

EXPLANATORY MEMORANDUM TO
THE ALTERNATIVE FUELS INFRASTRUCTURE REGULATIONS 2017
2017 No. 897

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Alternative Fuels Infrastructure Regulations 2017 are principally intended to impose a common set of standards and functionality for the provision of certain alternative fuel infrastructure (electricity and hydrogen for vehicles and seagoing ships at berth). This will ensure that users of electric or hydrogen powered vehicles and berthed seagoing ships can be confident of using the right infrastructure to the appropriate standard. This in turn will play a part in an increase in the use of alternatively fuelled vehicles and increase the environmentally beneficial practice of using electricity to power berthed ships.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument transposes the requirements of Directive 2014/94/EU on the Deployment of Alternative Fuels Infrastructure (“the Directive”) OJ No L 307 28.10.2014. The Directive seeks to deliver a build-up of recharging and refuelling infrastructure for alternative fuels across the European Union, by harmonising certain standards for such infrastructure. This instrument implements the Directive’s requirements concerning common standards for electric and hydrogen recharging infrastructure and for seagoing ships at berth. Recharging and refuelling infrastructure (“recharging infrastructure”) refers to the equipment required to recharge electric vehicles and refuel hydrogen fuelled vehicles. Recharging infrastructure, for example, covers infrastructure that is on the street or in car parks (comprising general public car parks as well as those set aside for specific activities, such as shopping or entertainment). The main requirement is that such charge points must be available for use by the general public and be compliant with the relevant standard.
- 4.2 The proposal that resulted in Directive 2014/94/EU was the subject of EM 5899/13, submitted to Parliament by the Department for Transport. The House of Commons European Scrutiny Committee considered the EM on 6th March 2013. The Committee recommended that the proposal was legally and politically important and

did not clear it, pending developments in negotiations (Report 34, Session 2012-2013, 34653). On 15th November 2013 the Minister wrote to the Chairman reporting on progress in negotiations. The Committee considered the letter on 20th November 2013, and continued to hold the proposal under scrutiny pending further negotiations (Report 23, Session 2013-2014). On 27th November 2013 the Minister wrote to the Chairman reporting on further developments. The Committee considered the letter on 4th December 2013 and cleared the proposal from scrutiny (Report 26, Session 2013-2014).

- 4.3 The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B at the 1497th sif on 26th February 2013. On 13th March 2013 the Chairman wrote to the Minister holding the proposal under scrutiny pending further information and progress in negotiations. On 15th and 27th November 2013 the Minister wrote to the Chairman reporting on progress in negotiations. On 4th December 2013 the Chairman replied to the Minister granting a scrutiny waiver but asking to be kept informed of further developments. A further Ministerial letter was sent to the Chairman on 16th December 2013. The Committee cleared the proposal from scrutiny on the 13th January 2014 and further Ministerial letters were sent subsequently on the 27th March 2014 and 16th February 2015.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
5.2 The territorial application of this instrument is the United Kingdom.

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 At present, there is no requirement for alternative fuel infrastructure operators to use particular charging or refuelling standards. This has seen many different connectors become available, threatening the deployment of such infrastructure as well as potentially causing operability issues. The aim of the Directive and this instrument is to mandate minimum requirements for such infrastructure, ensuring consistency and greater interoperability for users. This aligns with the Department's agenda of promoting the spread of recharging infrastructure through its grant award schemes.
- 7.2 This instrument will place obligations on the operators of electric and hydrogen recharging infrastructure ("infrastructure operators") and statutory harbour authorities. Infrastructure operators, meaning the party responsible for operating recharging infrastructure, whether as owner or on behalf of another party, will be required to ensure that the infrastructure they are responsible for meets certain common standards set out in this instrument. For shore-side electricity supply installations, statutory harbour authorities will be obliged to ensure that the design, testing and construction of installations complies with a standard set out in this instrument.
- 7.3 This instrument also imposes requirements to improve the user experience of certain recharging infrastructure. For electric vehicle recharging infrastructure, this instrument provides that infrastructure operators provide ad-hoc access to users for

their infrastructure. This means users will be able to charge their vehicles without requiring a pre-existing contract or membership with a particular infrastructure operator or electricity supplier. Currently, some users have to become members of certain charge point networks prior to use. There is also a requirement in this instrument that electric vehicle recharging points have the capacity to intelligently meter, for example by providing more information than a normal charge point. Infrastructure operators of electric vehicle recharging infrastructure will additionally be required to provide data, where available, on the location of recharging points for which they are responsible on an open and non-discriminatory basis. This instrument also provides for the imposition of civil penalties for breach of the requirements, as well as providing powers for the gathering of evidence related to potential breaches.

- 7.4 Equipment manufacturers of recharging, refuelling and shore-side electricity supply installations will also be impacted to some degree. They will have to ensure that their products meet the mandated standards if they are to maintain sales.
- 7.5 It is the duty of the Secretary of State to enforce this instrument. This instrument provides for the Secretary of State to authorise any suitable person to carry out functions under this instrument. The current intention is for the Secretary of State to authorise Regulatory Delivery, a body situated within the Department for Business, Energy and Industrial Strategy to carry out enforcement functions under this instrument on the Secretary of State's behalf.
- 7.6 On 23rd June 2016, the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

Consolidation

- 7.7 This Instrument does not amend an existing instrument. Consolidation is not, therefore, applicable.

8. Consultation outcome

- 8.1 A public consultation was held in October 2016 for a duration of four weeks. The relatively short duration reflected the close and regular contact with key stakeholders throughout the development of this instrument. This means that a large degree of feedback was already incorporated into the instrument prior to formal consultation. The consultation was open to all, but was of most interest to operators and manufacturers of recharging and refuelling infrastructure. One workshop and a number of bilateral meetings were held with stakeholders during the consultation period to answer any questions and ensure they were able to respond within the given timeframe.
- 8.2 Nineteen responses were received, primarily from industry stakeholders, but also from some private individuals. No responses were opposed to the broad approach proposed for implementing the Directive. The broad approach set out in this instrument remains the same as that outlined in the consultation document.
- 8.3 However, respondents did raise some concerns about detailed elements of implementation. Although the instrument was not annexed to the consultation, a

number of intended key aspects were set out, such as timeframes and civil penalty amounts.

- 8.4 One of the requirements relates to civil penalties, and the period that infrastructure operators have to correct non-compliant infrastructure before being issued with a penalty. Some respondents felt that a 10-day period was too short a time frame to enable operators to source replacement parts and correct their infrastructure. The Department has therefore amended the instrument to remove the 10-day period, providing more flexibility to operators. There is now no fixed date for compliance. It will be for the enforcement authority to set a date for rectifying a breach based on the nature of the breach and likely time to rectify it.
- 8.5 The Department also consulted at a high level on powers to impose civil penalties on regulated entities who do not bring their infrastructure into compliance. Some respondents also commented on the proposed amounts of the civil penalties. The Department has amended some of these to bring the penalties more in line with the cost of replacing each piece of infrastructure whilst ensuring they remain proportionate, dissuasive and effective.
- 8.6 There were also comments regarding the requirement to provide ad-hoc access, particularly around existing recharging points, with some stakeholders concerned about a challenging timetable for compliance. This instrument therefore provides for compliance with the ad-hoc access obligation for infrastructure installed after 17th November 2017, with remaining existing recharging points by 17th November 2018.
- 8.7 The Department's response to the consultation is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/641870/consultation-on-proposed-transposition-of-alternative-fuels-infrastructure-directive.pdf.

9. Guidance

- 9.1 No guidance is considered necessary. The obligations contained in this instrument are broadly complied with by industry already, and there are no legal requirements on any party to comply before 17th November of this year. However, the Department will keep under close review the application of this instrument by industry and will bring forward guidance should the need arise.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is predicted to be limited. Anecdotal evidence from discussions with infrastructure operators suggests that the majority of recharging infrastructure already complies with the requirements introduced by this instrument.
- 10.2 The impact on the public sector is currently unknown. It is worth noting that local authorities operate a proportion of the currently non-compliant recharging infrastructure and the cost impact in these instances will fall to them rather than private businesses.
- 10.3 A regulatory triage assessment was undertaken for this instrument which indicated that even in a worst case scenario the cost to businesses and the public sector would amount to £930,805, below the £1m threshold necessary to require a full impact assessment. In a central scenario the cost is estimated at £601,174, and in a low scenario £237,500.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to ensure that the impact on businesses in general is kept to a minimum. This has been achieved by only transposing the minimum requirements specified by the Directive, thereby ensuring the transposition does not apply any unnecessary burden. In some instances the extent to which the requirements apply has been further clarified following the consultation, to ensure infrastructure operators do not inadvertently apply the requirements when they do not need to.
- 11.3 No specific actions have been taken to minimise the impact on small businesses. Some small business will be affected by this instrument. The basis for the final decision on what action to take to assist small businesses was dictated by the specific scope of application indicated by the Directive.

12. Monitoring & review

- 12.1 The statutory Instrument imposes a duty on the Secretary of State to conduct a review of this instrument and publish a report on the outcome within at least five years of its coming into force. Thereafter, at subsequent intervals not exceeding five years. Compliance with this instrument will be monitored by the Office for Low Emission Vehicles, which will work closely with the enforcement agency to gather information on the level of compliance.

13. Contact

- 13.1 Dr Bob Moran at the Department for Transport. Telephone: 02079442388 or email: Bob.Moran@OLEV.gsi.gov.uk can answer any queries regarding the Instrument.