

A Consultation on Changes to the Certification and Testing of Petrol Vapour Recovery Equipment

**(Transposition of Directive 2014/99/EU on Stage II Petrol
Vapour Recovery during Refuelling of Motor Vehicles at
Service Stations)**



January 2016

Alternative formats available on request

1. INTRODUCTION.....	3
1.1 <i>Transposition of Directive 2014/99/EU</i>	3
1.2 <i>Approach to Transposition</i>	3
1.3 <i>Impact</i>	4
2 PURPOSE OF THE CONSULTATION.....	4
3 CONSULTATION QUESTIONS.....	4
4 TELL US WHAT YOU THINK.....	5
4.1 <i>Who will be interested in responding?</i>	5
4.2 <i>Having Your Say</i>	5
5 NEXT STEPS.....	5
6. EQUALITY/HUMAN RIGHTS/RURAL PROOFING ISSUES.....	6
6.1 <i>Equality Impact Assessment</i>	6
6.2 <i>Human Rights Issues</i>	7
6.3 <i>Rural Proofing</i>	7
7. PARTIAL REGULATORY IMPACT ASSESSMENT.....	8
7.1 <i>Policy Issue and Rationale for Government Intervention</i>	8
7.2 <i>Policy Objectives and Intended Effects</i>	8
7.3 <i>Policy Options Considered, Including Alternatives to Regulation</i>	8
7.4 <i>Expected Level of Business Impact</i>	9
8. FREEDOM OF INFORMATION AND CONFIDENTIALITY OF CONSULTATION RESPONSES.....	11
ANNEX:.....	12
<i>The draft Pollution Prevention and Control (Industrial Emissions) (Amendment) Regulations</i> <i>(Northern Ireland) 2016</i>	12

1. Introduction

1.1 Transposition of Directive 2014/99/EU

Petrol and diesel contain volatile organic compounds (VOCs), which contribute to the formation of ozone, a major air pollutant. VOCs evaporate inside the fuel tank of a vehicle and fill the air space above the liquid fuel. When a vehicle is refuelled, these vapours are forced out from the fuel tank by the incoming fuel and, unless controlled, escape into the atmosphere through the filler neck of the fuel tank.

The Department has already implemented legislation (The Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 which requires VOCs to be controlled at petrol stations by the installation of Stage II Petrol Vapour Recovery (PVR) equipment.

A new Directive 2014/99/EU (“the 2014 Directive”) has been introduced which requires compliance with recently introduced European Committee for Standardisation standards (CEN standards) on the certification and in-service efficiency testing of Stage II PVR equipment. Member States must transpose the 2014 Directive by 12 May 2016 and must apply its provisions from 13 May 2016.

1.2 Approach to Transposition

In order to transpose 2014 Directive, the Department is proposing to introduce an amendment to the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 which are already implementing the current Directive on Petrol Vapour Recovery (Directive 2009/126EC).

The amending Regulations will mainly update the definition of ‘PVRII’ in paragraph 2 of Part 2 of Schedule 12 of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 so that it reflects the amendments introduced through the 2014 Directive.

The amending Regulations are deemed to be the most appropriate method for transposing the 2014 Directive because they permit us to introduce the necessary technical changes whilst maintaining the existing legislative framework for PVR. This would maintain the current regulatory arrangements with which businesses are familiar.

The amending Regulations will have the effect of ensuring that Northern Ireland is compliant with the 2014 Directive. Scotland, England and Wales will be transposing separately.

1.3 Impact

Manufacturers of Stage II PVR equipment asked for the establishment of CEN Standards on certification and testing as it was deemed to be less burdensome, both technically and financially, to introduce pan-European standards rather than to have multiple different, national sets of technical guidelines.

The CEN standards are largely based upon an existing set of technical guidelines (VDI2405), which are used to regulate Stage II PVR in the UK. Hence, petrol retailers in the UK will not incur additional costs as a consequence of the adoption of these standards. There will be some re-certification costs for manufacturers of PVR equipment.

Through DEFRA's discussions with industry, we understand that these costs are likely to be £10,500 - £36,000 per manufacturer, depending on the scale of their operations. Discussions with industry suggest that there is only one site in the UK manufacturing PVR equipment which will directly bear the costs of re-certification.

2 Purpose of the Consultation

This consultation is focused on the proposed amendments to the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 which will transpose the 2014 Directive into NI law and enforce compliance with the CEN Standards.

We are seeking views on the approach we have taken to transposition, in particular on the workability and appropriateness of the amending Regulations. We are also interested in views on the accuracy and validity of our assessment of the impact of transposition.

3 Consultation Questions

We would specifically welcome responses related to the following questions:

1. Do you agree that the amending Regulations represent a practical and appropriate transposition of the 2014 Directive?
2. Do you agree that the Defra assessment of the impact of transposing the 2014 Directive is a fair reflection of its impact on UK industry?
3. Do you have any other, general comments on the approach the Department is taking to transposing this Directive?

4 Tell Us What You Think

4.1 Who will be interested in responding?

This is a public consultation and it is open to anyone with an interest in providing comments. We expect that it will be of particular interest to operators and regulators of service stations. The proposed Regulations will apply to Northern Ireland.

4.2 Having Your Say

If you wish to respond, please submit your comments by **28th March 2016**

You can respond by Email, by sending comments to:
aeqteam@doeni.gov.uk

or by post, by sending comments to:

Air & Environmental Quality Unit
DoE Regulatory and Natural Resources Policy Division
Department of the Environment Northern Ireland
6th Floor Goodwood House
44-58 May Street
Town Parks
Belfast
BT1 4NN

Please note that, unless you specifically request your response to be treated confidentially, your response may be made publically available.

5 Next Steps

The Department plans to make the amending Regulations in April in order that the regulations can come into force by 13th May 2016. We welcome your views and comments, particularly in response to the questions set out in the Consultation Document. If you wish to obtain a paper copy of the consultation, please contact:

Email: aeqteam@doeni.gov.uk

Direct Dial: 028 9025 4876

6. Equality/Human Rights/Rural Proofing Issues

6.1 Equality Impact Assessment

Under Section 75 of the *Northern Ireland Act 1998*, public authorities have a statutory duty to promote equality of opportunity. This legislation can be found at:

<http://www.legislation.gov.uk/ukpga/1998/47/section/75>

Preliminary screening exercises have been undertaken on the draft Regulations and there is no evidence that the proposed measures will have any impact on any of the groups specified in Section 75. Therefore, the Department does not consider a full Equality Impact Assessment to be necessary.

However, any differing views that any stakeholders may have on equality-related aspects of the draft NI F-gas Regulations will be taken into account by the Department.

The groups specified in section 75 are:

(a) persons of different:

- (i) religious belief,
- (ii) political opinion,
- (iii) racial group,
- (iv) age,
- (v) marital status or
- (vi) sexual orientation,

(b) between men and women generally,

(c) between persons with a disability and persons without, and

(d) between persons with dependants and persons without.

Copies of all screened policies are available from the Department's website at:

<https://www.doeni.gov.uk/equality-doe>

The Equality Commission will receive copies of this consultation document as part of the consultation exercise. Any comments that the Equality Commission might have will be taken into account.

6.2 Human Rights Issues

The *Human Rights Act 1998* (“HRA”) implements the European Convention on Human Rights (“ECHR”), which makes it unlawful for any public authority to act in a way that is incompatible with these rights.

Since the implementation of the HRA, all legislation must be checked to ensure compliance with the rights set out in the ECHR.

Screening exercises have been completed which concluded that the draft F-gas Regulations are compatible with the HRA. However, the Department welcomes any alternative views that stakeholders may have on human rights issues in the draft NI F-gas Regulations, which you are welcome to express as part of this consultation.

The HRA can be found on the following web-page:

<http://www.legislation.gov.uk/ukpga/1998/42/contents>

The text of the ECHR can be found on the following web-page:

<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

6.3 Rural Proofing

Rural proofing is a process to ensure that all relevant Government policies are examined carefully and objectively to determine whether they have a different impact in rural areas from that elsewhere.

The Department has not carried out an assessment on rural proofing as it considers that the measures contained within the draft Regulations are unlikely to have any impact in rural areas.

However, the Department is willing to consider any alternative views that any stakeholders may wish to offer on any potential effects of the draft amending Regulations that may differ between rural areas and any other sector of the community.

7. Partial Regulatory Impact Assessment

7.1 Policy Issue and Rationale for Government Intervention

The Stage II Petrol Vapour Recovery (PVR) Directive (2009/126/EC) aims to reduce the emissions of petrol vapour during the refuelling of motor vehicles at service stations by setting requirements for the certification and testing of vapour recovery equipment. The Directive contains a provision for adaptation to technical progress, specifically in the event that European Committee for Standardisation (CEN) standards on stage II PVR are developed.

CEN standards on the certification and testing of stage II PVR equipment were introduced in 2013 (standard EN16321-1:2013 concerns certification and standard EN16321-2:2013 concerns in-service efficiency testing). Hence, Directive 2014/99/EU was introduced in order to amend the 2009 Directive as a result of technical progress by making the use of the new CEN standards mandatory across the EU.

Member States must transpose the 2014 Directive prior to its entry into force on 13 May 2016. As Stage II PVR has previously been regulated in Northern Ireland through the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013, the Department is proposing to transpose the 2014 Directive by amending the relevant section of this legislation such that it reflects the new requirement to comply with the CEN standards.

7.2 Policy Objectives and Intended Effects

The aim of making this amendment to the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 is to ensure that the 2014 Directive is transposed ahead of its entry into operation.

The intended effect of the Regulations is that compliance with the new CEN standards on Stage II PVR will now be mandatory for UK manufacturers of stage II PVR equipment and service stations.

7.3 Policy Options Considered, Including Alternatives to Regulation

Introducing an amendment to the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 is deemed to be the most appropriate method for transposing the 2014 Directive. This is because industry welcomes the certainty and clarity of a single regulatory approach across Europe as this will lead to a reduction of the regulatory burden on industry as manufacturers of PVR equipment will only need to certify their products in

accordance with one set of technical standards rather than a separate set of standards for each Member State. Also, the regulations will allow for the introduction of the necessary technical changes whilst maintaining the rest of the existing legislative framework for PVR, such as the current system of fines and penalties for non-compliance.

The possibility of introducing non-statutory guidance on stage II PVR has also been considered. It has been found to be less effective for two key reasons.

Firstly, as opposed to Regulations, non-statutory guidance would not provide regulators with the power to impose fines and penalties on non-compliant manufacturers and service stations.

Secondly, we would also likely face a challenge from the Commission for non-transposition because non-statutory guidance would be deemed to have insufficient legal standing to constitute full transposition of the 2014 Directive.

7.4 Expected Level of Business Impact

Service Stations

There are approximately 30 service stations which currently have Stage II Petrol Vapour Recovery systems in operation in Northern Ireland. Conversely, there are approximately 210 service stations which do not currently use Stage II Petrol Vapour Recovery systems in NI. These businesses will all be required to comply with the amendments to the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 we propose to introduce. (for example, if they upgrade to Stage II PVR during a major refurbishment)

DEFRA have consulted informally with the Petrol Retailers' Association and have concluded that the impact on UK service stations (including independent, oil company, and supermarket service stations) will be extremely low. The reason for this is twofold.

Firstly, the new CEN standards are largely based upon an existing set of German technical guidelines (VDI2405) which have historically been used to regulate stage II PVR equipment in the UK. Hence, service stations will not be required to invest in new PVR equipment and there will be no significant monetisable costs arising from transposition.

The second reason we consider that transposing the 2014 Directive will have a limited impact is that the Directive makes no changes to the existing regulatory regime for PVR. It maintains the current system of the inspection and testing of stage II PVR equipment in service stations. Therefore, there will be no increase in the regulatory burden on business arising from transposition.

Stage II PVR Equipment Manufacturers

Defra have also informally consulted with Gilbarco Veeder-Root, a major manufacturer of PVR equipment with regards to the cost to manufacturers of re-certifying their products in accordance with the new standards. Their rough estimate of the cost of re-certification is approximately €15-50k per manufacturer, depending on the size of their operations.

We understand that there is one site in the UK (in England) involved in the manufacture of stage II PVR equipment which will directly bear this cost. Hence, the monetisable impact on the UK manufacturing sector will be limited and there will be none for Northern Ireland.

Furthermore, it was European manufacturers of Stage II PVR equipment who pushed for the development of EU-wide CEN standards. The rationale for this was that it was deemed to be preferable, both in terms of economic benefit and regulatory burden, to introduce mandatory compliance with pan-EU standards than for manufacturers to certify their equipment in accordance with a variety of national technical guidelines.

So, whilst there may be some costs involved in re-certifying equipment in accordance with the CEN standards, this will be less financially burdensome than having to certify the same products to show their compliance with many sets of technical standards. The UK was involved in the development of the CEN standards.

Impact on Small Businesses

As outlined above, independent service stations will not be required to invest in new PVR equipment once compliance with the CEN standards becomes mandatory as their existing technology will already meet their requirements.

They will also not experience an increase in regulatory burden as frequency of testing and inspection will remain unchanged.

The PVR equipment manufacturer mentioned in the *Stage II PVR Equipment Manufacturers* section is run by a large company and hence the limited cost of product re-certification will not be borne by small business at all.

The 2014 Directive aims to reduce the emissions of volatile organic compounds (VOCs) from the refuelling of vehicles at service stations. VOCs are a precursor to ozone. The reduction of their emissions across Europe arising from the implementation of an EU-wide regulatory regime for Stage II PVR will help to reduce the transboundary effects of pollution and lead to associated social and economic benefits.

8. Freedom of Information and Confidentiality of Consultation Responses

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request.

The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations as they will give you guidance on the legal position about any information given by you in response to this consultation.

The *Freedom of Information Act 2000* (“FOIA”) gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation.

The FOIA can be found at:

<http://www.legislation.gov.uk/ukpga/2000/36/contents>

The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor’s Code of Practice on the FOIA provides that:-

- the Department should only accept information from third parties in confidence if it is necessary to obtain information in connection with the exercise of any of the Department’s functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties “in confidence” which is not confidential in nature; and
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified by the Information Commissioner.

For further information about confidentiality of responses, please contact the Information Commissioner’s Office, or see the web-site at: <http://ico.org.uk/>

For further information about this particular consultation please contact aeqteam@doeni.gov.uk

Annex:

The draft Pollution Prevention and Control (Industrial Emissions) (Amendment) Regulations (Northern Ireland) 2016

[D R A F T] S T A T U T O R Y R U L E S O F N O R T H E R N
I R E L A N D

2016 No. 000

ENVIRONMENTAL PROTECTION

The Pollution Prevention and Control (Industrial Emissions) (Amendment) Regulations (Northern Ireland) 2016

Made - - - - - ***

Coming into operation - 13th May 2016

The Department of the Environment, in exercise of the powers conferred by Article 4(1) of, and Schedule 1 to, the Environment (Northern Ireland) Order 2002(1), makes the following Regulations.

In accordance with Article 4(4) of that Order, the Department of the Environment has consulted district councils and such bodies or persons appearing to it to be representative of the interests of district councils as it considers appropriate, such bodies or persons appearing to it to be representative of the interests of industry, agriculture and business as it considers appropriate and such other bodies or persons as it considers appropriate.

Citation and commencement

1. These Regulations may be cited as the Pollution Prevention and Control (Industrial Emissions) (Amendment) Regulations (Northern Ireland) 2016 and shall come into operation on 13th May 2016.

Amendment of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013

2. The Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(2) are amended in accordance with regulations 3 and 4.

Amendment of Schedule 1 (activities, installations and mobile plant)

3. In Schedule 1—

at the end of Part C of section 1.2, in paragraph 1 (interpretation of Part C) in the definition of “new service stations” for “paragraph (c)” substitute “paragraph (d)”.

(1) S.I. 2002/3153 (N.I. 7)

(2) S.R. 2013 No. 160, as amended by S.R. 2014 No. 304

Amendment of Part 2 of Schedule 12

4. In Schedule 12, in Part 2 (PVRII) for paragraph 2(1) substitute—

“Interpretation

2.—(1) In this Part, “PVR II” means Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations as last amended by Commission Directive 2014/99/EU (3).”

Sealed with the Official Seal of the Department of the Environment on *** 2016.



Dave Foster
A senior officer of the Department of the Environment

(3) OJ No L 285, 31.10.2009, p. 36, as last amended by Commission Directive 2014/99/EU (OJ No L 304, 23.10.2014, p. 89).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 (“the principal Regulations”).

These Regulations implement Commission Directive 2014/99/EU (OJ No L 304, 23.10.2014, p. 89), which amends Directive 2009/126/EC (OJ No L 285, 31.10.2009, p. 36) as regards the test methods to certify petrol vapour recovery systems for use in service stations and the test methods to verify the operation of such systems.

Regulation 3 amends a typographical error.

Regulation 4 amends the principle Regulations to substitute the definition of “PVR II” in paragraph 2 of Part 2 of Schedule 12 so that the updated definition refers to that Directive as amended by Commission Directive 2014/99/EU.

An Impact Assessment has been prepared and copies can be obtained from the Air and Environmental Quality Unit, Department of the Environment, Goodwood House, 44-58 May Street, Town Parks, Belfast, BT1 4NN. A copy has been placed in the Assembly library.