

**EXPLANATORY MEMORANDUM AND REGULATORY IMPACT ASSESSMENT
TO THE
POLLUTION PREVENTION AND CONTROL (ENGLAND AND WALES) (AMENDMENT)
(ENGLAND) REGULATIONS 2006**

2006 No. 2311

EXPLANATORY MEMORANDUM

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

2. **Description**
 - 2.1 These Regulations concern the following amendments to the Pollution Prevention Control (England and Wales) Regulations 2000 (S.I. 2000/1973) ("the 2000 Regulations"):
 - Implement Petrol Vapour Recovery stage II controls.
 - Exempt certain operators of coin-operated dry cleaning machines from applying for a PPC Permit.
 - Remove the burning or flaring of landfill gas from Section 5.1 of Schedule 1 to the 2000 Regulations.
 - The coming into force date for the Solvent Emissions Regulations (England and Wales) Regulations 2004 (S.I. 2004/107).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 Defra has previously corresponded with both the JCSI and the Merits Committee on 28 February and 22 March 2006 to explain why it no longer proposes to consolidate the 2000 Regulations. The reason behind this change in policy is because the Department is now a long way down the line in preparing the ground for a new permitting and compliance programme that is to be known as the Environmental Permitting Programme (EPP).

The EPP is a better regulation initiative that will introduce a modernised common permitting and compliance platform for the future. The EPP is also a constituent element of the Department's initial regulatory simplification plan (known as "Lifting the Burden"), which can be located at: http://intranet/betterpolicy/documents/lifting_the_burden.pdf. This report sets out how the Department is cutting red tape and simplifying Regulations.

It is intended that the new EPP Regulations will replace the existing Pollution Prevention Control (PPC) permitting system and the waste management licensing system (which is subject to the Waste Management Regulations 1994 (S.I. 1994/1056)) to provide a single, streamlined environmental permit for operations currently subject to PPC and waste management licensing control in England and Wales.

Defra has already completed a twelve week public consultation exercise, and is now preparing for a second one in the early autumn where draft Environmental Permitting

(England and Wales) Regulations will be circulated in preparation to introduce them as the successor to the PPC 2000 Regulations and the Waste Management Regulations in 2008.

Consolidation of an extremely lengthy existing Regulation just a short while before implementing the new EPP Regulations would require the relevant regulators and the regulated businesses to adapt to two changes in quick succession. Each change would require substantial revision to the numerous guidance documents that are produced both by the Department and by the Regulators. However an unofficial consolidated text of the 2000 Regulations is available on our website for the benefit of those regulated by them.

The Committee may also be interested to learn that during the recent completed EPP consultation exercise there have been no consultees who have asked for the prior consolidation of the 2000 Regulations as an interim step before the Environmental Permitting Regulations are made

4. Legislative Background

4.1 The Pollution Prevention and Control (England and Wales) Regulations 2000 implement the 1996 Directive¹ concerning integrated pollution prevention and control (“IPPC”) and maintain long-standing other domestic controls on industrial pollution. The Regulations are over one hundred pages in length, and they are highly complex. It is inevitable that amendments needed to be made during the phasing in of the PPC regime to reflect the practical application of the regime on operators. Also additional integrated pollution and control measures (such as the new petrol vapour recovery controls) that have required implementation as part of the PPC permitting regime.

4.2 Petrol Vapour Recovery stage II controls

This Statutory instrument implements Petrol Vapour Recovery stage II (PVR II) controls which will reduce emissions of volatile organic compounds (VOCs) which escape during the refuelling of vehicles at service stations. PVR II will be required at service stations with an annual petrol throughput of: 3,500m³ (3,500,000 litres) or more, for existing stations and; 500m³ (500,000 litres) or more, for new stations. PVR II control measures will be required to be fitted in such service stations from 1 January 2010.

4.3 Coin-operated Dry Cleaners

In accordance with the Solvent Emissions (England and Wales) Regulations 2004, (S.I. 2004/107), all existing dry cleaners must apply for a PPC permit by 31 October 2006. Some coin-operated dry cleaning machines, found in particular in laundrettes, will not be able to comply with the Directive provisions unless staffed at all times, and it is expected by the National Association of the Launderette Industry that some may decide to stop the dry cleaning side of their business. The amendment will remove the need for such operators to apply for a PPC permit prior to closing.

¹ Directive 96/61/EC.

4.4 Landfill Gas

As noted in the attached Regulatory Impact Assessment it had been noticed that, in their current form, the 2000 Regulations require that the operation of flaring or burning of landfill gas fall within Section 5.1 (disposal of waste by incineration). This will occur if halogens are present in landfill gas. Adequate controls, such as those in Section 5.2 (disposal of waste by landfill) are already in place for the regulation of these sites and their inclusion in Section 5.1 is unnecessary.

4.5 Substituted coming into force date

This amendment is required in order to correctly refer to the commencement date of the Solvent Emissions (England and Wales) Regulations 2004.

5. Extent

This instrument applies to England only. The devolved administrations for Scotland, Wales and Northern Ireland, will make amendments to the equivalent regulations within their jurisdictions.

6. European Convention on Human Rights

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

7. Policy background

7.1 Petrol Vapour Recovery stage II controls

7.1.1 Petrol vapour escapes when a car's tank is filled at a petrol station. PVR II equipment collects and recycles the vapour. The concern is that volatile organic compounds (VOCs), such as petrol vapour, react in the air to form ground level ozone (summer smog). The measures will lead to a significant reduction in emissions, and some reduction in the risk to public health.

7.1.2 A consultation in April 2002 proposed a negotiated agreement with industry for the introduction of PVR II, but it proved not to be possible to reach such an agreement and industry indicated a preference for a regulatory approach. The Government carried out a further consultation on the implementation of PVR II controls from 7 November 2005 to 7 February 2006. A summary of the consultation responses can be found via the following weblink: <http://www.defra.gov.uk/corporate/consult/pvr-stage2/index.htm>

7.1.3 The Government's final implementation plan for implementing PVR II after consideration of the consultation responses, can be found via the following weblink: <http://www.defra.gov.uk/environment/airquality/pvr-stage2/index.htm>

7.2 Coin-operated Dry Cleaners

- 7.2.1 Paragraph 4.3 above describes the background. Dry cleaners are regulated because of their emissions of VOCs, which have the impact described in paragraphs 7.1.1 above.
- 7.2.2 The National Association of the Launderette Industry has been consulted informally and formally in regarding the need for this amendment and has been fully supportive. The formal consultation was sent to representatives of operators and regulators and two responses relevant to this amendment were received, both of which supported it - see <http://www.defra.gov.uk/corporate/consult/ppc-amendregs-2006/responses.pdf>
- 7.2.3 This is a better regulation amendment aimed at avoiding unnecessary PPC applications being lodged with the regulator.

7.3 Landfill Gas

- 7.3.1 As noted in paragraph 4.4 of this Memorandum the inclusion of flaring or burning of landfill gas within Section 5.1 of the Schedule to the 2000 Regulations was unnecessary.
- 7.3.2 A consultation regarding this proposed amendment to Schedule 1 was carried out during 2006. No objections to the amendment were made. A summary of the responses is available on the Defra website at: <http://www.defra.gov.uk/corporate/consult/ppc-amendregs-2006/index.htm>

7.4 Substituted coming into force date

A correction was required to paragraph 4 of Part B of Section 7 (SED Activities) to ensure that 20 January 2004 is the date when a SED (Council Directive 1999/13/EC) activity is deemed to have been operated above the solvent consumption threshold in certain circumstances.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum. There is reference also to a Regulatory Impact Assessment that was published in November 2005 relating to the PVR II controls: <http://www.defra.gov.uk/corporate/consult/pvr-stage2/pvrstage2-ria.pdf>
- 8.2 The PVR II controls will lead to annual benefits of £1.5m - £24m at annual costs to industry that are expected to be in the range nil - £11m depending on the implementation methods adopted
- 8.3 The amendment relating to coin-operated dry cleaning machines will reduce the regulatory burden for those affected.
- 8.4 The impact of the two further amendments (substitution of a coming into force date and landfill gas) on the public sector is negligible.

9. Contact

Nigel Barraclough at the Department for Environment, Food and Rural Affairs Tel: 020 7082 8392 or e-mail: Nigel.barraclough@defra.gsi.gov.uk can answer queries regarding the instrument.

FINAL REGULATORY IMPACT ASSESSMENT

Risk and Annual Review

1. Title

The Pollution Prevention Control (England and Wales) (Amendment) (England) Regulations 2006.

2. Objective of the Regulations

There are four amendments to the Pollution Prevention Control (England and Wales) Regulations 2000 (“the 2000 Regulations”):

1. Implementation of Petrol Vapour Recovery “Stage II” Controls (known as “PVR II”) that meet a UK obligation arising from the UN Economic Committee for Europe Geneva Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes;
2. To provide that where a coin-operated dry cleaning machine is to cease operation in October 2007 because it is not possible to comply with the Solvent Emissions Directive² (the “SED”) no application for a PPC permit is required in the interim;
3. An amendment to correct an error in relation to a commencement date relating to the SED;
4. Minor technical amendment to clarify the position concerning burning of landfill gas containing halogens.

3 Background

3.1 PVR II

A consultation, which closed on 7 February 2006 has been carried out on the general principles and policy of PVR II. Details of this consultation, including a Regulatory Impact Assessment is available on the Defra website at:

<http://www.defra.gov.uk/corporate/consult/pvr-stage2/index.htm>. The UN Geneva Protocol entered into force on 29 September 1997 following its adoption in November 1991. The Protocol can be seen on the UNECE website at <http://www.unece.org>. Further information concerning PVR II is available on the Defra website at: <http://www.defra.gov.uk/environment/airquality/pvr-stage2/index.htm>.

3.2 Dry cleaners

² Directive 1999/13/EC on the limitations of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations. Implemented in England and Wales by the Solvent Emissions (England and Wales) Regulations 2004 (SI 2004 No. 107).

The PPC regulations currently provide that all dry cleaners must submit a duly made application to the regulator by 31st October 2007. Some coin-operated dry cleaners are unlikely to be able to comply with the SED, and for these there is no benefit from an application being submitted. The amending Regulations would remove this requirement on the basis that such operators agree to cease to carry out such operations that fall within the scope of the SED before 31st October 2007.

3.3 Correction of a drafting error in Part B of section 7 of Schedule 1 to the 2000 Regulations. The new date inserted is 20th January 2004.

3.4 Landfill gas

It has been noticed that, in their current form, the 2000 Regulations are drafted so that the flaring or burning of landfill gas may also fall within Section 5.1 (disposal of waste by incineration) of Schedule 1. This will occur if halogens are present in landfill gas. Adequate controls, such as those in Section 5.2 (disposal of waste by landfill) are already in place for the regulation of these sites and their inclusion in Section 5.1 is unnecessary.

This amendment concerning is of a minor technical nature and a RIA is not considered necessary for it.

4. Consultation

A draft of the proposed amendment Regulations were sent out to public consultation on the 19th May 2006. This consultation closed on 14th July with only nine responses, all of which were in favour of the miscellaneous changes that were proposed.

4.1 PVR II

As noted in paragraph 3.1 a public consultation has already taken place between November 2005 and February 2006.

4.2 Dry cleaners

Consultation has been undertaken with the National Association of the Launderette Industry. The Textile Services Association and local authority regulators have been made aware.

4.3 Substituted commencement date

Reference to the correct commencement date of the Solvent Emissions (England and Wales) Regulations 2004 has been reworded since the consultation draft but with the same intention of referring to the date of the 20 January 2004.

4.4 Landfill Gas

As already noted in paragraph 3.4 the amendment concerns a minor technical issue that has been noticed in the 2000 Regulations and this was the subject of the recent consultation.

5. Options

5.1 PVR II

We are required to implement in England our part of the UK obligation arising from the UN Economic Committee for Europe Geneva Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes. This was noted in the Regulatory Impact assessment that Defra issued in November 2005. The preferred option arising from that earlier public consultation is now being implemented. The measure will be introduced by specifying the controls as best available techniques (as described in regulation 3 to the 2000 Regulations), and by listing refuelling activities at those service stations required to comply as Part B processes under the 2000 Regulations. The government has chosen to set the threshold of 3,500m³ for existing and 500m³ for new service stations. These controls need to be fitted by those service stations above the relevant threshold before 1st January 2010.

5.2 Dry cleaners

The “do nothing” option would result in the relevant businesses that intend to cease operating their coin-operated dry cleaner machines by 31st October 2007 incurring unnecessary expense in preparing an application and submitting it with an application fee of £132. Local authorities would have the unnecessary work of determining the application. Therefore the option of exempting such operators from the necessity to lodge an application under the 2000 Regulations is logical.

5.3 Substituted commencement date

The substituted wording inserted into Part B of section 7 of Schedule 1 to the 2000 Regulations is required in order to correct a drafting error.

5.4 Landfill Gas

The alternative would be for the burning of landfill gas to remain in Section 5.1 of Schedule 1 to the 2000 Regulations. This is confusing to the operators and regulators alike and has no benefit in terms of environmental protection. The amendment therefore clarifies this minor technical issue in the 2000 Regulations. To “do nothing” will only maintain the uncertainty in the 2000 Regulations.

6. Costs and benefits

It has already been noted under the Background that an earlier regulatory impact assessment concerning PVR II has already been carried out and published by the

Department in November 2005, and that a separate assessment concerning landfill gas and the correction of the commencement date error is not necessary. Consequently this section relating to “Costs and Benefits” applies to the amendment concerning “dry cleaners” only.

6.1 Sectors and groups affected

The dry cleaning amendment affects coin-operated dry cleaners who will be stopping operation by 31st October 2007.

6.2 Benefits

Relevant coin-operated dry cleaning businesses will avoid incurring unnecessary expense in preparing an application and submitting it with an application fee of £132. Local authorities will avoid the unnecessary work of determining the application.

6.3 Costs (overall, to LAs, to operators)]

The dry cleaning amendment will result in a cost saving to operators and a saving in terms of resources to the regulators.

6.4 Small Firms Impact Test

All relevant coin-operated dry cleaners are likely to be small firms and will benefit as noted above.

6.5 Competition assessment

Competition issues do not arise in particular as this exemption only applies where the operator ceases to operate before 31st October 2007. All dry cleaners in the EU must comply with the SED.

6.6 Enforcement, sanctions and monitoring

Dry cleaners are regulated by local authorities. Monitoring of local authority performance is undertaken by Defra through an annual statistical survey, periodic performance reviews, regular meetings with stakeholders, and assorted other techniques. A 2-3 monthly update newsletter is being published by Defra for regulators and dry cleaners during the introduction phase of the new dry cleaning controls.

6.7 Implementation and delivery plan

Relevant dry cleaners and regulators have been advised that this amendment is in prospect and not to make or require applications. The amendment Regulations when published will therefore simply provide formal confirmation of the position.

6.8 Post implementation review

Local authority compliance with the amending Regulations will be monitored through the above-mentioned techniques for monitoring local authority delivery of the PPC controls.

6.9 Summary and recommendation

This amendment will benefit both operators of coin-operated dry cleaning machines and regulators. It will have no environmental detriment and therefore it is our recommendation that it be made.

7. Regulatory Quality Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

.....
BEN BRADSHAW
PARLIAMENTARY UNDER SECRETARY OF STATE
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

CONTACT:
Nigel Barraclough
Air and Environment Quality Division
Department for Environment, Food and Rural Affairs

Ashdown House
123 Victoria Street
London SW1E 6DE
Tel: 020 7082 8392
E-mail: Nigel.barraclough@defra.gsi.gov.uk