

EXPLANATORY MEMORANDUM TO
THE CLEAN AIR (MISCELLANEOUS PROVISIONS) (ENGLAND)
REGULATIONS 2014

2014 No. 3318

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument consolidates and updates six sets of regulations associated with the Clean Air Act (1993) into one set of regulations. The consolidation forms part of the Government's Better Regulation Agenda and review of the Clean Air Act (1993) and will improve the accessibility and clarity of these Regulations. The regulations supplement provisions in the Clean Air Act 1993 on dark smoke from vessels, arrestment plant, chimney height approval and local authority powers to carry out research and publicity into air pollution. The instrument therefore revokes the following sets of regulations:

- The Dark Smoke (Permitted Periods) (Vessels) Regulations 1958 (S.I. 1958/878),
- The Clean Air (Arrestment Plant) (Exemption) Regulations 1969 (S.I 1969/1262),
- The Clean Air (Height of Chimneys) (Exemption) Regulations 1969 (S.I 1969/411),
- The Control of Atmospheric, Pollution (Research and Publicity) Regulations 1977 (S.I. 1977/19),
- The Control of Atmosphere Pollution (Appeals) Regulations 1977 (S.I 1977/17),
- The Control of Atmospheric Pollution (Exempted Premises) Regulations 1977 (S.I. 1977/18)(“the existing regulations”)

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Clean Air Act 1993 (“the Act”) makes provision for abating air pollution. The Act includes:

- Prohibitions on emitting dark smoke (including from the chimney of a vessel)
- Requirements that new non-domestic furnaces (e.g. boilers) be provided with local authority-approved plant for arresting grit and dust;
- Requirements for the height of chimneys serving certain furnaces to be approved by local authorities.
- Powers for local authorities to obtain information about air pollution including by serving notices on the occupiers of premises (but not private dwellings) requiring the provision of information about emissions from those premises.

4.2 Under the Clean Air Act (1993) the Secretary of State can also make regulations creating exemptions from these provisions and covering other matters such as how local authorities must exercise their information-gathering functions and appeals against information notices.

4.3 The six sets of regulations listed in paragraph 2.1 were made in exercise of the powers set out above in paragraphs 4.1 and 4.2. This instrument consolidates these regulations into one set of regulations.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The purpose of the Clean Air Act 1993 is to abate air pollution. The first Clean Air Act was introduced in response to the smogs of the 1950s which were caused by the widespread burning of coal for domestic heating and by industry and which were blamed for the premature deaths of thousands of people. The provisions in the Act and the regulations covering dark smoke from vessels, the fitting of arrestment plant, the approval of chimney heights and local authority powers to carry out research and publicity concerning air pollution are intended to help abate air pollution by controlling the emission of pollutants such as smoke, grit and dust.

7.2 The primary policy objective is to consolidate the existing regulations whilst maintaining existing standards of environmental protection. Consolidation of the regulations forms part of the Government's Better Regulation agenda (Red Tape Challenge) and Defra's review of the Clean Air Act 1993 and will improve the accessibility and clarity of the regulations while maintaining the same standards of protection against air pollution. These changes will make it easier to locate them and understand the overall legislative context.

7.3 The 2014 Regulations will maintain the existing regimes relating to dark smoke from vessels, arrestment plant, chimney height approvals and local authorities powers to carry out research and publicity concerning air pollution thus ensuring that existing standards of environmental protection are maintained. There will be no increase in burdens on local authorities and industries as they will not be required to do anything

different under the Regulations. The main change is to substitute a new Schedule listing of Crown premises that are exempt from local authorities' powers to require occupiers to provide information about emissions from their premises. This Schedule has been updated in accordance with information supplied by the Ministry of Defence so that it only covers Crown premises for which exemption is currently considered necessary on grounds of defence and national security. The 2014 Regulations also make changes to reflect modern drafting practices such as converting imperial measurements into metric measurements.

- Consolidation

7.4 The 2014 Regulations revoke and replace the six statutory instruments listed in paragraph 2.1 and consolidates those provisions into a single set of regulations.

8. Consultation outcome

8.1 In April 2011, the Government launched the Red Tape Challenge, an initiative to review all potentially unnecessary regulation on business over this Parliamentary Term. The Clean Air Act and its associated regulations were identified as an area for review as part of this process.

8.2 As part of the review process the Department initially conducted extensive stakeholder consultations including two local authority seminars in 2012, distribution of two questionnaires between 31 January and 12 February 2013, and an industry and local authority workshop in February 2013. In autumn 2013 Defra issued an eight-week Call for Evidence which sought comment on perceived burdens and on the stakeholder suggestions for change from earlier engagement. This received 58 responses, more than half of which were from local authorities and a quarter from industry/businesses. The Summary of Responses from the Call for Evidence can be found at <https://www.gov.uk/government/consultations/clean-air-act-1993-review>

8.3 In line with Cabinet Office 'consultation principles' we focused on engagement with key groups with an interest in this area rather than consulting the public at large. We sought views from these key groups about whether the Act and associated regulations were still fit for purpose given modern day air quality requirements and challenges. We also asked whether there were any improvements that could be made.

8.4 The feedback received in these consultations indicated that whilst some of the provisions in the Act and associated regulations were rarely used they still provided a necessary level of control for maintaining air quality. Some respondents to the Call for Evidence suggested that it would be beneficial to update the language in the Regulations. Based on these consultations we identified that some of the regulations (in paragraph 2.1) should be kept in a consolidated form with minor changes. We also identified other regulations that may require more substantive changes. These additional regulations are being considered separately as part of the wider review of the Act.

8.5 A summary of the key feedback received in relation to the regulations that this instrument is consolidating is set out below.

8.6 Seminars, workshops, questionnaire and stakeholder engagement

- The Dark Smoke (Permitted Periods) (Vessels) Regulations 1958 (S.I. 1958/878)

Two local authority respondents to the Defra questionnaire noted that they had used section 44 of the Act, which extends the dark smoke provisions in the Act to emissions from vessels (as defined in the Merchant Shipping Act 1995 as 'ship'). Two further local authority respondents stated that section 44 was necessary to address dark smoke emissions from vessels operating in ports. Therefore, the Department decided to retain this provision and determined that this regulation remained necessary to enable operators of vessels to carry out certain activities (such as starting up and re-fueling vessels) within defined periods without committing offences.

- Clean Air (Arrestment Plant) (Exemption) Regulations 1969 (S.I 1969/1262)

Two respondents to the questionnaire said that modern manufacturing standards mean that new furnaces should not emit grit or dust. However stakeholders said there remains a level of risk that some plant may still require arrestment plant to be fitted in order to achieve emission limits. Respondents to the later Call for Evidence also agreed with the comments received from these questionnaires. Therefore, the Department concluded that the arrestment plant provisions in the Act should be retained. The Department also recognised that the exemptions in the regulations were still required to cover certain activities, such as the use of standby generators,

- Clean Air (Height of Chimneys) (Exemption) Regulations 1969 (S.I 1969/411)

Sections 14, 15 and 16 of the Act require specified furnaces to operate with a chimney of an approved height. Approval is granted by local authorities on demonstration that emissions, as far as practicable, are prevented from becoming prejudicial to health or a nuisance. The sections are therefore important to control local impacts of furnaces. Stakeholders were asked in a questionnaire during initial stages of the review whether the exemptions were still appropriate. Opinions were divided with half of the respondents stating they were still appropriate and half stating that they were no longer necessary. The Department decided to retain the provisions in the regulations as opinion from stakeholders was evenly divided.

- Control of Atmospheric, Pollution (Research and Publicity) Regulations 1977 (S.I. 1977/19), and Control of Atmosphere Pollution (Appeals) Regulations 1977 (S.I 1977/17)

During the local authority seminars, we asked whether section 36 of the Act, which enables local authorities to require occupiers of premises to provide details of emissions of pollutants into the air, was still required. Some respondents said that removing this provision would weaken local authority powers and would be detrimental to the requirement for local authorities to work towards air quality improvements. Therefore,

the Department concluded that this section was still required and that consequently it was also necessary to retain S.I. 1977/19), which prescribes the information that may be requested, and, S.I. 1977/17 which enables appeals against section 36 notices to be made.

- Control of Atmospheric Pollution (Exempted Premises) Regulations 1997(S.I. 1977/18)

We consulted the Ministry of Defence which is responsible for the sites covered by these regulations. The Ministry of Defence advised that exemptions for a limited number of sites are still required for reasons of defence and national security and offered assurances that it would co-operate with local authority inspectors if an issue were to arise at an exempted site. The Ministry of Defence provided a revised and updated list of the Crown premises that should be exempted from section 36 of the Clean Air Act 1993.

8.7 Statutory Consultation

An informal consultation, lasting four weeks, from 30 October to 27 November 2014, was undertaken on a draft of the consolidated regulations to determine whether they improved ease of access and clarity. The four week period was considered sufficient as the consultation seeks views on the format of the draft regulation only. The proposed consolidated text does not dilute or substantially alter existing legislative requirements.

This consultation also fulfilled the statutory consultation requirements applying to the regulations under sections 37 and 38 of the Clean Air Act 1993 and it was used as an opportunity to seek the consultees' views on all of the consolidated regulations. In accordance with the statutory requirements comments were sought from local authorities, industry bodies and persons conversant with problems of air pollution.

We received sixteen responses from local authorities, industry representatives and air pollution practitioners. We asked whether the format (i.e. layout, structure etc) of the draft Regulations met the aim of the consolidation exercise. Of the sixteen people who responded to the consultation, fourteen agreed that the consolidated regulations would make it easier for business and local authorities to locate and use the provisions and two disagreed. Of the respondents who agreed, one local authority respondent suggested supplementing the regulations with a guidance manual in a similar format to the Environmental Permitting Guidance. The Department notes that guidance on the regulations can be obtained by contacting the Defra helpline on 03459 33 55 77. Another respondent, who represents persons conversant with problems of air pollution, suggested making new regulations to address current combustion sources that are typically used and installed today.

Of the two respondents who disagreed, one an industry respondent, suggested that the Regulations should address the issue of emissions such as PM and NOx. The other, a local authority respondent, suggested aligning the Regulations with current standards and also consolidating further regulations which legislate the emissions of grit and dust as follows:

- The Clean Air Act (Emission of Grit and Dust From Furnaces) Regulations 1971

- The Clean Air Act (Measurement of Grit and Dust From Furnaces) Regulations 1971

These regulations were left out of the scope of this consolidation exercise, as they fall within the category of regulations that require further review at a later date. In particular, the Government is awaiting the outcome of negotiations on the proposed Medium Combustion Plant Directive as they may have an impact on emission limits that are applicable to the vast majority of plants controlled by the Act. The proposed Medium Combustion Plant Directive (MCPD) (1-50 Megawatt) will set emission standards for plant between 1 and 50 Megawatt rated thermal input.

The other suggestions mentioned above fall outside the scope of this consolidation exercise but we will consider them as part of the ongoing review of the Act. We will continue to involve stakeholders and delivery partners during the review process.

9. Guidance

9.1 There is no specific guidance issued to ensure compliance with this instrument.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no adverse impact on business, charities or voluntary bodies. Businesses are likely to benefit in terms of improved clarity and ease of access to the regulations.

10.2 There is no adverse impact on the public sector. Local authorities will continue to fulfil their responsibilities for local air quality management although there is a possible reduction in administrative burden as a result of local authorities being updated and better informed.

11. Regulating small business

11.1 The legislation applies to small businesses. However this legislation consolidates existing legislation into a single set of regulations. It therefore maintains the current legal requirements and does not introduce any new duties on business.

12. Monitoring & review

12.1 The department will continue to monitor and review the impact of consolidating these regulations as part of its standard business as usual policy-making. This will include working with stakeholders to determine whether the consolidated regulations have improved ease of access and clarity for regulators, businesses and the general public.

13. Contact

13.1 Bridget Haughan at the Department for Environment, Food and Rural Affairs.
Tel: 020 7238 3391 or e-mail: bridget.haughan@defra.gsi.gov.uk can answer any queries regarding this instrument.