	10.7	10.7
Operational/capital cost of technology switch	56.7	0	45.4
<i>Total</i>	110.9	91.3	107.0
Benefits (emissions reductions)			
Air Quality	41.0	143.2	50.9
CO2 (Traded)	0.1	0.4	0.2
CO2 (Non-Traded)	3.3	10.0	6.6
<i>Total</i>	44.4	153.6	57.7
NPV	-66.5	62.3	-49.03

*Please note any differences due to rounding.

8.2 Key costs and benefits of implementing the generators controls

This section details the estimated emission reduction and associated costs of implementing the emissions controls on high NO_x generators.

The results present the outcome over a 15 year assessment period. The assessment begins in 2018, when the first costs will be incurred, and ends in 2032, where it would be anticipated that the generator controls will have been implemented in full. As a reminder, the analysis assumes a worst-case scenario in which all generators with capacity market agreements are exempt for the whole assessment period.

Year-by-year results (i.e. annualised costs for individual years) are presented to demonstrate the impact per individual year when the measures on those plants that are part of the energy balancing markets come into effect. From 2032 onwards, the impacts will be similar for future years given that there are no further changes to emission controls from that year. The changes will be as a result of the closure of existing plants on reaching the end of their operating life and opening of new plants, and changes in the projected use of different fuel types. However, although the numbers of plants are not projected further than 2032, the growth in plants as a result of the capacity market could mean a growth in the numbers anticipated.

The main ranges around the central estimate represent the two key sensitivities. The first is the anticipated behaviour change of new (operational from 1 December 2016) plants which, due to the uncertainties around the impact of the measures, is the main sensitivity surrounding the total cost impacts of the directive. The scenarios tested are as follows:

Scenario 1: No change in diesel, all diesels fit abatement

Scenario 2: 80% of projected diesel capacity becomes gas

Scenario 3: 100% of projected diesel capacity becomes gas

The second is the variation in the damage cost values attributed to reduced emissions. It is standard HMT Green Book practise to present the uncertainty in valuing human health.

All prices are in 2014, and a 3.5% discount rate has been used in present value figures as per Green Book guidance. The base year for the NPV is 2018.

In the remainder of this section, each of the following monetised impacts is discussed in more detail:

COSTS

- **Abatement costs for plant operators** – Compliance with the additional measures for electricity generating plants will lead to additional costs for plants between 0-50MW and lower that are not exempt from compliance with emission limits. These plants may need to fit abatement in order to reduce their NO_x, PM and SO_x emissions to meet the ELVs set in the regulation. These costs will vary depending on the plant type, the age of plant and the most cost effective abatement measure chosen. The central estimate is that this will lead to an additional to baseline cost of £50.6m (£43.2m and £80.3m) in present value terms for businesses.
- **Administrative and compliance (inspection) check costs** – The costs include the additional permitting requirements and compliance checks required by the additional measures for high risk electricity generating plants (those with high NO_x emissions). The central estimate is that this will lead to an additional to baseline cost of £0.3m in present value terms for businesses
- **Monitoring costs** – The costs include the fees for an accredited consultant to conduct the monitoring surveys and prepare a monitoring survey report to the operator annual or tri-annually in order to meet the Directives monitoring requirements. The central estimate is that this will lead to an additional to baseline cost of £10.7m in present value terms for businesses
- **Cost of switching plant type in projections** – Under the additional generators controls, it is assumed that the capacity of some forecasted diesel standby plants would be replaced by gas as gas will not have to fit abatement as it is assumed to meet the ELV. This cost captures the difference of building and running a gas plant as opposed to diesel (capital and operating costs). The range presented will capture the varying levels where this change in fuel type occurs. The central estimate is that this will lead to an additional to baseline impact of £45.4m (range: £0 – where no switch occurs and £56.7m) in present value terms for businesses

Non-monetised costs

- **Revenue loss for plant operators** – Under the generator controls, some standby plants operating before 1 December 2016 or those with successful bids in the 2014 and 2015 Capacity Markets will choose to reduce their hours instead in response to the additional measures set. This will be considered as a transfer as it is assumed that overall capacity would still be needed so other compliant plants would now be able to take up these contracts, therefore revenue would transfer from one non-compliant plant to another compliant plant. However, it is a cost faced by the plants considered within this scope but due to the lack of information around specific revenue streams, it cannot be monetised.

MONETISED BENEFITS TO THE ENVIRONMENT AND HUMAN HEALTH

- **Monetised air quality benefits** – The main benefit of the implementation of the generators controls will arise from the reduction in air pollutant emissions. By reducing the number of plants operating without abatement and ensuring that these plants are monitored for their emission levels, this will improve air quality and benefit human health and the environment. This captures the reduction in both chronic mortality effects (which consider the loss of life years due to air pollution) and morbidity effects (which consider changes in the number of hospital admissions for respiratory or cardiovascular illness). However, it does not quantify all human health impacts. The total air quality benefits from the generators controls are valued at £50.9m in present value terms.
- **Monetised CO₂ Emissions benefits** – Certain measures intended to reduce emissions of air pollutants also affect CO₂ emissions from UK plants. As some of the larger plants would fall into the scope of the EU Emissions Trading System (ETS), the reduction in costs to UK businesses of purchasing extra EU ETS allowances from abroad is assessed. Therefore, any change in CO₂ emissions in the UK is valued using the traded cost of carbon. Smaller plants will fall under the non-traded value of carbon, where although they are not traded as part of the EU ETS, the emissions still contribute to the global carbon value and need to be considered and as other industries may not need to abate as much as a result. The total CO₂ emissions benefits from the additional generators controls are valued at £6.8m in present value terms.

8.3 Abatement costs

The central year on year breakdown is shown in the table below where the annual total cost of abatement increases over the appraisal period as each measure is introduced. Table 8.2 below also demonstrates where stages of the additional measures (2024, 2029) come into effect and a greater number of plants are impacted, as shown by the higher cost.

Table 8.2 Year on year discounted cost of abatement for standby generators (£m, 2014 prices) Central Scenario [80% of diesel standby plant capacity projected switches to gas]

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total PV
CENTRAL – Scenario 2																
£m	0	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.8	0.9	0.9	0.9	15.1	14.5	14	50.6

Note: any differences in totals due to rounding

As demonstrated by the tables above, under the central scenario, only 20% of projected diesel would continue to operate and therefore would fit abatement. This results in relatively low costs of abatement as other forms of fuel (gas) is assumed to meet the ELV with no additional abatement required.

Sensitivity of the behaviour change

Anticipated behaviour change of plants is a key driver of the cost of abatement. If more plants switch to gas, then fewer need to fit abatement equipment.

Therefore we have sensitivity tested two more extreme scenarios, where there is no change or 100% change in fuel. Scenario 1, where 100% of forecasted diesel plants will continue to be diesel, is demonstrated in Table 8.4 below, and has been tested with all projected diesel plants fitting abatement to meet the ELV set in the measures. However, as there is little known about technology available to meet these measures, the scenario uses the costs of current abatement and is therefore likely to underestimate any cost associated with adopting new abatement technologies. It should be noted that this scenario is unlikely, since at least some shift to gas is expected where natural gas is available, to avoid periodic monitoring and running costs and investment in secondary abatement.

Scenario 3 (Table 8.3) demonstrates where 100% of projected diesel fuel is filled by gas.

Table 8.3 Year on year cost of abatement for standby generators (£m, 2014 prices) Low Scenario [100% change to gas in plants projected], discounted

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total PV
LOW Overall – Scenario 3																
£m	0	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	14.4	13.8	13.2	43.2

Table 8.4 Year on year cost of abatement for standby generators (£m, 2014 prices) High Scenario [No change in fuel of plants projected], discounted

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total PV
HIGH Overall – Scenario 1																
£m	0	0.3	0.9	1.5	2	2.5	3	3.2	3.4	3.5	3.6	3.7	18	17.5	17	80.3

8.4 Administrative and compliance (inspection) check costs

The administration costs are the costs faced by plants for operator and regulator time and effort for processing an environmental registration/permit, inspection, data recording and reporting.

Permitting, compliance checking and reporting activities will result in a range of one-off and recurring costs to regulators and operators, however this IA includes only the costs which are additional to those incurred for compliance with the MCPD (for 1-50MW plants). Additional permitting costs will be incurred for generators that require more complex permits, or at an earlier date, than set under the MCPD.

Most standby plants in the MCPD are classified as low risk when they register and seek a permit, however with the Environment Agency modelling, even modern diesel generators with base case emissions of 1200mg/Nm³ are likely to cause a breach in recommended local air quality hourly limits and therefore, meeting the lower ELV of 190mg/Nm³ is important so as not to risk a breach. Therefore those diesel plants that may choose to apply for a permit with site-specific conditions have been reclassified as high risk as they would need to be monitored to ensure they are meeting the conditions of the permit: this will be reflected in higher permitting and compliance check costs.

Permitting costs will affect back up, working and standby plants. The breakdown for registration and administrative costs per plant is demonstrated in Table 8.5 below.

Table 8.5 Recurring administrative costs per site (2014, £/year)

	Recurring cost per site (2014 £/year)			
	0-1MW	1-5MW	5-20MW	20-50MW
Registration: subsistence (high risk)	868.8	868.8	868.8	2,035.4
Registration: subsistence (low risk)	91.2	91.2	91.2	91.2
Registration: subsistence (high risk - low risk)	777.7	777.7	777.7	1,944.2

Year on year administrative costs for plants under generator controls are presented in Table 8.6 below for the central scenario. Total NPV for the overall low scenario is 0.3 and for the high scenario is 0.5.

Table 8.6 Year on year cost of administration for generators controls (£m, 2014 prices), discounted

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total NPV
CENTRAL SCENARIO																
£m	0	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.3

Note: any differences in totals due to rounding

8.5 Monitoring costs

The monitoring cost captures the cost of monitoring whether a plant is meeting an ELV which would include the fees for an accredited consultant to conduct the monitoring surveys and prepare a monitoring survey report to the operator. Under the MCPD, working generators over 1MW will be required to monitor emissions annually (if over 20MW) or tri-annually (if 1-20MW) in order to meet the Directives monitoring requirements. Standby and backup generators are required to monitor emissions at least once every 5 years, depending on their operating hours. Under the MCPD, working generators must monitor emissions of the pollutants for which they have ELVs, and all generators must monitor CO.

The emission controls for generators set additional monitoring requirements for plants that chose to fit abatement, which will need to monitor to ensure they are not breaching the ELV; this requirement may also apply from an earlier date than under the MCPD. The cost per plant is highlighted in Table 8.7 below.

Table 8.7 Additional NO_x Monitoring costs for generators subject to the high NO_x generator controls

Recurring cost per site (2014 £/year)			
0-1MW	1-5MW	5-20MW	20-50MW
746.24	746.24	746.24	746.24

The results are presented in Table 8.8 below.

Table 8.8 Year on year cost of monitoring (£m, 2014 prices), discounted

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total NPV
CENTRAL																
£m	0	0	0.1	0.2	0.3	0.3	0.5	0.6	0.6	0.6	0.6	0.6	2.1	2	2	10.7

8.6 Impact of capacity switching fuel types

This represents the impact faced if some of the capacity forecasted were filled by gas instead of the projected diesel in the baseline. The cost of building a gas plant over a diesel plant is higher in terms of build cost, although the cost to run the plant is cheaper due to the low fuel costs.

The results below demonstrate that in the central scenario where 80% of the forecasted diesel plants have a direct switch to gas, there would be a cost of £45.4m.

This impact has been sensitivity tested by testing the extreme cases where 100% of capacity would continue to be diesel (Scenario 1) or 100% of the capacity would be filled by gas (Scenario 3) (Table 8.10). This has highlighted that a 100% switch to gas may be unlikely due to the higher cost of set up. However, it is worth noting that these costs assume an exact switch of run time and plant size in order to allow a direct comparison. In practise, it is likely that gas would run for longer hours which, if compared, would represent a different picture due to the higher running cost of diesel.

Table 8.9 Year on year cost of capacity fuel switch (£m, 2014 prices), discounted

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total NPV
CENTRAL																
£m	0	0.11	0.89	1.61	2.29	2.91	3.5	3.7	3.9	4.07	4.23	4.37	4.5	4.61	4.71	45.4

Table 8.10 Year on year cost of capacity fuel switch (£m, 2014 prices), discounted

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total PV
High Overall – Scenario 1																
£m	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Low Overall - Scenario 3																
£m	0	0.14	1.11	2.02	2.86	3.64	4.37	4.63	4.87	5.09	5.28	5.46	5.62	5.76	5.89	56.7

8.7 Revenue Impacts (non-monetised)

Plants in Tranche A would face a revenue loss if operators choose to reduce their operating hours. This impact is assessed purely for existing plants as these plants are already built and the measures would restrict their ability to operate as in the baseline, if they breach the measures set. The cost is also not included in the overall cost figures, as it is not a true cost to society because the cost is seen as a redistribution of income from one generator to another (See Section 10).

With generators entering contracts before December 2016, it is assumed that 50% of these generators will reduce their hours to 50 hours (to the identified safe running time from the Environment Agency modelling) in 2018 and face revenue loss from this point, while we have assumed that, (with the exception of plants under capacity market agreements before December 2016) the rest of the existing generators would reduce their operating hours to 50 hours in 2024, when stricter ELVs will need to be met. The 50% behaviour change in each year represents the urban/rural split as outlined in Section 7. This assumption was validated during consultation.

The cost of lost revenue is likely to be mitigated somewhat by the fuel savings from reducing running hours (cost of operating for 100 hours compared with the cost of operating for 50 hours), however it is still significant for these generators.

Plants in Tranche B would not be impacted as these generators are not yet built so do not face a revenue loss compared to the base case. As a result there would be no changes between scenarios as these scenarios affect the behaviour of investors choosing the fuel type of generators they intend to build.

8.8 Monetised benefits to the environment and human health

The main benefit of the implementation of the additional controls will arise from the reduction in air pollutant emissions. By reducing the number of plants operating without abatement and ensuring that these plants are monitored for their emission levels, this will improve air quality and have a positive impact on human health and the environment (including greenhouse gases).

Emissions reductions of air pollutants

Table 8.11 below highlights the total emission reductions of key pollutants as a result of the implementation of the controls specific to high NO_x polluting generators.

Table 8.11 Total emission reductions from generator controls (kt) 2018-2032

SO ₂	NO _x	PM	CO ₂
2.9	11.0	0.2	128.1

Table 8.12 demonstrates the full breakdown of these emission reductions by pollutant across the entire period, demonstrating the profile of reductions.

Table 8.12 Year-on-year breakdown of emissions reduction by pollutant (kt/yr)

Quantity abated (kt/yr)	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
SO₂	0	0	0.1	0.1	0.1	0.2	0.2	0.2	0.2	0.3	0.3	0.3	0.3	0.3	0.4
NO_x	0	0.1	0.1	0.2	0.3	0.4	0.5	0.5	0.6	0.6	0.6	0.7	2.1	2.2	2.2
PM	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

The level of emission reduction has been sensitivity tested for each scenario as different generators have different base case emissions. Under Scenario 1, it is assumed that all projected diesel remains as diesel. As a result, the emission reductions are relatively low as diesel only reaches 190mg/Nm³ when fitted with appropriate abatement.

Under Scenario 3, it is assumed that all projected diesel will switch to gas. New gas plants are assumed to have a lower basecase emission level in other pollutants so additional abatement of SO_x and PM would occur, therefore a higher number of gas plants in the future results in higher emission savings than the other scenarios compared to the base case.

Carbon emissions

Table 8.13 below highlights the total emission reductions of carbon as a result of the implementation of the additional measures. This amounts to a cumulative saving of 128kt of CO₂ in the central scenario.

Table 8.13 Total CO₂ emissions reduction 2018-2032 in each scenario

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total
Central Scenario 2 (kt/yr)																
CO₂	0	2.4	3.7	5.1	6.4	7.8	9.1	9.8	10.4	11	11.6	12.2	12.2	12.8	13.5	128.1
Low Overall Scenario 3 (kt/yr)																
CO₂	0	2.4	4.1	5.7	7.3	9	10.6	11.4	12	12.6	13.2	14.5	14.6	15.4	16.1	149
High Overall Scenario 1 (kt/yr)																
CO₂	0	2.1	2.2	2.3	2.4	2.4	2.5	2.5	2.4	2.4	2.4	2.3	1.6	1.6	1.6	30.8

Similarly to the emission reductions of NO_x, SO₂ and PM, the variations of the projection of future generators have a substantial impact on the level of emissions saved.

Monetised Benefits - Air Quality

Table 8.14 below demonstrates the benefits generated as a result of the controls on high NO_x generators. The central case of Scenario 2 demonstrates that implementing these measures would generate £50.9m benefits, of which £21m is from fitting abatement and reducing hours, while £29.9m is from the fuel switch.

The sensitivity of the central scenario 2, high and low, present the uncertainty associated with valuing health benefits in the damage costs. Please note that in all three scenarios above, the level of emissions reduction does not change. The sensitivity captures the uncertainty surrounding the valuation of health benefits for a given level of emissions reduction.

More broadly, the previous section of this IA presents higher (or lower) emissions reductions depending on whether more (scenario 3) or less (scenario 1) diesel plant switch to gas. This sensitivity was also tested and presented a range closer to the central than the sensitivity presented below. Therefore, the sensitivity presented below is robust to other uncertainties in the air quality benefits.

Table 8.14 Year on year monetised benefits from measures on plants entering the energy balancing market (PV, £m, 2014 prices), discounted

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total NPV
Scenario 2 - Abatement Measures and Reduced Hours	0.00		0.14	0.20	0.26	0.32	0.37	0.42	0.44	0.47	0.49	0.51	5.86	5.76	5.66	20.9
Scenario 2 - Fuel (technology) switch.	0	0.1	0.5	0.9	1.4	1.8	2.1	2.3	2.5	2.7	2.8	3.0	3.1	3.3	3.4	29.9
Scenario 2 Total	0.0	0.1	0.7	1.1	1.6	2.1	2.5	2.7	2.9	3.1	3.3	3.5	9.0	9.0	9.1	50.9
Scenario 2 High Total	0.0	0.2	0.6	1.0	1.3	1.7	2.0	2.2	2.3	2.5	2.6	2.7	7.3	7.3	7.3	41.0
Scenario 2 Low Total	0.0	0.9	2.2	3.6	4.8	6.0	7.2	7.8	8.3	8.8	9.2	9.7	24.8	24.9	25.0	143.2

The total monetised benefits in the central scenario are valued at £50.9m (Scenario 2) (not including GHG benefits).

Monetised Benefits – Greenhouse gasses

Table 8.15 below demonstrates the benefits of reducing carbon emissions generated as a result of implementing the controls on generators. The central case of Scenario 2 demonstrates that implementing these measures would generate cumulative benefits of £6.8m.

Table 8.15 Carbon benefits 2018-2032 (discounted)

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total NPV
Scenario 2																
£m	0	0	0.1	0.2	0.2	0.3	0.4	0.4	0.4	0.5	0.5	0.5	0.5	0.6	0.7	5.3

8.9 Summary of results

Table 8.16 Present value of total costs and benefits over 15 year appraisal period (2018 – 2032), £m 2014 prices

£m, 2014		Sensitivity		Best estimate
Scenarios		Low Scenario	High Scenario	Central Scenario
Generators controls	PV Costs	110.9	91.3	107
	PV Benefits	44.4	153.6	57.7
	NPV	-66.5	62.3	-49.03

*Where 22.7m of benefits are from GHG and the remainder Air Quality.

Table 8.16 demonstrates the total costs and benefits for the impact of the controls on high NO_x generators. All three scenarios carry forward the number of plants estimated in section 7.1, and Approach 1 for compliance (inspection) checks.

Scenario 2 is the central scenario for costs and for high/low benefits (damage costs). The high overall scenario combines low cost (Scenario 1) with high benefit, and the low overall scenario combines high cost (Scenario 3) with low benefit. That is, the range presents the sensitivity around the assumptions on behaviour change of diesel to gas (Scenario 1-3) and the valuation of health benefits for a given reduction in emissions (Scenario 2).

Compliance Costs

The full costs to high NO_x generator operators in England and Wales is demonstrated in Table 8.17 below with a central estimate of £107m. The low cost scenario is Scenario 1 and the high cost Scenario 3.

Table 8.17 NPV of costs for the low, high and central scenarios of behaviour changes

2018-2032	Low cost (£m)	High cost (£m)	Central (£m)
Costs			
Abatement costs	43.2	80.3	50.6
Administration costs	0.2	0.3	0.3
Monitoring costs	10.7	10.7	10.7
Cost of fuel (technology) switch	56.7	0	45.4
Total	110.9	91.3	107

For the main analysis, it has been assumed that costs will be funded through internal finances as per the results in the previous section. However, in practice, some firms would have to fund some of the upfront CAPEX through external financing. Costs as a function of a firm's ability to finance is given consideration in the distributional impacts assessment in the following section.

Monetised Air Quality Benefits

The benefits of implementing the generators controls are demonstrated in Table 8.18. Table 8.18 demonstrates the range with varying damage costs which is very significant with a central estimate of £50.9m, with variations of the damage costs on the central scenario showing a range from £41m to £143.2m. The sensitivity to the proportion of plants switching fuel type was also tested and presented a range closer to the central than the sensitivity provided above. Therefore, the sensitivity provided above is robust to other uncertainties in the air quality benefits.

Table 8.18 PV for air quality impacts with varied damage cost scenarios 2018-2032 (£m, 2014 prices)

	LOW Benefits (£m)	HIGH Benefits (£m)	CENTRAL (£m)
Abatement measures and hours reduction	19.6	65.9	21
Benefit of technology switch	21.5	77.3	29.9
Total	41	143.2	50.9

Authority Disaggregation

The original analysis was produced for a UK perspective. However, this impact assessment presents plant for England and Wales, emissions reductions and consequent costs and benefits, and not those of the UK. The disaggregation from the UK results was based on 84% of plants being located in England, 7.5% in Scotland, 5.2% in Wales and 3.1% in Northern Ireland. It was assumed that plants are distributed equally regardless of capacity, technology and fuel type.

8.10 Options results summary

The previous section demonstrates that the NPV for Option 1 is (-£49.03m).

Option 1 is the preferred option for the following reasons:

- a) It provides the greatest protection of public health and the environment, delivering air quality improvements valued at over £50.9m with additional benefits in reducing carbon emissions.
- b) It enables the UK to comply with important air quality legislation by preventing breaches in the safe hourly NO_x levels laid out in the AAQD and curbing an increase in high polluting generators by encouraging their replacement with cleaner technologies thus contributing towards the NO_x, PM and SO₂ emissions ceilings, which will become more stringent from 2020.

9. Risks & assumptions

9.1 Key Sensitivities

Plant capacity, and therefore fuel consumption and associated total emissions, are based on mean plant capacity data from EU averages. The same average capacity is assumed for every plant within the same size category, regardless of fuel or technology type. This results in total emission reduction and associated benefits being highly influenced by this assumption.

Number of Plants

Prior to implementation of the MCPD and generator controls, operators of plants below 20MW have not been required to register the size or type of their plant, or their activities e.g. operating hours. The limited information on the number of plants below 20MW was a key sensitivity in estimating the impact of the implementation of the MCPD.

Relatively limited data was received from stakeholders so the majority of the analysis is based on data gathered and/or derived for the Commission study and estimations in number of plants and projections in activity data from the NAEI. This was supplemented by data provided by the National Grid regarding the number of below 1MW generators providing ancillary services to the grid.

The growth in number of standby plants has been estimated based upon the results of the capacity market auctions in 2014 and 2015, which may not be representative of the additional growth expected, as this only represents two years; the drop in bids from diesel generators on the 2016 capacity market auction, presumably at least partly in response to the proposed emission controls, means that its results cannot be used to forecast a growth in their number under the baseline. It is difficult to estimate future plant numbers, however the costs and benefits would be proportionate to one another.

Damage cost functions

When measuring the impact of emissions, an impact pathway approach is preferred in some circumstances. An impact pathway approach models the spatial distribution of changes in emission from a specific source. This approach is time consuming and costly. Given the uncertainty around the spatial distribution of plants and their operating patterns damage costs were more appropriate to use.

For this impact assessment, damage costs were used to calculate the indicative impact of emission changes. Damage costs are standardised average values of the impact to society of a given change in emissions. Damage cost values are published in the Green Book guidance, and are used as standard practice throughout government.

As health advice and expert medical recommendations from COMEAP are updated when new research emerges, the damage cost functions are revised to reflect this where appropriate. At the time of the consultation and writing of the final IA, the damage cost function used for NO_x was £11,672. This has been revised down by 63% to £4,269 in line with the latest advice from the COMEAP.

A limitation is that damage costs are a UK average, and not specific to the geographical source of emissions change. For example, they don't adjust for the site specific population exposure to the pollution, where reductions in pollutants in a more densely populated region would generate greater benefits. Moreover, damage costs are an underestimate for two reasons. Firstly, they capture partial health impacts, such as those to mortality (cost of life years brought forward), but largely not to those on morbidity (short-term impacts). Secondly, they do not explicitly capture impacts to ecosystems and cultural heritage.

Switch in fuel

The degree to which operators choose to switch from diesel to gas engines in response to the proposals is the largest source of uncertainty for several reasons.

Firstly, gas and diesel plants are assumed to be interchangeable with regards to plant characteristics and revenue earnings. There is little data available on individual plants and therefore little is known of the precise revenue sources of each plant and the capacity available in each revenue stream in the energy balancing market. Therefore the assumption of access to revenue streams such as payments from supply to the capacity markets, STOR and TRIAD may not be a representative income rate for all plants, particularly as gas plants are more likely to enter markets where longer running times are required due to the lower fuel cost. However, there is little available data on this, so we cannot monetise the impacts which are likely to be significant to plants in Tranche A (although it is assumed they could continue to operate profitably at 50 hours).

Similarly, the average running time for each plant is assumed to be the same in order to complete a cost comparison of building gas over diesel generators. However, with the cheaper fuel, the running hours of gas are likely to be longer so the cost difference will not be truly representative.

The central scenario assumes that the majority of operators would choose gas generators to avoid the need for secondary abatement to comply with the NO_x ELV but assumes that some generators (20% of diesel generators) would apply abatement. We further have tested this assumption during consultation but no additional data was provided by stakeholders. With technological development, abatement that can easily and cost-effectively achieve emissions reductions to the required level may become widely available, and therefore diesel generators would be more likely to adopt abatement. If this becomes the case, then there is uncertainty as to whether there would be the predicted reduction in diesel.

9.2 Other sensitivities

Abatement measures

Generators are grouped into status categories based on Tranche A or B, capacity class, and fuel type. For each status category, the model is only able to choose one abatement measure; therefore, one abatement measure is selected and applied to all plants within each status category.

In practice, plants that fall within a status category will have different emissions reductions needed to meet an ELV, and therefore a different level of abatement effort, and associated cost than assumed. The impacts on emissions and compliance cost estimated are expected to be modest, as a result of averaging and aggregating. However, in some circumstances, as operators will choose abatement measures which are the most cost effective for their specific plants, costs could be an underestimate.

Table 9.1 provides an overview of some relevant assumptions and associated uncertainties. We have consulted on these uncertainties with stakeholders, and the results of these discussions are also presented in the table.

Table 9.1 Assumptions and associated uncertainties around impacts

Assumption	Associated uncertainty
<p>Number of plants and respective emissions – current and projected to 2032</p>	<p>The number of plants is a key driver to the costs as the assumed number of plants correlates with the levels of emissions and therefore cost of abatement and emissions reductions.</p> <p>As result, should there be substantial variation from the assumed number of plants; the costs could be very different from what we have calculated in the assessment.</p> <p>Data collected during consultation from BEIS and the National Grid on the number of generators providing DSR services was used to supplement the initial estimates.</p>
<p>The change in number of diesel or gas plants in the future is entirely depending on operators reactions to the proposed measures. It has been assumed that operators of some diesel plants bidding into the capacity market from December 2016 will not see the measures as a viable investment, and therefore, the capacity would be filled by gas plant.</p>	<p>The proportion of diesel capacity that switches to gas depends on whether investors continue to see diesel as a viable option. We assume in the central scenario that only 20% of diesel plants will be fitted with the required technology to comply with the emission controls proposed. This assumption appears realistic considering the marked drop in successful bids from diesel generators on the 2016 Capacity Market auction. We have consulted on this assumption but no additional data was provided by stakeholders.</p>

The number of plants entered into energy balancing contracts before 2016 that choose to reduce their hours is based on an assumption of where they are located.

It is assumed that some plants in contracts would rather reduce hours than take a permit with site-specific conditions which requires fitting abatement. At least some generators will have been subject to an air quality assessment through the planning process and will have planning conditions designed to comply with Ambient Air quality limits in the vicinity of the plant. In addition the Environment Agency modelling made conservative assumptions, so a larger number of plants are less likely to cause a breach of the NO_x hourly limit and impact a receptor. No additional information on this uncertainty was obtained during the consultation.

Current emission levels

Assumptions had to be made about current emissions for gas and diesel generators (determined by emission rates and operating hours) since data available is limited. An average emissions level of each category and type of plant is assumed as individual data on existing plants is not available. Therefore if the actual plants are cleaner or more polluting, the benefits would vary accordingly.

10. Distributional Effects

Small and micro-businesses can be affected disproportionately by the burden of regulation. New regulatory proposals are designed and implemented in a manner aiming to mitigate disproportionate burdens where appropriate. As such, the default assumption set in the Better Regulation Framework Manual (June 2013) is that there will be a legislative exemption for small and micro-businesses where a large part of the measure can be achieved without including small and micro-businesses within the scope of the policy proposal.

The Better Regulation Framework Manual defines micro and small businesses according to a staff headcount. Micro-businesses are those employing up to 10 FTE staff members while small businesses employ between 11 and 49 FTE staff. The Manual provides guidance on Small and Micro-business Assessment including a range of potential mitigation measures if the proposed policy option does have an impact on small and micro-businesses.

10.1 Sectors affected

Electric power generation sector

The sector which will be mainly affected by the controls on high NO_x generators is the electric power generation sector. Analysis of ONS business population estimates²⁷ suggests that around 97% of businesses in this sector are small and micro businesses but that these businesses employ only around 15% of all workers in the sector. If the number of workers employed is assumed to be proportional to the size of the business, we can estimate that large and medium businesses have a combined market share of around 85% in this sector. This is felt to be a sensible assumption given a lack of evidence.

It is unclear to what extent the businesses in the Capacity Market are representative of the electric power generation sector as a whole. However due to a lack of evidence on this, it has been assumed that the business population in the Capacity Market is broadly similar to the overall business population of the sector. The consultation did not provide additional information on this issue.

Other sectors

Other sectors where high NO_x emitting back-up generators are common (e.g. industrial sites, hospitals, data centres) might be affected to some extent. This is only if they choose to provide grid services, probably through aggregators. Few are likely to do so because they would need to comply with the proposed controls in this circumstance. However, the impact on their income is expected to be very small, and it was therefore deemed disproportionate to assess it.

10.2 Distribution of health impacts

Benefits are derived from the reduction of emissions to air and associated avoided costs for reduction of damage to society. For this reason it isn't meaningful to distribute these benefits across sectors. The Interdepartmental Group on Costs and Benefits (IGCB) damage cost functions "*include estimates of the health impacts (both deaths and sickness) of all four pollutants. Supplementary Green Book guidance*) so those vulnerable to respiratory and heart disease (i.e. old, young, those with existing conditions, and people living in areas with higher ambient air pollutant concentrations (urban areas)) will be more adversely affected and therefore the damage avoided is higher from reducing emissions.

²⁷ ONS Business Population Estimates (2015),
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467445/bpe_2015_detailed_tables.xls

11. Measurement of the Impact on Micro and Small Enterprises

Our evidence base around small and micro businesses in the energy balancing market is relatively weak compared to the evidence base for MCPs. However, if we assume that businesses in the market are broadly representative of the electric power generation sector as a whole, we can calculate some indicative impacts on small and micro businesses as a result of the proposed policy changes for high NO_x emitting generators.

In order to calculate these indicative impacts, the overall costs which are likely to vary with market share (abatement costs and the cost of switching fuel) have been multiplied by the total market share controlled by small and micro operators. Then, the costs which are more likely to vary with the number of businesses (administrative costs and monitoring costs) have been multiplied by the percentage of total businesses in the sector which are small and micro. These costs have then been added together to get a rough estimate for the total costs to small and micro businesses for the 15 year appraisal period of between £57m and £67m. This is far lower than the equivalent expected costs to medium and large businesses of between £162m and £237m. While these numbers are necessarily indicative estimates due to the lack of evidence, they do suggest that the great majority of the burden from this policy is likely to fall on medium and large businesses (see Table 11.1).

Table 11.1 Estimated costs to small and micro business from the policy changes for high NO_x generators (2018-2032)

	LOW (£m)	HIGH (£m)	CENTRAL (£m)
Costs which are assumed to vary by market share			
Abatement costs	43.2	80.3	50.6
Cost of fuel switch	56.7	0	45.4
Costs which are assumed to vary by number of businesses			
Administration costs	0.2	0.3	0.3
Monitoring costs	10.7	10.7	10.7
Total costs to small and micro businesses			
	57.0	64.6	66.7
Total costs to medium and large businesses			
	162.1	236.8	218.2

Consideration has been given to excluding small and micro businesses from the scope of the policy; however doing so would reduce the benefits of the policy (perhaps by around 15%, based on the market share) and the indicative analysis at this stage suggests that this policy will not place a disproportionate burden on these businesses. Additionally, as a significant share of these high NO_x generators are used in small and micro businesses, excluding them from the scope of the regulation would create a loophole which would affect our capacity to deter an increase in the use of such generators.

Guidance and communications will be developed for plant operators which will be expected to reduce and further minimise any impacts for micro and small businesses.

11.1 Financial and Affordability

While the assessment considers the average annual costs per enterprise, compliance costs would involve upfront capital costs that need to be financed either through own or borrowed resources. If firms seek to spread the upfront capital costs over a number of years, they will have an additional cost of capital financing. This cost is not included in the average annual cost.

11.2 Direct Costs and Benefits to Business Calculations (following One-In-Three-Out methodology)

Following the Equivalent Annual Net Cost to Business (EANCB) requirements, costs and benefits calculated here use a 2014 price base year and a 2015 PV base year. Consistent with the Environmental Permitting Regime, and other cost recovery schemes, we envisage charging operators appropriate fees to recover regulator costs, thus avoiding additional burdens on public finances (please see Section 7.4 for details). As such, the costs to business include all abatement, administration, compliance (inspection) and monitoring costs associated with the generator controls.

The EANCB as a result of the high NO_x emitting generator measures is -£8.1m, which includes the benefit of fuel savings to firms switching from diesel to gas. This part of the policy is considered out of scope of 'One-in, Three-out'.

The additional measures for generators are intended both to address an issue which will affect our ability to meet NO_x emissions ceilings, particularly the 2020 ceilings contained within the amendment to the Gothenburg protocol and to help us to comply with the NO_x limits set out in the EU Air Quality Directive.

By consulting on this policy before the next Capacity Market auction in December 2016 we sent a signal of our future intentions to businesses aimed at encouraging them to invest in alternatives to the high NO_x emitting generators which are currently incentivised by the Capacity Market mechanism. This allowed businesses maximum flexibility compared to if we delayed because the costs of retrofitting high NO_x generators can be greater than the additional costs of purchasing a lower NO_x generator at the outset. In the consultation we asked if sites under 1MW should be subject to similar emission controls, which was strongly supported, and we are implementing controls for those plants applying a timescale that will similarly provide flexibility for industry and encourage use of lower emission technologies.

The impacts of the 2008 EU Ambient Air Quality Directive were initially estimated when it was first transposed²⁸. However the incentives created by the Capacity Market were not foreseen at the time because the Capacity Market had not been created. Therefore all of the impacts calculated in this policy will be additional to the impacts calculated in the original analysis for this Directive.

We do not intend for these additional measures to be implemented until after the ratification of the Gothenburg protocol and therefore they will not constitute gold plating of the NO_x emissions ceiling. Developing and bringing into force the controls now rather than delaying, such as until the revised ceilings are transposed, gives operators fair warning of what is intended without bringing forward requirements on them. This will enable new operators to choose the least cost path to future compliance – which could mean continuing with a diesel generator and fitting abatement equipment in the future or opting for an alternative fuel.

Since the controls are necessary to comply with both the NO_x emission ceiling in the Gothenburg Protocol which is implemented by the National Emissions Ceiling Directive (for all generators) and the Ambient Air Quality Directive (for generators with a capacity greater than 5MW), all impacts from this policy are therefore out of scope of One-In, Three-out as a result of being necessary to comply with EU requirements.

All costs and benefits have been assessed at 2015 prices and uplifted to 2018 PV base year. However the EANCB figure is calculated at 2014 (real) prices and 2015 Present Value base year. Methodology is consistent with the Green Book and supplementary guidance.

²⁸ Defra (2007) 'An Economic Analysis to inform the Air Quality Strategy: Updated Third Report of the Interdepartmental Group on Costs and Benefits'
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221088/pb12637-icgb.pdf

12. Competition assessment

The competition assessment guidelines²⁹ set out four questions to establish whether a proposed policy is likely to have an effect on competition. In particular, the assessment needs to establish whether the requirement to comply with the emission limit values for the generators with a thermal input of 0-50MW would affect the market by:

- ▶ Directly limiting the number or range of suppliers?
- ▶ Indirectly limiting the number or range of suppliers?
- ▶ Limiting the ability of suppliers to compete?
- ▶ Reducing suppliers' incentives to compete vigorously?

A brief summary of the four questions and a response considering the requirement is presented in Table 12.1.

Table 12.1 Competition Assessment Filter Questions

Do the proposed requirement to carry out a CBA	Response	Comment
Q1. ...directly limit the number or range of suppliers?	No	The proposed requirement to comply with the proposed ELVs does not seek to directly limit the number of suppliers
Q2. ...indirectly limit the range of suppliers?	No	<p>The proposed requirement to comply with the proposed ELVs is not likely to limit the range of suppliers. In particular, the proposed requirement does not prevent entry or exit from the electricity generation market. Furthermore, anticipated compliance and administrative costs are driven by the size of the HNG (0-5 MW, 5-20 MW and 20-50MW) and apply the same requirements across different ownership models.</p> <p>As detailed in this assessment, several options are available to operators subject to the regulation: reduce operating hours, shift to cleaner fuels (e.g. gas), or fit abatement.</p> <p>The reduction in operating hours is unlikely to limit the range of engine suppliers and engine operators (electricity suppliers). This may actually lead to an increase in the range of suppliers as, for the same electricity demand to be met, more engines running for fewer hours may be required.</p> <p>Similarly, the shift to gas engines is unlikely to have a significant impact on the range of suppliers. Many engine suppliers produce both gas and diesel engines. For small manufacturers focused on one type of engine, the regulation might reduce demand for diesel manufacturers and increase demand for gas manufacturers. However this impact is likely to be minimal as manufacturers also supply other markets (e.g. NRM, other countries...).</p> <p>In terms of suppliers of abatement technologies aiming to reduce pollutant emissions, these are manufactured by a range of companies ranging from the engineering or chemical companies to the energy specialist. For example, the large engineering equipment manufacturers Siemens (DE), Hitachi (DE), Alstom (FR), ABB (CH), Andritz (AT), Fluor (UK), Perkins (UK), all provide engines and abatement techniques for NO_x. Some manufacturers are more specialised. For instance, Howden (UK) is a leading provider of rotary regenerative heat exchangers used for SCR. Johnson Matthey (UK) is a leader in providing chemical catalysts. Whilst a majority of the engines and abatement technology manufacturers are large companies, a significant number of SMEs are involved in the installations or the fitting of these technologies. Moreover, some more specific (specialist) technologies, particularly relevant for combustion engines, may be developed by smaller manufacturers. Overall, there is no one dominant supplier or dominant approach across the generators affected by the proposed regulation.</p> <p>Furthermore, the requirement to comply with the proposed ELV does not specify application of any particular abatement technology leaving the choice to the operators.</p>
Q3. ...limit the ability of suppliers to compete?	No	The proposed regulation would bring smaller scale combustion processes in line with regulation for combustion plants greater than 50 MW, thereby reducing any (potential) perverse effect on these generators at the threshold above and below 50 MW.
Q4. ...reduce suppliers' incentives to compete rigorously?	No	The proposed requirement does not seek to limit the incentives for suppliers to compete. In particular, application of the rules across the board would impose similar constraints on all operators.

Overall, the requirement to comply with the ELVs for standby generators is unlikely to have adverse impacts on competition. Additional compliance and administrative costs that companies across different sectors would be facing may result in significant burden affecting profitability and commercial viability of these enterprises. However,

²⁹ OFT http://www.of.gov.uk/shared_of/reports/comp_policy/Quick-Guide1-4.pdf

application of the new requirements for high NO_x generators would impose similar constraints on all operators across the board.

13. Social impact assessments

In general terms, when an operator is faced with additional compliance and administrative costs, a range of potential responses exist ranging from absorbing the additional cost through reduction of profit margins up to fully passing these on within the prices of products and services. The companies could also aim to reduce their cost base, for instance, by cutting labour and/or other production costs.

13.1 Distributional impact on households

Households are not expected to run generators that are the subject of this impact assessment. Any household impact would be indirect, most likely through energy prices.

In the central scenario (Scenario 2) and Scenario 3, we forecast an increase in gas used to fill future capacity as it would be able to meet ELVs without requiring additional abatement. However, the increase in gas may potentially impact the cost of electricity, through a change in the cost of the energy balancing services. This cost is currently included on consumer energy bills and represents around 1% of the electricity bill. Currently diesel is primarily used in the energy balancing market as it responds to demand quickly and cheaply. Therefore a switch to gas has the potential to increase consumer energy prices because gas is a more expensive option to respond to energy balancing requirements due to the setup of gas services. This will be offset in part by the lower fuel costs from running a gas plant but there is the potential for energy prices to marginally increase to the consumer, which National Grid have estimated to be around 0.02%.

An increase in energy prices is most likely to affect households as energy costs make up a large portion of a household's income. An ongoing concern in energy policy is that increases in energy prices may be regressive in nature (i.e. impact more on lower income households) as lower income groups spend a larger proportion of their disposable income on energy compared to higher income groups. An ONS study estimated that the poorest fifth of households spent 11% of their income but the richest fifth spend 3%.

However, as the cost of energy balancing services is a small proportion of the overall electricity cost, this increase in electricity prices is likely to have a very marginal impact.

13.2 Employment and Labour Markets

Overall, implementation of the regulation may have positive secondary impacts on the level of employment in abatement technology suppliers and emissions monitoring companies, while potentially having adverse primary impacts in sectors that will incur additional compliance and administrative costs. Secondary impacts (costs and benefits) have not been explicitly monetised in this assessment but primary costs have.

Implementation of regulations requiring fitting of abatement technology will lead to costs for the firms affected whilst also representing income for firms that manufacture and install these technologies. When considering supply of abatement technologies, the UK and EU as a whole has a well-established abatement technology supply chain as the majority of the technologies currently being applied by large combustion plants are also relevant for these smaller plants.

It is unclear how these two effects will reach a balance but it might be a reasonable assumption that the effect will in aggregate be fairly neutral.

14. Conclusions

Poor air quality is the largest environmental risk to public health in the UK, exacerbating the impact of pre-existing health conditions, especially for the elderly and children. Long term exposure reduces life-expectancy, mainly due to increased risk of mortality from cardiovascular and respiratory causes and from lung cancer. COMEAP research indicates that short-term exposure to NO₂ is linked to some direct effects on morbidity while long term effects suggest impacts on respiratory and cardiovascular mortality, children's respiratory symptoms and lung function. Air pollution also damages biodiversity and reduces crop yields³⁰.

Medium combustion plants (MCPs) in the 1-50MW range are a significant, largely unregulated source of emissions of NO_x, PM and SO₂, which impact on air quality. An important tool for controlling emissions from this source, the MCPD, came into force in December 2015 and must be transposed within 2 years. The legislation was fully supported by UK during negotiations as it represents a cost effective way of controlling emissions and offers a number of important exemptions and flexibilities necessary to keep burdens on business low and any impacts on energy security to a minimum. Furthermore as air pollution is transboundary, effective MCPD implementation across Europe will further improve UK air quality. The impact of implementing the MCPD in the UK is assessed in a separate impact assessment.

However, schemes intended to increase capacity and provide balancing services in the electricity market are incentivising greater use of particularly polluting generators, which are in the main a subset of MCPs. These generators are primarily diesel engines and emit very high NO_x emissions relative to other forms of generators, which can lead to breaches in hourly NO₂ air quality limits set in the AAQD, designed to protect human health. These high NO_x generators are relatively cheap to run for short periods and therefore it is currently financially attractive to use them for providing services to the grid, including installation of large arrays of these plants which a particular concern for local air quality. Unfortunately the MCPD scope and implementation timescale do not provide sufficient controls for these high NO_x generators, or serve to deter an increase in use. Therefore further measures are required to prevent breaches of air quality legislation and impacts on human health and environment. Taking action early will reduce burdens on businesses by proactively preventing the proliferation of high NO_x generators which would subsequently have to be retrofitted at a high cost to businesses. It also gives existing operators more time to prepare as waiting until the NO_x ceiling has been transposed in 2018 gives a very limited time to consider measures in time to meet the 2020 requirements.

The present impact assessment has assessed the introduction of emission controls for high NO_x emitting generators, required to enable compliance with air quality limits and to curb avoidable increases in national NO_x emissions due to current energy market incentives.

The results of the analysis are presented in Table 14.1 below:

Table 14.1 Central NPV of each impact for Option 1 (2018-2032)

2018-2032	Option 1, Central Scenario (£m, PV)
Costs (cost to operators)	
Abatement costs	50.6
Administration costs	0.3
Monitoring costs	10.7
Operational/capital cost of technology switch	45.4
<i>Total</i>	107.0
Benefits (emissions reductions)	
Air Quality	50.9
CO ₂	6.8
<i>Total</i>	57.7
NPV	-£49.03

*Please note any differences due to rounding.

³⁰ COMEAP (2010) The Mortality Effects of Long-Term Exposure to Particulate Air Pollution in the United Kingdom. Committee on the Medical Effects of Air Pollutants. Available from: <https://www.gov.uk/government/publications/comeap-mortality-effects-of-long-term-exposure-to-particulate-air-pollution-in-the-uk>

The implementation of the generator controls is the favoured option for two key reasons:

- a) It provides the greatest protection of public health, delivering air quality improvements valued at over £50.9m with additional benefits in reducing carbon emissions and a significant number of benefits which have not been monetised.
- b) It enables the UK to comply with important air quality legislation by preventing breaches in the safe hourly NO_x levels laid out in the AAQD and curbing an increase in high polluting generators by encouraging their replacement with cleaner technologies, thereby helping the UK to comply with its obligations under the Gothenburg protocol and National Emissions Ceilings Directive.

The impacts assessed within the document are based on the best available knowledge of the current high NO_x generators active within the UK along with the assumed behaviour of these plants when faced with these restrictions. However, it is recognised that there are uncertainties around the modelling and the implementation and delivery of our preferred option. We will monitor the effectiveness of the controls primarily through the Environment Agency's implementation plan.

15. Annex

A. Development of proposals for controlling emissions from high NO_x generators

The Environment Agency modelling identified that generators with high NO_x emissions posed a risk to local air quality by causing high local concentrations of NO₂ which exceed legally binding limits set for the protection of human health.

The modelling used conservative assumptions about emissions levels and high-risk configurations of generators and was used to identify size, time and emission limits beneath which breaches of the EU Ambient Air Quality Directive (where concentrations of NO₂ exceed 200 micrograms per cubic metre more than 18 times per year) would be unlikely (occur less than 1 in 20 years). The modelling indicated that a breach was unlikely for;

- large generators (just under 50MW) with emissions less than 190mg/Nm³,
- large generators (just under 50MW) of diesel plant with very high emissions (>3000mg/Nm³) that operate for 50 hours
- small generators (5MW or less)

unless they were located within 150m of a sensitive receptor (place where people are likely to be exposed).

When the modelling was complete several options for controlling emissions were assessed. Due to the lack of data about plants <50MW, particularly those with a shorter run time, this was a qualitative assessment. BEIS and National Grid were involved in the policy development process and asked to review the likely impacts of possible control options for generators on energy security and balancing services. During the consultation we presented the qualitative assessment of options (included in the consultation IA) which explained the rationale for the proposals, and stakeholders were engaged to understand the impacts for providers of balancing services, based on technology limitations, costs and timescale required for investment, as well as concerns about local air quality and unfair competition from unregulated generators.

After consideration of the consultation responses (see Annex E), the proposed controls were amended as follows:

- 6) For plants which require secondary abatement to comply with the 190mg/Nm³ NO_x ELV, the time for meeting the ELV was increased to 20 minutes for Tranche A generators and 10 minutes for Tranche B generators. This was based on feedback that the 5 minutes originally proposed would not be achievable in many circumstances, and informed by an analysis of the impact on total emissions which benefited from data submissions on running time of the generators affected.
- 7) For tranche A generators which require a permit from 1 January 2019, the deadline for compliance with permit conditions was moved to 1 October 2019. This will provide operators more time to make decisions on how to meet permit conditions and plan any investment needed, but still apply controls from the beginning of the supply agreements awarded in the 2015 Capacity Market auction.
- 8) Tranche A generators will be subject to the standard permit conditions only when their power supply agreements come to an end, unless they enter a new power supply agreement after 31st October 2017 which remains in force after December 2018. This will allow operators to meet their contractual obligations while protecting local air quality, as sites of concern will be subject to bespoke permits from 2019.
- 9) To address concerns from stakeholders, including BEIS and OFGEM, emission controls were extended to sites under 1MW which provide balancing services to the grid, to ensure a level playing field; the timescale for application of such controls was adjusted to ensure investors and operators who entered power supply agreements before the controls are announced will benefit from transitional arrangements.

B. Abatement measures and costs methodology

The impact assessment model is based on an abatement matrix which details abatement measures for each pollutant (NO_x, SO₂ and PM), technology type (boiler, engine and turbine), fuel and capacity class, alongside its abatement efficiency and costs. After entering the set of ELVs, the model compares these against baseline emission levels (projected into the relevant year) and calculates the necessary emission reduction needed to achieve the ELVs. Given the reduction needed, the model selects the most cost effective measures and calculates total emission reduction and costs. These figures are based on the data from the abatement matrix, multiplied by the number of plants applying those measures. The process is done separately for new and existing plants. It is done separately because an adjustment factor has been applied to the costs of the abatement measures to reflect the lower cost of installing abatement as part of installation of a new plant when compared to the higher cost of retrofitting a measure to an existing plant.

Compliance costs for potential abatement measures are based on the abatement matrices developed by Amec Foster Wheeler for the Commission in recent studies. A number of literature sources were reviewed in order to compile information on possible abatement measures for generators and associated pollution abatement efficiencies and costs. The following sources were reviewed:

- JRC (2007) Small combustion installations: Techniques, emissions and measures for emission reduction. Joint Research Centre;
- AEA (2007) Assessment of the benefits and costs of the potential application of the IPPC Directive (EC/96/61) to industrial combustion installations with 20-50 MW rated thermal input. Final Report to the European Commission;
- (Summary of) Best Available Techniques in Small 5-50 MW Combustion Plants in Finland;
- EGTEI (2010) Options for limit values for emissions of dust from small combustion installations < 50 MW;
- VITO (2011) Beste Beschikbare Technieken (BBT) voor nieuwe, kleine en middelgrote stookinstallaties, stationaire motoren en gasturbines gestookt met fossiele brandstoffen;
- ECN (2008) Onderbouwing actualisatie BEES B: Kosten en effecten van de voorgenomen wijziging van het besluit emissie-eisen stookinstallaties B;
- Amec Foster Wheeler's multi pollutant abatement measures database.

The majority of the costs are taken from VITO (2011), with some additional costs taken from AEA (2007) and Amec Foster Wheeler (2013). Figures are inflated to 2014 prices in all cases³¹. The literature sources include a range of costs for measures, which represent the uncertainty around the cost estimates for the abatement measures and variation in installation specific variables, and so a low and high range of costs are used in this analysis. A list of abatement measures is provided on Annex Figure 1. For some abatement measures, the low and high costs are the same, which is assumed to reflect a single underlying cost data source; whilst for other abatement measures (SCR and SNCR in particular) there is a significant difference between the low and high costs.

Identify the abatement measures

Abatement measures and their associated emission reduction efficiencies are based on the abatement matrices developed by Amec Foster Wheeler for the Commission in recent studies (Amec Foster Wheeler, 2014).

Annex Figure 2 lists a consolidated version of the abatement measures considered in the generators controls Impact Assessment as well as their abatement efficiency and the technologies and fuels affected. Where a range is shown for abatement efficiency this indicates different efficiencies are expected when the measure is applied to different size-fuel-technology type categories. Abatement efficiencies presented are an indication of the emission reduction that the measure can achieve on average and are therefore suitable for modelling the impact across groups of plant; the reduction realised in individual plant could be slightly higher or lower depending on site specific features.

³¹ Capital (CAPEX) and operational (OPEX) costs have been identified in the reference sources to allow for flexibility in annualising the data; default values of a 3.5% discount rate and an annualisation period of 15 years have been used in the central case. Costs have been presented in 2014 prices using the GDP deflators available from HMT (ONS June 2015).

Annex Figure 1 List of measures considered in the generators IA and their associated abatement efficiency

	Technologies that can fit this measure			NO _x abatement efficiency	SO ₂ abatement efficiency	PM ₁₀ abatement efficiency
	Low NO _x burner / Advanced lean burn	Engines and turbines	Fuels affected: Natural gas, gas, gaseous fuels, Other			
Low NO _x burner / Advanced lean burn	Engines and turbines	Natural gas, gas, gaseous fuels, Other	40% - 50%	-	-	
SCR (Selective catalytic reduction)	All technologies	All fuels	70% - 90%	-	-	
Hours reduction (from 100hpa to 50hpa)	All technologies	All fuels	50%	50%	50%	

Annex Figure 2 List of measures considered in the generators IA and their associated uptake frequency

Pollutant	Measure	Number fitted in 2030	
		New	Existing
NO _x	Lean burn / low NO _x burners	12	24
	SCR	2,749	1,007

Please note the number of fitted is not the number of plants. Some plants need to fit multiple abatement technology to meet ELVs for multiple pollutants. Some plants required to meet emissions limits are already compliant under BAU and therefore do not need to fit abatement technology.

Expanded versions of the above abatement matrix are used within the model to automatically identify which abatement measure would be required to achieve compliance with the scenario ELVs. Given that to date the majority of plants have not been regulated, there has been no driver to optimise emissions performance. A threshold has been set at 10% emission reduction. Below 10%, it is assumed modifications to existing equipment and operating practice can be implemented to achieve the necessary reduction with minimal additional cost³². If an emission reduction of greater than 10% is required, then the lowest cost measure that can achieve the required reduction is selected.

An adjustment factor has been applied to the costs of the abatement measures to reflect the lower cost of installing abatement as part of installation of a new plant, compared to the higher cost of retrofitting a measure to an existing plant. For primary measures, this premium is assumed to be 60%, consistent with Amec Foster Wheeler’s recent modelling for the Commission’s impact assessment. For secondary measures, the premium is 40%. This is 60%/40% adjustment is for CAPEX only. The CAPEX/OPEX distinction matters for some measures such as pure fuel switch, where there is no CAPEX in some applications.

³² An assumption consistent with the Commission study

C. Behavioural response assumptions

For engines and turbines generating electricity, there could be two alternatives to fitting abatement:

1. Stop auto-generating electricity and switch to buying from the grid. This will result in higher cost per unit of electricity and may also require an upgrade to the supply contract and/or physical connection, also at additional cost.
2. To purchase or hire portable gensets, which do not fall under the MCPD but instead have emission limits under NRMM standards. Given the low number of expected cases of such a switch, a comparison of the costs and benefits of the MCPD against the NRMM standards has not been performed.

In specific circumstances, where one of the outlined alternative options is lower in cost than fitting abatement, the option may be taken and therefore the behavioural response for some operators may be different than the one assumed to be representative of the vast majority of operators. Due to the relative small scale and uncertainty it was not considered further.

D. Consultation responses

Annex Table 6 Summary of consultation responses and actions taken

Question	Summary of responses	Action taken
Do you agree with the proposed definition of “generators”? If not please explain your reasons and propose an alternative definition.	Most agreed but felt that NRMM/mobile generators should be included in the definition to avoid making a loophole.	Proceed with proposed definition, which makes clear mobile generators cease to be mobile if connected to permanent infrastructure.
Do you agree with the emissions limits proposed and that where secondary abatement is applied it must abate emissions to the required Emission Limit Value within five minutes?	Majority agreed with the 190mg/Nm ³ emission limit. Strong concern that majority of plant would be unable to meet the five minute limit.	Proceed with 190 mg/Nm ³ emission limit; increase deadline for compliance to 20 minutes for Tranche A and 10 minutes for Tranche B.
Do you agree with the proposed timescales for implementation, which reflect those specified in the Medium Combustion Plant Directive?	Some felt that the timescales were overly stringent others not strict enough given the current threat of poor air quality. It was asked that the timescales were joined for those having to comply with both MCPD and generator controls.	Delaying compliance with permit conditions for Tranche A generators which require a permit from January 2019 to October 2019.
Do you agree that generators with Capacity Market Agreements from 2014/2015 auctions that are not already operating should be regulated in the same way as generators that are already operating?	There was support to the proposed approach due to concern over financial risk and uncertainty if generators with Capacity Market Agreements at the time of publication of the consultation did not have transitional arrangements.	Proceed as proposed that generators not yet in operation but which entered power supply agreements under the 2014 and 2015 Capacity Market Auction will be included in Tranche A.
Do you believe that generators with an aggregated rated thermal input <1MW (at a single site) should be required to comply with low emission limits?	The majority believed generators with an aggregated rated thermal input <1MW (at a single site) should be required to comply with the same emission limits. However they wanted them included in the IA.	Extend controls to sites under 1MW providing balancing services to the grid.
Is there a case for allowing back-up generators to be tested at peak times of demand?	The majority agreed there was a case for allowing testing at peak times, as preventing would result in loss of capacity, which would have to be made up from other sources leading to an increase in emissions.	Proceed as proposed that plants should be allowed to test at peak times.
Do you agree with the proposed approach to controlling particulate emissions from generators?	Consultees asked that ‘visible persistent emissions’ be carefully defined in guidance, and how Defra will measure whether the problem persists or not.	Amend to “persistent dark smoke emissions” to enable regulator to address a visible problem and remove ambiguity but not set emission limits for PM.
Do you agree with the proposed exemptions from emission controls?	It was agreed nuclear sites be exempted from the proposals. There were calls for the exemption for backup generators to be clearly defined.	Proceed as proposed.
Do you agree that permitted generators should be required to monitor their emissions every three years only if they have adopted abatement?	A number asked that all generators should be required to monitor regardless of whether they require secondary abatement.	Proceed as proposed - permitted generators that rely on secondary abatement to achieve emissions limits will require emissions monitoring at least once every three years. Regulator will have power to direct operator to test to demonstrate compliance if required.
Do you foresee any challenges to using the Environmental Permitting Regulations for implementing the MCPD and controls on generators?	The majority felt it was right to use the Environmental permitting regulations but were concerned about increasing the complexity of the regulations. There were also concerns the fees and charges are insufficient to enable cost recovery and would need to be so if Local Authorities were the regulator.	Proceed as proposed by using the Environmental Permitting Regulations.
We will ensure duplicating and conflicting controls are removed whilst ensuring that the current level of environmental protection is maintained. Do you agree with this approach? If not please explain.	Most agreed it would reduce burden on industry as long as it was clear what the replacing provision is, what it removes and why.	Proceed as proposed: no changes needed for Sulphur Content of Liquid Fuels Directive; retain Clean Air Act provisions on emission of stack heights. Include a control on emissions of dark smoke.
Which of the following approaches do you consider to be the best option for choice of the regulator:	It was a close split between the Environment agency and a combination of the Environment Agency and Local authorities. It	Option B - EA regulates all plants in England and NRW regulates all plants in Wales. Part B plant permits to be transferred to EA.

<p>A) Plants where regulator must determine the permit conditions to safeguard local air quality and those in Part A1 installations are regulated by EA in England and NRW in Wales, and other plants are regulated by LAs</p> <p>B) EA regulates all plants in England and NRW regulates all plants in Wales</p> <p>C) LAs regulate all plants</p>	<p>was asked that whoever was the regulator they provide further clarity.</p>	
<p>Are there any situations where you consider the identity of regulator needs to be further clarified?</p>	<p>Some asked for further clarity on mobile plants. Another issue was the overlap with waste permits.</p>	<p>Need to consider situation of waste sites in guidance.</p>
<p>Do you agree with the assumptions made/ evidence provided in the policy analysis and associated impact assessment e.g. number of plants, operating hours, emissions?</p> <p>If not, please provide details.</p>	<p>Some noted that some areas were omitted from the impact assessment such as mobile generators.</p>	<p>Amend the IA to reflect changes of proposals described in this table.</p>

E. Glossary

Terminology	Definition
Abatement technology	<i>In this report</i> refers to techniques and technologies used to reduce pollutant emissions. Primary abatement prevents formation of pollutants and includes a switch to fuels which result in lower emissions, retrofitting of existing plant (e.g. by changing the burners) and selection of new plant with lower emission. Secondary abatement refers to technology which removes pollutants from the exhaust gases, such as filters for dust or selective catalytic reduction to destroy NO _x .
Amec Foster Wheeler	Amec Foster Wheeler Foster Wheeler plc is a British multinational consultancy, engineering and project management company headquartered in London, United Kingdom that provided analysis for this impact assessment
AQ	Air quality
AQMAs	Air Quality Management Areas
Back-up plant	Plant installed to provide emergency electricity generation in times of interruption to supply of mains grid electricity, operating rarely and normally much less than 500 hours per year (assumed to be less than 50 hours).
BEIS	Department of Business, Energy and Industrial strategy
CA	Competent Authority
Capacity Market	The Capacity Market is the key policy tool to bring forward sufficient reliable electricity capacity to ensure we maintain a secure supply of electricity.
CAPEX	Capital Expenditure
CO	Carbon Monoxide
CO₂	Carbon Dioxide
Combustion plant	Any technical apparatus in which fuels are oxidised in order to use the heat thus generated
Cyclone	A type of filtration system fitted to abate pollution impacts of Biomass, Other solid fuels, Liquid fuels.
DEFRA	Department for Environment Food and Rural Affairs
DRGD	Dry Flue gas Desulphurisation
EA	Environment Agency
EANCB	Equivalent Annual Net Cost to Business
EGR	Exhaust Gas Recirculation
ELVs	Emission Limit Values; means the permissible quantity of a substance contained in the waste gases from a combustion plant which may be discharged into the air during a given period

EMEP CORINAIR	Emission Inventory Guidebook
Energy Market	Energy market is the trade and supply of energy
EPR	Environmental Permitting Regulations
ESI	Electricity Supply Industry
ESP	Electrostatic Precipitators
ETS	Emissions Trading Systems
FGD	Flue gas Desulphurisation
Filters	Form of abatement where different materials are fitted to plants to filter out particulate pollution
FTE	Full time Equivalent
GB	Great Britain
GHGs	Greenhouse gases
Government	Defra and Welsh Government
GOS	Gross Operating Surplus
IED	Industrial Emissions Directive
IGCB	Interdepartmental group on costs and benefits
Installation (as defined in EPR)	(a) a stationary technical unit where one or more activities are carried on, and (b) any other location on the same site where any other directly associated activities are carried on,
Kt	Kilo tonne
KW	Kilowatt
LA	Local Authority
LCP	Large Combustion Plant
Lean burn/low NO_x burners	A form of abatement using larger quantities of air in the fuel mix for internal combustion engines.
MCERTS	Monitoring Certification Scheme
MCP	Medium Combustion Plant
MCPD	Medium Combustion Plant Directive
Member states	Members of the European Union
mg/Nm³	Milligrams per normalised meter cubed

MS	Member State
MW	Megawatt - a unit of power equal to one million watts Unless otherwise stated the use of MW in this report refers to MW thermal
MWth	Thermal rated input in MW – the maximum fuel energy rate of the combustion plant.
MWe	Megawatts electric - electric output of a power plant in megawatt. The relationship between thermal input and electrical output of a generator depends on its efficiency – an engine that is 33% efficient would have a thermal input 3 times greater than its electrical output.
NAEI	National Atmospheric Emissions Inventory
NO₂	Nitrogen Dioxide
NO_x	Nitrogen Oxide
NPV	Net present value
ONS	Office of National Statistics
OPEX	Operating expense
PJ	Peta joules
PM	Particulate Matter
PM₁₀	Particulate Matter 10 micrometres or less in diameter
PM_{2.5}	Fine particulate matter (2.5 micrometres or less in diameter)
PV	Present Value
Rpm	Revolutions per minute
SBS	Structural business statistics
SCR	Selective catalytic reduction
SME	Small and medium sized enterprises
SNCR	Selective non-catalytic reduction
SO₂	Sulphur Dioxide
Solid Fuels	Refers to fuel made of solid substance, typically coal or wood
SO_x	Oxides of Sulphur
Stand-by plant	Plant installed alongside working plant to provide for additional demand at peak times or in case of shut down of the main working plant, and operating fewer than 500 hours per year.
STOR	Short Term Operating Reserve

t	Tonnes
T-1	Capacity Market auctions held one year ahead of delivery offering 1-year agreements (only) to top-up/fine tune the capacity requirement as needed for the coming delivery year.
T-4	T-4' Capacity Market auctions seek to procure capacity four years in advance of the required delivery window, and award 'capacity agreements' to those successful
TRIAD	The Triads are defined as the three half-hours of highest demand on the Great British electricity transmission network between November and February each year. The triad charging system is a tool used by National Grid to smooth demand for electricity at peak times and is used to recover the costs of building and maintaining the electricity transmission network. The cost of electricity for large industrial and commercial users of electricity whose consumption is half hourly metered is determined by their demand during the Triads. Large users of energy therefore have an incentive to reduce their demand during the Triads by running their generators to avoid drawing power from the transmission network during Triads (this is known as Triad avoidance). Generators connected at the distribution level are paid to produce power during the Triad peaks. Some generator operators are contracted by large energy users (or third parties on their behalf) to run during periods when triads are likely. Triads are declared by National Grid retrospectively so generators are run whenever the operator believes a triad is likely to occur.
UKIAM	UK integrated assessment model (UKIAM) he UK integrated assessment model (UKIAM), has been developed using Defra funding by Imperial College London to investigate cost effective strategies for reducing UK emissions which maximise improvements in environmental protection in the UK while complying with future UK emission ceilings imposed to reduce transboundary air pollution in Europe. UKIAM brings together information on projected UK emissions of SO ₂ , NO ₂ , NO _x , NH ₃ , CO ₂ , N ₂ O, CH ₄ , PM ₁₀ and PM _{2.5} to calculate the simultaneous effect of abatement measures on a combination of pollutants, and comparison of future scenarios. This includes calculating the effects with respect to changes in greenhouse gas emissions as well as human exposure to air pollution, urban air quality, and the natural ecosystems.
Working plant	Operating on average more than 500 hours per year which are subject to compliance with emission limits.

Explanatory Memorandum to the Environmental Permitting (England & Wales) (Amendment) Regulations 2018

This Explanatory Memorandum has been prepared by the Department for Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Environmental Permitting (England & Wales) (Amendment) Regulations 2018 and I am satisfied that the benefits justify the likely costs.

Hannah Blythyn
Minister for Environment
11 December 2017

1. Description

The primary purpose of the instrument is to amend the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154, “the 2016 Regulations”), so as to transpose 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 (“the Medium Combustion Plants Directive”), and to introduce additional controls in respect of combustion plant used to generate electricity. The instrument extends the scope of the 2016 Regulations to include permitting requirements for the operation of medium combustion plants and generators in order to regulate emissions to protect air quality.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee:

Use of a ‘composite’ statutory instrument

The purpose of the Medium Combustion Plant Directive and the controls is to address emissions of nitrogen oxides, sulphur dioxide and particulate matter which could otherwise cause pollution. Existing provisions in the 2016 Regulations already subject combustion plant in the 20 megawatts-thermal (MWth) to 50MWth range, together with incineration and co-incineration plant, to the requirements of the environmental permitting regime across England and Wales. This commonality with the provisions of the MCPD makes the 2016 Regulations an appropriate vehicle for MCPD transposition.

This composite statutory instrument applies to England and Wales, amends a composite statutory instrument (the 2016 regulations) and is subject to approval by the National Assembly for Wales and by the UK Parliament. Accordingly, it is not possible for this Instrument to be laid or made bilingually. The instrument applies in relation to Wales and England, with the exception of regulation 17 (amendment of provisions relating to enforcement undertakings), which amends a part of the 2016 regulations that applies in relation to the Environment Agency only, regulation 19 (amendment of the Air Quality Standards (Wales) Regulations 2010, which applies in relation to Wales only), and regulation 18 (amendment of the Air Quality Standards Regulations 2010, which applies in relation to England only).

Consultation

In accordance with section 2(4)¹ of the Act, the Welsh Ministers have consulted, amongst others, Natural Resources Wales (NRW).

¹ as amended by article 4 of, and paragraphs 394 and 395 of Schedule 2 to, the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W.90)).

Late transposition of an EU obligation

The deadline for all Member States to have legislation in place for transposing the Medium Combustion Plant Directive is 19 December 2017. Delays to finalising the draft regulations following consultation have meant this deadline will not be met.

Confirmation of making of the Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2017

Subject to resolution of the Assembly and both Houses of Parliament, this statutory instrument will be made pursuant to section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999 (c.24). Several paragraphs of Schedule 1 are engaged, including paragraph 20(1)(b). That paragraph may only be used in relation to a “relevant directive”. An order designating the Medium Combustion Plant Directive as a “relevant directive” under paragraph 20(2)(c) of Schedule 1 to the 1999 Act has been made by the Welsh Ministers in relation to Wales and has come into force.

3. Legislative background

The 2016 Regulations, presently only apply domestic emission controls to combustion plant with a thermal rated input of over 20MW, to combustion plant with an aggregated thermal rated input of over 50MW (by virtue of the EU Industrial Emissions Directive (Directive 2010/75/EU) and to waste incineration and co-incineration plant.

This Instrument transposes, in relation to England and Wales, the Medium Combustion Plant Directive, by amending the 2016 Regulations to include within the environmental permitting regime all combustion plant with a thermal rated input of 1MW or more and less than 50MW (“Medium Combustion Plants”). As part of the transposition of the Medium Combustion Plant Directive, this Instrument amends the Air Quality Standards (Wales) Regulations 2010 (S.I. 2010/1433) and the Air Quality Standards Regulations 2010 (S.I. 2010/1001) to include a requirement to assess the case for applying more stringent emission controls in respect of medium combustion plants when reviewing the air quality plans developed for the purpose of those regulations.

This Instrument also amends the scope of the 2016 Regulations to introduce domestic permitting requirements for certain plant used to generate electricity with a rated thermal input below 50MW (“specified generators”), some of which will also be Medium Combustion Plant. The term “specified generators” includes single plant and groups of plant located on the same site which are operated by the same operator and for the same purpose. Certain individual generators with a rated thermal input below 1MW are also in scope.

4. Purpose & intended effect of the legislation

Improving air quality across Wales, in order to reduce the burden of poor air quality on human health and the natural environment, is an absolute priority for the Welsh Government and this is reflected in our National Strategy: Prosperity

for All. Clean air is important for us all, but particularly for those who are most sensitive, including the very young, elderly people and those with certain health conditions. In addition, Wales, and the rest of the UK, is subject to EU and international obligations to protect air quality by preventing harmful pollutant levels and limiting national emissions of pollutants (under the EU Ambient Air Quality Directive 2008/50/EC) and the United Nations Convention on Long Range Trans-boundary Air Pollution).

The European Commission carried out an extensive review of EU air policy between 2011 and 2013, which included stakeholder engagement and public consultation. Informed by the review, the Commission published in December 2013 the Clean Air Package, which included proposals to regulate emissions from Medium Combustion Plants, since they are an important source of emissions which were not regulated at the EU level (plant with a rated thermal input of 50MW and above are subject to emission controls under the Industrial Emissions Directive). On the 25 November 2015 the Medium Combustion Plant Directive was made. The Directive requires the operation of Medium Combustion Plant to be subject to authorisation in a manner that enables the imposition of conditions upon emissions of nitrogen oxides, sulphur dioxide and particulates/dust into the air. Permit conditions also require the testing of emissions periodically to demonstrate compliance with the relevant emissions levels.

The 2016 Regulations provide a 'one-stop-shop' for environmental permitting in England and Wales, bringing together the process for applying for, regulating and measuring compliance in environmental permitting. The framework was originally created in 2007 to make the permitting process more efficient and effective and to reduce the burden associated with the various separate permitting regimes that had gone before.

In accordance with the Medium Combustion Plant Directive, from 20 December 2018, operators of new Medium Combustion Plant will require a permit to operate, at which point those plants will have to comply with the emission limit values for certain pollutants (according to fuel type). Operators will also need to keep a record of operations to demonstrate compliance with their permit conditions for at least 6 years. A long implementation period is provided for existing Medium Combustion Plant, in order to provide operators with sufficient time to adapt technically to the requirements.

This Instrument also imposes domestic controls in respect of Specified Generators, some of which will be Medium Combustion Plant. Developments in the energy market in recent years have led to rapid growth in the use of low-cost, small-scale flexible power generators, many of which operate on diesel fuel. These plant are not currently subject to emission controls and can have very high emissions of nitrogen oxides.

Operators of these plant will be required to comply with applicable emission limits. Older, existing generators, and those already providing certain services to the national electricity transmission system, will benefit from a longer timescale for compliance depending on the rated thermal input of the generators, emissions, operating hours and the duration of the relevant agreements. These 'transitional arrangements' have conditions associated with them to avoid giving a competitive advantage to older, generally more polluting,

generators when bidding to provide services in the energy market. A competitive advantage could incentivise their use with a resultant impact on emissions.

5. Consultation

A joint Wales and England consultation on proposals to transpose the Medium Combustion Plant Directive and on additional controls on combustion plant used to generate electricity opened on 16 November 2016 and closed on 8 February. The consultation period lasted for 12 weeks and there were 112 responses in total. Responses were largely from the energy sector and industry but responses were also received from NGO's, Local Authorities and members of the public.

A summary of responses and the Government response can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/626803/mcpd-generator-consult-sum-responses.pdf . This document lists the consultation questions, summarises responses and who responded, and outlines decisions made as a result of consultations responses.

PART 2 – REGULATORY IMPACT ASSESSMENT

Two Regulatory Impact Assessments are provided, which consider the impact of the legislation on an England and Wales basis. One Impact Assessment focuses on the changes required to transpose the Medium Combustion Plant Directive. The other Impact Assessment considers the additional domestic controls being placed on 'Specified Generators'.

SL(5)160 – The Environmental Permitting (England and Wales) (Amendment) Regulations 2017

Background and Purpose

The primary purpose of these Regulations is to amend the Environmental Permitting (England and Wales) Regulations 2016 (“the 2016 Regulations”), so as to transpose 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 (“the Medium Combustion Plants Directive”), and to introduce additional controls in respect of combustion plant used to generate electricity.

These Regulations extend the scope of the 2016 Regulations to include permitting requirements for the operation of medium combustion plants and generators in order to regulate emissions to protect air quality.

Procedure

Affirmative

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument, in that it is not to be made in both English and Welsh (Standing Order 21.2(ix)).

These Regulations have been made as a composite instrument, meaning that these Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament. The Welsh Ministers considered it was not reasonably practicable for these Regulations to be made in English and Welsh.

However, where these Regulations amend bilingual legislation, those amendments are in English and Welsh (see regulation 19(2)(b) of these Regulations). This shows that legislation containing Welsh language text can be (and is occasionally) laid before the UK Parliament.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

The following analysis is based on the European Union (Withdrawal) Bill (“the Bill”) as introduced.

These Regulations form part of “EU-derived domestic legislation” under clause 2 of the Bill, therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

With regard to the Medium Combustion Plants Directive, that Directive will not automatically form part of domestic law on and after exit day under the Bill. However, where a court or tribunal has recognised, before exit day, that an EU Directive confers a right on an individual that the individual can rely on and enforce in law, then that right will form part of domestic law on and after exit day (see clause 4 of the Bill).



Government Response

No government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

14 December 2017



SL(5)159 – The Agricultural Holdings (Units of Production) (Wales) Order 2017

Background and Purpose

This Order prescribes units of production for the assessment of the productive capacity of agricultural land situated in Wales and sets out the amount which is to be regarded as the net annual income from each such unit for the year 12 September 2017 to 11 September 2018 for certain purposes of the Agricultural Holdings Act 1986.

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

The Order defines “eligible hectare” by reference to EU legislation, i.e. EU Regulation 1307/2013 which establishes rules around direct payments to farmers within the framework of the common agricultural policy.

Under the European Union (Withdrawal) Bill (as currently drafted) that EU Regulation will be frozen and will form part of retained EU law on exit day. The EU Regulation will be within the body of retained EU law that only the UK Ministers and the UK Parliament can amend, so UK Ministers or the UK Parliament will be able to change the meaning of “eligible hectare”.

Neither the National Assembly for Wales nor the Welsh Ministers will be given any powers to amend any element of the EU Regulation in its application in Wales, despite it being in a devolved area.

Government Response

No government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

19 December 2017

Agenda Item 5.2

LEGISLATIVE CONSENT MEMORANDUM

TRADE BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Trade Bill (the “Bill”) was introduced in the House of Commons on 7 November 2017. The Bill can be found at:
[Bill documents — Trade Bill 2017-19 — UK Parliament](#)

Policy Objectives

3. The UK Government’s stated policy objectives are to provide continuity for businesses, workers and consumers across the UK and establish the UK as an independent global trading nation. To support this the Bill makes provision about the implementation of international trade agreements; establishing a Trade Remedies Authority and conferring functions on it; and makes provision about the collection and disclosure of information relating to trade.

Summary of the Bill

4. The Bill is sponsored by the Department for International Trade.
5. The Bill has four main functions:
 - It confers regulation making powers on a Minister of the Crown and devolved authorities to implement the Agreement on Government Procurement in the event that the UK is an independent member of that Agreement after EU-exit;
 - It confers regulation making powers on a Minister of the Crown and devolved authorities to implement certain kinds of existing EU/third country trade agreements, such as the existing Free Trade Agreements signed by the EU on behalf of the UK;
 - To establish a Trade Remedies Authority to deliver the new UK trade remedies framework;
 - To establish a data sharing gateway between Her Majesty’s Revenue and Customs and other public and private bodies.

The provisions in the Bill of particular relevance to Wales are:

- Clause 1 – (implementation of the Agreement on Government Procurement);
- Clause 2 – (implementation of international trade agreements);
- Parts 2 and 3 – (establishing the Trade Remedies Authority; and Collection and sharing of trade information). We do not believe that these parts are making provision for any purpose within, or which modifies the legislative competence of the Assembly. However the establishment of a Trade Remedies Authority could have an impact on devolved areas such as agriculture and fisheries.

Provisions in the Bill for which consent is required

6. We consider that Part 1 of the Bill and its associated Schedules require consent on the basis that they are making provision for a purpose that is within the Assembly's legislative competence.
7. **Part 1, Clause 1** – this provision confers powers on the Welsh Ministers to implement the Agreement on Government Procurement (GPA). This is a plurilateral (non-mandatory) agreement within the World Trade Organisation framework which opens up government procurement markets. The UK is not a party to the GPA in its own right but is bound by and benefits from the GPA by virtue of its membership of the EU. On exit from the EU, the UK will no longer be bound by or benefit from the GPA. The UK's aim is to negotiate its way back into the GPA as a party in its own right and this means that we may need to make regulations in order to implement the GPA in relation to Wales. The powers conferred by clause 1 are concurrent, in so far as they are exercisable in relation to Wales. This means that both a Minister of the Crown and the Welsh Ministers are able to exercise those powers in relation to subjects within the Assembly's legislative competence. Therefore we consider that consent is required for this provision.
8. **Part 1, Clause 2** – this confers powers on the Welsh Ministers to implement international trade agreements with third countries corresponding to certain kinds of existing EU/third country agreements. As in the case of clause 1, the powers can also be exercised by a Minister of the Crown in relation to Wales. The international trade agreements potentially covered by this provision will encompass a wide range of policy areas falling within the Assembly's legislative competence, to include agriculture and fisheries. We therefore believe that consent is required for this provision.
9. **Part 1, Clause 3 and Schedules 1, 2 and -3** – Clause 3 provides for different types of provision that could be made in regulations made under clauses 1 and 2. Clause 3 also gives effect to Schedules 1-3. Schedule 1 places restrictions on the exercise of the Welsh Ministers powers. Schedule 2 makes provision for the procedure which is to apply to regulations made under clauses 1 and 2. Schedule 3 contains exceptions to restrictions in the devolution settlement.

10. As these provisions define how the regulation making powers conferred by clauses 1 and 2 can be exercised by the Welsh Ministers within its devolved competence, these provisions also relate to subjects within the Assembly's competence and consent is therefore required.
11. **Part 1, Clause 4** – this provision outlines how certain terms within Part 1 of the Bill should be interpreted. As this provision needs to be considered alongside clauses 1, 2 and 3, we consider that consent is required for this provision.
12. It is the Welsh Government's view that consent is required for these provisions because they fall within the legislative competence of the National Assembly for Wales in so far as they relate to a range of subjects in Part 1 of Schedule 7 to the Government of Wales Act 2006. These subjects include (but are not limited to)-

Agriculture, horticulture, forestry, fisheries and fishing, animal health and welfare, plant health, plant varieties and seeds, rural development (subject heading 1); promotion of business (subject heading 4); environmental protection, including pollution, nuisances and hazardous substances (subject heading 6); food and food products, food safety (including packaging and other materials which come into contact with food), protection of interests of consumers in relation to food (subject heading 8); promotion of health, prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder (subject heading 9).

Powers to create subordinate legislation

13. Schedule 2 provides for scrutiny by the UK Parliament and the devolved legislatures of regulations made under clauses 1 or 2. Regulations made by a Minister of the Crown or the Welsh Ministers acting either jointly or alone are subject to the negative procedure.

Restrictions on powers for Welsh Ministers

14. So far as exercisable in relation to Wales, the powers are concurrent, i.e. both Welsh Ministers and a Minister of the Crown can make regulations in relation to Wales. There are no requirements for consultation or consent when the Minister of the Crown is making changes to devolved law. As we have already set out in response to the European Union (Withdrawal Bill) it is vital any powers given to UK Government Ministers to make secondary legislation in devolved areas must only be used with the prior consent of Welsh Ministers. The Trade White paper suggested such consent from Devolved Governments would be sought and we believe this should be included on the face of the Bill. Further, as currently drafted, there are a number of restrictions placed on devolved Ministers' use of the powers provided for in the Bill which are not placed on UK Ministers. We believe, as a matter of principle, that devolved Ministers should have the same powers in respect of matters falling within devolved competence as UK Ministers are being given.

15. **Schedule 1** contains restrictions on how devolved authorities can use the powers which largely mirror the kinds of restrictions currently imposed on Welsh Ministers' powers under the European Union (Withdrawal) Bill, e.g. the powers cannot be used-
- (a) to make provision that would be outside the Assembly's competence
 - (b) to modify that part of the EU Acquis which has automatic effect in the UK via section 2(1) of the European Communities Act 1972 and which will be incorporated into domestic law, by the European Union (Withdrawal) Bill.
 - (c) to make provision that is inconsistent with any modifications to that body of law, which are made by the European Union (Withdrawal) Bill or under that Bill or this Bill
 - (d) to do any of the following without Minister of the Crown consent:
 - to bring regulations into force before exit day
 - to make provision about, or inconsistently with, quota arrangements (which concerns the division of responsibility within the UK for compliance with international obligations).

Reasons for making these provisions for Wales in the Trade Bill

16. The Welsh Government agrees that legislation is necessary to provide clarity and certainty for businesses and consumers in relation to trade as we leave the EU. We accept there may be instances when it makes sense for the UK Parliament to legislate on devolved areas, but this should only be with the consent of the Devolved Governments and this should be made clear on the face of the Bill. Further, there should be parity between the regulation making powers given to Ministers of the Crown and, with respect to devolved areas, Welsh Ministers. The additional restrictions placed on the Welsh Ministers in this regard are not appropriate. Whether or not legislative consent should be given for this Bill will need to be considered in the context of the response to amendments put down to address these issues

Financial implications

17. While there are no direct financial implications for the Welsh Government or the Assembly arising from the powers under the Bill, there will be significant financial implications for Wales from our future trade relationships both in its overall economic effect and in areas of funding currently deriving from the EU, as set out in *Securing Wales' Future*.

Conclusion

18. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as the Bill covers both devolved and non-devolved matters. In terms of coherence, it is considered that legislating via a UK wide Bill is the most effective and proportionate legislative vehicle for creating an independent trade policy for the UK once it has exited from

the EU. Devolved areas may be heavily impacted by future trade agreements therefore it is important Welsh interests are adequately reflected in the Trade Bill.

Ken Skates AM
Cabinet Secretary for Economy and Transport
December 2017

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Agenda Item 10

By virtue of paragraph(s) vi of Standing Order 17.42

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