



# Energy Act 2013

## 2013 CHAPTER 32

### PART 2

#### ELECTRICITY MARKET REFORM

### CHAPTER 8

#### EMISSIONS PERFORMANCE STANDARD

#### 57 Duty not to exceed annual carbon dioxide emissions limit

- (1) The operator of any fossil fuel plant must secure that the emissions of carbon dioxide from it that are attributable to the use of fossil fuel do not exceed EL tonnes of carbon dioxide (“the emissions limit”) in any year, where—

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

and—

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

C is the installed generating capacity, in MW, of the electricity generating station comprised in the fossil fuel plant.

- (2) Until (and including) 2044, the statutory rate of emissions is 450 g/kWh.
- (3) In this Chapter, “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.
- (4) Those conditions are that the generating station—
- is constructed pursuant to a relevant consent given or made on or after the date on which subsection (1) comes into force, and

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- (b) uses—
  - (i) fossil fuel, or
  - (ii) fuel produced by gasification plant.
- (5) Subsection (1) is subject to—
  - (a) section 58, and
  - (b) any provision made by or under regulations made under subsection (6).
- (6) The Secretary of State may by regulations—
  - (a) make provision about the interpretation of the duty imposed by subsection (1) (“the emissions limit duty”);
  - (b) make any provision mentioned in Schedule 4 (application of emissions limit duty to additional cases or subject to modifications).
- (7) Regulations under subsection (6)(a) may, in particular, make provision—
  - (a) for determining whether gasification plant or CCS plant (including any CCS plant associated with gasification plant) is associated with a generating station;
  - (b) for determining the emissions from fossil fuel plant;
  - (c) for the use of fossil fuel—
    - (i) for operating plant that is ancillary to a generating station for safety purposes, or in an emergency, or
    - (ii) by a network generating station at a time when it is not exporting to a network,
 to be disregarded for any of the purposes of this Chapter;
  - (d) for determining (whether by apportionment or otherwise) which emissions from fossil fuel plant are attributable to the use of fossil fuel;
  - (e) for determining when plant ceases to be, or to be part of, fossil fuel plant;
  - (f) specifying the meaning of any of the following expressions—
    - (i) “operator”, in relation to fossil fuel plant;
    - (ii) “installed generating capacity”;
    - (iii) “constructed pursuant to a relevant consent”, in relation to an electricity generating station;
  - (g) specifying any category of emissions by reference to provision made, or that may from time to time be made, by or under regulations implementing the ETS Directive.
- (8) Provision that may be made by virtue of subsection (7)(d) includes provision for treating emissions attributable to the supply of heat to customers from combined heat and power plant as not being attributable to the use of fossil fuel.

## **58 Introduction of carbon capture and storage: exemption from emissions limit**

- (1) The emissions limit duty does not apply during the exemption period in relation to fossil fuel plant for which there is a complete CCS system.
- (2) For this purpose, a complete CCS system, in relation to fossil fuel plant, is a system of plant and facilities for—
  - (a) capturing some or all of the carbon dioxide (or any substance consisting primarily of carbon dioxide) that is produced by, or in connection with,

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- generation of electricity by the generating station comprised in the fossil fuel plant,
  - (b) transporting the carbon dioxide (or substance) captured, and
  - (c) disposing of it by way of permanent storage.
- (3) The exemption period for any fossil fuel plant is the period—
- (a) beginning with the first day on which the fossil fuel plant and its complete CCS system are ready for use, and
  - (b) ending with—
    - (i) the expiry of 3 years beginning with that day, or
    - (ii) 31 December 2027,whichever is earlier.
- (4) In subsection (3), “use” includes testing in connection with the generation of electricity on a commercial scale.
- (5) Subsection (1) is subject to any provision made by regulations under section 57(6)(b).

## **59 Suspension etc of emissions limit in exceptional circumstances**

- (1) This section applies where an appropriate authority considers that there is an electricity shortfall, or a significant risk of an electricity shortfall.
- (2) Where this section applies, the appropriate authority may direct that, in relation to relevant plant, the emissions limit duty is to be treated as—
- (a) suspended for a period specified in the direction, or
  - (b) modified for a period specified in the direction.
- (3) For the purposes of this section, there is an electricity shortfall when—
- (a) the electricity available in Great Britain is insufficient to meet demands in Great Britain, or
  - (b) the electricity available in Northern Ireland is insufficient to meet demands in Northern Ireland.
- (4) For this purpose—
- (a) electricity available in Great Britain or Northern Ireland includes electricity that is available there by virtue of an electricity interconnector (within the meaning of Part 1 of EA 1989), and
  - (b) subject to that, it is for the appropriate authority to determine what is to be regarded as available electricity.
- (5) Before giving a direction under this section, the Secretary of State must consult—
- (a) the Scottish Ministers,
  - (b) the Welsh Ministers, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (6) As soon as practicable after giving a direction under this section, the Secretary of State must lay before Parliament a document containing—
- (a) a copy of the direction, and
  - (b) a statement of the Secretary of State's reasons for making the direction.
- (7) Before giving a direction under this section, the Department of Enterprise, Trade and Investment must consult such persons as it considers it appropriate to consult.

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- (8) As soon as practicable after giving a direction under this section, the Department of Enterprise, Trade and Investment must lay before the Northern Ireland Assembly a document containing—
- (a) a copy of the direction, and
  - (b) a statement of the Department's reasons for making the direction.
- (9) A direction under this section—
- (a) is to be made in writing;
  - (b) may include incidental, supplementary and transitional provision;
  - (c) may be varied or revoked by a further direction under this section.
- (10) Provision that may be made by virtue of subsection (9)(b) includes, in particular, provision imposing requirements on enforcing authorities (within the meaning of Schedule 5) for Great Britain or Northern Ireland, as the case may be.
- (11) Each appropriate authority—
- (a) must issue (and may from time to time revise) a statement of the Secretary of State's or, as the case may be, the Department's policy in relation to making directions under this section,
  - (b) must publish the up-to-date text of the statement whenever it is issued or revised, and
  - (c) must have regard to the statement in making any direction under this section.
- (12) For the purposes of this section—
- “appropriate authority” means—
- (a) the Secretary of State, or
  - (b) the Department of Enterprise, Trade and Investment;
- “relevant generating station” means a generating station which satisfies paragraphs (a) and (b) of section 57(4);
- “relevant plant” means—
- (a) in relation to a direction by the Secretary of State, fossil fuel plant which consists of or includes a relevant generating station in Great Britain;
  - (b) in relation to a direction by the Department of Enterprise, Trade and Investment, fossil fuel plant which consists of or includes a relevant generating station in Northern Ireland.

## **60 Monitoring and enforcement**

- (1) It is the duty of the appropriate national authority to make arrangements for monitoring compliance with, and enforcement of, the emissions limit duty.
- (2) The appropriate national authority may by regulations make any provision mentioned in Schedule 5 (monitoring compliance with, and enforcement of, the emissions limit duty).
- (3) The arrangements under subsection (1) must include arrangements for giving effect to directions under section 59 (and, in particular, for compliance by enforcing authorities with any requirements imposed on them under subsection (10) of that section).
- (4) In this section (and Schedule 5), the “appropriate national authority” means—
  - (a) in relation to England, the Secretary of State;

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- (b) in relation to Scotland, the Scottish Ministers;
  - (c) in relation to Wales, the Welsh Ministers;
  - (d) in relation to Northern Ireland, the Department of Environment.
- (5) Subsection (4) is subject to paragraph 5 of Schedule 5 (which provides for the Secretary of State to make certain provision for Scotland, Wales and Northern Ireland).

## 61 Interpretation of Chapter 8

(1) In this Chapter—

“carbon capture and storage technology” means technology for doing, or contributing to the doing of, any of the following things—

- (a) capturing carbon dioxide (or any substance consisting primarily of carbon dioxide) that has been produced by, or in connection with, generation of electricity on a commercial scale;
- (b) transporting such carbon dioxide (or substance) that has been captured;
- (c) disposing of such carbon dioxide (or substance) that has been captured, by way of permanent storage;

“CCS plant” means plant, or a system of plant and facilities, that uses, or is capable of using, carbon capture and storage technology;

“distribution system” has the meaning given by section 4(4) of EA 1989 (and “distributed” is to be read accordingly);

“emissions limit duty” means the duty imposed by section 57(1);

“ETS Directive” means Directive [2003/87/EC](#) of the European Parliament and of the Council (as amended from time to time);

“fossil fuel” means—

- (a) coal;
- (b) lignite;
- (c) peat;
- (d) natural gas (within the meaning of the Energy Act 1976);
- (e) crude liquid petroleum;
- (f) bitumen;
- (g) any substance which—
  - (i) is produced directly or indirectly from a substance mentioned in paragraphs (a) to (f) for use as a fuel, and
  - (ii) when burned, produces a greenhouse gas (within the meaning given in section 92 of the Climate Change Act 2008);

“fossil fuel plant” has the meaning given by section 57(3);

“gasification plant” means plant which—

- (a) uses fossil fuel, and
  - (b) produces fuel for use in an electricity generating station;
- “network generating station” means a station that exports to a network;

“relevant consent” means—

- (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;

“transmission system” has the meaning given by section 4(4) of EA 1989;

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“year”, except in section 58, means any calendar year for which the emissions limit is defined by section 57.

- (2) For the purposes of this Chapter, a generating station exports to a network when it is generating any electricity that is conveyed from it by means of a transmission system or is distributed by means of a distribution system.

## 62 Regulations under Chapter 8

- (1) Any regulations made by the Secretary of State or the Welsh Ministers under this Chapter must be made by statutory instrument.
- (2) Any power to make regulations under this Chapter that is exercisable by the Department of Environment is to be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (3) An instrument containing—
- (a) regulations under section 57 (whether or not also containing regulations by the Secretary of State under section 60), or
  - (b) regulations by the Secretary of State under section 60 which amend or repeal any provision of primary legislation,
- may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament.
- (4) Any other instrument containing regulations made by the Secretary of State under section 60 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) If, but for this subsection, an instrument containing regulations by the Secretary of State under this Chapter would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.
- (6) Regulations by the Scottish Ministers under section 60 are—
- (a) if they amend or repeal any provision of primary legislation, subject to the affirmative procedure;
  - (b) otherwise, subject to the negative procedure.
- (7) An instrument containing regulations by the Welsh Ministers under section 60—
- (a) may not be made if the regulations amend or repeal any provision of primary legislation unless a draft has been laid before, and approved by a resolution of, the National Assembly for Wales;
  - (b) otherwise, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (8) Statutory rules containing regulations by the Department of Environment under section 60 are—
- (a) if the regulations amend or repeal any provision of primary legislation, subject to affirmative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954), and
  - (b) otherwise, subject to negative resolution (within the meaning of section 41(4) of that Act).
- (9) Any regulations under this Chapter may—

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- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (10) Regulations under section 57 that apply in relation to Northern Ireland may be made only with the consent of the Department of Enterprise, Trade and Investment.
- (11) Before making any regulations under section 57 or 60, the Secretary of State must consult—
- (a) in the case of regulations under section 57 that will apply in relation to Scotland or Wales, the Scottish Ministers or the Welsh Ministers, respectively, and
  - (b) in any case, such persons (or such other persons) as the Secretary of State considers it appropriate to consult.
- (12) Before making any regulations under section 60, the Scottish Ministers or the Welsh Ministers must consult such persons as they think appropriate.
- (13) Subsections (11) and (12) may be satisfied by consultation before, as well as after, the passing of this Act.

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