

Explanatory Memorandum to The Emissions Performance Standard (Enforcement) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department of Natural Resources 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 Emissions Performance Standard (Enforcement) (Wales) Regulations 2015.

Carl Sargeant AM
Minister for Natural Resources

15 June 2015

1. Description

The Emissions Performance Standard (Enforcement) (Wales) Regulations 2015 supports the policy of decarbonising our energy supply by placing a limit on emissions from fossil fuel power stations. The limit applies throughout the UK but responsibility for monitoring and enforcement is devolved.

These Regulations establish a monitoring and enforcement regime for the Emissions Performance Standard (EPS) in Wales.

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

None.

3. Legislative background

Chapter 8 of Part 2 of the Energy Act 2013 (“the Act”) imposes a 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, made by the Secretary of State and applying across the United Kingdom make further provision for the application of the emissions limit duty.

Section 60 of and Schedule 5 to the Energy Act 2013 vests power in the Welsh Ministers to make arrangements for monitoring compliance with and for enforcement of the Emissions Limit Duty in relation to Wales by regulations.

The Regulations are made using the negative resolution procedure. This means that it will be made (i.e. signed) and laid before the National Assembly, but may not be brought into force until at least 21 (calendar) days from the date of laying.

4. Purpose & intended effect of the legislation

The Emissions Performance Standard Regulations 2015 contains provision about the application across the UK of the Emissions Limit Standard (hereafter “EPS”) provided for by section 57 of the Energy Act 2013. The EPS acts as a regulatory backstop to the UK National Planning policy, which requires any new coal fired power station to be equipped with Carbon Capture and Storage (CCS), so ensures that not only are new coal plant built with CCS but operated in accordance with emissions requirements. The EPS is extended to existing coal-fired generation plants which extend their operational life by replacing or adding a main boiler, and also modify the Emissions Limit in certain circumstances.

The objective of the EPS is to ensure that while fossil fuel-fired electricity generation continued to make a contribution to security of supply, it does so in a manner consistent with the decarbonisation of the UK's energy supply.

This instrument sets out the role and powers of the Natural Resources Body for Wales (NRBW) as the monitoring and enforcement authority in Wales and sets out:

- the notifications required by fossil fuel plant operators to NRBW;
- the establishment of a charging scheme;
- allowing for NRBW to issue enforcement notices in the event of breaches;
- provision for NRBW to issue civil penalties; and
- provision for NRBW to enforce information notices, enforcement notices and civil penalty notices by obtaining an order of the High Court.

This instrument also:

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

5. Consultation

A six week public consultation was conducted jointly with the UK Department of Energy and Climate Change (DECC) from 25 September to 06 November 2014. It can be accessed via the following link:

<https://www.gov.uk/government/consultations/implementing-the-emissions-performance-standard>

A total of twelve responses were received to the consultation, which were largely supportive of the proposed approach to the Regulations; in particular the intention to minimise additional monitoring and reporting burden by utilising existing arrangements relating to the EU Emissions Trading Scheme was welcomed.

The consultation responses did not suggest grounds for any substantive amendment in policy approach.