

Explanatory Memorandum to the Carbon Capture Readiness (Electricity Generating Stations) (Amendment) (Wales) Regulations 2019:

This Explanatory Memorandum has been prepared by Planning Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Carbon Capture Readiness (Electricity Generating Stations) (Amendment) (Wales) Regulations 2019.

Julie James

Minster for Housing and Local Government

20 February 2019

PART 1

1. Description

- 1.1 The Carbon Capture Readiness (Electricity Generating Stations) (Amendment) (Wales) Regulations 2019 amend the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 (“the 2013 Regulations”) as a result of the devolution, by the Wales Act 2017, of energy consenting functions in relation to electricity generating stations in Wales which have or will have a capacity not exceeding 350MW.
- 1.2 The 2013 Regulations implemented Article 36 of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast) (“the 2010 Directive”).

2. Matters of special interest to the Constitutional and legislative Affairs Committee

- 2.1 These Regulations are made under section 2(2) of the European Communities Act 1972. There is a choice of procedure in relation to instruments made under section 2(2) of that Act. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of the instrument as it is giving effect to EU provisions.

3. Legislative Background

- 3.1 These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (“the 1972 Act”) and section 58B of the Government of Wales Act 2006 (“the 2006 Act”).
- 3.2 Section 58B of the 2006 Act was inserted by section 20(1) of the 2017 Act. Section 58B allows the Welsh Ministers to make secondary legislation using powers in section 2(2) of the 1972 Act as if they were a Minister of the Crown or government department designated by Order in Council under that provision, provided such legislation is within the legislative competence of the National Assembly for Wales. The 2017 Act devolves to the Welsh Ministers and the National Assembly for Wales responsibility for energy consenting up to 350MW.

4. Purpose and Effect

- 4.1 These Regulations ensure the continued transposition of Article 36 of the 2010 Directive.

- 4.2 The aim of Article 36 is to ensure potential for future carbon capture and storage (“CCS”) is assessed when developers apply for consent to construct plants with a rated electrical output of 300MW or more.
- 4.3 A number of assessments need to be carried out relating to the technical and economic feasibility of capturing, transporting and storing potential carbon dioxide emissions from an applicable plant. These assessments are designed to determine whether it is reasonable to expect that the proposed power station could be fitted with CCS technology in the future. If an assessment demonstrates that fitting of CCS technology is feasible then Article 36 requires space to be set aside to accommodate retrofitting of such equipment, thus making the proposed plan “carbon capture ready”.
- 4.4 The 2013 Regulations transposed Article 36 of the 2010 Directive. The 2013 Regulations require that before making any development consent order or granting consent under section 36 of the Electricity Act 1989 (“1989 Act”) for the construction of combustion plants with rated electrical output of 300 megawatts or more (and for extensions to combustion plants which will have the effect of increasing the rated electrical output of the plant to 300 megawatts or more), the Secretary of State or the Scottish Ministers (as applicable) must determine whether certain conditions are met relating to the feasibility of CCS. If the conditions are met the order or consent must include requirements or conditions for suitable space to be set aside for equipment necessary to capture and compress all carbon dioxide that would otherwise be emitted from the plant.
- 4.5 Similar provision is made in the case of applications for changes to development consent orders or variations of section 36 consents where the change or variation would enable a combustion plant to have a rated electrical output of 300 megawatts or more, or in the case of a plant with an existing rated electrical output of 300 megawatts or more would enable an increase in the rated electrical output of that plant.
- 4.6 These Regulations amend the 2013 Regulations as a result of the devolution of energy consenting functions by the Wales Act 2017 in relation to electricity generating stations in Wales which have or will have a capacity not exceeding 350MW.
- 4.7 The effect of these Regulations is that before granting a planning permission for the construction of combustion plants with rated electrical output of between 300 and 350 megawatts (and for extensions or alterations to combustion plants which will have the effect of increasing the rated electrical to between 300 and 350 megawatts) the Welsh Ministers or local planning authority (as applicable) must determine whether certain conditions are met

relating to the feasibility of CCS. If the conditions are met the order or consent must include requirements or conditions for suitable space to be set aside for equipment necessary to capture and compress all carbon dioxide that would otherwise be emitted from the plant. Similar provision is made where the Welsh Ministers are considering a change to an existing development consent order which would enable a combustion plant to have a rated electrical output of between 300 and 350 megawatts, or in the case of a plant with an existing rated electrical output of 300 megawatts or more would enable an increase in the rated electrical output of that plant to a maximum of 350 megawatts.

5. Consultation

5.1 The Welsh Government undertook a 12 week consultation from 30 April to 23 July 2018 on changes to the consenting of infrastructure in Wales. The consultation was drawn to the attention of a wide range of stakeholders including LPAs, generating station operators and their representatives, businesses, planning consultants, interest groups and other public sector agencies. A total of 47 responses were received.

5.2 Part 1 of the consultation related to the arrangements for on and offshore generating stations in the short-term and proposed a 'status quo', where possible. The overall consensus of respondents was the proposed changes were proportionate and appropriate in the short-term.

5.3 A summary of the consultation responses is available from the Welsh Government at:

<https://beta.gov.wales/changes-approval-infrastructure-development>.

6. Regulatory Impact Assessment

6.1 The requirement for a Regulatory Impact Assessment ("RIA") has been assessed against the RIA code for subordinate legislation. In this instance, an RIA was not considered necessary.

6.2 These Regulations are made as a consequence of energy consenting functions by the Wales Act 2017 in relation to electricity generating stations in Wales which have or will have a capacity not exceeding 350MW. The discretion of the Welsh Ministers in relation to the content of the instrument is limited as it is giving effect to the 2010 Directive.

6.3 The Wales Act 2017 was accompanied by an RIA which assessed the costs and benefits of the devolution of energy consenting functions to the Welsh Ministers. The RIA can be found here:

https://webarchive.nationalarchives.gov.uk/20160611073307/https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/527740/Wales_Bill_impact_assessment.pdf .