

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

