



Department  
of Energy &  
Climate Change



Llywodraeth Cymru  
Welsh Government

# Implementing the Emissions Performance Standard: Further Interpretation and Monitoring and Enforcement Arrangements in England and Wales

DECC Consultation Document

14D/340 25 September 2014



The consultation can be found on DECC's website:

<https://www.gov.uk/decc>

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# Executive Summary

The purpose of this consultation is to seek views on our proposed approach to the regulations that will fully implement the Emissions Performance Standard (EPS).

The Energy Act 2013 (“the Act”) established an Emissions Performance Standard (EPS) to limit carbon dioxide emissions from new fossil fuel power stations<sup>1</sup>. The way in which the EPS applies to new fossil fuel generation plants is defined in primary legislation. However, the Act allows for limited tailoring of the arrangements in specified circumstances and for the creation of arrangements for monitoring and enforcement of the EPS. The key provisions in the Act to which the proposals and further clarifications set out in this consultation relate are:

- Section 57 of the Act. This places a limit on the amount of carbon dioxide new fossil fuel plants may emit each year and together with Schedule 4 allows for the EPS to be applied to existing coal plants that undergo life extension by way of upgrading to supercritical technology<sup>2</sup> or replacement of an existing main boiler.
- Section 58 of the Act, which provides for new fossil fuel generation plants that host carbon capture and storage (CCS) projects to be exempt from the EPS for a period of 3 years.
- Section 59 of the Act, which gives the Secretary of State power to suspend the EPS in exceptional circumstances for the purpose of ensuring security of supply and requires that a ‘Statement of Policy’ be issued in respect of any future exercise of the power.
- Section 60 of the Act, which places a duty on appropriate national authorities<sup>3</sup> to establish arrangements relating to the monitoring and enforcement of the EPS, including the appointment of an enforcing authority (i.e. Regulator).

This consultation therefore seeks views on these aspects of the EPS. Specifically it:

- Describes our proposals for monitoring compliance. The intention is for the EPS arrangements to follow closely and use the same information as those that are already in place under the EU Emissions Trading Scheme (EU ETS) and for sanctions that may be applied in the event of a breach of the EPS to be linked to the economic benefit associated with any emissions above the EPS limit.
- Clarifies the operation of the Carbon Capture and Storage (CCS) project exemption. In particular, the role of the enforcing authority in ensuring the conditions for attracting a time-limited exemption from the EPS have been met;

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<sup>1</sup> All references in this document to ‘emissions’ are to emissions of carbon dioxide only.

<sup>2</sup> Upgrading to supercritical technology would require installation/replacement of a main boiler.

<sup>3</sup> Appropriate ‘national authorities’ are the Secretary of State in England, Ministers in Scotland and Wales and the Department of the Environment in Northern Ireland.

- Provides a draft ‘Statement of Policy’ intended to guide any future exercise of the Secretary of State’s power to modify or suspend the EPS; exercisable in limited circumstances where there is an electricity shortfall or a risk of one.
- Confirms that in circumstances where an existing coal power plant upgrades to supercritical technology or replaces a main boiler or installs an additional one, the installed generation capacity served by the new boiler will become subject to the EPS.

The EPS applies throughout the UK and has been developed together with the Devolved Administrations.

The intention is for **Parts 1 and 2 of the draft Regulations** to apply throughout the UK.

**Part 3 of the draft Regulations** sets out the proposed approach for monitoring and enforcement in **England and in Wales**<sup>4</sup>. However, the **Scotland and Northern Ireland** Administrations have indicated that they expect to follow closely the approach to monitoring and enforcement set out in this document. They will be consulting on proposals for their respective jurisdictions in due course.

We are also publishing draft Regulations as part of this consultation (Annex A). **We, therefore, also welcome comments on this draft.**

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<sup>4</sup> Consultation by Welsh Ministers on the approach for monitoring and enforcement of the EPS in Wales forms part of this consultation.

# Contents

Executive Summary .....	4
Contents .....	6
1. General Information .....	8
2. Introduction .....	10
Application of the Emissions Performance Standard in the Devolved Administrations; and Further Consultation .....	10
3. General Approach .....	12
Interpretation of the Emission Limit Duty .....	12
Monitoring and Enforcement in England and Wales .....	12
Suspension or Modification of the Emissions Limit Duty .....	13
Exemption for Carbon Capture and Storage Projects .....	13
4. Further Interpretation of the Emissions Limit Duty .....	15
Accounting for Heat (Good Quality Combined Heat and Power) .....	15
Adjustment of the Emissions Limit due to Change of Circumstances During a Year .....	16
Upgrades and Extensions Bringing Existing Coal-fired Power Plant within the Emissions Performance Standard (EPS) Regime .....	16
Application of the EPS to ‘New’ Generating Capacity .....	16
Gasification Plant Supplying Fuel to a Separate Fossil Fuel Plant .....	17
5. Monitoring and Reporting .....	18
Monitoring and Reporting of Carbon Emissions .....	18
Monitoring Arrangements .....	19
Reporting Arrangements .....	20
Verification .....	20
Compliance .....	21
Fees and Charging .....	21
6. Enforcement and Appeals .....	22
Level of Financial Penalty to be Levied in Connection with Breach of the Emissions Limit Duty .....	22
Enforcement Notices .....	23
Discretion .....	24
Enforcement Action Costs .....	24
Ensuring UK-wide Consistency .....	24

Proposed EPS Appeals Body: The First-tier Tribunal.....	24
7. EPS Suspension: Statement of Policy .....	27
Statement of Policy.....	27
8. Exemption for Carbon Capture and Storage Projects .....	29
Exemption for Carbon Capture and Storage Projects .....	29
Catalogue of Consultation Questions.....	31
Annex A: EPS Draft Regulations.....	33
Annex B: EPS Suspension – Statement of Policy .....	44
Glossary and List of Abbreviations.....	47

# 1. General Information

## **Purpose of this consultation:**

The purpose of this consultation is to give stakeholders the opportunity to comment on proposals for design of the EPS regulations.

We welcome comment on the proposed approach as described in this document, as well as the draft regulations (Annex A).

**Issued: 25 September 2014**

**Respond by: 6 November 2014**

How to Respond: Responses and enquiries can either be sent via post to the address below, or electronically to the OCCS mailbox:

Emissions Performance Standard Consultation  
Office of Carbon Capture and Storage  
Department of Energy & Climate Change,  
3 Whitehall Place,  
London, SW1A 2AW

Tel: 0300 068 6130

Email: [occs@decc.gsi.gov.uk](mailto:occs@decc.gsi.gov.uk)

Respondents in Wales are requested to copy their responses to:

Robin Wilson  
Energy Wales/ Ynni Cymru  
Welsh Government / Llywodraeth Cymru

Tel / Ffôn 02920 801398

E-mail / E-bost [robert.wilson1@wales.gsi.gov.uk](mailto:robert.wilson1@wales.gsi.gov.uk)

**Territorial Extent:** This consultation concerns proposed Emissions Performance Standard Regulations.

**Parts 1 and 2** of the regulations will extend to the United Kingdom.

**Part 3** of the regulations concerns arrangements for monitoring and enforcement of the EPS in **England and Wales<sup>5</sup> only**.

Questions 3 – 7 of this consultation document relate to Part 3 of the proposed regulations. When responding to these questions (or when commenting on Part 3<sup>6</sup> more generally) and

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<sup>5</sup> Consultation by Welsh Ministers on the approach for monitoring of compliance and enforcement of the EPS in Wales forms part of this consultation.



your remark relates to the application of the EPS in either England or Wales **only**, please state to which of England or Wales your remarks relate in your response.

If you do not tell us that your remarks concern the operation of the EPS in either England or Wales only, we will assume that they relate to the operation of the EPS in both England **and** Wales.

Scottish Ministers will be consulting separately on proposals for EPS monitoring and enforcement arrangements applying in Scotland.

The Department for the Environment in Northern Ireland will be consulting separately on proposals for EPS monitoring and enforcement arrangements applying in Northern Ireland.

### **Additional copies**

You may make copies of this document without seeking permission.

Other versions of this document in Braille, large print or audio-cassette are available on request.

### **Confidentiality and data protection**

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we received a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on our website at [www.decc.gov.uk/en/content/cms/consultations/](http://www.decc.gov.uk/en/content/cms/consultations/). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

### **Quality assurance**

This consultation is carried out in accordance with the Government's Code of Practice on consultation, which can be found here: <http://www.bis.gov.uk/files/file47158.pdf>

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator

3 Whitehall Place, London, SW1A 2AW

Email: [consultation.coordinator@decc.gsi.gov.uk](mailto:consultation.coordinator@decc.gsi.gov.uk)

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<sup>6</sup> Please note that the draft regulations at Annex A will only give effect to monitoring and enforcement arrangements in England (these are set out in Part 3 of the draft). For the avoidance of doubt, separate legislative provision will be made by the Welsh Government to give effect to the proposed arrangements in Wales.

## 2. Introduction

### This consultation seeks views on those aspects of the Emissions Performance Standard that will be set out in regulation.

The Emissions Performance Standard (EPS) became law as part of the Energy Act 2013 (“the Act”) and forms part of the suite of measures that together make up the Government’s Electricity Market Reforms (EMR). The EPS applies to all new fossil fuel electricity generation plants that are above 50MWe and receive development consent after 18 February 2014 - the date at which the EPS came into force.

The EPS has been set at a level equivalent to emissions of 450gCO<sub>2</sub>/kWh for a plant operating at baseload<sup>7</sup>. This is equivalent to around half the level of emissions of unabated coal generation and is fixed until end 2044. The EPS provides a regulatory reinforcement of the existing planning requirement that any new coal-fired power station can only be built if it is equipped with carbon capture and storage (CCS)<sup>8</sup>. The EPS also applies to new gas plant, but the Emissions Limit is not expected to impact on the operation of modern gas plant. The EPS is the first of its kind to be introduced by any country in the European Union.

Given the typical timelines for the construction of new commercial-scale fossil fuel generation plants, we expect it will be at least 4-5 years before the first plant subject to the EPS will become operational. The Government nonetheless believes it is helpful to set out its proposed approach for the detailed aspects of the EPS now in order to provide greater regulatory certainty for potential investors.

The Government had committed to review the EPS on a regular basis (once every three years, with the first review in 2015) and as part of the statutory review of EMR policies to be carried out in 2019 – as required under section 50 of the Act.

### Application of the Emissions Performance Standard in the Devolved Administrations; and Further Consultation

The Act applies the EPS throughout the United Kingdom.

**Parts 1 and 2** of the draft regulations make further provision relating to the interpretation of the Emissions Limit Duty imposed on operators of fossil fuel generation plants under the EPS. These provisions will therefore apply throughout the United Kingdom.

The Act requires that arrangements for monitoring and enforcement are put in place by way of regulation by appropriate national authorities. These national authorities are the Secretary of

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<sup>7</sup> See Glossary for an explanation of how the Emissions Limit for a fossil fuel plant is calculated.

<sup>8</sup> The National Policy Statement for Fossil-fuel Electricity Generating Infrastructure (EN-2) requires that any new coal-fired power plant demonstrate at least 300MW (net) of the proposed generating capacity as a condition of its consent.

State in England, Scottish Ministers in Scotland, Welsh Ministers in Wales and the Department of Environment in Northern Ireland. Although the Act requires national authorities to make their own arrangements for monitoring and enforcement, there is consensus that where possible, a common approach should apply throughout the United Kingdom.

The proposals contained in this document for monitoring and enforcement of the EPS relate to England and Wales<sup>9</sup> only.

Consultation questions 3-7 in this consultation document relate to monitoring and enforcement arrangements.

If, when responding to any of these questions (or to a matter relating to proposals for monitoring and enforcement more generally<sup>10</sup>) your remark is limited to the application of the regulations in either England or Wales, you should specify this in your response. If you do not, we will assume that your remark relates to both England and Wales.

The relevant national authorities in Scotland and Northern Ireland will consult on proposals for monitoring and enforcement arrangements to apply in their respective jurisdictions in due course.

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<sup>9</sup> Consultation by Welsh Ministers on the approach for monitoring of compliance and enforcement of the EPS in Wales forms part of this consultation.

<sup>10</sup> Please note that the draft regulations at Annex A will only give effect to monitoring and enforcement arrangements in England (these are set out in Part 3 of the Draft). For the avoidance of doubt, legislative provision will be made by the Welsh Government to give effect to the proposed arrangements in Wales.

## 3. General Approach

The following sections provide a general overview of the Government's proposed approach in each of the areas covered by this consultation.

These are discussed in more detail in the following chapters, which include, where appropriate, related questions for consultees. The principles underpinning much of this approach have been developed through previous consultation.

### Interpretation of the Emission Limit Duty

Chapter 4 provides further clarity on how the duty placed on operators of fossil fuel generation plants by the EPS (the "Emissions Limit Duty" in section 57 of the Act) is to be interpreted.

We have provided definitions of "operator" of fossil fuel and gasification plant and of "installed generating capacity" that make clear on whom the EPS Emissions Limit Duty rests and the approach for calculating the Emissions Limit for an individual fossil fuel plant.

We have also set out our intended approach for adjusting the Emissions Limit for a fossil fuel plant on a pro-rata basis where operation begins or ends part-way through a year, or where there is a change to a plant's installed generating capacity (for example, where generation capacity is retired) or where part of a plant's capacity is subject to a CCS exemption. We confirm the approach previously set out that a coal plant constructed before the EPS came into force will become subject to the EPS if it is upgraded to supercritical technology or an existing main boiler of the plant is replaced.

We also set out our intended approach for taking into account gasification plant (including underground coal gasification) that is 'associated' with a fossil fuel plant. This provides for circumstances where a gasification plant, whether or not it is part of a fossil fuel generation plant, supplies combustible gas subsequently used to generate electricity. The intention is that carbon emissions produced in the production of combustible gas used in a generation plant will count towards that plant's Emissions Limit under the EPS.

Further detail is also provided on how certain categories of emissions are to be treated for the purposes of the EPS; this includes, for example, discounting emissions produced by a fossil fuel plant where these are attributable to ancillary plant operated for safety purposes or in an emergency.

We also confirm our approach for calculating emissions associated with heat production from Good Quality Combined Heat and Power Plants (GQCHP); with emissions attributable to fossil fuel used to generate useful heat discounted. This is to ensure that the EPS does not act as a disincentive to the take up of Combined Heat and Power (CHP).

### Monitoring and Enforcement in England and Wales

This consultation concerns proposals for monitoring and enforcement in England and Wales only. The Government will appoint the Environment Agency as the EPS Regulator in England; in Wales, the EPS Regulator will be Natural Resources Wales.

Our proposed approach to monitoring is intended to minimise the regulatory burden of compliance by utilising the monitoring and reporting of emissions already required of operators under the EU ETS. Before commencing operation of a fossil-fuel plant (and thereafter in the event of a material change) the operator will be required to calculate and declare the plant's 'Emissions Limit' to the appropriate Regulator; the operator will then monitor carbon emissions in accordance with the Monitoring and Reporting methodology used for the EU ETS.

The Regulator will take an operator's annual verified EU ETS Return and reconcile the reported emissions figure against the notified Emissions Limit for the fossil-fuel plant. In the event that the verified annual carbon emissions reported under the EU ETS is greater than the Emissions Limit for a plant, the operator will be obliged to provide a further EPS specific return which identifies only those emissions attributable to the generation of electricity. The Regulator will then use the EPS return to carry out a further reconciliation to confirm whether a breach of the EPS has occurred. More detail on monitoring and reporting is provided at Chapter 5.

The Regulator will have available a suite of measures for ensuring compliance. This includes the ability to take enforcement action, including the imposition of financial penalties, in the event of a breach of the Emissions Limit Duty. We propose that any civil penalty imposed in the event of a breach of the Emissions Limit Duty should be sufficient to disincentivise a breach of the EPS and be proportionate. Chapter 6 provides more detail on this aspect of the EPS.

## Suspension or Modification of the Emissions Limit Duty

The EPS may be suspended by the appropriate authority<sup>11</sup> where there is a risk to security of electricity supply. In Great Britain we propose that the Secretary of State will only exercise this power if satisfied that a shortfall of electricity, or risk of a shortfall, remains after other mitigating measures have been taken. The proposed approach seeks to ensure that the EPS will not become a contributory factor in any risk to security of electricity supply.

Any decision to suspend the EPS has to take account of a published 'Statement of Policy'. This consultation includes a draft Statement of Policy which sets out in further detail the conditions that we propose should be met before any direction to suspend the EPS is made. We propose that the maximum period of any suspension of the EPS under any single direction should not exceed 90 days. Chapter 7 provides more detail on this aspect of the EPS.

## Exemption for Carbon Capture and Storage Projects

Carbon Capture and Storage projects will be exempt from the EPS for a period of three years from the point at which a complete CCS chain with which a fossil fuel generation plant is equipped is ready to use. We propose that the CCS exemption will only apply to that part of a fossil fuel generation plant equipped with the complete CCS chain.

The CCS exemption is time limited by the Act and will come to an end in 2027, consistent with an expectation that CCS will be fully commercialised by then. The Regulator will have

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<sup>11</sup> The 'appropriate Authority' is the Secretary of State in Great Britain and the Department of Enterprise, Trade and Investment in Northern Ireland.

responsibility for ensuring that an operator has met the conditions necessary for the exemption to apply. Regulators may, in the future, publish guidance to assist operators in understanding whether the conditions for attracting the CCS exemption have been met. Chapter 8 provides more detail on this aspect of the EPS.

## 4. Further Interpretation of the Emissions Limit Duty

### Summary

We are setting out our intended approach for:

- Avoiding the creation of any disincentive to investment in Combined Heat and Power by not counting the emissions associated with heat production from Good Quality Combined Heat and Power Plants (GQCHP);
- Taking into account circumstances where operation of a plant begins or ends part-way through a year, or where there is a change to a plant's installed generating capacity (for example if capacity is retired) with a plant's Emissions Limit adjusted on a pro-rata basis;
- Ensuring that in the event that an existing coal plant upgrades to supercritical technology or replaces an existing main boiler it will become subject to the EPS;
- Ensuring that where a generation plant uses combustible gas produced from fossil fuel by a gasification plant (including underground coal gasification) any carbon emissions produced in the manufacture of the gas used by the generation plant will be counted towards its EPS Emissions Limit.

### Accounting for Heat (Good Quality Combined Heat and Power)

Good Quality fossil fuel fired Combined Heat and Power (CHP) is an important technology in helping to meet our carbon budgets while the electricity generation sector decarbonises. It plays a pivotal role in providing secure and cost-effective energy supplies, particularly for industry. The Government therefore continues to support the development of Good Quality CHP in the UK. To ensure that CHP facilities are not penalised, the EPS will make allowances for the fuel used to generate useful heat when classifying attributable emissions for the purposes of the EPS.

The approach used in the draft regulations is based on a "boiler substitution" method. The emissions which would be produced by supplying the same amount of heat using a counterfactual gas boiler are subtracted from the total annual emissions of the plant to arrive at the emissions associated with the production of electricity. The formula in the regulations calculates this using the annual "Qualifying Heat Output" from a CHP plant's CHP Quality

Assurance certificate, along with an assumed counterfactual boiler efficiency of 90%<sup>12</sup> and a natural gas CO<sub>2</sub> emissions factor<sup>13</sup>.

## Adjustment of the Emissions Limit due to Change of Circumstances During a Year

The draft regulations allow for the emission limit of a plant to be adjusted in order to take into account circumstances where a fossil fuel plant comes into operation, its installed generating capacity is permanently altered, or it becomes subject to a CCS exemption, part way through a year.

The draft regulations therefore require an operator to notify the Regulator of any change or changes, together with an appropriately adjusted Emissions Limit for a plant in circumstances where:

- i. A plant commences or permanently ceases operation during a year;
- ii. The installed generating capacity of a plant is permanently increased or decreased; or
- iii. A plant's generating capacity or proportion of it is subject to a CCS exemption.

The intention is to calculate the modified annual Emissions Limit for plant based on the number of days remaining in the year from which an event occurs, as a proportion of the whole year.

Further details on the rules for calculating a plant's annual Emissions Limit in these circumstances are set out in Regulation 4.

## Upgrades and Extensions Bringing Existing Coal-fired Power Plant within the Emissions Performance Standard (EPS) Regime

As an exception to the general principle that the EPS applies to new fossil fuel generation plant (i.e. consented after 18 February 2014), the Act provides the power to make regulations to also include existing plant in circumstances where a main boiler is replaced or an additional main boiler is installed.

The Government has previously indicated an intention that existing plants which undergo significant upgrades or life extension after the EPS regime has come into force would, nevertheless, be subject to the regime and this would be achieved by applying the EPS to a coal plant if upgraded to supercritical technology<sup>14</sup> or if a main boiler is replaced.

The intention of this approach was to offer certainty to investors and operators about the circumstances in which the EPS Regulator will judge an upgrade to have taken place. Existing coal plants will be able to undertake routine maintenance, including routine replacement of equipment that constitutes part of normal plant operation, as well as any other major works necessary to meet European environmental standards or the installation of CCS without triggering application of the EPS<sup>15</sup>. The Regulations implement this.

## Application of the EPS to 'New' Generating Capacity

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<sup>12</sup> EU natural gas boiler reference efficiency (lower Calorific Value basis) from Commission Decision 2011/877/EU Annex II.

<sup>13</sup> 0.205 tonnes CO<sub>2</sub>/MWh of gas (Lower Calorific Value basis).

<sup>14</sup> Upgrade to supercritical technology would require installation/replacement of a main boiler.

<sup>15</sup> For example, equipment to reduce NO<sub>x</sub> or other emissions as required by the Industrial Emissions Directive.



Consistent with the purpose of the EPS, in circumstances where a main boiler is replaced or an additional boiler installed, the EPS will apply to only that portion of a plant's installed generating capacity that is served by the upgrade. The draft regulations impose a duty on the operator to notify the Regulator of a relevant upgrade, and notify the revised EPS Emissions Limit.

## Gasification Plant Supplying Fuel to a Separate Fossil Fuel Plant

The draft regulations make provision for circumstances where combustible gas produced from fossil fuels by a gasification plant (including underground coal gasification plant) is used for electricity generation. This could be where the gas is produced by a discrete gasification facility that does not incorporate power generation (in which case, the gasification facility supplies the gas to a generation plant); or it could be where gasification plant is integral to a power generation plant but also supplies gas to another, separate, generation plant. It is our intention that these types of arrangement should not provide a route for circumventing the limit on emissions from new fossil fuel generation plant created by the EPS.

The underpinning principle of our policy in these circumstances is for any carbon emissions produced by the gasification plant in the production of combustible gas which is subsequently used to produce electricity to be treated as 'attributable emissions' for the generating plant that uses the gas. Any emissions produced by the generation plant when using this gas for the purpose of generating electricity will also be counted towards the plant's Emissions Limit.

The intention is that the operator of a fossil fuel generation plant operating under this type of arrangement will secure emissions data from the gasification plant operator relating to the carbon dioxide emitted in the production of the combustible gas used as fuel by their fossil fuel plant. However, the regulations allow the EPS Regulator to request this information from the operator of the gasification plant if necessary.

We acknowledge that other circumstances might arise in the future that will need more specific arrangements. In the event this does prove necessary, the principle that emissions associated with the production of combustible gas from fossil fuels by gasification and used for electricity generation will continue to apply when calculating the EPS annual emissions for a fossil fuel generation plant.

### Consultation Question

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|----|--|
| 1. | Does Paragraph 1 of Schedule 4 of the Energy Act 2013 together with Part 2 of the draft Regulations provide a sufficient degree of clarity on the types of changes to an existing coal-fired power plant that will bring it within the EPS regime? |
|----|--|

### Consultation Question

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|----|---|
| 2. | Do the draft regulations provide a sufficient degree of clarity on the circumstances described above in respect of gasification plant supplying fuel to a fossil fuel plant and the EPS regime? |
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## 5. Monitoring and Reporting

### Summary

We propose that:

- Before commencing operation of a plant, (and thereafter in the event of a specified change occurring) operators of fossil fuel plant must notify the Regulator of the 'Emissions Limit' for that plant;
- Operators will be required to monitor their plant's carbon emissions in accordance with the methodology in the Monitoring and Reporting Regulation for the EU ETS;
- The Regulator will reconcile an operator's annual verified EU ETS Reports against notified Emissions Limits for their fossil-fuel plant;
- If the verified annual carbon emissions reported under the EU ETS is above the Emissions Limit for a plant, the operator must provide a further EPS specific notification, identifying emissions directly attributable to the generation of electricity;
- The Regulator will use the EPS notification (plus any further information necessary) to assess whether a breach of the EPS has occurred.

### Monitoring and Reporting of Carbon Emissions

The Act makes provision for appropriate national authorities<sup>16</sup> to establish arrangements relating to the monitoring and enforcement of the EPS, including the appointment of an Enforcing Authority (i.e. a Regulator), by way of regulations. As previously noted, this part of the consultation concerns proposals for monitoring and enforcement in England and Wales only. Scottish and Northern Irish administrations will be consulting on proposals for EPS monitoring and enforcement arrangements applying in their respective jurisdictions in due course.

In England, the EPS Regulator will be the Environment Agency. In Wales, the EPS Regulator will be Natural Resources Wales (NRW). The Environment Agency and NRW already act as competent authorities for the purposes of the EU ETS, so already undertake functions similar to those that will be required for the effective operation of the EPS.

The July 2011 Energy White Paper set out Government's intention that the regulatory arrangements supporting the EPS should keep any additional regulatory burden to a minimum, and, wherever possible, should be consistent with an environmental regulator's administration

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<sup>16</sup> Appropriate national authorities are the Secretary of State in England, Ministers in Scotland and Wales and the Department of Environment in Northern Ireland.

of other relevant mechanisms<sup>17</sup>. Consistent with this, the Government has sought to minimise regulatory burden by using the existing monitoring and reporting requirements placed on operators under the EU ETS to also ensure compliance with the EPS.

The data that power station operators are required to report under the EU ETS overlaps considerably with the data that will be required for the operation of the EPS. The approach applied currently for the monitoring and reporting of carbon emissions under the EU ETS will, so far as is practicable, therefore be followed for the EPS. This principle extends to ensuring that the EPS reporting cycle should match the EU ETS reporting cycle.

This chapter describes our proposed approach for monitoring and reporting of carbon dioxide emissions for the purpose of ensuring operators of fossil fuel plants are compliant with the EPS. It describes how compliance with the obligation placed on the operator of a fossil fuel plant under the EPS will be practically demonstrated, together with the functions to be carried out by the enforcing authority (i.e. Regulator) for the purpose of ensuring compliance. The following provides a description of the proposed approach.

## Monitoring Arrangements

The annual Emissions Limit for a fossil fuel plant under the EPS is set on the basis of a calendar year, as per the annual cycle for reporting under the EU ETS.

### Declaration of the Plant's Emissions Limit

The operator of a new fossil fuel plant will be required to notify the EPS Regulator of the Emissions Limit for their plant within 31 days of getting a required EU ETS Permit for that plant. The Emissions Limit will be calculated in accordance with the formula prescribed under section 57 of the Energy Act 2013<sup>18</sup>. This ensures that before a new fossil fuel generation plant commences operation, the Regulator who will also be the regulatory body for the EU ETS will be notified of the Emissions Limit for that plant.

### Monitoring EPS Emissions – Relationship with the EU ETS Monitoring Plan

Before commencing operation of their plant, an operator will, as part of the EU ETS Permit for the plant, submit an EU ETS Monitoring Plan to the Regulator. The operator must also notify the Regulator of any changes to the Monitoring Plan thereafter. For example, there will be a revision to the plan where there is a change to the plant's generating capacity or fuel type.

We propose that when developing the EU ETS Monitoring Plan, an operator should, if necessary, make provision to ensure that any carbon emissions from the use of fossil fuel that are 'attributable emissions' for the purposes of the EPS can be clearly identified. Doing so will ensure that the plant operator is well placed to obtain that information needed for the purposes of meeting any obligation to supply an 'EPS Annual Emissions Notification'. Further information on attributable emissions and the EPS Annual Emissions Notification is set out below.

Under the EPS, 'attributable emissions' are those emissions that will be counted towards a plant's Emissions Limit. These are emissions produced directly as a result of the use of fossil

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<sup>17</sup> 'Planning our Electric Future: A White Paper for secure, affordable, low carbon electricity'

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/48129/2176-emr-white-paper.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48129/2176-emr-white-paper.pdf)

<sup>18</sup> See Glossary to this consultation document for an explanation of the formula contained under section 57 of the Energy Act 2013.

fuel<sup>19</sup> for the production of electricity. We recognise, therefore, that when an installation is monitoring emissions for the purposes of the EU ETS, it may be required to record emissions that do not constitute 'attributable emissions' under the EPS. For example, emissions resulting from the heating of buildings or maintenance activities would be declarable under the EU ETS but would not count towards the fossil fuel plant's EPS total annual emissions, since they do not result directly from the use of fossil fuel to produce electricity.

Since it will often be the case that little or no variation to the EU ETS Monitoring Plan will be required in order for the plant operator to monitor emissions for the purposes of the EPS we consider that it would be disproportionate to create an additional requirement for a separate EPS monitoring plan. However, this does mean that plant operators will need to ensure that their EU ETS Monitoring Plan provides sufficient granularity of their emissions data to allow them to identify those emissions that are attributable emissions for the purposes of the EPS.

In practice, this means the operator will need to identify in the ETS Monitoring Plan those source streams that give rise to 'attributable emissions' for the purposes of the EPS so that, if needed, a declaration of 'EPS emissions' can subsequently be made.

We consider this approach will help to minimise regulatory burden. It also ensures that monitoring of emissions under the EPS will be consistent with the methodology defined under the EU ETS Monitoring and Reporting regulation<sup>20</sup>.

## Reporting Arrangements

Under the EU ETS, an operator of a fossil fuel plant is required to report their annual carbon emissions (EU ETS Annual Report) to the Regulator no later than 3 months after the end of the relevant reporting year. For example, emissions for 1 January to 31 December 2014 should be reported and verified by 31 March 2015.

As noted above, we recognise that emissions required to be declared for the purposes of the EU ETS may exceed those emissions considered 'attributable emissions' for the purpose of the EPS. We are not aware, however, of any circumstance where the reverse would be true. Therefore, to minimise regulatory burden, we are proposing that the operator of a plant subject to the EPS should only be required to submit a separate report identifying those emissions that are attributable for the purposes of the EPS if their plant's EU ETS Annual Report shows EU ETS emissions to be higher than the plant's declared EPS Emissions Limit.

In these circumstances, the Regulator will require further information in order to establish whether or not a breach of the EPS Emissions Limit has taken place. Where emissions reported for the EU ETS exceed the EPS Emissions Limit, the plant operator will therefore be required to submit an additional report: an 'EPS Annual Emissions Notification'. The EPS Annual Emissions Notification will identify which of those emissions reported under the EU ETS constitute attributable emissions for the purposes of the EPS. The total of attributable emissions will show whether or not a breach of the plant's Emissions Limit has occurred.

## Verification

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<sup>19</sup> Emissions produced from the use of biomass fuels are not attributable emissions under the EPS.

<sup>20</sup> Commission Regulation (EU) No 601/2012

[http://ec.europa.eu/clima/policies/ets/monitoring/documentation\\_en.htm](http://ec.europa.eu/clima/policies/ets/monitoring/documentation_en.htm)

An accredited (or certified) verifier provides an independent check of an operator's EU ETS annual emissions report which includes assessing the monitoring methods, information, data and calculations used by the operator. Since the data used for declaring EPS related emissions will have already been verified for EU ETS related purposes, introduction of additional verification requirements for the EPS is not considered necessary.

## Compliance

On receipt of an operator's EU ETS report, the Regulator will compare the reported emissions for the fossil fuel plant against the EPS Emissions Limit for the plant. As described above, in the event that a plant's annual emissions reported for the purposes of the EU ETS exceed the plant's previously notified EPS Emissions Limit, the operator will also have submitted an EPS Notification. The EPS Notification will identify those emissions which constitute 'attributable emissions' for the purposes of the EPS, i.e. those emissions that are the direct result of operations and processes carried out in the production of electricity by the fossil fuel plant.

The Regulator will then use the operator's EPS notification along with the plant's notified Emissions Limit to determine whether or not a breach of the plant's Emissions Limit has taken place.

Where any information required by the Regulator for the purposes of establishing whether or not a breach of the Emissions Limit has occurred has not been provided, the draft regulations provide the power for the Regulator to obtain this from the operator.

## Fees and Charging

Costs incurred by the Regulator in monitoring compliance with the EPS in England and Wales will be recovered from operators of fossil fuel plants subject to the EPS in their jurisdiction. Costs to the Regulator associated with any enforcement action will be met by the operator against whom the enforcement action is taken.

### Consultation Question

- |    |  |
|----|--|
| 3. | Does the proposed approach for monitoring and reporting carbon emissions for the purpose of the EPS minimise burden on operators? Are there ways in which the process could be further simplified and/or burden reduced? |
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## 6. Enforcement and Appeals

### Summary

We propose that:

- The Regulator should have access to appropriate enforcement mechanisms to ensure there is no financial incentive to breach the EPS Emissions Limit Duty;
- Regulations will confer a power on the Regulator to impose an enforcement notice and/or levy civil penalties in the event that a fossil fuel plant operator breaches the EPS Emissions Limit Duty;
- The level of any financial penalty issued in connection with a breach of the EPS Emissions Limit Duty should be sufficient to remove any benefit derived by an operator from a breach;
- Parties subject to civil penalties and/or an enforcement notice will have the ability to appeal decisions to the First-tier Tribunal.

We consider that the EPS enforcement framework should sufficiently deter an operator of a fossil fuel plant from breaching its obligation not to exceed the Emissions Limit Duty for that plant. Consistent with this principle, an operator that has breached the Emissions Limit Duty should not be left in a better position financially than an operator that has not. Whilst the enforcement framework should ensure that there is no financial incentive to breach the Emissions Limit Duty, we also consider that enforcement action should not be disproportionately punitive.

To achieve these outcomes, we propose that, where the Regulator is satisfied that an operator has breached the Emissions Limit Duty, it should have the ability to levy a financial penalty.

### Level of Financial Penalty to be Levied in Connection with Breach of the Emissions Limit Duty

Two principal approaches have been considered in connection with the level of financial penalty to be levied in the event of a breach of the Emissions Limit Duty. These are as follows:

- Specifying a fixed calculation in regulations for a financial penalty to be levied on the basis of either electricity generated (MWh) or carbon emitted ( $\text{TCO}_2$ ) after the point at which the EPS is breached multiplied by a fixed penalty value (£/MWh) or (£/T  $\text{CO}_2$ ); or
- Stating in regulations the principles the Regulator must apply when imposing a financial penalty levied in connection with a breach of the Emissions Limit Duty, with penalty

levels reflective of the financial benefit derived by an operator from the electricity generation that resulted in a breach.

### First Approach – Fixed Penalty

Under the first approach, any fixed penalty (whether imposed on a £/MWh or £/TonneCO<sub>2</sub> basis) would need to be set at a level that would result in the quantum of any financial penalty being consistent with the principle that the penalty imposed should be sufficient to remove any benefit derived from the breach but not disproportionately punitive.

However, it is difficult to set a penalty value in advance of a breach that we can be confident will result in penalty levels that are consistent with our overarching principles. This is because revenues and costs associated with the generation of electricity will be specific to the plant concerned; and, more generally, because revenues and costs associated with the generation of electricity will vary over time.

In light of the above, we have concluded that it will not be possible to settle on a fixed penalty value to be included in regulations that will, in all circumstances, be sufficient to incentivise compliance whilst not being unduly punitive.

The approach of specifying a fixed penalty value in regulations has therefore been discounted.

### Second Approach – Principles to be Applied in Setting a Penalty Level

The second approach should provide greater flexibility to ensure that the penalty imposed is sufficient to recover benefit derived by an operator from the electricity generation causing the breach. Specifying in regulation those principles that the Regulator will apply when determining the level of any penalty is considered to provide sufficient clarity on the nature of the penalty that may be imposed in the event of breach of the Emissions Limit Duty whilst also ensuring that the stated policy objectives of recovering financial benefit and not being disproportionately punitive will be achieved.

Regulation 16 of the EPS draft regulations therefore reflects the second of the approaches described above. This requires that any penalty levied by the Regulator must:

- remove the benefit derived by the operator from the breach of the Emissions Limit Duty,
- be fair, and
- be proportionate.

The draft regulations provide for the Regulator to access that information which it reasonably requires in order to determine the level of benefit an operator has derived from any breach of the Emissions Limit Duty. This power is provided at Regulation 14 ‘Information Notices’.

This model is consistent with the approach taken to the calculation of civil penalties adopted in other regulatory regimes, such as those put in place under the Regulatory Enforcement and Sanctions Act 2008.

If necessary the Secretary of State and/or Welsh Ministers and/or their respective Regulators will have the ability to build on these regulatory principles in the future by way of issuing further guidance in connection with the calculation of financial penalties.

### Enforcement Notices

Consistent with providing the Regulator with sufficient tools for ensuring compliance we consider that the Regulator should have the ability to require an operator to take such action as

may be necessary to correct a breach of the Emissions Limit, or to prevent a breach from occurring.

The draft regulations therefore provide a power for the Regulator to issue enforcement notices. It also makes prescription regarding the form of such notice, which must set out the remedial steps required to be taken as well as the time period in which actions must be completed.

## Discretion

Consistent with the EU ETS regime, we propose that the Regulator should have the ability to exercise discretion in determining whether to issue a financial penalty and when determining the level of such penalty (subject to the requirement that any financial penalty should be sufficient to recover benefit derived from the breach and be fair and proportionate).

We consider that this approach will ensure the Regulator is provided with the ability to take that action which is considered most appropriate to deal effectively with any non-compliance. This consultation seeks views on whether or not the Regulator should have the ability to exercise discretion in connection with EPS financial penalties.

## Enforcement Action Costs

As noted above, where a Regulator takes enforcement action, the cost of that action will be met by the party against whom enforcement action is being taken.

## Ensuring UK-wide Consistency

The Act requires relevant national authorities to make their own arrangements for the monitoring and enforcement regime supporting administration of the EPS. However, there is consensus that, wherever possible, a common approach to the monitoring and enforcement of the EPS will be taken. This will ensure that investors and fossil fuel plant operators will operate under a common approach, irrespective of where in the United Kingdom a plant is located.

To this end, we propose that, in connection with England, the Secretary of State should consult with the relevant national authorities in Scotland, Wales and Northern Ireland prior to issuing any guidance in connection with EPS financial penalties. In connection with Wales, Welsh Ministers will consult with the relevant national authorities prior to issuing any guidance in connection with EPS financial penalties.

## Proposed EPS Appeals Body: The First-tier Tribunal

We consider that the regulations should provide any party subject to any EPS related civil penalty or enforcement action with a means of appealing this.

We consider that the appropriate body to hear any such appeal would be the First-tier Tribunal (FtT). The FtT already hears appeals relating to enforcement action taken by the Regulator in the context of the EU ETS; and in view of the fact that the compliance with the Emissions Limit will be assessed substantively on the basis of data already produced for the purposes of the EU ETS, it would be consistent for the FtT also to hear EPS related appeals.



The FtT and the Upper Tribunal were created by the Tribunals, Courts, and Enforcement Act 2007. The First-tier Tribunal<sup>21</sup> (FtT) is part of Her Majesty's Courts Service. It has its own procedure rules and hears appeals on a wide range of matters including environmental matters.

The FtT is empowered to deal with a wide range of issues which might form the substance of appeals, and to ensure the cases are dealt with in the interests of justice and in a manner which minimises parties' costs. The composition of a Tribunal is a matter for the Senior President of Tribunals to decide and may include non-legal members with suitable expertise or experience in an appeal in addition to Tribunal judiciary.

The FtT is divided into several different chambers. The General Regulatory Chamber brings together various different jurisdictions of a regulatory nature.

If the FtT is selected as the appropriate body to hear appeals in these matters then it would operate under the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 which provide flexibility for dealing with individual cases. The General Regulatory Chamber rules can be found at: <http://www.justice.gov.uk/tribunals/rules>. Rule 2 of the General Regulatory Chamber Rules states its overriding objective as being to deal with a case fairly and justly. This includes dealing with a case in ways which are proportionate to the importance of the case, the complexity of the issues and the anticipated costs and resources of the parties. The Rules give the Tribunal judge wide case management powers in order to achieve these objectives.

The Tribunal may also hear an appeal either orally in a court room or determine the matter on the papers only. This latter written procedure is used if both parties agree that the Tribunal may determine the appeal on the papers without holding a full hearing and the Tribunal is satisfied that it can determine the issues without one. Any party to a case has a right to appeal to the Upper Tribunal on points of law arising from a decision of the First-tier Tribunal. The right may only be exercised with the permission of the First-tier Tribunal or the Upper Tribunal. Where permission is given, the further appeal would be made to the Upper Tribunal.

Under the Rules the FtT has the power to award costs against a party where it considers that a party has acted unreasonably in bringing, defending, or conducting the proceedings.

The Lord Chancellor has the capacity to charge fees for appeals to the FtT, for example an application fee. Where he is proposing to introduce fees he is required to consult the Senior President of Tribunals. Following this, any such proposal would be subject to secondary legislation that would need to be debated and agreed by both Houses of Parliament before it would take effect.

The Tribunal also has powers to prohibit the disclosure or publication of information or documents, and to give a direction prohibiting disclosure of information to a person if the disclosure were likely to cause someone serious harm and it is proportionate to give such a direction.

### Consultation Question

4	Do you agree with the principles that the Regulator must apply when determining the
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<sup>21</sup> Further details of the First Tier Tribunal procedure can be found at <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/environment/index.htm>

	level of any financial penalty (specifically, that any financial penalty must be sufficient to recover any benefit derived from the breach, and that the penalty must be fair and proportionate)?
<b>Consultation Question</b>	
5.	Do you consider that the Regulator should have discretion when determining whether or not to levy an EPS related civil penalty and/or when determining the level of any such penalty?
<b>Consultation Question</b>	
6.	Do you consider that the First-tier Tribunal is the appropriate body to hear and determine appeals relating to any civil penalty and/or enforcement action imposed by the Regulator in connection with the EPS?
<b>Consultation Question</b>	
7.	Do you consider that the General Regulatory Chamber Rules of the First-tier Tribunal will suit the handling of these appeals? The General Regulatory Chamber Rules may be found at: <a href="http://www.justice.gov.uk/tribunals/rules">http://www.justice.gov.uk/tribunals/rules</a>

## 7. EPS Suspension: Statement of Policy

### Summary

- Section 59 of the Act gives the Secretary of State power to suspend the Emissions Limit Duty in Great Britain in ‘exceptional’ circumstances where there is a risk to security of supply;
- In exercising the power to suspend the Emissions Limit Duty the Secretary of State must adhere to a published ‘Statement of Policy’.

We propose that:

- The draft Statement of Policy sets out the conditions that must be met before a direction to suspend the Emissions Limit Duty can be given, the form of notification and the information that must be included in any direction;
- The period of a suspension of the Emissions Limit Duty under any single direction shall not exceed 90 days.

Comments are invited on the Statement of Policy (copy at Annex B).

### Statement of Policy

In the future it is possible that the restriction the EPS places on the operation of fossil-fuel plant could, under certain circumstances, contribute to a shortfall in the amount of electricity that is available to meet demand.

Under such circumstances, in order to mitigate a risk to security of supply, the Secretary of State has the power to suspend or modify the Emissions Limit Duty in Great Britain. The same provision applies in respect of Northern Ireland, where the suspending authority is the Department of Enterprise, Trade and Investment (DETI).

Before exercising the power to suspend or modify the Emissions Limit Duty the Secretary of State must issue a “Statement of Policy”, to which he must have regard in any exercise of the power.

The purpose of a ‘Statement of Policy’ is to provide further clarity and transparency on the Secretary of State’s exercise of the power to suspend the Emissions Limit Duty, prior to any suspension being made.

Whilst Section 59 of the Energy Act 2013 prescribes the extent of the power to suspend the Emissions Limit Duty and the legal requirements placed on the Secretary of State, the Statement of Policy will set out the Government’s policy in respect of the following:

- Determination of ‘exceptional circumstances’ under which a direction to modify or suspend the Emissions Limit Duty may be given;
- Conditions precedent for giving a direction to modify or suspend the Emissions Limit Duty;
- Form of notification of a direction to modify or suspend the Emissions Limit Duty;
- Arrangements for giving effect to a direction;
- Review of the Statement of Policy.

The Government is consulting on the proposed content of this policy statement. Draft text is provided at Annex B.

### Consultation Question

8	Do you have any observations on the statement, taking account of its purpose?
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## 8. Exemption for Carbon Capture and Storage Projects

### Summary

- Section 58 of the Act provides that Carbon Capture and Storage projects will be exempt from the Emissions Limit Duty for a period of three years from the point their complete CCS chain becomes ready for use;
- The availability of the CCS exemption will cease as of end 2027.

We propose that:

- The exemption for complete CCS will apply to only those units of a generating station that are equipped with CCS;
- The Regulator will have responsibility for ensuring that an operator has met the conditions necessary for the exemption to apply.

### Exemption for Carbon Capture and Storage Projects

The Government wants to facilitate the development of CCS in the UK as a cost effective carbon abatement technology. To this end, the Government is making available £1 billion in capital funding with additional operational funding through the UK Electricity Market Reforms, to support the design, construction and operation of the UK's first commercial-scale CCS projects<sup>22</sup>.

Whilst the EPS provides an important backstop on the carbon emissions from any new coal-fired power station equipped with CCS, the Government was keen that it did not inadvertently create an obstacle to investment in CCS.

The Act, therefore, contains a provision to exempt that part of a newly constructed power station that is equipped with CCS from the EPS for a maximum period of 3 years from the point of commissioning. The purpose of the exemption is to assist investors in CCS projects to manage any risk that the EPS may present to a project during its commissioning phase, which is expected to be when risk is highest for early CCS projects due to the inherent uncertainties in 'first of a kind' projects. CCS investors have made it clear that some limited relief from the EPS for CCS projects during their commissioning phase would assist in helping to reduce risk and cost.

During the early stages of a project, whilst the CCS system is put to initial use and proved, the application of an exemption will ensure that the CCS testing and commissioning process can be carried out unaffected by the EPS. The exemption will apply to all CCS projects, whether

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<sup>22</sup> Further information regarding the Government's programme of activities to support deployment of CCS in the UK can be found at: <https://www.gov.uk/uk-carbon-capture-and-storage-government-funding-and-support>

supported under the Government's CCS Competition or coming forward outside of the competition, until end 2027; a period considered sufficient to assist the full commercialisation of CCS.

Given the policy rationale that underpins the CCS exemption (i.e. to assist the development of cost effective CCS technologies), our current view is that the exemption should apply only to that part of a generating station equipped with a complete CCS chain. The EPS would therefore continue to apply to any generating units that are not equipped with CCS. The installed generating capacity of the exempted generating unit(s) would then be subtracted when calculating the Emissions Limit for the fossil fuel plant.

The exemption period may only begin once a complete CCS system (capture, transport and storage) is physically in place and its commissioning begins i.e. it is ready for use (which includes testing in connection with the generation of electricity on a commercial scale). The exemption will run unbroken for a fixed period of three years with no prospect of renewal.

As the exemption period is fixed and the EPS will otherwise apply to a plant, we have not identified any obvious incentive for an operator to seek to delay the commission date and hence commencement of the exemption period. The three year exemption period will begin at the point carbon dioxide is produced on a commercial scale and enters a secure transport system. In practice it is expected that CCS projects will reach this stage once the power plant has been fully commissioned, preliminary testing of the CCS chain has been completed and quantities of carbon dioxide commensurate with a plant operating at full output are being produced. This will in effect represent the beginning of the process to fully pressurise the pipeline only after which injection into the permanent store can begin.

During the exemption period, normal monitoring requirements will apply in respect of any non-exempt capacity of the fossil fuel plant and compliance with the EPS. We believe this approach will provide assistance to all future CCS projects through the riskier commissioning phase, but importantly is consistent with the purpose of the EPS, to act as a backstop to the carbon emissions from new coal with CCS.

### Consultation Question

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|---|---|
| 9 | Do you agree that applying the exemption to only that part generating units equipped with CCS is the right approach? Are there any potential negative consequences of the proposed approach taking into account the policy rationale for the exemption? Please state the basis for your view. |
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# Catalogue of Consultation Questions

## Consultation Question

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|----|--|
| 1. | Does Paragraph 1 of Schedule 4 of the Energy Act 2013 together with Part 2 of the draft Regulations provide a sufficient degree of clarity on the types of changes that will bring an existing coal-fired power plant within the EPS regime? |
|----|--|

## Consultation Question

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|----|---|
| 2. | Do the draft regulations provide a sufficient degree of clarity on the circumstances described above in respect of gasification plant supplying fuel to a fossil fuel plant and the EPS regime? |
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Questions 3 – 7 of this consultation document relate to Part 3 of the proposed regulations. When responding to these questions (or when commenting on Part 3<sup>23</sup> more generally) and your remark relates to the application of the EPS in either England or Wales **only**, please state to which of England or Wales your remarks relate in your response.

If you do not tell us that your remarks concern the operation of the EPS in either England or Wales only, we will assume that they relate to the operation of the EPS in both England **and** Wales.

## Consultation Question

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|----|--|
| 3. | Does the proposed approach for monitoring and reporting carbon emissions for the purpose of the EPS minimise burden on operators? Are there ways in which the process could be further simplified and/or burden reduced? |
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## Consultation Question

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|---|---|
| 4 | Do you agree with the principles that the Regulator must apply when determining the level of any financial penalty (specifically, that any financial penalty must be sufficient to recover any benefit derived from the breach, and that the penalty must be fair and proportionate)? |
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## Consultation Question

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<sup>23</sup> Please note that the draft regulations at Annex A will only give effect to monitoring and enforcement arrangements in England (these are set out in Part 3 of the draft). For the avoidance of doubt, separate legislative provision will be made by the Welsh Government to give effect to the proposed arrangements in Wales.

5.	Do you consider that the Regulator should have discretion when determining whether or not to levy an EPS related civil penalty and/or when determining the level of any such penalty?
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**Consultation Question**

6.	Do you consider that the First-tier Tribunal is the appropriate body to hear and determine appeals relating to any civil penalty and/or enforcement action imposed by the Regulator in connection with the EPS?
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**Consultation Question**

7.	Do you consider that the General Regulatory Chamber Rules of the First-tier Tribunal will suit the handling of these appeals? The General Regulatory Chamber Rules may be found at: <a href="http://www.justice.gov.uk/tribunals/rules">http://www.justice.gov.uk/tribunals/rules</a>
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**Consultation Question**

8	Do you have any observations on the statement, taking account of its purpose?
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**Consultation Question**

9	Do you agree that applying the exemption to only that part of a power station equipped with CCS is the right approach? Are there any potential negative consequences of the proposed approach taking into account the policy rationale for the exemption? Please state the basis for your view.
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# Annex A: EPS Draft Regulations

*Draft Regulations laid before Parliament under sections 57(6), 60(2) and 62(3) of the Energy Act 2013, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2015 No. 0000**

### **ELECTRICITY**

#### **The Emissions Performance Standard Regulations 2015**

*Made* - - - - *2015*

*Coming into force in accordance with regulation 1*

The Secretary of State has before making these Regulations—

- (a) obtained the consent of the Department of Enterprise, Trade and Investment for Northern Ireland in accordance with section 62(10) of the Energy Act 2013<sup>(a)</sup>, and
- (b) consulted Scottish Ministers and Welsh Ministers and such other persons as the Secretary of State considered it appropriate to consult.

In accordance with section 62(3) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State, in exercise of the powers conferred sections 57(6), (7)(a) to (g), and (8), 60(1) to (5) and 62(1) and (9) of the Energy Act 2013, makes the following Regulations:

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(a) 2013 c. 32 which has been amended by S.I. 2014/1638, reg 48(1), (2), Sch 13, Pt 1, para 8, Sch 14, Pt 1,

## PART 1

### Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Emissions Performance Standard Regulations 2015, and come into force on 1 April 2015.

(2) Parts 1 and 2 of these Regulations extend to the United Kingdom.

(3) Part 3 of these Regulations applies to England only.

### Interpretation

2. In these Regulations—

“the Act” means the Energy Act 2013;

“associated gasification plant” means a plant which fulfils the requirements of regulation 8(1);

“CHPQA” means the Combined Heat and Power Quality Assurance Standard, Issue 5, November 2013(a);

“CHPQA certificate” means a certificate issued under the CHPQA programme by the Secretary of State;

“combined heat and power generating station” means a station which generates electricity and is (or may be) operated for purposes including the supply to any premises of—

(a) heat produced in association with electricity, or

(b) steam produced from, or air or water heated by, such heat;

“commences operation” means when an electricity generating station first transmits or distributes electricity generated at that station;

“competent authority” means the competent authority designated by the United Kingdom for the purposes of the Monitoring and Reporting Regulation;

“emergency” means the occurrence of a risk to the health and safety of personnel or the safe operation of a fossil fuel plant;

“gasification” means the substoichiometric oxidation or steam reformation of a substance to produce a gaseous mixture and that mixture contains at least two of (a), (b) and (c) from the following list—

(a) the oxides of carbon,

(b) methane,

(c) hydrogen;

“generating station” means a station which generates electricity;

“generating unit” of a generating station means any combination of generators, boilers, turbines, or other prime movers that are physically connected as one unit and operated together to produce electricity independently of any other unit;

“the GGETS Regulations” means the Greenhouse Gas Emissions Trading Scheme Regulations 2012(b);

“Greenhouse Gas Emissions Permit” means a permit issued by the competent authority under regulation 10 of the GGETS Regulations;

“Greenhouse Gas Emissions Report” means the report required to be submitted by article 67 of the Monitoring and Reporting Regulation and the requirement in a Greenhouse Gas Emissions Permit pursuant to Schedule 4, paragraph 2(3)(b) of the GGETS Regulations;

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(a) Copies may be obtained from the Department of Energy and Climate Change at the address shown in the explanatory note and at: <http://chpqa.decc.gov.uk/assets/CHPQADocuments/CHPQAStandardIssue5.pdf>.

(b) S.I. 2012/3038 which has been amended by S.I. 2013/755, S.I. 2013/1037 and S.I. 2013/3135.

“installed generating capacity” means the maximum capacity of electricity generation (in MW) at which a generating station is able to be operated for a sustained period without damage being caused to it (assuming the source of energy used to generate electricity is available without interruption);

“main boiler” means any fired vessel or vessels used to produce steam as part of a generating unit—

- (a) with a total thermal capacity in excess of 300MWth, and
- (b) in which any mixture of fossil fuel in gaseous, liquid or pulverised solid form is combusted;

“the Monitoring and Reporting Regulation” means Commission Regulation (EU) No 601/2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>(a)</sup>;

“MWth” means megawatts of thermal output;

“operator”, in relation to a relevant fossil fuel plant, means the person required to hold a Greenhouse Gas Emissions Permit for the relevant fossil fuel plant;

“relevant fossil fuel plant” means plant to which the emissions limit duty applies under regulation 3;

“source stream” has the same meaning as in Article 3(4) of the Monitoring and Reporting Regulation.

“verified” means verified in accordance with the Verification Regulation;

“the Verification Regulation” means Commission Regulation (EU) No 600/2012 of 21 June 2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>(b)</sup>.

## PART 2

### Emissions limit duty

#### Application of emissions limit duty

**3.—**(1) The emissions limit duty in section 57(1) of the Act applies to—

- (a) a fossil fuel plant, and
- (b) a generating unit which satisfies the conditions in paragraphs (2) and (3).

(2) The condition in this paragraph is the generating unit uses—

- (a) fossil fuel, or
- (b) fuel produced from fossil fuel by an associated gasification plant.

(3) The conditions in this paragraph are that—

- (a) the electricity generating station in which the generating unit is located was the subject of a relevant consent granted before 18 February 2014, and
- (b) after 18 February 2014—
  - (i) any main boiler in that generating unit is replaced, or
  - (ii) an additional main boiler is installed in the electricity generating station.

(4) The emissions limit duty does not apply to operating plant that is ancillary to a generating station for safety purposes, or in an emergency.

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(a) OJ No L 181, 12.7.2012, p 30.

(b) OJ No L 181, 12.7.2012, p 1.

### Amendment of emissions limit

4.—(1) The emissions limit applicable to a relevant fossil fuel plant is to be amended in accordance with paragraph (3), when any of the conditions in paragraph (2) apply.

(2) The conditions are that during a year to which section 57 of the Energy Act 2013 applies—

- (a) the generating station is used for the first time for the generation of electricity,
- (b) the generating station permanently ceases to be used for the generation of electricity,
- (c) the emissions limit duty does not apply in relation to the operation of any generating units of the fossil fuel plant by virtue of section 58 of the Act where that operation begins or ends during the year,
- (d) the installed generating capacity, C, of the fossil fuel plant is altered.

(3) The amendments to be applied are—

- (a) if the condition in paragraph 2(a) applies, then the revised emissions limit (“EL<sub>(revised)</sub>”) in tonnes is—

$$EL_{(revised)} = EL \div 365 \times N$$

where—

N is the number of days in that year after the generating station commences operation, including the day on which the generating station commences operation.

- (b) if the condition in paragraph 2(b) applies, then the emissions limit (“EL<sub>(revised)</sub>”) in tonnes is—

$$EL_{(revised)} = EL \div 365 \times N$$

where—

N is the number of days in that year before the fossil fuel plant ceases operation, including the day on which the fossil fuel plant ceases operation.

- (c) if the condition in paragraph 2(c) applies, then the revised emissions limit (“EL<sub>(revised)</sub>”) in tonnes is—

$$EL_{(revised)} = (EL \div 365 \times N) + (C_{(revised)} \times R \times 7.446 \div 365 \times D)$$

where—

N is the number of days the fossil fuel plant operated without an exemption under section 58 of the Act applying,

C<sub>(revised)</sub> is the installed generating capacity, in MW, of the electricity generating station comprised of the generating units not covered by an exemption under section 58 of the Act,

R is the statutory rate of emissions, in g/kWh,

D is the number of days in that year the fossil fuel plant operated with an exemption under section 58 of the Act applying.

- (d) if the condition in paragraph 2(d) applies then the emissions limit (“EL<sub>(revised)</sub>”) in tonnes is—

$$EL_{(revised)} = (EL \div 365 \times N) + (C_{(revised)} \times R \times 7.446 \div 365 \times D)$$

where—

N is the number of days in that year the fossil fuel plant was operated before the change in installed generating capacity,

C<sub>(revised)</sub> is the revised installed generating capacity, in MW, of the electricity generating station comprised in the fossil fuel plant after alteration,

R is the statutory rate of emissions, in g/kWh,

D is the number of days in that year the fossil fuel plant was operated after the change in installed generating capacity, including the day on which the fossil fuel plant commenced operation with the changed installed generating capacity.

(4) Where an emissions limit is revised under this regulation,  $EL_{(revised)}$  is to be treated as the emissions limit, EL, for the application of section 57 of the Energy Act 2013 and these Regulations for that year.

#### **Exemption for complete carbon capture and storage system**

5. The exemption from the emissions limit duty in section 58(1) of the Act applies only to those generating units which use a complete CCS system.

#### **EPS annual emissions total**

6. Subject to regulations 7 and 8, in respect of a relevant fossil fuel plant, the emissions from it that are attributable to the use of fossil fuel for a calendar year (“EPS annual emissions”) are those emissions of carbon dioxide which are the direct result of operations and processes carried out in the production of electricity by that relevant fossil fuel plant.

#### **Reduction for qualifying heat**

7. If the relevant fossil fuel plant is a combined heat and power generating station, emissions of carbon dioxide attributable to the use of the relevant fossil fuel plant to produce heat are not EPS annual emissions where—

$$\text{EPS annual emissions} = E_{\text{electricity}} - (\text{CHP}_{\text{QHO}} \times 0.205 \div 0.9)$$

and—

$E_{\text{electricity}}$  are the EPS annual emissions in tonnes for the purposes of regulation 6 but for the operation of this regulation,

$\text{CHP}_{\text{QHO}}$  is the amount specified as Qualifying Heat Output in a CHPQA certificate applying to the relevant fossil fuel plant for that year (in MWh of thermal output).

#### **Associated gasification plant**

8.—(1) A gasification plant is “associated” with a relevant fossil fuel plant where—

- (a) the gasification plant produces fuel from fossil fuel used by the relevant fossil fuel plant in generating electricity, and
- (b) the carbon dioxide emissions of the gasification plant are not otherwise included in the EPS annual emissions for the relevant fossil fuel plant.

(2) The EPS annual emissions total of a relevant fossil fuel plant in a year must be increased by the total carbon dioxide emissions directly attributable to the production of the fuel produced in an associated gasification plant and used by the fossil fuel plant in the generation of electricity during that year.

## **PART 3**

### **Monitoring and Enforcement in England**

#### **Enforcing authority**

9. In relation to a relevant fossil fuel plant in England, the Environment Agency is the enforcing authority for the emissions limit duty.

### **Emissions limit notification duty**

**10.**—(1) If any of the conditions in paragraph (3) applies, the operator of a relevant fossil fuel plant must submit a notification (“an emissions limit notification”) to the Environment Agency within 31 days of that condition first being met.

(2) An emissions limit notification must contain—

- (a) the emissions limit (in tonnes) for the relevant fossil fuel plant, calculated in accordance with section 57(1) of the Act and regulation 4 of these Regulations,
- (b) the installed generating capacity (in MW) of the relevant fossil fuel plant, and
- (c) The date on which the relevant fossil plant commenced or will commence operation.

(3) The conditions are—

- (a) the operator holds a Greenhouse Gas Emissions Permit for the relevant fossil fuel plant on the date these Regulations come into force in accordance with regulation 1,
- (b) a Greenhouse Gas Emissions Permit for the relevant fossil fuel plant is granted after the date these Regulations come into force in accordance with regulation 1,
- (c) a Greenhouse Gas Emissions Permit for the relevant fossil fuel plant is varied in relation to the amount of installed generation capacity covered by that permit after the date these Regulations come into force in accordance with regulation 1, or
- (d) the emissions limit for the relevant fossil fuel plant is amended under regulation 4.

(4) The Environment Agency may specify the manner and form in which an emissions limit notification must be submitted.

### **Emissions limit: carbon capture and storage**

**11.**—(1) For the purposes of section 58 of the Act, a complete CCS system may not be considered ready for use unless notification (“a CCS notification”) under paragraph (2) is received by the Environment Agency.

(2) A CCS notification must specify—

- (a) the generating units within the relevant fossil fuel plant to which the complete CCS system relates,
- (b) the installed generating capacity of the generating units specified under sub-paragraph (a), and
- (c) the date on which the CCS system is to be considered ready for use.

(3) The Environment Agency may specify the manner and form in which a CCS notification must be submitted.

### **EPS annual emissions notification**

**12.**—(1) If the annual emissions of carbon dioxide for a relevant fossil fuel plant reported in a verified Greenhouse Gas Emissions Report are greater than the emissions limit for that plant over the year covered by the report, the operator must submit a notification the “EPS annual emissions notification” to the Environment Agency in accordance with paragraph (4).

(2) For the purposes of paragraph (1), carbon dioxide emissions not relating to generating units in a verified Greenhouse Gas Emissions Report are to be discounted.

(3) The EPS annual emissions notification required by paragraph (1) must—

- (a) contain the EPS annual emissions total for the relevant fossil fuel plant for the same period as the verified Greenhouse Gas Report in paragraph (1), calculated in accordance with Part 2 of these Regulations,
- (b) identify source streams for each generating unit at the relevant fossil fuel plant to which the emissions limit duty applies,

- (c) be calculated or measured in accordance with the methodology of the Monitoring and Reporting Regulation, and
  - (d) be submitted to the Environment Agency within 10 days of the submission of the verified Greenhouse Gas Emissions Report in paragraph (1).
- (4) The Environment Agency may specify the manner and form in which the EPS annual emissions notification must be submitted.

### **Charges**

**13.**—(1) The Secretary of State may make, and from time to time revise, a charging scheme (“an EPS charging scheme”) for the carrying out of functions conferred on the Environment Agency by these Regulations.

- (2) An EPS charging scheme may, in particular—
- (a) make different provision for different cases, including different provision in relation to different persons in different circumstances or localities,
  - (b) provide for the times at which and the manner in which the payments required by the scheme are to be made, and
  - (c) make such incidental, supplementary and transitional provisions as appear to the Secretary of State to be appropriate.
- (3) The Environment Agency may only charge for the carrying out of functions conferred on it under these Regulations as provided by an EPS charging scheme.
- (4) Where an operator fails to pay a charge imposed on it in accordance with an EPS charging scheme—
- (a) the Environment Agency may consider that the operator has failed to fulfil any notification duty to which the charge relates, and
  - (b) the amount of the charge may be recovered from the operator by the Environment Agency as a civil debt.
- (5) An EPS charging scheme must be published in such a manner as considered by the Secretary of State as appropriate to bring it to the attention of the public.

### **Information notices**

**14.**—(1) For any of the purposes mentioned in paragraph (2), the Environment Agency may, by notice served on an operator of a relevant fossil fuel plant or the operator of an associated gasification plant (an “information notice”), require that person to furnish the information as is specified in the notice, in such form and within such period following service of the notice or at such time as is so specified.

- (2) The purposes are—
- (a) investigating whether or not the operator has breached the emissions limit duty,
  - (b) investigating whether or not an operator has failed to comply with a requirement in this Part of these Regulations, and
  - (c) investigating the following in relation to an associated gasification plant, for the purposes of calculating the emissions of a relevant fossil fuel plant—
    - (i) the carbon dioxide emissions of the associated gasification plant,
    - (ii) the amount of fuel used by a relevant fossil fuel plant produced by the associated gasification plant.

### **Enforcement notices**

**15.**—(1) Where the Environment Agency is of the view that an operator has breached, is breaching, or is likely to breach the emissions limit duty, the Environment Agency may serve a notice (“an enforcement notice”) on that operator.

## Implementing the Emissions Performance Standard: Further Interpretation and Monitoring and Enforcement Arrangements in England and Wales

(2) An enforcement notice must—

- (a) state the Environment Agency's view under paragraph (1),
- (b) specify the matters constituting the breach of or making a breach likely,
- (c) specify the steps that must be taken to remedy the breach or to ensure that the likely breach does not occur, and
- (d) specify the time by which those steps specified in paragraph 2(c) must be taken.

(3) The time specified in paragraph (2)(d) cannot be sooner than 21 days after service of an enforcement notice.

(4) The operator must comply with the requirements of an enforcement notice within the period so specified in accordance with paragraph 2(d).

(5) The Environment Agency may withdraw an enforcement notice at any time by further notice issued to the operator.

### Civil penalty notices

**16.**—(1) The Environment Agency may impose a civil penalty by notice (“civil penalty notice”) on an operator where the operator breaches the emissions limit duty.

(2) The civil penalty notice may require the payment of—

- (a) a financial penalty for the operation of the relevant fossil fuel plant in breach of the emissions limit duty, and
- (b) costs reasonably incurred by the Environment Agency in investigating and assessing the breach of the emissions limit duty.

(3) Any financial penalty must—

- (a) remove the benefit derived by the operator from the breach of the emissions limit duty,
- (b) be fair, and
- (c) be proportionate.

(4) The civil penalty notice issued under paragraph (1) must—

- (a) specify on what basis the amount of any financial penalty imposed was calculated, and
- (b) include the date by which any amount payable under the civil penalty notice is to be paid in full.

(5) If any amount payable under the civil penalty notice is not paid in full by the date required to be specified by paragraph (4)(b), the amount may be recovered from the operator by the Environment Agency as a civil debt

(6) The Environment Agency may withdraw the civil penalty notice before it has been paid by further notice issued to the operator.

(7) The Environment Agency may not issue a civil penalty notice in respect of a breach of the emissions limit duty for a year which began more than 5 years before the year in which the notice is served in accordance with the Schedule to these Regulations.

(8) The Secretary of State may issue guidance (“EPS penalty guidance”) on the calculation of financial penalties under paragraph (2)(a).

(9) EPS penalty guidance may, in particular—

- (a) make different provision for different cases, including different provision in relation to different persons in different circumstances or localities,
- (b) make such incidental, supplementary and transitional provisions as appear to the Secretary of State to be appropriate.

(10) Where EPS penalty guidance is issued, the amount of the financial penalty imposed under paragraph (2)(a) must be calculated in accordance with that guidance.

(11) Before issuing guidance under paragraph 8, the Secretary of State must consult—



- (a) Scottish Ministers,
- (b) Welsh Ministers,
- (c) Department of Environment in Northern Ireland, and
- (d) such other persons as the Secretary State considers appropriate.

(12) Where EPS penalty guidance is issued, it must be published in such a manner as considered by the Secretary of State as appropriate to bring it to the attention of the public.

(13) Subject to any EPS penalty guidance, the Environment Agency may specify the manner and form in which any amount required to be paid by a civil penalty notice must be paid.

(14) Any sum received by the Environment Agency under this regulation must be paid into the Consolidated Fund.

#### **Directions under section 59(2) of the Act**

**17.**—(1) Where the Secretary of State makes a direction under section 59(2) of the Act (“the direction”), the Environment Agency must treat the emissions limit duty in section 57(1) of the Act and these Regulations as suspended or modified as required by the direction.

(2) The Environment Agency must comply with any requirement imposed on it by the direction.

#### **Appeals**

**18.**—(1) An operator may appeal to the First-tier Tribunal against—

- (a) an enforcement notice under regulation 15, or
- (b) a civil penalty notice under regulation 16.

(2) An appeal must be made within 28 days beginning with the day on which the notice subject to the appeal is served.

(3) Where an operator appeals under paragraph (1), any enforcement notice or notice imposing a financial penalty subject to that appeal is suspended until the appeal is determined by the First-tier Tribunal in accordance with paragraph (4).

(4) The First-tier Tribunal may—

- (a) affirm the enforcement notice or civil penalty notice,
- (b) direct the Environment Agency to revoke or amend the enforcement notice or civil penalty notice, or
- (c) impose such other enforcement notice or civil penalty notice as the Tribunal thinks fit.

#### **Publication of information**

**19.**—(1) Subject to paragraph (3), the Environment Agency may publish any of the relevant information in paragraph (2) on or after—

- (a) the day following expiry of the period for appealing the imposition of a notice by the Environment Agency under regulation 18(2), or
- (b) if such an appeal is made, the determination or withdrawal of the appeal.

(2) The “relevant information” is—

- (a) the identity of the operator subject to an enforcement notice or civil penalty notice,
- (b) in the case of the imposition of an enforcement notice, the steps required to be taken to remedy the breach of the emissions limit duty or to ensure that the likely breach does not occur,
- (c) in the case of the imposition of a civil penalty notice, the amounts payable under the civil penalty notice, and
- (d) if the notice has been the subject of an appeal under regulation 18, the results of that appeal.

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- (3) The Environment Agency may not publish the relevant information under paragraph (1) if—
- (a) the operator is found on appeal not to have breached the emissions limit duty, or
  - (b) the enforcement notice or civil penalty notice to which the information relates has been withdrawn.

### Enforcement by the High Court

**20.**—(1) Subject to paragraph (2), if an operator of a relevant fossil fuel plant fails to comply with any of the obligations (“relevant obligations”) listed in paragraph (3), the Environment Agency may certify that non-compliance in writing to the High Court.

- (2) The Environment Agency may not certify non-compliance to the High Court if—
- (a) the time for the performance of any relevant obligation has not elapsed,
  - (b) the time for an appeal relating to a relevant obligation under regulation 18(2) has not elapsed, or
  - (c) any appeal relating to a relevant obligation under regulation 18 has not been determined.
- (3) The relevant obligations are any obligation in—
- (a) an information notice issued under regulation 14,
  - (b) an enforcement notice issued under regulation 15, or
  - (c) a civil penalty notice issued under regulation 16.

(4) If the High Court is satisfied that the operator has failed without reasonable excuse to comply with a relevant matter, the court may deal with the operator as if the operator were in contempt.

### Disclosure of information and application of GGETS Regulations

**21.** After regulation 46(1)(a)(iii) of the GGETS Regulations insert—

- “(iv) necessary for the performance of the Environment Agency’s functions in England under the Emissions Performance Standard Regulations 2015, or”

### Documents

**22.** The Schedule (Documents) is to have effect.

Date *Name*  
Secretary of State  
Department of Energy and Climate Change

## SCHEDULE

Regulation 22

### Documents

**1.** The provisions of this Schedule apply to a document, which includes a notice, direction request or notification issued by the Secretary of State or the Environment Agency under these Regulations.

**2.** A document must be in writing and dated.

**3.** A document given to a person on a non-working day is to be treated as given on the next following working day.

- 4.** A document may be given to a person by—
- (a) delivering it to that person in person;
  - (b) leaving it at that person’s proper address;
  - (c) sending it by post or fax to that person’s proper address;
  - (d) sending it by email to that person; or
  - (e) submitting it by means of a dedicated portal on that person’s website.
- 5.** For the purposes of paragraph 4(a) a document is given to—
- (a) a body corporate, where it is given to a person having control or management of that body;
  - (b) a partnership, where it is given to a partner or a person having control or management of the partnership business;
  - (c) an unincorporated association, where it is given to a person having management responsibilities in respect of the association.
- 6.** For the purposes of paragraph 4(d), a document is given to—
- (a) a body corporate, where it is sent to an email address of—
    - (i) the body corporate; or
    - (ii) a person having control or management of that body,where that address is supplied by that body for the conduct of the affairs of that body;
  - (b) a partnership, where it is sent to an email address of—
    - (i) the partnership; or
    - (ii) a partner or a person having control or management of the partnership business,where that address is supplied by that partnership for the conduct of the affairs of that partnership;
  - (c) an unincorporated association, where it is sent to an email address of a person having management responsibilities in respect of the association, where that address is supplied by that association for the conduct of the affairs of that association.
- 7.** A person may, in substitution for the proper address which would otherwise apply, specify an address in the United Kingdom at which that person or someone on that person’s behalf may be given documents, which address is to be treated instead as that person’s proper address.
- 8.** In this Schedule—
- “dedicated portal” means a facility on a person’s website which is established to allow electronic communication with that person;
- “proper address” means in the case of—
- (a) a body corporate, the registered office (if it is in the United Kingdom) or the principal office of that body in the United Kingdom;
  - (b) a partnership, the principal office of the partnership in the United Kingdom;
  - (c) any other person, that person’s last known address, which includes an email address.

# Annex B: EPS Suspension – Statement of Policy



Department  
of Energy &  
Climate Change

## **Statement of policy on the exercise of the Secretary of State's power under section 59 of the Energy Act 2013**

## Introduction

This statement of policy is published by the Secretary of State for Energy and Climate Change (the “appropriate authority”) pursuant to section 59(11) of the Energy Act 2013 (the “Act”).

Terms defined in the Act have the same meaning when used in this statement unless the context requires otherwise.

Section 59 of the Act provides that the appropriate authority may, where it considers that there is an electricity shortfall or a significant risk of one, direct that in relation to relevant plant i.e. generating plant in Great Britain to which the Emissions Limit Duty applies, the Emissions Limit Duty be treated as modified or suspended for a specified period (section 59(2)). The purpose of section 59 is to allow for such action to be taken where there are exceptional circumstances that give rise to an electricity shortfall or the risk of a shortfall that cannot be mitigated other than by a suspension of the Emissions Limit Duty.

Before giving any direction the Secretary of State must consult the Scottish and Welsh Ministers and such other persons the Secretary of State considers appropriate (section 59(5)). As soon as is practicable after giving a direction the Secretary of State must lay before Parliament a document containing a copy of the direction and a statement of the reasons for making the direction (section 59(6)).

Any direction must be made in writing and may be varied or revoked by a further direction (section 59(9)). Any direction may include requirements placed on the enforcing authorities, which are the Environment Agency in England, the Scottish Environmental Protection Agency in Scotland and Natural Resources Wales in Wales (section 59(10)).

Section 59(11) of the Act requires the Secretary of State to publish a statement of policy in relation to the giving of directions to which he must have regard in giving any direction to modify or suspend the Emissions Limit Duty.

The policy statement may be revised and any revised version must be published.

This policy statement by the Secretary of State is issued pursuant to section 59(11) of the Act and sets out the policy of the Secretary of State in respect of:

- Determination of exceptional circumstances under which a direction to modify or suspend the Emissions Limit Duty may be given;
- Conditions precedent for issuing a direction to modify or suspend the Emissions Limit Duty;
- Form of notification of a direction to modify or suspend the Emissions Limit Duty;
- Arrangements for giving effect to a direction;
- Review of this Statement of Policy.

## **Determination of circumstances under which a direction to modify or suspend the Emissions Limit Duty may be made**

In accordance with section 59 of the Act the Secretary of State may issue a direction to modify or suspend the Emissions Limit Duty in circumstances where he is satisfied that electricity supplies are insufficient to meet electricity demand (“a shortfall”) or that there is a significant risk of a shortfall.

In determining whether such circumstances exist the Secretary of State will consider all relevant factors and have particular regard to information published or provided by;

- The “National System Operator” (as defined in section 46(11) of the Act)

- The “Authority” (as defined in section 152(1) of the Act)
- Any other person or source of information relating to security of supply.

Before giving any direction, including a direction to modify or revoke an existing direction, the Secretary of State must consult the Scottish and Welsh Ministers and such other person as he considers it appropriate to consult.

### **Conditions precedent for giving a direction to modify or suspend the Emissions Limit Duty**

Where the Secretary of State is satisfied that there is an electricity shortfall or a significant risk of one exists, before making any direction to modify or suspend the Emissions Limit Duty s/he must be satisfied that the following conditions have been met:

- i. That a shortfall or the significant risk of a shortfall will remain after all other reasonably viable measures open to him or to others to mitigate the shortfall or the risk of a shortfall have or will have been taken.
- ii. That the shortfall or significant risk of a shortfall will be wholly or partially mitigated by a modification to, or suspension of, the Emissions Limit Duty.

### **Form of notification of a direction to modify or suspend the Emissions Limit Duty and arrangements for giving effect to a direction**

In accordance with section 59 of the Act the Secretary of State will notify any direction to modify or suspend the Emissions Limit Duty in writing to the enforcing authorities. The enforcing authorities will be required to give effect to a direction in accordance with any arrangements under section 60(3) of the Act.

A direction will include the following information:

- The date on which the direction is made and the period for which it is to apply;
- The date on which the modification or suspension of the Emissions Limit Duty is to become effective and the period for which it is to apply;
- The nature of any modification to the Emissions Limit Duty;
- Such other information that is considered necessary for giving proper effect to the direction.

The period for which the Emissions Limit Duty is modified or suspended by any one direction should not exceed the period that the Secretary of State expects the shortfall or risk of a shortfall to continue and must not exceed 90 days.

As soon as is practicable and not more than 10 days after giving a direction the Secretary of State must lay before Parliament a document containing a copy of the direction and a statement of his reasons for making the direction.

### **Review of the statement of policy**

This policy statement may be revised and any revised version must be published within 21 days of any revision.

This policy statement will be reviewed as part of the wider non-statutory three-yearly review of the Emissions Performance Standard.

# Glossary and List of Abbreviations

CCS – Carbon Capture and Storage

**Emissions Limit** – is the limit on carbon dioxide emission placed on a fossil fuel plant by the EPS. The Emissions Limit is calculated by reference to the formula set out at Section 57 of Energy Act 2013. This is as follows:

$$EL = R \times C \times 7.446$$

Where –

EL is the annual Emissions Limit in tonnes CO<sub>2</sub>

R is the Statutory Rate of Emissions, in g/kWh (i.e. 450g/kWh)

C is the installed generating capacity of a power station, in Megawatts

7.446 represents ‘baseload’ operation. ‘Baseload’ operation is derived by multiplying the number of hours in a year (that is, 8760 hours) by 85%; which gives 7446. This is then divided by 1000 to express EL in tonnes of carbon dioxide.

**Emissions Limit Duty** – the legal duty that the operator of a fossil fuel plant is under not to exceed the Emissions Limit for that plant.

**EU ETS** – the EU Emissions Trading Scheme.

**EU ETS Permit** – in effect, a licence to operate and emit greenhouse gases covered by the EU ETS scheme.

**EU ETS Monitoring Plan** – a plan that provides information on how an operator’s emissions will be measured and reported in accordance with the EU ETS monitoring rules. The plan is approved by the relevant environmental regulator.

**Fossil Fuel Plant** – Fossil Fuel Plant is defined for the purposes of Chapter 8 of the Energy Act 2013 as follows:

“fossil fuel plant” means an electricity generating station which satisfies the conditions in subsection (4), together with any associated gasification plant and any associated CCS plant.

Conditions in subsection (4) are as follows:

“the generating station— .

(a) is constructed pursuant to a relevant consent given or made on or after the date on which subsection (1) comes into force, and .

(b) uses— .

(i) fossil fuel, or .

(ii) fuel produced by gasification plant” .

“Relevant Consent” is defined as meaning:

“(a) consent granted under section 36 of EA 1989 or Article 39 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)), or

(b) an order granting development consent under the Planning Act 2008”.

**Gasification Plant** – Gasification Plant is defined for the purposes of Chapter 8 of the Energy Act 2013, as follows:

“gasification plant” means plant which—

(a) uses fossil fuel, and

(b) produces fuel for use in an electricity generating station;

### **Monitoring and Reporting Regulation**

This is the EU ETS Monitoring and Reporting Regulation (Commission Regulation (EU) No 601/2012). This sets out the rules under which installations subject to the EU ETS must monitor their emissions.

**MWe** – Megawatts electrical

**MWt** – Megawatts thermal

**NRW** – Natural Resources Wales.



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