

## **Explanatory Memorandum to the Environmental Permitting (England and Wales) (Amendment) Regulations 2016**

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.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Environmental Permitting (England and Wales)(Amendment) Regulations 2016. I am satisfied that the benefits outweigh any costs.

**Carl Sargeant AM**  
**Minister for Natural Resources**  
10 February 2016

### **Description**

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) ("the 2010 Regulations") to specify that new European Committee for Standardisation (CEN) standards must be used to

certify and test new equipment for recovering petrol vapour during refuelling of motor vehicles at service stations.

### **Matters of special interest to the Constitutional and Legislative Affairs Committee**

These composite regulations will apply to England and Wales and are subject to negative resolution procedure in the National Assembly for Wales and in both Houses of the UK Parliament. Because the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

### **Legislative background**

Section 2 of the Pollution Prevention and Control Act 1999 (“the 1999 Act”) enables the Welsh Ministers (in relation to Wales) to make provision by regulations for, or in connection with, regulating activities capable of causing environmental pollution. The Environmental Permitting (England and Wales) Regulations 2010, and subsequent amendments, were made under this power.

Paragraph 20(1)(b) of Schedule 1 to the 1999 Act provides that regulations made under Section 2 of that Act may make any provision made, or capable of being made under Section 2(2) European Communities Act 1972 in connection with a relevant directive. Paragraph 20(2)(c) enables the Welsh Ministers to, by order, designate any EU Directive as a ‘relevant directive’. In order to make use of this power, a further statutory instrument will need to be made prior the principal amendment regulations being made. That instrument can also be composite in nature, made by the Secretary of State in relation to England and by the Welsh Ministers in relation to Wales. There is no Parliamentary or Assembly procedure for this Order.

The 2014 Directive, amending the 2009 Directive on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations, requires transposition by 13 May 2016. The instrument that is the subject of this Memorandum will amend the 2010 Regulations so as to transpose the 2014 Directive. It applies to England and Wales.

### **Purpose & intended effect of the legislation**

Petrol vapours can cause harm to human health and the environment. Existing legislation aims to reduce the emissions of petrol vapour to the atmosphere at various stages during the storage and distribution of petrol. Stage II petrol vapour recovery involves recovering the petrol vapour displaced from the fuel tank of a motor vehicle during refuelling at a service station and transferring that petrol vapour to an underground storage tank at the service station or back to the petrol dispenser for resale. The 2009 Directive established a minimum level of Stage II petrol vapour recovery across Member States.

The 2009 Directive has recently been amended by the 2014 Directive. The changes introduced are minor technical amendments which specify the new

European Committee for Standardisation (CEN) standards which must be used to certify and test PVR equipment, replacing the option of different national methodologies. UK industry was involved in development of these standards and will benefit from certifying to common EU standards rather than having to comply with varied national standards.

### **Consultation**

A public consultation was held between 20 November 2015 and 11 January 2016. The consultation received 7 responses as a result of the low impact and technical nature of the change. All the responses supported the proposed amendment to the 2010 Regulations. No issues or concerns were raised.

Industry representatives and regulators responding to the consultation agreed that the regulations will not place excessive burdens on industry but rather that the proposals mandate standards already adopted in England and Wales voluntarily, and will have a positive effect on businesses which operate in other Member States.

### **Regulatory Impact Assessment (RIA)**

#### **Rationale for intervention and intended effects**

New EU legislation on Stage II petrol vapour recovery (PVR) during the refuelling of motor vehicles at service stations has been introduced. Directive 2014/99/EU on Stage II PVR ('the 2014 Directive') amends previous PVR legislation (Directive 2009/126/EC – 'the 2009 Directive') such that Stage II PVR systems, and the testing of their efficiency, will need to comply with new European Committee for Standardisation (CEN) standards by 13 May 2016.

In order to transpose the 2014 Directive, we are proposing to introduce an amendment to the Environmental Permitting (England and Wales) Regulations 2010/675. Our amending Regulations will update the definition of 'PVRII' in paragraph 2 of Part 2 of Schedule 18 and also the reference in Schedule 1, Part 2 (activities), Section 1.2, Interpretation of Part B, paragraph 2 of the Environmental Permitting Regulations, so that it reflects the amendments introduced through the 2014 Directive.

The regulations will permit us to introduce the necessary technical changes whilst maintaining the existing legislative framework for PVR, meaning, for example, that the current system of fines and penalties for non-compliance will be maintained. The amending Regulations will have the effect of ensuring that England and Wales are compliant with the 2014 Directive.

### **Impact**

The Stage II Petrol Vapour Recovery (PVR) Directive (2009/126/EC) aims to reduce the emissions of petrol vapour during the refuelling of motor vehicles at service stations by setting requirements for the certification and testing of vapour recovery equipment. That Directive contains a provision for adaptation to technical progress, specifically in the event that European Committee for Standardisation (CEN) standards on stage II PVR are developed. CEN standards on the certification and testing of stage II PVR equipment were introduced in 2013 (standard EN16321-1:2013 concerns certification and standard EN16321-2:2013 concerns in-service efficiency testing). The 2014 Directive was introduced in order to amend the 2009 Directive as a result of technical progress by making the use of the new CEN standards mandatory across the EU.

The impact on business is expected to be minimal. The new CEN standards have been developed at the request of industry and are based on practices which were already in common use in the UK. The UK was involved in the development of the CEN standards, and their mandatory use will provide a level playing field across the EU and reduce costs of businesses selling across the EU market. Businesses will not have to invest in new PVR technology in order to comply with the 2014 Directive. It is estimated that there will be a one-off cost of approximately £10,500-£36,000 to one UK manufacturer associated with re-certifying their products. The consultation confirmed that industry representatives agreed with the assessment of impact of transposing the Directive. There is no impact on charities or voluntary bodies. There is no impact on the public sector as the inspection rate for Local Authority regulators is unchanged by this amendment.

The intended effect of the transposing Regulations is that compliance with the new CEN standards on Stage II PVR will now be mandatory for manufacturers of stage II PVR equipment and service stations.

### *Service Stations*

Figures from the Petrol Retailers Association (PRA) estimate that there are 8,611 service stations in the UK in total. These businesses will all be required to comply with the amendments to the 2010 Regulations we propose to introduce. Following public consultation, we consider that the impact on service stations will be extremely low. The reason for this is twofold. Firstly, the new CEN standards are largely based upon an existing set of German technical guidelines (VDI2405) which have historically been used to regulate stage II PVR equipment in the UK. Hence, service stations will not be required to invest in new PVR equipment and there will be no significant monetisable costs arising from transposition. The second reason is that the 2014 Directive makes no changes to the existing regulatory regime for PVR. It maintains the current system of the inspection and testing of stage II PVR equipment in service stations. Therefore, there will be no increase in the regulatory burden on business arising from transposition.

### *Stage II PVR Equipment Manufacturers*

Industry representatives estimate the cost to manufacturers of re-certifying their products in accordance with the new standards to be approximately €15-50k per manufacturer, depending on the size of their operations. We understand that there is one site in the UK involved in the manufacture of stage II PVR equipment which will directly bear this cost. Hence, the monetisable impact on the manufacturing sector will be limited.

Furthermore, it was European manufacturers of stage II PVR equipment who pressed for the development of EU-wide CEN standards. The rationale for this was that it was deemed to be preferable, both in terms of economic benefit and regulatory burden, to introduce mandatory compliance with pan-EU standards than for manufacturers to certify their equipment in accordance with a variety of national technical guidelines. So, whilst there may be some costs involved in re-certifying equipment in accordance with the CEN standards, this will be less financially burdensome than having to certify the same products to show their compliance with many sets of technical standards. The UK was involved in the development of the CEN standards.

### *Impact on Small Businesses*

The legislation applies to activities that are undertaken by small businesses. However, independent service stations will not be required to invest in new PVR equipment once compliance with the CEN standards becomes mandatory as their existing technology will already meet their requirements. They will also not experience an increase in regulatory burden as frequency of testing and inspection will remain unchanged.

The PVR equipment manufacturer mentioned in the *Stage II PVR Equipment Manufacturers* section is run by a large company and hence the limited cost of product re-certification will not be borne by small business at all.

## **Conclusion**

The transposition of the 2014 Directive by amending the 2010 Regulations will have a limited impact on businesses, in terms of both financial and regulatory burdens. Consultation with the key stakeholders such as the Petrol Retailers Association and representatives of manufacturers of PVR equipment has been carried out and their views have been taken on board in the assessment of the impacts of the Directive. A public consultation held between November 2015 - January 2016 confirmed this assessment.

The reasons for our conclusion are summarised below:

1. European manufacturers of Stage II PVR equipment pressed for the establishment of European Committee for Standardisation (CEN) Standards on certification and testing as it was deemed to be less burdensome, both technically and financially, to introduce pan-European standards rather than to have multiple different, national sets of technical guidelines.
2. The CEN standards made mandatory by the 2014 Directive are largely based upon an existing set of technical guidelines (VDI2405), which had been used to regulate Stage II PVR in the UK. Hence, petrol retailers will not need to invest in new PVR technology because their existing equipment will already comply with the CEN Standards when they become mandatory.
3. There will be no alteration to the frequency of inspections of PVR equipment at service stations, as the 2009 Directive required that they be inspected at least once a year and this is not changed by the 2014 Directive.
4. There will be some re-certification costs for manufacturers of PVR equipment. We understand that these costs will be approximately €15-50k per manufacturer, depending on the scale of their operations. We understand, from consultation with industry, that there is only one UK site manufacturing PVR equipment which will directly bear the costs of recertification, as most manufacturers are based in other Member States.

Therefore, the total cost in the UK will be approximately £10,500-£36,000 (€15-50k).

5. We do not expect the transposition of the 2014 Directive to have an impact on small businesses, as service stations will be able to continue their operations as normal and the UK site producing PVR equipment is run by a large manufacturer.
6. The 2014 Directive aims to reduce the emissions of volatile organic compounds (VOCs) from the refuelling of vehicles at service stations. VOCs are a precursor to ozone. The reduction of their emissions across Europe arising from the implementation of an EU-wide regulatory regime for Stage II PVR will help to reduce the trans-boundary effects of pollution and lead to associated social and economic benefits.