

EXPLANATORY NOTES¹ on the Limitation of Emissions of Certain Pollutants into the Air from Medium Combustion Plants Regulations, 2018

1. Introduction and background

The Limitation of Emissions of Certain Pollutants into the air from Medium Combustion Plants Regulations, 2018 (MCP Regulations) transpose the obligations arising from Directive 2015/2193/EU on the limitations of emissions of certain pollutants into the air from medium combustion plants (MCPs). The aim of the directive, and subsequently, of the MCP Regulations, is to regulate, and ultimately reduce sulphur dioxide (SO₂), nitrogen oxides (NO_x) and dust emissions into the air from MCPs by setting emission limit values for new and existing installations. The Regulations also lay down rules to monitor emissions of carbon monoxide (CO). The designated competent authority under the said regulations is the Environment and Resources Authority (ERA).

The MCP Directive fills the regulatory gap at EU level between large combustion plants (>50MWth), covered by the Industrial Emissions Directive (transposed through S.L. 549.76 to S.L. 549. 81) and small appliances (heater and boilers under 1 MWth) covered by the Ecodesign Directive (transposed through S.L. 427.64).

2. Overview and Structure of the Instrument

The MCP Regulations fall under the Environment Protection Act (Chapter 549 of the Laws of Malta) and consist of 19 regulations, which tackle the following:

- i. scope and aim of the regulations
- ii. definitions of terms contained therein
- iii. applicability and non-applicability of the regulations
- iv. the obligation to hold a permit and its review procedure
- v. emission limit values and exemptions to such limits
- vi. the obligations of operators of MCPs
- vii. compliance and inspections
- viii. reporting
- ix. offences, penalties and fees

The regulations also include five schedules (I-V) which form a substantive part of the legislation. Schedule I lists the information to be provided by the operator to the competent authority, Schedule II outlines the emission limit values, Schedule III relates to the monitoring of emissions and assessment of compliance, Schedule IV outlines the template for an issuing of a derogation as per regulation 12(8), and Schedule V lists the schedule of fees.

¹ These explanatory Notes are in accordance with and for the purpose of article 3(2)(c) of the Small Business Act (Chapter 512 of the Laws of Malta).

3. Commentary on parts and articles

The MCP Regulations apply to any combustion plant with a rated thermal input (RTI) higher than 1 but less than 50 Megawatts (MW). Combustion plant is defined therein as any technical apparatus in which fuels are oxidised in order to use the heat thus generated. Regulation 5 then lists certain exceptions such as plants already covered by the Industrial Emissions (Large Combustion Plants) Regulations (S.L. 549.78) and the Industrial Emissions (Waste Incineration) Regulations (S.L. 549.81). In certain cases, specified in regulation 6, a combination formed by two or more new MCPs is to be considered as a single medium combustion plant.

Regulations 7 to 10 tackle the permitting requirements and procedure. Under the MCP Regulations, existing MCPs with an RTI greater than 5MW must obtain a permit by 1st January 2024 at the latest; and those with an RTI less than or equal to 5MW must obtain a permit by 1st January 2029 at the latest. An 'existing combustion plant' is defined therein as a combustion plant:

- i. put into operation before 20th December 2018; or
- ii. for which a permit is granted before 19 December 2017 pursuant to the Ambient Air Quality Regulations provided that the plant is put into operation no later than 20 December 2018.

All new MCPs must obtain a permit prior to commencing operations. Permits are to be obtained from ERA and the relevant application form may be downloaded from the authority's website.

Regulations 11 and 12 together with Schedule II establish the emission limit values (ELVs) for the production of NO_x, SO₂ and dust (Total Particulate Matter) and the obligations of the operators in this regard. These ELVs imposed vary according to whether the plant is classified as existing or new, the RTI of the plant and the type of fuel used. The ELVs must be applied from 20 December 2018 for new plants, and by 2025 or 2030 for existing plants, depending on their size. Certain exemptions to the ELVs are listed in regulation 12.

Operators of MCPs are required to monitor emissions in accordance with regulation 13 therein, including the monitoring of carbon monoxide, and to keep a record of such emissions and provide the necessary information to ERA in order to enable verification of compliance in accordance with regulation 14.

Regulations 16 to 18 contain the details relating to offences and penalties in case of offences committed against the MCP Regulations. Regulation 19 and Schedule V list the fees that are payable to the competent authority in respect of applications including for the variation, transfer, renewal, surrender or derogation thereof.

4. Concluding note

The Limitation of Emissions of Certain Pollutants into the air from Medium Combustion Plants Regulations, 2018, were published in the Government Gazette on the 3rd April 2018, and are available from the following link:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=28999&l=1>

N.B. This Explanatory Note is not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. This Note does not purport to be an authoritative ruling on the interpretation of the legislation.