



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

Government Response to the Consultation

14 January 2015

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# Executive Summary

This document sets out the Government's response to the consultation on proposals for the regulatory framework supporting introduction of the Emissions Performance Standard.

The consultation document 'Implementing the Emissions Performance Standard: Further Interpretation and Monitoring and Enforcement Arrangements in England and Wales' ('the consultation') was published on 25 September 2014. The Emissions Performance Standard ('the EPS') is established in the Energy Act 2013 ('the Act') and this largely sets out how the EPS will apply to new fossil-fuel generation plant. However, the Act does allow for regulations to be made that will provide limited tailoring of the EPS in specified circumstances and for the introduction of a monitoring and enforcement regime. The consultation sought views on proposals for these regulations.

The consultation contained a full draft of proposed regulations and comments on this draft in general were welcomed. Specific issues highlighted for respondents' attention included the following:

- Proposals for monitoring and compliance; including the intention that EPS arrangements should mirror those already in place in connection with the EU Emissions Trading Scheme (EU ETS) and should use the same emissions reporting information wherever possible;
- The principle that sanctions should be applied in the event of a breach of the EPS and should be linked to the economic benefit derived from the production of emissions in excess of the Emissions Limit;
- Proposals for the operation of the EPS exemption relating to Carbon Capture and Storage (CCS) projects;
- A draft 'Statement of Policy' intended to guide any future exercise of the Secretary of State's power to modify or suspend the EPS in circumstances where she or he considers that an electricity shortfall, or the risk of one, exists; and
- Proposals making provision such that 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.

Twelve consultation responses were received from a range of stakeholders including environmental non-governmental organisations, electricity generators and other industrial companies. A full list of respondents is provided at Annex A.

The majority of responses suggest there is broad agreement to proposals for EPS regulations and the Government's intention is therefore to proceed with the making of regulations on the basis set out in the consultation.

Some respondents raised issues in connection with the substantive design of the EPS, which, as noted in the consultation, is now established in primary legislation. These points were not,

therefore, taken into account as they fell outside of the scope of the consultation; which was limited to the design of the EPS implementation regulations.

Minor drafting changes to the draft regulations contained in the consultation have also been made. These changes have generally been made either to reflect better drafting practice, improve and simplify the relationship with the primary legislation and/or the stated policy; or to improve overall clarity. They do not affect the substantive policy intention as set out in the consultation.

## Territorial Extent

Parts 1 and 2 of the draft regulations will apply throughout the UK.

Part 3 of the draft regulations sets out the proposed approach for monitoring and enforcement in England. This approach is also being adopted in Wales. Additionally, 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.

The approach to be taken by Welsh Ministers on arrangements for monitoring of compliance and enforcement of the EPS in Wales formed part of the consultation. Content of this Response relating to monitoring of compliance and enforcement (as set out in part 3 of the regulations) therefore relates to arrangements to apply in England and Wales.

# Further Interpretation of the Emissions Limit Duty

## Summary

This section of the consultation set out our intended approach for:

- Avoiding creation of any disincentive to investment in Combined Heat and Power plant;
- Adjusting a plant's Emissions Limit on a pro-rata basis to take 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;
- Ensuring that in the event of an existing coal plant upgrading to supercritical technology or replacing/installing a 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, any carbon emissions produced in the manufacture of that gas will be counted towards the generating plant's EPS Emissions Limit.

## Consultation Questions

Respondents were specifically asked:

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?
2. Do the draft regulations provide a sufficient degree of clarity on the circumstances ... in respect of gasification plant supplying fuel to a fossil fuel plant and the EPS regime?

## Government Consideration of the Issue

- 1.1. Respondents were generally supportive of the proposed approach to interpretation of the EPS.

### Question 1

- 1.2. Those answering question 1 agreed there was sufficient clarity regarding the changes that would bring an existing coal fired plant into the EPS regime.
- 1.3. One respondent queried whether the draft regulations would achieve the policy intent and instead apply to any generating unit at a generating station, as opposed to the generating unit served by the additional main boiler. We can confirm that the draft

regulations implement the desired policy effect and the EPS will only apply to a generating unit served by the new main boiler.

- 1.4. One respondent suggested that determining when a boiler had been 'replaced' might be difficult. The Government has set out its position that routine maintenance of a boiler is permissible without triggering application of the EPS and we therefore consider that the existing drafting provides sufficient clarity on this point.
- 1.5. One respondent also sought confirmation that the EPS would apply in circumstances where an existing coal plant's main boiler failed and had to be replaced in order to allow for the plant's continued operation. We can confirm that is the stated policy intent.
- 1.6. One respondent queried whether the regulations would apply the EPS to existing gas plant replacing or installing a main boiler. We can confirm that 'boiler' is defined such that only a boiler in a coal-fired plant is subject to the provision. The provision will not, therefore, affect gas plant.

## Question 2

- 1.7. The majority of those responding to question 2 agreed there was sufficient clarity on the EPS's treatment of emissions in circumstances where a gasification plant was supplying gasified fuel to a plant subject to the EPS. One party noted that although suitable now, in view of potentially complex arrangements that might emerge in the future, it would be advisable to keep arrangements under review. We have made drafting changes, such that it is clear that any gasification plant that supplies fuel produced from fossil fuel to a relevant fossil fuel plant is to be considered as 'associated' with the fossil fuel plant. The emissions of an associated gasification plant in producing fuel for a fossil fuel plant will be included in the emissions of the fossil fuel plant for the purposes of the EPS. Government has also committed to reviewing the operation of the EPS on a regular basis.
- 1.8. One respondent indicated that in view of the policy that emissions associated with the production of gasified fuel should be taken into account for the purposes of calculating a plant's 'attributable emissions', emissions arising from the production of shale gas should also be taken into account. However, the provisions relating to underground coal gasification are designed to ensure that plant which would otherwise be burning coal at the point of generation is not able to circumvent the EPS by gasifying the coal off-site and using that gas to generate electricity – there is no intent that 'whole-life' emissions should generally be taken into account for the purposes of the EPS. In the same way that the regulations do not require emissions associated with the extraction or production of conventional gas to be taken into account for the purposes of the EPS, we do not consider there to be a case for assessing whole-life emissions associated with shale gas.
- 1.9. A number of respondents said either that the EPS should, or should not, be applied to other industrial sectors (such as the chemical sector). These comments were, however, outside the scope of the consultation.
- 1.10. One respondent stated that any emissions arising from an additional or intermediate gasification facility involved in the production of fuel for subsequent use in a generating station should be treated as attributable emissions for the purposes of the EPS. We would expect the Regulator to take the view that emissions associated with a gasification process comprising one or more stages would be taken into account for the purposes of the EPS to the extent that those emissions are attributable to the production of fuel subsequently used by the generation plant for the purposes of generating electricity.



## Other Issues Raised

- 1.11. Other points raised in connection with proposals for regulatory arrangements relating to interpretation of the EPS included the following:
- One respondent welcomed the intention to ensure that the EPS does not disincentivise deployment of Good Quality Combined Heat and Power and agreed with the proposed treatment for EPS purposes.
  - One respondent queried whether inclusion of the phrase ‘means the maximum capacity of electricity generation ... at which a generating station is able to be operated...’ in the definition of installed generating capacity might have the unintended effect of producing an Emissions Limit for a commissioning plant of zero; rendering it incapable of operation. As a result, the definition of installed generation capacity has been amended to state ‘... at which a generating station could be operated...’.
  - One respondent questioned whether the list of ancillary plant provided at Regulation 3(4) needed to be expanded to ensure that only emissions arising from electricity generation are taken into account for the purposes of establishing EPS compliance. We consider that it is already the case that only emissions produced as a direct result of operations and processes carried out in the production of electricity are taken into account when calculating emissions for the purposes of the EPS, though this is effected by the operation of the definition of ‘EPS annual emissions’ rather than by regulation 3(4). The purpose of this provision is to ensure that fossil fuel plant that might, for example, exist at a nuclear station in order to maintain safe operations is not affected by the EPS. We therefore do not consider any change is needed.
  - Several respondents suggested that the EPS should be extended to apply to existing plant or other sectors in a manner that would require the amendment of primary legislation. These comments were outside the scope of the consultation.
  - Several respondents raised points relating to EPS review arrangements, which are also unaffected by proposals for regulation. The Government has committed to reviewing the EPS on a 3 yearly basis with a review due to be carried out by end 2015.

## Additional Changes

- 1.12. A provision consistent with Schedule 4 paragraph 1(3) of the Act has been inserted to clarify that any fossil fuel plant generating station consented prior to introduction of the Electricity Act 1989 or the Electricity (Northern Ireland) order 1992 came into force (i.e. which is not the subject of a ‘relevant consent’) but which otherwise meets the criteria which would make it subject to the Emissions Limit Duty, such as upgrading boiler to supercritical technology, will then be covered by the EPS.

# Monitoring and Reporting

## Summary

This section of the consultation set out our intended approach to EPS monitoring and reporting, including our proposals that:

- Operators of fossil fuel plant should, in the circumstances specified, notify the Regulator of the plant's 'Emissions Limit';
- Emissions should be monitored for the EPS in accordance with the methodology in the EU ETS Monitoring and Reporting Regulation;
- The Regulator should compare an operator's annual verified EU ETS Report against the plant's notified Emissions Limit, and, if the Report's total emissions exceed the Emissions Limit, the operator will 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.

## Consultation Questions

Respondents were specifically asked:

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

## Government Consideration of the Issue

- 1.13. Respondents were generally supportive of the policy intention to minimise additional regulatory burden by basing the monitoring and reporting approach on existing EU ETS procedures where possible.

### Question 3

- 1.14. As noted above, the majority of respondents were generally supportive of the proposed approach.
- 1.15. One respondent sought clarification of the Regulator's approach in circumstances where emissions had not been verified for EU ETS purposes or had been misstated. Government has not considered it necessary to introduce separate arrangements relating to the verification of emissions for EPS purposes as operators failing to have their emissions verified will already be subject to sanctions under the EU ETS regime. In the unlikely event of verified EU ETS data not being available, the Regulator has access to information-gathering powers which it may use in connection with its administration of the EPS and which it may opt to deploy.

- 1.16. One respondent asked whether a direct link could be established such that any change to the EU ETS monitoring methodology would automatically be translated into the EPS Regulations. In line with standard drafting procedures, 'ambulatory' provisions (i.e. those which automatically change to reflect changes in other legislation) tend not to be used, as it becomes difficult for Parliament to assess what the ultimate effect of an ambulatory provision may be. Any change to the EU ETS monitoring and reporting regulation would require a commensurate change to be made in UK legislation. In the case of a change to the EU ETS methodology affecting installations subject to the EPS, we would expect that, as part of the normal process for making such a change, a corresponding change to the EPS regulations would also be made.
- 1.17. One respondent stated that the proposal to consider only emissions attributable to electricity generation for the purposes of the EPS was welcome, but noted that this might require some additional monitoring in some cases.
- 1.18. One respondent stated that for simplicity, all emissions arising from an EU ETS installation encompassing a generation plant subject to the EPS should be taken into account for determining compliance with the Emissions Limit. The EPS is focused on emissions from new fossil fuel generation plants, therefore emissions that may result from activities carried out on a power station site that fall outside of the scope and intent of EPS policy should not be considered, for example waste disposal.
- 1.19. One respondent suggested that, consistent with other regimes, emissions produced during start-up and shut-down periods should not be taken into account as emissions levels are higher during these phases than is generally the case. However, start-up and shut-down activities are activities directly associated with the production of electricity and it is therefore consistent with the purpose of the EPS to take into account emissions produced during these periods. In addition, the EPS limit for a plant is in the form of an annual mass of emissions so provides flexibility for variations in emissions levels during a plants operation.

### Other Issues Raised

- 1.20. Other points raised in connection with proposals for monitoring and reporting for EPS purposes included the following:
  - One respondent stated the regulations to be unclear with regard to the treatment of plants not exporting to the grid and plants operating prior to a full CCS chain becoming operational. No separate regulatory provision has been proposed for plants not exporting to the grid or operating prior to a full CCS chain becoming operational and we therefore consider it sufficiently clear that no different treatment will apply.
  - A number of respondents sought clarification on the treatment of emissions arising from fuel processing activities (for example, coal pulverisation). It is our view that emissions produced on site as a result of coal pulverisation would reasonably be considered to have been produced as a 'direct result of operations and processes carried out in the production of electricity' and therefore would be considered attributable emissions for the purposes of the EPS.

### Additional Changes

- 1.21. An additional condition for the submission of an annual emissions notification has been inserted. This is to ensure that operators using gasified fuel are required to proactively submit the data needed for the Regulator to establish compliance with the Emissions

## Monitoring and Reporting

Limit Duty by way of an annual emissions notification in circumstances where the installation's emissions and any emissions directly attributable to the production of gasified fuel subsequently used by that plant exceed the plant's Emissions Limit. This change has been made to ensure the regulations adequately effect the intended policy.

# Enforcement and Appeals

## Summary

This section of the consultation set out proposals for enforcement policy, specifically 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.

## Consultation Questions

Respondents were specifically asked:

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)?
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?
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?
7. Do you consider that the General Regulatory Chamber Rules of the First-tier Tribunal will suit the handling of these appeals?

## Government Consideration of the Issue

- 1.22. Respondents to questions relating to proposals for enforcement action were largely supportive of the proposed approach.

### Question 4

- 1.23. Respondents to question 4 agreed that the specified principles should be followed by the Regulator when determining the level of any penalty levied in connection with the EPS.

- 1.24. One respondent stated their view that the operator's intention should be a material consideration for the Regulator when determining the level of any penalty to be applied in the event of a breach of the Emissions Limit. We can confirm our expectation that the Regulator would consider intent as part of a proportionate approach to the levying of penalties.
- 1.25. Several respondents stated a need for the Regulator to behave transparently in exercising enforcement responsibilities; for example by providing operators with clear understanding of how enforcement arrangements have been, and will be, applied. We expect the Regulator to act in accordance with principles underpinning its current regulatory approach when exercising its powers in relation to the EPS. The principle of transparency is acknowledged in the Environment Agency's current 'Enforcement and Sanctions' statement.
- 1.26. Some respondents stated that operators breaching the Emissions Limit should be penalised by way of a commensurate reduction on a future Emissions Limit. Primary legislation does allow for regulations to make such provision, however the Government has determined not to proceed on this basis. In designing the penalty regime we have sought to deliver a regime that is consistent with other regimes, is straightforward and provides sufficient disincentive for breach. The proposed system of financial penalties will ensure that it is not in the interest of an operator to engage in repeated breach of the EPS. Further provision allowing for reduction of the Emissions Limit in future years (which would require creation of a more complicated compliance regime) is therefore not considered to be necessary. In the unlikely event of the proposed civil penalties regime providing insufficient disincentive to stop an operator from engaging in repeated breach of the Emissions Limit, it is likely that enforcement arrangements would be revisited.

#### Question 5

- 1.27. Respondents to question 5 generally agreed that the Regulator should have the ability to exercise some discretion when setting the level of civil penalties.
- 1.28. One respondent said that a cap on the maximum level of any penalty should be set, to ensure that operators were not subject to unlimited risk exposure. As set out in the consultation, a fixed-penalty approach was considered but discounted on the basis that it would not be possible to guarantee that a specified sum would, in all circumstances, be sufficient to recover the full extent of any benefit derived from the breach. Similar considerations apply to the setting of a cap. The regulations require the Regulator to act proportionately when determining the level of any civil penalty; and we consider this requirement to be sufficient to ensure that any penalty cannot be unduly punitive.

#### Questions 6 and 7

- 1.29. Those respondents answering question 6 agreed that the First-tier Tribunal would be an appropriate body to hear appeals of EPS enforcement action. One respondent stated that the appeal right should be sufficient to remedy any potential errors in the enforcement notice, which the proposed appeals arrangements would allow.
- 1.30. No concerns were raised in connection with the suitability of current First-tier Tribunal rules.

#### Additional Changes

- 1.31. Drafting of the regulatory provisions relating to enforcement has been amended to better reflect the primary legislation. This has involved removal of the previous drafting which sought to offer the Regulator the ability to impose an enforcement notice where it

considered that an operator to be breaching or likely to breach the Emissions Limit Duty. The primary legislation does not allow for such a power to be conferred by way of Regulation and therefore this provision has been removed. This will not affect the ability of the Regulator to take action necessary to ensure effective enforcement of the Emissions Limit Duty.

- 1.32. Drafting in respect of the level of the financial penalty that the Regulator must set has been modified to include the wording 'where possible'. This is to cater for the very unlikely possibility that the Regulator may not be able to impose a penalty satisfying all of the specified principles (i.e. that the penalty should remove the benefit derived by the operator from the breach of the emissions limit duty; be fair and be proportionate).
- 1.33. We therefore do not consider that this change is, in practice, likely to make any substantive alteration to the nature of any enforcement action taken.

# EPS Suspension: Statement of Policy

## Summary

This section of the consultation set out the proposed content of the statement of policy relating to EPS suspension, including:

- 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 to suspend should all be specified in the statement of policy; and
- That the period of a suspension of the Emissions Limit Duty under any single direction should not exceed 90 days.

## Consultation Questions

Respondents were specifically asked:

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

## Government Consideration of the Issue

- 2.1. Those responding to question 8 were broadly supportive of the proposed statement of policy.

### Question 8

- 2.2. One respondent noted the proposed 90 day limit on the operation of any single direction to suspend constituted a suitable time period.
- 2.3. One respondent stated that the statement of policy should specify where, in the order of measures taken to mitigate against security of supply issues, suspension of the EPS would take place. The draft statement of policy sets out that the Secretary of State will not suspend the EPS unless satisfied that 'all other reasonably viable measures open to him or to others to mitigate the shortfall or the risk of shortfall have ... been taken'. Whilst we agree that 'reasonably viable measures' have not been specified, we believe this phrasing provides sufficient clarity on the circumstances in which the EPS may be suspended or modified without inappropriately constraining the Secretary of State's ability to respond flexibly to security of supply issues.
- 2.4. The statement of policy is provided at Annex B.



# Exemption for Carbon Capture and Storage Projects

## Summary

This section of the consultation set out proposals for application of the exemption from the EPS contained at section 58 of the Act relating to Carbon Capture and Storage (CCS) projects; in summary:

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

## Consultation Questions

Respondents were specifically asked:

9. Do you agree that applying the exemption to only ... 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.

## Government Consideration of the Issue

- 2.5. The majority of respondents answering question 9 agreed that the exemption should only apply to that part of the power station equipped by the full CCS chain.

### Question 9

- 2.6. A number of respondents indicated that the exemption should be available to the operator before a full CCS chain is in place, so that the plant could commence generating activities on an unrestricted basis before the full transport and storage elements of the chain had been completed. However, the CCS exemption contained in the Act is clear that a complete CCS chain must be ready for use before the exemption can apply and we do not consider that there is legal ability (or a policy rationale) from deviating from this position by way of regulation.
- 2.7. One respondent sought clarification as to the point at which the CCS exemption would apply. The draft regulations provide that the operator must submit a 'CCS notification' to the Regulator specifying the date at which the operator considers the CCS chain will be 'ready for use'. It is open to the Regulator to seek further information from the operator in the event of any doubt as to the point at which the full CCS chain can reasonably be considered 'ready for use'.

## Other Issues

- 2.8. One respondent suggested that any plant utilising the CCS exemption should still be required to report its emissions to the Regulator during the period of the CCS exemption as this could provide the Regulator with useful information about the operation of the CCS chain. We do not consider there to be grounds for compelling an operator to report for EPS purposes during the period where an exemption from the obligation to comply with the Emissions Limit applies as the Regulator will not need this information for purposes relating to its effective administration of the EPS. However, in practice, it is likely that the plant operator will report emissions data for the purposes of the EU ETS, and may well be subject to reporting requirements legitimately arising from other sources, too.
- 2.9. One respondent stated that an operator should not be subject to any additional regulatory risk as a result of a third party to whom CO<sub>2</sub> had been supplied failing to permanently store CO<sub>2</sub>. Our expectation is that normal contractual arrangements should make appropriate provision for any failure to provide contracted services, as would generally be the case. In addition, as set out in the consultation, the methodology used to monitor emissions for EPS purposes will be that which is already used in connection with the EU ETS. Therefore, the same monitoring approach for emissions supplied to a transport and storage structure is expected to apply.
- 2.10. One respondent queried how emissions would be monitored in circumstances where not all generating units were subject to a CCS related exemption. In these circumstances, the operator would be responsible for undertaking such additional monitoring as would be required to demonstrate compliance with the EPS.

# Annex A: List of Respondents

Responses to the 'Implementing the Emissions Performance Standard: Further Interpretation and Monitoring and Enforcement Arrangements in England and Wales' consultation were received from the following organisations.

- Carbon Capture & Storage Association
- CoalPro
- Combined Heat & Power Association
- E3G
- EDF Energy
- Energy UK
- E.ON
- Five Quarter
- GDF SUEZ
- Sahaviriya Steel Industries UK
- Sandbag
- SSE

## Annex B: 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**

2015

## **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 operator of the national transmission system for Great Britain (where transmission system has the same meaning as in section 4(4) of the Electricity Act 1989.
- The Gas and Electricity Markets Authority.
- 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**

Before making a direction to modify or suspend the emissions limit duty, the Secretary of State must be satisfied that conditions (a), (b) and (d) or conditions (a), (c) and (d) below have been met. The conditions are:

- (a) that there is an electricity shortfall or a significant risk of one;
- (b) that the shortfall, or significant risk of a shortfall, remains despite all reasonably viable measures open to the Secretary of State or to others to mitigate the risk of shortfall having been taken;
- (c) that the shortfall, or significant risk of a shortfall, would remain were all reasonably viable measures open to the Secretary of State or to others to have been taken; and
- (d) 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**

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.

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