

Department for Environment, Food and Rural Affairs

Consultation on the Large Combustion Plants (Transitional National Plan) Regulations 2015

Summary of responses and government response

November 2015

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1. Introduction

2. In September 2015, the government published a consultation <https://consult.defra.gov.uk/industrial-pollution-control/transitional-national-plan-consultation> which invited views on the Large Combustion Plants (Transitional National Plan) Regulations 2015, which will provide the legal basis for the implementation of the UK Transitional National Plan (TNP) from 1 January 2016 to 30 June 2020.
3. The Industrial Emissions Directive (IED) allows certain large combustion plants (LCPs) an additional four and a half years in which to make the necessary investment in emissions abatement technology to achieve compliance with stringent IED emission limits for three key pollutants (nitrogen dioxides, sulphur dioxide and dust) through the operation of a TNP.
4. Implementing the TNP means the UK will achieve a reduction in emissions of air pollutants and the associated environmental and human health benefits in a cost-beneficial manner without imposing an unreasonable burden on industry.
5. The plants included in the plan are important to the UK in terms of both economic productivity and energy security. They include LCPs which power major industrial sites.

2. Background

6. The regulations establish the duties and powers of the Secretary of State, the Environment Agency, the other relevant UK regulatory agencies (the Scottish Environment Protection Agency), Natural Resources Wales, and the Department of the Environment Northern Ireland), and the operators of plants participating in the TNP. The regulations also establish an emissions trading system, which will allow participants to trade any unused 'emissions allowances' with other plants in order to reduce total costs of implementation while delivering the same level of overall environmental benefits. Existing environmental permitting legislation provides the necessary framework for ensuring compliance with the conditions of the TNP.
7. The consultation invited views on the draft regulations and accompanying impact assessment.

3. About this document

8. This document provides a summary of the responses received and the government response. This document does not attempt to repeat the background information given in the consultation paper and only provides a limited amount of context for the options and related questions. Please refer to the consultation document which is

available at <https://consult.defra.gov.uk/industrial-pollution-control/transitional-national-plan-consultation> for detailed information.

9. This document lists all of the questions asked in the consultation and summarises the responses received.

4. Consultation questions

Question 1: Overall do you agree that the approach taken in the regulations is workable?

Question 2: Do you agree that the regulations should include provisions for the establishment of an emissions trading system?

Question 3: Do you agree that the approach taken on the annual emissions ceiling for participating plants in the event of part-closure is the correct approach?

Question 4: Do you have any other comments regarding the approach taken in the proposed regulations?

Question 5: Do you agree with the general approach taken in the impact assessment?

Question 6: Do you have any additional or different data sources from those used in the impact assessment that you can share?

Question 7: Do you have any other comments on the impact assessment?

5. Summary of responses: group breakdown

10. A total of 18 consultation responses were received. These are split across stakeholder groups as indicated in table 1, which shows the number of responses by the broad category of the respondent.

Table 1 – Type of organisation	Number of responses
Trade Associations	1
Energy providers	9
NGOs	4
Manufacturers	4

6. Responses to consultation questions and government response

Question 1: Overall do you agree that the approach taken in the regulations is workable?

11. Of the 18 respondents 13 (72%) agreed with the approach taken in the regulations. They considered it similar to the system which operated under the National Emissions Reduction Plan (NERP). They noted that past experience indicates that the NERP was effective has worked well and thereby provides a sound precedent for the approach proposed in the regulations.
12. 5 respondents (28%) disagreed with the proposed approach. Two were concerned that the TNP lacked ambition and should go further to drive a transition in emissions performance from current levels. One respondent asked for government to take additional measures to limit the negative impacts from coal-fired power plants.

Government response

13. The TNP is of vital importance to both the UK economy and environment. The benefits to the UK of implementing the TNP, net of costs including all air emission costs, are estimated at £5.8billion.
14. The European Commission has begun infraction proceedings against the UK for exceedances of EU limit values for concentration of nitrogen dioxide (NO₂) in certain areas. However, it is important to note that the primary cause of these exceedances is the level of emissions from transport (cars, heavy goods vehicles, etc.) as opposed to industrial emissions.
15. The government has reviewed the responses to the consultation and considers the approach taken in the regulations to be workable. The regulations will be laid subject to minor amendments and where necessary clarification will be provided in the accompanying guidance.

Question 2: Do you agree that the regulations should include provisions for the establishment of an emissions trading system?

16. There were 16 substantial responses to this question. 13 (81%) agreed that the regulations should include provision for an emissions trading system. They viewed such a system as being the most effective way to achieve a reduction in emissions in a cost effective manner. They pointed out that the NERP system on which the TNP emissions trading system is based has proved successful during the period in which it has been operational. This group considered the proposed TNP system would enable operators to collectively find the most cost-effective pathway towards achieving the necessary reduction in emissions.

17. For the system to work effectively it was suggested that emissions data taken from continuous emissions monitoring should be adjusted to match the results of annual extractive emissions tests. Transparency was also requested on how Quality Assurance Level 2 (QAL2) calibration factors would be used to calculate mass emissions.
18. 3 respondents (19%) did not support the establishment of the emissions trading system. 2 respondents viewed such a system as unnecessarily complex compared to the potential benefits and suggested that operators are not often willing to trade allowances with competing plants. Another was not convinced that its introduction was merited, particularly in respect to the impact on coal plant investment decisions and the risk that it might facilitate additional gaming between plant operators.

Government response

19. There is strong support for establishing an emission trading system under the TNP and this will be brought into force by the regulations. The proposed approach in the regulations mirrors the approach used under the National Emissions Reduction Plan, which has proved successful.
20. Government will be working with regulators to ensure the system is transparent and also to address the concerns raised regarding regulators' approach towards Quality Assurance Level 2 (QAL2) calibration factors and continuous emissions monitoring.

Question 3: Do you agree that the approach taken on the annual emissions ceiling for participating plants in the event of part-closure is the correct approach?

21. There were 18 responses to this question. 11 respondents (61%) agreed with the proposed approach not to reduce annual emissions ceiling for plants in the event of part-closure. They pointed out that the approach was consistent with the Commission implementing decision and the Industrial Emissions Directive. This group considered a provision to reduce the ceiling in such circumstances would constitute gold-plating since it would be going beyond Directive requirements. There was also concern that UK sites could be at a significant disadvantage to other European sites should a provision to reduce the ceiling be introduced into the implementing regulations.
22. 7 respondents (38%) supported a reduction of the ceiling in the event of part-closure. This group viewed such a measure necessary to drive improvements in environmental performance and incentivise plants to invest earlier in the necessary abatement technology.

23. 1 respondent said that whilst the ceiling could be reduced it would be inappropriate to do so if there were no mechanism to increase allowances for subsequent reopening of plants.

Government response

24. On the basis of the mixed consultation responses, government will not be including provision in the regulations to reduce the annual emissions ceilings for participating plants in the event of part-closure. Government will monitor this and revisit the issue in future, if needed, in light of practical experience.

Question 4: Do you have any other comments regarding the approach taken in the proposed regulations?

25. Some specific issues were raised on the draft regulations.

26. Further clarification was requested on how the reduction of allowances will be calculated when a plant closes part way through a year.

27. One respondent requested that it should be made clearer that transfers of emission allowances, which are allowed to be processed for 3 months of the following year, cannot be used by operators to transfer emission allowances for their own plants from one year to the next.

28. Another respondent requested the inclusion of a specific clause to set out the regulatory route for operators to exit the Transitional National Plan before the end of the Plan period in mid-2020.

29. Clarification was sought by a few respondents on when a transfer would be voided by the Environment Agency.

30. Concerns were raised that the deadline of 31 January for regulators to submit annual reports to the EA would potentially compress the reporting window at the end of the calendar year for operators regulated by bodies other than the EA.

Government response

31. The government has assessed these and other requests for clarification and will be clarifying the position on them in the guidance issued to accompany the regulations.

32. We have also amended the regulations to require regulators in Scotland, Wales and Northern Ireland to submit their annual emission reports to the EA by 28 February instead of 31 January. This is intended to address concerns raised about the compressed timetable unfairly disadvantaging operators in those countries.

Question 5: Do you agree with the general approach taken in the impact assessment?

33. There were 14 responses to this question. 9 respondents (65%) agreed with the general approach taken in the impact assessment (IA). This group considered the IA fit-for-purpose and providing a suitable mechanism for quantifying the impacts of the TNP. This group noted that the societal benefit of energy security and resilience had not been monetised. They argued that this is a significant benefit both during the TNP period and beyond into the 2020s. On this basis they also agreed with the IA's conclusion that the estimated benefit is likely to be conservatively low.
34. 5 respondents (35%) disagreed with the approach taken in the IA disagreeing with some of its baseline assumptions. Two respondents would have preferred a fuller assessment of the Limited Life and Limited Hours derogations as alternative options. One respondent suggested that the cost benefit analysis omitted consideration that unabated plants have the benefit of lower costs and replace abated plants in the commercial market. A respondent stated that to be coherent with broader UK objectives, the IA should also consider implications of alternative generation options in the context of reduced operation of ageing coal power plants.

Government response

35. The government has considered these responses, and has updated the number of plant considered in the IA. Additional information including a qualitative assessment of the Limited Hours Derogation and an updated sensitivity analysis of the Limited Life Derogation has been added to the IA.
36. The responses regarding the baseline and the potential alternative reactions that would occur instead of full closure of LCPs in violation of the IED have also been noted. However the IA has not been amended to reflect those comments due to the uncertainties around whether any additional reactions would fully cover the energy supply gap. Further modelling of the Limited Hours Derogation has also been ruled out as it is not a clear option for the majority of LCPs.

Question 6: Do you have any additional or different data sources from those used in the impact assessment that you can share?

37. No additional data sources were provided by respondents.

Question 7: Do you have any other comments on the impact assessment?

38. There were no further substantive comments on the impact assessment.

7. Next steps

39. The regulations which will facilitate the TNP coming into force on 1 January 2016 have been laid before Parliament. We shall also publish guidance on the emissions trading scheme on GOV.UK

Annex 1: list of respondents

AES

Client Earth

Doosan babcock

Drax Power

E3G

EDF Energy

Energy UK

Engie

EON

Friends of the Earth

Fuel cells

Ineos

RWE Generation UK

Sandbag

Scottish Power

Sellafield

SSE

Tata Steel



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