

Standard Rules Consultation no 15: Revision of standard rule sets for Medium Combustion Plant and Specified Generator

Standard rules for the Environmental Permitting (England and Wales) Regulations 2016

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Summary

The Environmental Permitting (England and Wales) Regulations 2016 (“EP Regulations”) allow us to offer standard permits, to reduce the administrative burden on business while maintaining environmental standards. They are based on sets of standard rules that we can apply widely in England and Wales. The rules are developed using assessments of the environmental risk posed by the activity.

The rules take considerable time, resources and consultation to develop but once in place they make applying and determining the applications comparatively easy. This is because there is no need for a site-specific risk assessment.

This consultation proposes revisions to eight standard rules for medium combustion plant and specified generators. The Medium Combustion Plant Directive (MCPD) and Specified Generators provides cost efficient emission controls on new and existing plant. The Directive has been introduced into Regulation in England and Wales and regulated under an environmental permit. We would like your views on these new proposals.

We will take account of the consultation responses and publish with the new standard rules on our website.

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# 1 About this consultation

This is an explanatory document that provides an outline of the documents we are consulting on, and an overview of the standard permitting process. It is designed to help you understand and comment on them.

The consultation will run for 12 weeks from 4th November 2019 to 31st January 2020.

1.1 What we are consulting on

The Environmental Permitting (England and Wales) Regulations 2016 allow us to develop and revise standard rules for certain activities. We base them on our understanding of the risks. We are asking for your views on revising the standard rules sets for Tranche B Specified Generators (SG) so that the rules also cover those that are classed as new Medium Combustion Plant (MCP). We also propose an amendment to standard rule SR2018 No7 for new MCP to clarify the requirements and amend buffer distances from conservation sites based on stack heights.

The consultation is primarily about the following documents:

**Standard rules sets (see Section 2 for more information):**

These consist of all the rules necessary to ensure that the risks to the environment

and human health are reduced to an acceptable level for this activity.

**Generic risk assessments (see Section 2 for more information):**

We have provided new and revised generic risk assessments for the rules. The new risk assessments relate only to emissions to air.

1.2 What this consultation means to you

We think that this consultation will be of particular interest to:

Operators, trade associations, and business:

This is your opportunity to ensure that the rules and generic risk assessment work for you and your industry but also provide the necessary protection to the environment and human health. We would like any suggestions you may have for future sets of rules for activities that might result in a number of permit applications.

Other regulators, the public, community groups and non-governmental organisations with an interest in environmental issues:

This is your opportunity to ensure that the rules and risk assessment work to provide the necessary protection to the environment and human health, whilst still being useful to industry.

# 2 Standard permits – how they work

2.1 What is a standard permit?

Standard permits contain one condition, which refers to a fixed set (or sets) of standard rules that an operator must comply with. The standard rules define the activities that an operator can carry out and specify necessary restrictions on those activities, such as emission limits or the types of waste or raw materials that can be accepted at the site. Standard rules are published on our website following public consultation. This is the fifteenth such consultation.

An operator who wishes to carry out a particular activity can look at the standard rules and, if they can comply with them, they may decide to apply for a standard permit. We are able to issue the permit more quickly and more cheaply because we have no decisions to make on site-specific permit conditions. An operator who cannot meet the requirements of the standard rules must apply for a bespoke permit and provide us with additional information. It takes us longer to issue a bespoke permit because we have to carry out a more detailed assessment of the application and decide whether to include site-specific conditions.

There is no right of appeal against the rules in a standard permit because applying for a standard permit is voluntary. If an operator wants to change the way the site operates so that it falls outside the scope of the standard rules or they feel that the standard permit no longer works for their particular operation, an application must be made to vary to a bespoke permit.

Operators must apply for a bespoke permit for any regulated activities not covered by standard rules. These activities generally have a higher potential impact on the environment or require more complex controls than operations for which standard rules can be used.

Standard Rules permits can only be granted where the regulated facility has one single legal person as the operator. The term **‘Operator’** is defined in regulation 7 of EP Regulations as the person who has control over the operation of a regulated facility. If a regulated facility has not been put into operation, the person who will have control over it when it is in operation, is the operator.

The central issue in deciding whether someone is the operator of a regulated facility is whether they are able to exercise control over its operation. They must demonstrably have the authority and ability to ensure that the Environmental Permit is complied with.

When assessing whether an operator (or proposed operator) has the authority and ability we consider the following and other factors.

Does the operator/proposed operator have the authority and ability to:

1. Manage site operations through having day-to-day control of plant operations, including the manner and rate of operation?
2. Ensure that permit conditions are effectively complied with?
3. Decide who holds key staff positions and have incompetent staff removed?
4. Make investment and/or other financial decisions affecting performance of the facility?
5. Ensure that regulated activities are suitably controlled in an emergency?

A site owner can continue to be the operator and hold the permit where it lets a contract for activities at a site provided they continue to take responsibility and exert sufficient supervision.

2.2 What are standard rules?

When developing sets of standard rules we carry out a single assessment of risk for a commonly undertaken activity. This enables us to define the risk boundary within which the rules can be used. This boundary comprises a number of restrictions such as size, location and operational controls. The restrictions will be those necessary to enable a consistent set of rules to reduce the risk to an acceptable level. The rules would be the same for each operator carrying out that particular activity, irrespective of location. Rules and risk assessments are published in advance so that operators and the public know precisely what controls we will apply to a proposed activity.

In developing the risk boundary for each set of standard rules, we have to protect the environmental quality of some specific sensitive receptors. For example, standard rules sets may contain a rule which requires that the activity must not be carried out within a certain distance of specified types of nature conservation sites, such as European sites[[1]](#footnote-2) or a rule that prohibits activities taking place within an Air Quality Management Area (AQMA).

The rules for some operations will not permit activities to be carried out within a specified distance of a watercourse or groundwater source protection zone. Operators will need to check that their operation fits within the rules before making an application. If there is a change in the local circumstances after the permit has been issued such that the operation no longer fits within the standard rules (for example a conservation site is designated within the prescribed screening distance), an operator may be required to upgrade the operation to maintain levels of protection or apply to change to a bespoke permit.

The rules include the Emission Limit Values and monitoring requirements set in the Regulations together with some additional rules on the objectives that need to be achieved such as management of the MCP or generator. They specify what we want operators to achieve, but do not tell them how to achieve it. That is their responsibility. This approach is not new and was used in previous regimes such as water quality discharge consents, waste management licensing, pollution prevention and control and radioactive substances regulation. Guidance on how to comply with the rules we have already published is provided in ‘How to comply with your environmental permit’, which is available on our website.

2.3 The generic risk assessment

We have prepared a generic risk assessment for each rule set. The assessment defines the risk boundary that can be regulated through common controls and how to properly manage the risks. The risk assessment has been carried out using the “source – pathway – receptor” approach. The risk assessment is split into three broad sections:

Data and information – this section comprises receptor, source, harm and pathway information that is relevant to the activity under consideration.

Judgement – we have carried out the risk assessment to determine the likelihood of the receptors being exposed to the hazard, the consequences of the hazard being realised and the overall magnitude of the risk.

Action – risks will be controlled by setting standard rules. In the case of the management of noise and vibration this will include compliance with the relevant noise and vibration management plan where necessary. We will control residual risks by carrying out compliance assessment, such as site inspections, to ensure that operators comply with the rules.

As previously mentioned, a set of standard rules may contain a rule which requires that activities must not be carried out within a certain distance of specified nature conservation sites. The broad sensitivity of habitats and species groups to the potential hazards from facilities regulated by us through the EP Regulations is well understood. Harm can occur through hazards such as toxic contamination, nutrient enrichment, habitat loss, siltation, smothering, disturbance and predation.

These distance rules allow us to filter out activities which could not have an effect on the interest features of these sites and species. This is part of the overall risk boundary for each activity and is necessary because we will not be consulting the nature conservation bodies on individual applications for standard permits, in accordance with our public participation statement.

# 3 Proposed set of rules and risk assessment

3.1 Revisions to standard rules sets SR2018 No.1 to 6 and SR2018 No.8

We have amended the standard rules to accommodate specified generators that may include medium combustion plant that are new plant as defined in Schedules 25A and 25B of The Environmental Permitting (England and Wales) (Amendment) Regulations 2018 [SI 110 2018].

<http://www.legislation.gov.uk/ukdsi/2018/9780111163023/pdfs/ukdsi_9780111163023_en.pdf>

There are no changes to the conclusions of the risk assessment and therefore in places the Emission Limit Values (ELVs) that would apply to specified generators that include new MCP are tighter than specified in the Medium Combustion Plant Directive. Emission monitoring requirements for any combustion plant forming a specified generator that is classed as new MCP has different monitoring obligations.

Where Emission Limit Values (ELVs) apply to SGs that are new MCPs, Operators will be required to meet the stricter of the relevant limits.

The specific amendments to the SR2018 No. 1 to 6 and SR2018 No. 8 are the:

Introduction on a specified activity for a new MCP (Table 2.1).

Addition of Rule 3.2.2.

Clarification of timescales for undertaking and submitting monitoring results in Rules 3.1.2 and 4.2.2

Consistent application of Rule 4.3.3 requiring notification of requested monitoring times

Addition of Rule 4.3.5 to require notification of change to new medium combustion plant covered by the Standard Rules

Addition of ELVs and monitoring requirements for any part of a specified generator that is a new MCP (Table 3.2) (except SR2018 No. 8).

We have also taken the opportunity to amend SR2018 No. 1 and SR 2018 No. 6 to include conditions relating to abatement. This applies to operators that need secondary abatement to achieve compliance with ELVs (amendment to Table 2.3 and addition of Rule 3.2.5).

The proposed changes are intended to make the standard rules sets more accessible to operators where their specified generator includes plant with a rated thermal input equal to or greater than 1MWth, that was brought into operation on or after 20/12/18.

3.2 Revisions to standard rule set SR2018 No7

These rules allow the operator to operate one or more new medium combustion plant (MCP) between 1 and less than 20MWth which were put in operation on or after 20 December 2018 at a specified location. We propose to expand the number of scenarios incorporated within the rules set to reach a wider customer audience whilst maintaining the same level of environmental protection.

We have:

* expanded the acceptable fuel types
* set an associated screening distance to the ecological receptors
* allowed the limited use of back up fuel for gas fired boilers

However, we will consider other options and we welcome responses from practitioners in the combustion field.

We have clarified when information relating to emissions monitoring is expected to be submitted - Rule 4.2.2

# 4 Consultation questions

This consultation is your opportunity to comment on our proposed amendment to the rules.

We would particularly welcome your feedback on the questions below:

**Question 1**: Do you agree with the proposals to revise the standard rules sets?

**Question 2**: Are there any barriers to using these rules?

**Question 3:** Please tell us about any financial impact on your business of making this proposed change.

**Question 4**: Please tell us if you have any further comments that have not been covered by the previous questions and provide as much information as possible to support your comments.

# 5 Responding to this consultation

5.1 Important dates

This consultation opens on 4th November 2019 and runs until 31st January 2020.

5.2 How to respond

You can view the consultation documents and questions online at <http://naturalresources.wales/?lang=en>

If you would like to ask for a printed version of the document to be posted to you, please contact our Customer Contact centre via email, telephone or post:

Email permittingconsultations@naturalresourceswales.gov.uk

Phone 0300 065 3000

Mail Natural Resources Wales, Ty Cambria, Newport Road, Cardiff, CF24 0TP

You can submit your response by email or letter. Please send your completed response form by 31st January 2020 to the address above.

5.3 What will the responses be used for?

We will use the responses from this consultation to shape these standard rules. Natural Resources Wales staff dealing with this consultation will see all responses in full.

5.4 How we will use your information

Throughout the consultation we will make all comments (apart from personal information) publicly available on our website in line with the General Data Protection Regulations (GDPR) 2018. This includes comments received online, by email and post, unless you have specifically requested that your response be kept confidential. Only names of organisations that respond and not individuals will be published.

If you respond online or provide an email address, you will receive an acknowledgement of your response. After the consultation has closed a summary of the responses will be published on our website in March 2020. You will be contacted to let you know when this is available.

In accordance with the Freedom of Information Act 2000, we may be required to publish your response to this consultation but will not include any personal information. If you have requested your response to be kept confidential, we may still be required to provide a summary of it.

We would also like to contact you about other consultations

If you consent to receiving further information in relation to consultations from us please tick the box to confirm

 If you have any further queries or concerns, please contact dataprotection@naturalresourceswales.gov.uk.  For further information on the processing of your personal details please see our Privacy Notice page on the website.

1. Candidate or Special Area of Conservation (cSAC or SAC) and proposed or Special Protection Area (pSPA or SPA) in England and Wales). For the purposes of standard rules, a Ramsar site is considered as a European site. [↑](#footnote-ref-2)