
EXPLANATORY NOTE

(This note is not part of the Regulations)

Chapter 8 of Part 2 of the Energy Act 2013 (“the Act”) imposes a duty “the emissions limit duty” on operators of fossil fuel plant granted planning consent on or after 18th February 2014, to ensure that its annual emissions of carbon dioxide attributable to fossil fuels do not exceed an amount (“the emissions limit”) determined according to a formula set out in section 57(2) of the Act.

Part 1

Part 1 of these Regulations contains definitions used in these Regulations and provides that Parts 1 and 2 of these Regulations extend to the United Kingdom, while Part 3 applies to England only.

Part 2

Regulation 3 applies the emissions limit duty to upgrades or alterations to generating units of existing fossil fuel plants, where a main boiler in the generating unit is replaced or an additional main boiler is installed. The Regulation does not apply to those fossil fuel plants which are already considered to be fossil fuel plants within the scope of the emissions limit duty as subject to a relevant consent. The Regulation excludes plant that is ancillary to the function of the fossil fuel plant as a generating station but is to be used for safety purposes or in an emergency.

Regulation 4 modifies the emissions limit where particular conditions apply during a year. It is possible for more than one of the modifications to apply during a year.

Regulation 5 makes provision for when a gasification plant should be considered as associated with a relevant fossil fuel plant.

Regulation 6 exempts from the emissions limit duty generating units with a complete CCS system. Generating units not covered by a complete CCS system within the same fossil fuel plant continue to be subject to the emissions limit duty.

Regulation 7 sets out what emissions are relevant in determining whether a fossil fuel plant has breached the emissions limit duty (the “EPS annual emissions”). The relevant emissions are those emissions of carbon dioxide which are the direct result of operations and processes carried out in the generation of electricity and any from a gasification plant which produces fuel for a fossil fuel plant, where the gasification plant’s emissions in respect of the fossil fuel used by the gasification plant in supplying the generating plant are not otherwise included in the EPS annual emissions for the fossil fuel plant.

Regulation 8 provides for a reduction in the EPS annual emissions for fossil fuel plants which are combined heat and power plants, based on the amount of good quality heat produced by the plant in a given year.

Part 3

Part 3 creates a monitoring and enforcement regime for England.

Regulation 9 sets out the circumstances in which a fossil fuel plant operator must supply a notice to the Environment Agency. The notice must contain the emissions limit for the fossil fuel plant, its installed generating capacity and the date on which it commenced or is expected to commence generation.

Regulation 10 makes provision for notices to be given to the Environment Agency in relation to a complete CCS system, including which generating units any exemption should apply to.

Regulation 11 makes provision for the supply of a detailed emissions notification, an “EPS annual emissions notification”, containing the EPS annual emissions of a fossil fuel plant calculated in accordance with Part 2 of the Regulations and the methods of assessment and calculation used for the EU Emissions Trading Scheme. An EPS annual emissions notification will only have to be submitted if the Green House Gas Emissions Report for the fossil fuel plant discloses greater carbon dioxide emissions than the emissions limit for that plant.

Regulation 12 provides for the Secretary of State to establish a charging scheme for operation by the Environment Agency when carrying out functions under these Regulations.

Regulation 13 allows the Environment Agency to request further information from the operator of a fossil fuel plant, or the operator of an associated fossil fuel plant.

Regulation 14 allows for enforcement notices to be issued by the Environment Agency where an operator of a fossil fuel plant has breached the emissions limit duty.

Regulation 15 makes provision in relation to the Environment Agency to issuing civil penalties, where an operator of a fossil fuel plant has breached the emissions limit duty. The Secretary of State may publish guidance on financial penalties, to which the Environment Agency must have regard.

Regulation 16 provides for the effect of directions made by the Secretary of State under section 59(2) of the Energy Act 2013 suspending the operation of the emissions limit duty.

Regulation 17 makes provision for appeals against enforcement notices and civil penalty notices to the First-tier Tribunal.

Regulation 18 allows the Environment Agency to publish information in relation to issuing enforcement notices and civil penalty notices, providing that any appeal has been determined or withdrawn, or that the time limit for bringing an appeal has elapsed.

Regulation 19 makes provision for the enforcement of information notices, enforcement notices and civil penalty notices by way of the High Court treating an operator’s non-compliance as contempt.

Regulation 20 makes amendments to the Greenhouse Gas Emissions Trading Scheme Regulations 2012, to allow for information disclosure and publication such that that the Environment Agency can better perform its functions under Part 3 of these Regulations.

Regulation 21 brings into force the Schedule which makes provision for the service of documents by the Secretary of State and the Environment Agency under these Regulations. The Environment Agency is given powers elsewhere in the Regulations to proscribe the manner in which operators may serve notifications on it.

A validation regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change at 3 Whitehall Place, London, SW1A 2AW and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.