

Explanatory Memorandum to The Sulphur Content of Liquid Fuels (England and Wales) (Amendment) Regulations 2014

This Explanatory Memorandum has been prepared by The Department for Natural Resources, Culture and Sport 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's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Sulphur Content of Liquid Fuels (England and Wales) (Amendment) Regulations 2014.

John Griffiths AM

Minister for Natural Resources, Culture and Sport

21 July 2014

1. Description

1.1 Council Directive 1999/32/EC ('the Principal Directive') sets limitations on the sulphur content of certain petroleum derived liquid fuels that are used in combustion plant on land and at sea. The limitations relating to land based plant were transposed in England and Wales by the Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007. The Principal Directive was amended in 2012 by Directive 2012/33/EU. The Sulphur Content of Liquid Fuels (England and Wales) (Amendment) Regulations 2014 transpose EC Directive 2012/33/EU in respect of petroleum derived liquid fuels that are used in combustion plant on land.

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

2.1 The legislation is being made on a composite basis. The Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007 were made compositely and this established approach remains appropriate for The Sulphur Content of Liquid Fuels (England and Wales) (Amendment) Regulations 2014.

2.2 The European Communities Act 1972 provides discretion as to what procedure to use in making subordinate legislation. As the Regulations merely give effect to an amending provision of EU law, application of the negative procedure is considered appropriate.

3. Legislative background

3.1 Council Directive 1999/32/EC ("the principal directive") imposes limitations on the sulphur content of certain petroleum-derived liquid fuels used in plant on land and at sea. The provisions concerning the use of those fuels in plant on land were transposed in England and Wales by the Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007 (SI 2007/79) ("the 2007 Regulations"). The principal directive was amended in 2012 by Directive 2012/33/EU ("the 2012 directive") and it is now necessary to transpose these amendments.

3.2 The National Assembly for Wales was designated under section 2(2) of the European Communities Act 1972 in respect of the assessment and management of ambient air quality and compliance with air quality limit values, targets and objectives. This designation now rests with the Welsh Ministers by virtue of section 162 of, and paragraph 30 to, the Government of Wales Act 2006 ('GOWA 2006'). These Regulations are subject to the negative procedure.

4. Purpose & intended effect of the legislation

4.1 The proposed Regulations transpose the 2012 Directive, by making amendments to the 2007 Regulations. These amendments relate to:

- the definitions of 'heavy fuel oil' and 'gas oil';
- exceptions to the general prohibition on the use of heavy fuel oil with a sulphur content of more than 1% by mass;
- the prohibition on the use of gas oils with a sulphur content of 0.1% by mass (removal of a higher maximum sulphur limit - 0.2% by mass - that applied to gas oils used in the period up to 1 January 2008); and
- the requirement for member states to take all necessary measures to check by sampling, that the sulphur content of fuels complies with the above limits with reference to various sampling and analysis requirements. The 2012 Directive includes a requirement for sampling to be carried out 'periodically' and analysed without undue delay. It also provides the reference method to be adopted for determining the sulphur content of sampled fuels.

4.2 The changes being made are limited in nature, and affect only the two main sectors involved in industrial regulation – ie: Local Authorities, who are the enforcers of the requirements, and those industrial installations which are regulated under the Environmental Permitting regime across England and Wales.

5. Consultation

5.1 In April 2014, Defra and the Welsh Government published a consultation document seeking views on the transposition of the amendments required by the 2012 directive. It was agreed that this should be a short, 3 week consultation, targeted at local authorities, who are the enforcers of the requirements, and relevant industry representatives. There were two responses to that consultation exercise, both of which expressed support for the transposition proposals, as outlined in para.4 above.

Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

This legislation has no impact on the statutory duties (sections 77 -79 GOWA 2006) or statutory partners (sections 72-75 GOWA 2006).

The proposed Regulations are being made in order to transpose the 2012 Directive. They make routine technical amendments to the 2007 Regulations.