EXPLANATORY MEMORANDUM TO

THE CARBON CAPTURE READINESS (ELECTRICITY GENERATING STATIONS) REGULATIONS 2013

2013 No. 2696

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations transpose Article 36 of Directive 2010/75/EU of the European Parliament and of the Council of 24th November 2010 on industrial emissions (integrated pollution prevention and control) (Recast)[1] (Directive 2010/75) (hereafter referred to as "the IE Directive").

2.2 The regulations provide that no order for development consent (in England and Wales), or consent under section 36 of the Electricity Act 1989 (either in England and Wales, or Scotland), may be made in relation to a combustion plant[2] with a capacity at or over 300 MWe unless the relevant authority has determined (on the basis of an assessment carried out by the applicant) whether it is technically and economically feasible to retrofit the equipment necessary to capture the carbon dioxide that would otherwise be emitted from the plant, and to transport and store such carbon dioxide from the site.

2.3 If the Secretary of State or Scottish Ministers (as applicable) determine that those conditions are met, and decides to grant development consent or section 36 consent (as the case may be), the regulations require that authority to include a requirement or condition (as applicable) in the relevant consent that suitable space for the equipment necessary to capture and compress carbon dioxide from the plant is set aside.

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[1] OJ No. L334/17, 17.12.2010. The Official Journal text of the Directive is available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:334:0017:0119:EN:PDF. Article 36 replicates the terms of Article 9a of Directive 2001/80/EC of the European Parliament and of the Council of 23rd October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants and replaces that article in its entirety with effect from 7th January 2013. Article 9a was inserted by Article 33 of Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide (OJ No. L140, 5.6.2009, p.114).

[2] Broadly speaking, the obligation relates to those combustion plants which are to be fuelled by coal, gas, oil or biomass (though note the exclusions set out in Article 28 of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast).

2.4 The regulations also include similar assessment and determination provisions where changes or variations are proposed to be made to existing development consent orders or section 36 consents, and where such modification would enable the relevant combustion plant so modified to have a rated electrical output of 300 MWe or more, or would increase the output of a combustion plant which is already able to produce 300 MWe.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative background

4.1 The Department of Energy and Climate Change published guidance on carbon capture readiness in the context of consents for generating stations under section 36 of the Electricity Act 1989 in England and Wales in November 2009[3]. The Scottish Government published similar guidance in March 2010[4]. This guidance transposed Article 9a of Directive 2001/80/EC of the European Parliament and of the Council of 23rd October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants ("Article 9a"). Article 9a was inserted by Article 33 of Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide[5]. Article 36 of the IE Directive replicates the terms of Article 9a and replaced that article in its entirety with effect from 7th January 2013. These regulations are intended to formally transpose Article 36 (alongside the existing guidance, which will remain in effect).

4.2 Annex A includes the "Transposition table – to accompany the Environmental Permitting (England & Wales) (Amendment) Regulations" which provides a summary of how the components of the IE Directive are transposed – the highlighted row refers to the transposition of Article 36.

5. Territorial Extent and Application

[3] See National Policy Statements for Infrastructure EN-1 and EN-2 at: https://www.gov.uk/consents-and-planning-applications-for-national-energy-infrastructure-projects#national-policy-statements-for-energy-infrastructure and further guidance at https://whitehall-admin.production.alphagov.co.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf

[4] http://www.scotland.gov.uk/Topics/Business-Industry/Energy/Infrastructure/Energy-Consents/Thermal-Guidance/Thermal-2010

[5] The Official Journal text of the Directive is available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0114:0135:EN:PDF. Article 33 inserts a new Article 9a into the Large Combustion Plant Directive, 2001/80/EC. Strictly speaking, Article 9a is the operative provision, but for convenience, Article 33 is referred to in this memorandum.

5.1 These regulations apply to England and Wales, and Scotland.

6. European convention on human rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The aim of Article 36 is to ensure potential for future carbon capture and storage (hereinafter referred to as "CCS") is assessed when developers apply for consent to construct combustion generating stations over 300 MWe, of a type covered by the IE Directive. 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 plant "carbon capture ready".

7.2 These regulations require that before making any grant for development consent or section 36 consent for a relevant plant, the Secretary of State or Scottish Ministers (as applicable) must determine whether (according to information available at the time of the determination) suitable carbon dioxide storage sites will be available, whether facilities for transport of carbon dioxide to those sites will be technically and economically feasible and whether it will be technically and economically feasible to retrofit for carbon dioxide capture (the "feasibility conditions"). Similar provision is made in the case of applications for changes or variations to existing development consent orders or section 36 consents, and where such modification would enable the relevant combustion plant so modified to have a rated electrical output of 300 MWe or more, or would increase the output of a combustion plant which is already able to produce 300 MWe[6].

7.3 The relevant authority (i.e. Secretary of State or Scottish Ministers) may not grant a relevant consent unless it has determined whether the feasibility conditions are met. If the relevant authority determines that such conditions are met and decides to grant the consent in question, the authority must include in such consent a condition/requirement that suitable space is kept available for the possible future retrofit of carbon capture equipment.

7.4 The objective of this instrument is therefore to ensure that large combustion generating stations which may be suitable for future retrofit of CCS

[6] I.e. in order to determine whether the existing space set aside for carbon capture and storage equipment continues to be sufficient.

technology have space available to install the necessary equipment should carbon capture and storage become technically and economically feasible in the future. This will assist the delivery of the policy to decarbonise the energy infrastructure in England, Wales, and Scotland.

7.5 The existing guidance for applications for planning consents for relevant combustion generating stations (see below) already requires developers to carry out the feasibility assessments required by this instrument.

8. Consultation outcome

8.1 No separate consultation exercise was conducted as this instrument does not introduce any new measures in respect of applications for consent for generating stations. Applicants currently have to comply with guidance which includes the measures contained in this instrument.

8.2 A full consultation exercise conducted on the policy measures effected by that guidance can be found at:

a) http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file46810.pdf
b) Consultation on the guidance itself can be found at http://webarchive.nationalarchives.gov.uk/+/http:/www.berr.gov.uk/files/file51117.pdf
c) The Government's Response to that consultation can be found at http://webarchive.nationalarchives.gov.uk/20121217221648/http:/www.decc.gov.uk/assets/decc/consultations/guidancecarboncapturereadiness/1_20091106164507_e_@@_ccrgovresponse.pdf

9. Guidance

9.1 Existing guidance for applications for consent for generating stations in England and Wales can be found at https://whitehall-admin.production.alphagov.co.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf

9.2 The equivalent guidance for Scotland can be found at http://www.scotland.gov.uk/Topics/Business-Industry/Energy/Infrastructure/Energy-Consents/Thermal-Guidance/Thermal-2010

10. Impact

10.1 A Regulatory Triage Assessment (RTA) is attached at Annex B.

10.2 The RTA confirms that there will be no additional impacts as a result of this instrument since the existing guidance already includes the obligations in Article 9a.

11. Regulating small business

11.1 This instrument would have no impact on small businesses since all the types of plant covered by the proposal would need to be at or over 300 MWe. In this large scale plant segment of the market only large firms operate since the capital requirements for building these plants run into hundreds of millions of pounds sterling.

12. Monitoring and review

12.1 Existing guidance is monitored on a continuous basis to ensure that it remains fit for purpose and does not have any unintended consequences especially on biomass and open cycle gas turbines.

12.2 The Secretary of State must carry out a review of the regulations within 5 years of their coming into force and publish the conclusions of that review accordingly.

13. Contact

Gareth Leigh at the Department of Energy and Climate Change (telephone: 0300 068 5677 or email: gareth.leigh@decc.gsi.gov.uk) can answer any queries regarding the instrument.