EXPLANATORY MEMORANDUM TO

THE EMISSIONS PERFORMANCE STANDARD (AMENDMENT) REGULATIONS 2022

2022 No. 467

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Emissions Performance Standard (EPS) places emissions limits (CO2) on new-build fossil fuel plants. It was established in the UK by the Energy Act 2013 and the Emissions Performance Standard Regulations 2015 ("the EPS Regulations"). It is a regulatory back stop which requires that new fossil fuel power stations do not exceed the Emissions Limit Duty, which is fixed at 450gCO2/kWh until 2044, unless they are equipped with Carbon Capture and Storage.

2.2 Part 3 of the EPS Regulations 2015 covers the monitoring and enforcement regime in England. Certain terms defined in regulation 2 of the EPS Regulations 2015 contain cross-references to legislation implementing the EU Emissions Trading Scheme in the UK, specifically the Greenhouse Gas Emissions Trading Scheme Regulations 2012 ("GGETS Regulations") (S.I. 2012/3038) and the Commission 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 ("the Monitoring and Reporting Regulation 2012") These cross-references require updating following the end of the Transition Period when the UK Emissions Trading Scheme came into force and the UK left the EU Emissions Trading Scheme. Therefore, amendments are required to regulation 2 to update these references and include a new definition of the Greenhouse Gas Emissions Trading Scheme Order 2020 to maintain the monitoring and enforcement of the EPS in England.

3. Matters of special interest to Parliament

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England.

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5. European Convention on Human Rights

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

6. Legislative Context

6.1 The EPS was established by the Energy Act 2013 and applies UK wide. It is also implemented by the Emissions Performance Standard Regulations 2015, Part 2 of

which covers the application of the Emissions Limit Duty in certain cases (UK-wide) and Part 3 of which covers the monitoring and enforcement regime in England (England only). The purpose of this SI is to amend certain definitions in regulation 2 of the EPS Regulations 2015 and to include a new definition of the Greenhouse Gas Emissions Trading Scheme Order 2020. The definitions that require amending (and the new one to be included) are only used in provisions found in Part 3, which applies to England only. There are separate regulations which implement a monitoring and enforcement regime in Wales and Northern Ireland respectively.

7. Policy background

7.1 The Emissions Performance Standard (EPS) places emissions limits (CO2) on new-build fossil fuel plants. It was established in the UK by the Energy Act 2013 and the Emissions Performance Standard Regulations 2015. It is a regulatory back stop which requires that new fossil fuel power stations do not exceed the Emissions Limit Duty, which is fixed at 450gCO2/kWh until 2044, unless they are equipped with Carbon Capture and Storage.

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8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because of the need to update certain definitions in the EPS Regulations 2015, caused by withdrawal from the European Union.

9. Consultation outcome

9.1 A consultation was held in 2014 on implementing the Emissions Performance Standard[1]. It has not been deemed necessary to consult on the changes made by this instrument owing to their very technical nature and their relation to withdrawal from the European Union.

10. Guidance

10.1 None.

11. Impact

11.1 There is no, or no significant, impact on business, charities or voluntary bodies.

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/357217/implementing_emissions_performance_standard.pdf.

11.2 There is no, or no significant, impact on the public sector.

11.3 A full Impact Assessment has not been prepared for this instrument because there are no impacts. A full Impact Assessment was done in 2013 when the EPS was first implemented[2].

12. Regulating small business

12.1 The legislation applies to activities that are undertaken by small businesses.

13. Monitoring & review

13.1 The Energy Act 2013 contains a statutory requirement for review every 5 years. This includes the Emissions Performance Standard.

14. Contact

14.1 Ollie Power (oliver.power@beis.gov.uk and Genna King (genna.king@beis.gov.uk) at the Department for Business, Energy and Industrial Strategy can be contacted with any queries regarding the instrument.

14.2 Rob Hewitt, Deputy Director for Energy Security at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

14.3 The Rt Hon Greg Hands MP at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

[2] https://www.parliament.uk/documents/impact-assessments/IA13-12H.pdf .