

2015 No. 1388 (W. 137)

ELECTRICITY, WALES

**The Emissions Performance
Standard (Enforcement) (Wales)
Regulations 2015**

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 plants 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.

The Emissions Performance Standard Regulations 2015 make further provision for the application of the emissions limit duty in the United Kingdom. They extend the application of the emissions limit duty to include generating units that have replaced the main boiler or installed an additional main boiler; they modify the emissions limit where particular conditions apply during a year; they make provision for when a gasification plant should be considered as associated with a relevant fossil fuel plant; they exempt from the emissions limit duty generating units with a complete carbon capture and storage system; they set out what emissions are relevant in determining whether a fossil fuel plant has breached the emissions limit duty and they provide for a reduction in the emissions limit for fossil fuel plants which are combined heat and power plants.

These Regulations create a monitoring and enforcement regime, in relation to the emissions limit duty, for Wales.

Regulation 2 contains definitions.

Regulation 3 sets out the circumstances in which a fossil fuel plant operator must supply a notification to the NRBW. The notification must state 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 4 makes provision for notifications to be given to the NRBW in relation to a complete CCS system, including to which generating units any exemption should apply.

Regulation 5 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 Emissions Performance Standard Regulations 2015 and the methods of assessment and calculation used for the EU Emissions Trading Scheme.

Regulation 6 provides for the Welsh Ministers to establish a charging scheme for operation by the NRBW when carrying out functions under these Regulations.

Regulation 7 allows the NRBW to request further information from the operator of a fossil fuel plant, or the operator of an associated fossil fuel plant.

Regulation 8 allows for enforcement notices to be issued by the NRBW where an operator of a fossil fuel plant has breached the emissions limit duty.

Regulation 9 makes provision for NRBW to issue civil penalties, where an operator of a fossil fuel plant has breached the emissions limit duty. The Welsh Ministers may publish guidance on financial penalties, to which the NRBW must have regard.

Regulation 10 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 11 makes provision for appeals against enforcement notices and civil penalty notices to the First-tier Tribunal.

Regulation 12 allows the NRBW 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 13 makes provision for NRBW to enforce information notices, enforcement notices and civil penalty notices by obtaining an order of the High Court.

Regulation 14 makes amendments to the Greenhouse Gas Emissions Trading Scheme Regulations 2012, to allow for information disclosure and publication as necessary for the performance of NRBW’s functions under these Regulations.

Regulation 15 brings into force the Schedule which makes provision for the service of documents by the Welsh Ministers and the NRBW under these Regulations. The NRBW is given powers elsewhere in the Regulations to prescribe the manner in which operators may serve notifications on it.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

2015 No. 1388 (W. 137)

ELECTRICITY, WALES

**The Emissions Performance
Standard (Enforcement) (Wales)
Regulations 2015**

Made 15 June 2015

Laid before the National Assembly for Wales
16 June 2015

Coming into force 8 July 2015

The Welsh Ministers, in exercise of the powers conferred by sections 60 and 62(9) of, and Schedule 5 to, the Energy Act 2013⁽¹⁾, make the following Regulations:

Title, application and commencement

1.—(1) The title of these Regulations is the Emissions Performance Standard (Enforcement) (Wales) Regulations 2015.

(2) These Regulations apply in relation to Wales and come into force on 8 July 2015.

Interpretation

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Energy Act 2013;

“associated gasification plant” (“*gwaith nwyeddio cysylltiedig*”) means any gasification plant that—

- (a) produces fuel from fossil fuels; and
- (b) the fuel produced by that plant is used by a relevant fossil fuel plant to generate electricity;

“CCS notification” (“*hysbysiad dal a storio carbon*”) means a notification under regulation 4;

(1) 2013 c. 32.

“civil penalty notice” (“*hysbysiad cosb sifil*”) means a notice issued under regulation 9;

“emissions limit notification” (“*hysbysiad terfyn allyriadau*”) means a notification under regulation 3;

“enforcement notice” (“*hysbysiad gorfodi*”) means a notice issued under regulation 8;

“EPS annual emissions” (“*allyriadau blynyddol y Safon Perfformiad Allyriadau*”) is to be construed in accordance with regulations 7 and 8 of the Emissions Performance Standard Regulations 2015(1);

“EPS annual emissions notification” (“*hysbysiad allyriadau blynyddol y Safon Perfformiad Allyriadau*”) means a notification under regulation 5;

“generating station” (“*gorsaf gynhyrchu*”) means a station which generates electricity;

“generating unit” (“*uned gynhyrchu*”) 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” (“*y Rheoliadau CMANTG*”) means the Greenhouse Gas Emissions Trading Scheme Regulations 2012(2);

“Greenhouse Gas Emissions Permit” (“*Trwydded Allyriadau Nwyon Tŷ Gwydr*”) means a permit granted under regulation 10 of the GGETS Regulations;

“Greenhouse Gas Emissions Report” (“*Adroddiad Allyriadau Nwyon Tŷ Gwydr*”) means a report required to be submitted by an operator by Article 67(1) of the Monitoring and Reporting Regulation(3) ;

“information notice” (“*hysbysiad gwybodaeth*”) is a notice issued under regulation 7;

“installed generating capacity” (“*capasiti cynhyrchu gosodedig*”), in relation to a generating station or generating unit, means the maximum capacity of electricity generation (in MW) at which that generating station or generating unit could 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);

“the Monitoring and Reporting Regulation” (“*y Rheoliad Monitro ac Adrodd*”) means Commission

-
- (1) S.I. 2015/933
(2) S.I. 2012/3038 which has been amended by S.I. 2013/1037, S.I. 2013/3135 and S.I. 2014/3125.
(3) See the requirement in a Greenhouse Gas Emissions Permit inserted pursuant to Schedule 4, paragraph 2(3)(b) of the GGETS Regulations.

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⁽¹⁾;

“MW” (“*MW*”) means megawatts;

“MWth” (“*MWth*”) means megawatt of thermal output;

“NRBW” (“*CANC*”) means Natural Resources Body for Wales;

“operator” (“*gweithredwr*”), 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” (“*gwaith tanwydd ffosil perthnasol*”) means a fossil fuel plant to which the emissions limit duty applies under the Act or a generating unit to which the emissions limit duty applies by virtue of regulation 3 of the Emissions Performance Standard Regulations 2015;

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

“year” has the same meaning as in section 61(1) of the Act.

Emissions limit notification duty

3.—(1) If any of the conditions in paragraph (3) are met in relation to a relevant fossil fuel plant, the operator of the plant must submit a notification (“an emissions limit notification”) to the NRBW within 31 days of the date on which the condition is met (or if more than one condition is met, within 31 days of the date on which the earliest condition is met).

(2) An emissions limit notification must state—

- (a) the emissions limit (in tonnes of carbon dioxide) for the relevant fossil fuel plant, calculated in accordance with section 57(1) of the Act and as modified, if applicable, by regulation 4 of the Emissions Performance Standard Regulations 2015;
- (b) the installed generating capacity of the relevant fossil fuel plant; and
- (c) the date on which the relevant fossil fuel plant commenced or is expected to commence generation.

(3) The conditions referred to in paragraph (1) are—

- (a) that a Greenhouse Gas Emissions Permit in relation to the relevant fossil fuel plant—
 - (i) is held by the operator on the date these Regulations come into force;

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

- (ii) is granted to the operator after the date these Regulations come into force; or
 - (iii) is varied in relation to the amount of installed generating capacity covered by that permit after the date these Regulations come into force; or
- (b) the emissions limit for the relevant fossil fuel plant is modified by regulation 4 of the Emissions Performance Standard Regulations 2015.
- (4) An emissions limit notification must be submitted in such form and manner as the NRBW may reasonably require.

CCS notification

4.—(1) For the purposes of section 58 of the Act, the NRBW must not consider a complete CCS system to be ready for use unless it has first received from the operator a notification (“a CCS notification”) in respect of the system.

(2) A CCS notification must state—

- (a) each generating unit within the relevant fossil fuel plant to which the complete CCS system relates;
- (b) the installed generating capacity of all the generating units stated under sub-paragraph (a); and
- (c) the date on which the operator wishes the complete CCS system to be considered ready for use.

(3) A CCS notification must be submitted in such form and manner as the NRBW may reasonably require.

EPS annual emissions notification

5.—(1) If the condition in paragraph (2) is satisfied in relation to a relevant fossil fuel plant, the operator of the plant must submit a notification (“an EPS annual emissions notification”) to the NRBW in accordance with paragraphs (4) and (5).

(2) The condition referred to in paragraph (1) is that the total of—

- (a) the total emissions of carbon dioxide for the relevant fossil fuel plant reported in a verified Greenhouse Gas Emissions Report; and
- (b) if applicable and where not otherwise included in the total under sub-paragraph (a), the total emissions of carbon dioxide directly attributable to the production of fuel produced from fossil fuel in any associated gasification plant used by the relevant fossil fuel plant for the same period as the report,

is greater than the emissions limit for that plant for the year covered by the report.

- (3) For the purposes of paragraph (2)—
 - (a) only emissions of carbon dioxide which relate to generating units reported in a verified Greenhouse Gas Emissions Report are to be included; and
 - (b) “emissions limit” (“*terfyn allyriadau*”) means the emissions limit for the relevant fossil fuel plant calculated in accordance with section 57(1) of the Act and as modified, if applicable, by regulation 4 of the Emissions Performance Standard Regulations 2015.
- (4) An EPS annual emissions notification must—
 - (a) state the EPS annual emissions for the relevant fossil fuel plant for the same period as the verified Greenhouse Gas Emissions Report referred to in paragraph (2), and for this purpose, the EPS annual emissions are to be calculated or measured in accordance with the methodology of the Monitoring and Reporting Regulation;
 - (b) identify source streams for each generating unit at the relevant fossil fuel plant to which the emissions limit duty applies;
 - (c) be submitted to the NRBW within 10 days of the submission of the verified Greenhouse Gas Emissions Report referred to in paragraph (2); and
 - (d) be submitted in such form and manner as the NRBW may reasonably require.

Charges

6.—(1) The Welsh Ministers may make, and from time to time revise, a scheme for the charging by the NRBW of fees or other charges for the carrying out of functions conferred on it by these Regulations (“an EPS charging scheme”).

- (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 Welsh Ministers to be appropriate.
- (3) The NRBW may charge for the carrying out of functions conferred on it by these Regulations only as provided by an EPS charging scheme.

(4) An operator must pay a charge imposed under an EPS charging scheme on the operator and where there is a failure to do so—

- (a) the notification to which the charge relates is to be treated as not having been made; and
- (b) the amount of the charge an operator fails to pay may be recovered from the operator by the NRBW as a civil debt.

(5) An EPS charging scheme must be made publically available by the Welsh Ministers before it has effect.

Information notices

7.—(1) For any of the purposes mentioned in paragraph (2), the NRBW may, by notice served on an operator or the operator of an associated gasification plant (“an information notice”), require that person to furnish to the NRBW such information as is stated in the notice, in such form and within such period following service of the notice or at such time as is so stated.

(2) The purposes referred to in paragraph (1) 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 either or both of the duties in regulations 3 and 5;
- (c) investigating whether a complete CCS system is ready for use; and
- (d) investigating any of 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; and
 - (ii) the amount of fuel produced by the associated gasification plant and used by the relevant fossil fuel plant.

Enforcement notices

8.—(1) Where the NRBW is of the view that an operator has breached the emissions limit duty, the NRBW may serve a notice (“an enforcement notice”) on that operator.

(2) An enforcement notice may only be served in respect of a breach of the emissions limit duty in relation to—

- (a) the year in which the notice is served; or
- (b) the preceding year.

(3) An enforcement notice must state—

- (a) the NRBW's view under paragraph (1);
- (b) the remedial action which the operator must take in respect of the breach; and
- (c) the time by which the remedial action stated under sub-paragraph (b) must be taken.

(4) The time stated under paragraph (3)(c) must not be earlier than 21 days after the date of service of the enforcement notice.

(5) Subject to paragraph (6) and regulation 11, where an enforcement notice has been served on an operator, the operator must comply with the requirements of the enforcement notice.

(6) The NRBW may vary an enforcement notice at any time by further enforcement notice served on the operator.

(7) The NRBW may withdraw an enforcement notice at any time.

Civil penalty notices

9.—(1) Subject to paragraph (7), where the NRBW is of the view that an operator has breached the emissions limit duty, the NRBW may serve a notice (“a civil penalty notice”) on that operator which states the financial penalty which is payable in respect of that breach.

(2) A civil penalty notice must state—

- (a) how the amount of the financial penalty imposed was calculated; and
- (b) the date by which the amount payable under the civil penalty notice is to be paid in full.

(3) The financial penalty is to be set at a level that the NRBW considers will, if possible—

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

(4) The financial penalty may include an amount in respect of the costs reasonably incurred by NRBW in investigating and assessing the breach of the emissions limit duty.

(5) An operator must pay the amount payable under a civil penalty notice and if it is not paid in full by the date stated in the civil penalty notice, the amount payable may be recovered from the operator by the NRBW as a civil debt.

(6) The NRBW may vary or withdraw a civil penalty notice before it has been paid by further notice served on the operator.

(7) The NRBW may not impose a financial penalty in respect of a breach of the emissions limit duty in any year which began more than 5 years before the

year in which the notice imposing the penalty is served.

(8) The Welsh Ministers may issue guidance (“EPS penalty guidance”) on the calculation of financial penalties.

(9) Where EPS penalty guidance is issued, the NRBW must have regard to that guidance when calculating the amount of a financial penalty to be imposed.

(10) Before issuing guidance under paragraph (7), the Welsh Ministers must consult—

- (a) the Scottish Ministers;
- (b) the Secretary of State;
- (c) the Department of Environment; and
- (d) such other persons or bodies as the Welsh Ministers consider appropriate.

(11) Where EPS penalty guidance is issued, it must be made publically available by the Welsh Ministers before it has effect.

(12) The NRBW may state the manner and form in which any amount required to be paid by a civil penalty notice must be paid.

(13) Any sum received by the NRBW under this regulation must be paid into the Welsh Consolidated Fund.

Directions under section 59(2) of the Act

10. Where the Secretary of State makes a direction under section 59(2) of the Act, the NRBW must—

- (a) treat the emissions limit duty as suspended or modified as required by the direction; and
- (b) comply with any requirement imposed on it by the direction.

Appeals

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

- (a) an enforcement notice; or
- (b) a civil penalty notice.

(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 civil penalty notice 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 NRBW to vary or withdraw the enforcement notice or civil penalty notice; or
- (c) impose such other enforcement notice or civil penalty notice as the First-tier Tribunal thinks fit.

Publication of information

12.—(1) Subject to paragraph (3), the NRBW may publish any of the information stated in paragraph (2) in relation to an enforcement notice or civil penalty notice on or after the later of—

- (a) the day following expiry of the period for making an appeal against the imposition of the notice, if no appeal is made; or
- (b) the determination or withdrawal of the appeal, if an appeal is made.

(2) The information referred to in paragraph (1) is—

- (a) the identity of the operator subject to the enforcement notice or civil penalty notice;
- (b) in the case of an enforcement notice, remedial action required to be taken to remedy the breach of the emissions limit duty;
- (c) in the case of a civil penalty notice, the amount payable under the civil penalty notice; and
- (d) if the notice has been the subject of an appeal under regulation 11, the result of that appeal.

(3) The NRBW must not publish the information stated in paragraph (2) in relation to an enforcement notice or civil penalty notice 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 has been withdrawn.

Enforcement by the High Court

13.—(1) If an operator fails to comply with a relevant obligation the High Court may, on an application by NRBW make an order requiring “the operator” to comply with the relevant obligation.

(2) The NRBW may not apply to the High Court for an order under paragraph (1) if—

- (a) the time for an appeal relating to the relevant obligation has not elapsed; or
- (b) any appeal relating to the relevant obligation has not been determined.

(3) In paragraph (1), “a relevant obligation” (“*rhwymedigaeth berthnasol*”) means any obligation included in—

- (a) an information notice;
- (b) an enforcement notice; or
- (c) a civil penalty notice.

Amendment of the GGETS Regulations

14.—(1) At the end of regulation 46(1)(a)(ii) of the GGETS Regulations, after “;” omit “or”.

(2) After regulation 46(1)(a)(iv) of the GGETS Regulations insert—

- (iv) necessary for the performance of the NRBW’s functions in Wales under the Emissions Performance Standard (Enforcement) (Wales) Regulations 2015.□

Documents

15. The Schedule (documents) has effect.

Carl Sargeant

Minister for Natural Resources, one of the Welsh Ministers

15 June 2015

SCHEDULE Regulation 15

Documents

1.—(1) Subject to sub-paragraph (2), the provisions of this Schedule apply to any document issued under these Regulations.

(2) The provisions of this Schedule do not apply to—

- (a) an emissions limit notification;
- (b) a CCS notification; and
- (c) an EPS annual emissions notification.

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, state 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” (*“porth penodedig”*) means a facility on a person's website which is established to allow electronic communication with that person;

“non-working day” (*“diwrnod nad yw'n ddiwrnod gwaith”*) means—

- (a) a Saturday or Sunday;
- (b) a Christmas Eve, Christmas Day or Good Friday; or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(1) in any part of the United Kingdom,

and “working day” (*“diwrnod gwaith”*) is to be read accordingly;

“proper address” (*“cyfeiriad cywir”*) 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;
- (d) any part of the United Kingdom.

(1) 1971 c. 80.