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2019 Rhif 294 (Cy. 72)

2019 No. 294 (W. 72)

**DIOGELU'R AMGYLCHEDD,
CYMRU**

**ENVIRONMENTAL
PROTECTION, WALES**

TRYDAN, CYMRU

ELECTRICITY, WALES

**Rheoliadau Parodrwydd i Ddal
Carbon (Gorsafoedd Cynhyrchu
Trydan) (Diwygio) (Cymru) 2019**

**The Carbon Capture Readiness
(Electricity Generating Stations)
(Amendment) (Wales) Regulations
2019**

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Parodrwydd i Ddal Carbon (Gorsafoedd Cynhyrchu Trydan) 2013 ("Rheoliadau 2013") o ganlyniad i'r datganoliad, gan Ddeddf Cymru 2017, o swyddogaethau cydsynio ym maes ynni mewn perthynas â gorsafoedd cynhyrchu trydan yng Nghymru, y mae neu y bydd ganddynt gapasiti nad yw'n fwy na 350 o fegawatiau.

Gweithredodd Rheoliadau 2013 Erthygl 36 o Gyfarwydddeb 2010/75/EU Senedd Ewrop a'r Cyngor ynghylch allyriadau diwydiannol (dulliau integredig o atal a rheoli llygredd) (Ail-lunio) (OJ Rhif L334, 17.12.2010, t.17).

Mae rheoliad 2 yn mewnosod diffiniadau newydd.

Mae rheoliad 4 yn diwygio rheoliad 4 o Reoliadau 2013 i wneud darpariaeth mewn cysylltiad â swyddogaethau newydd Gweinidogion Cymru o dan Atodlen 6 i Ddeddf Cynllunio 2008 mewn perthynas â chyfarparau hylosgi yng Nghymru y mae cyfradd eu hallbwn trydanol rhwng 300 a 350 o fegawatiau.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations 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 350 megawatts.

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) (OJ No. L334, 17.12.2010, p.17).

Regulation 2 inserts new definitions.

Regulation 4 amends regulation 4 of the 2013 Regulations to make provision in respect of the Welsh Ministers' new functions under Schedule 6 to the Planning Act 2008 in relation to combustion plants in Wales with a rated electrical output of between 300 and 350 megawatts.

Mae rheoliad 5 yn mewnosod rheoliad 6A newydd. Mae rheoliad 6A yn ymwneud â chaniatadau cynllunio ar gyfer adeiladu cyfarparau hylosgi yng Nghymru y mae cyfradd eu hallbwn trydanol rhwng 300 a 350 o fegawattiau (neu ar gyfer estyniadau i gyfarparau hylosgi yng Nghymru sy'n cael yr effaith o gynyddu cyfradd allbwn trydanol y cyfarparau i rhwng 300 a 350 o fegawattiau). Cyn rhoi caniatâd cynllunio o'r fath, rhaid i Weinidogion Cymru neu'r awdurdod cynllunio lleol (fel y bo'n gymwys) benderfynu a yw amodau penodol wedi eu bodloni o ran dichonoldeb dal a storio carbon. Os yw'r amodau wedi eu bodloni, rhaid i'r caniatâd cynllunio gynnwys amodau ar gyfer neilltuo lle addas ar gyfer yr offer sy'n angenrheidiol i ddal a chywasgu'r holl garbon deuocsid a fyddai fel arall yn cael ei allyrru o'r cyfarpar.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Aseidiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ystyriwyd nad oedd yn angenrheidiol cynnal aseiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

Regulation 5 inserts a new regulation 6A. Regulation 6A relates to planning permissions for the construction of combustion plants in Wales with a rated electrical output of between 300 and 350 megawatts (or for extensions to combustion plants in Wales which have the effect of increasing the rated electrical output of the plants to between 300 and 350 megawatts). Before granting such a planning permission the Welsh Ministers or local planning authority (as applicable) must determine whether certain conditions are met relating to the feasibility of carbon capture and storage. If the conditions are met, the planning permission must include conditions for suitable space to be set aside for equipment necessary to capture and compress all the carbon dioxide that would otherwise be emitted from the plant.

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.

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Carbon (Gorsafoedd Cynhyrchu
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The Carbon Capture Readiness
(Electricity Generating Stations)
(Amendment) (Wales) Regulations
2019

Gwnaed 18 Chwefror 2019

Made 18 February 2019

*Gosodwyd gerbron Cynulliad Cenedlaethol
Cymru* 20 Chwefror 2019

Laid before the National Assembly for Wales
20 February 2019

Yn dod i rym 1 Ebrill 2019

Coming into force 1 April 2019

Mae Gweinidogion Cymru, drwy arfer y pwerau a roddwyd gan adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972(1) ac adran 58B o Ddeddf Llywodraeth Cymru 2006(2), yn gwneud y Rheoliadau a ganlyn:

The Welsh Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1) and section 58B of the Government of Wales Act 2006(2), make the following Regulations:

Enwi, cychwyn a chymhwysu

Title, commencement and application

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Parodrwydd i Ddal Carbon (Gorsafoedd Cynhyrchu Trydan) (Diwygio) (Cymru) 2019 a deuant i rym ar 1 Ebrill 2019.

1.—(1) The title of these Regulations is the Carbon Capture Readiness (Electricity Generating Stations) (Amendment) (Wales) Regulations 2019 and they come into force on 1 April 2019.

(1) 1972 p. 68. Diwygiwyd adran 2(2) gan adran 27(1) o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006 (p. 51) a Rhan 1 o'r Atodlen i Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 (p. 7).
(2) 2006 p. 32. Mewnosodwyd adran 58B gan adran 20(1) o Ddeddf Cymru 2017 (p. 4). Mae wedi ei diddymu yn rhagolygol gan baragraffau 27 a 34 o Atodlen 3 i Ddeddf yr Undeb Ewropeaidd (Ymadael) 2018 (p. 16) o ddyddiad sydd i'w bennu. Mae adran 58B yn caniatáu i Weiniogion Cymru wneud is-ddeddfwriaeth gan ddefnyddio pwerau yn adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972 fel pe baent yn un o Weiniogion y Goron neu'n un o adrannau'r llywodraeth a ddynodwyd gan Orchymyn yn y Cyfrin Gyngor o dan y ddarpariaeth honno, ar yr amod y byddai deddfwriaeth o'r fath o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru fel arall.

(1) 1972 c. 68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
(2) 2006 c. 32. Section 58B was inserted by section 20(1) of the Wales Act 2017 (c. 4). It is prospectively repealed by paragraphs 27 and 34 of Schedule 3 to the European Union (Withdrawal) Act 2018 (c. 16) from a date to be appointed. Section 58B allows the Welsh Ministers to make secondary legislation using powers in section 2(2) of the European Communities Act 1972 as if they were a Minister of the Crown or government department designated by Order in Council under that provision, provided such legislation would otherwise be within the legislative competence of the National Assembly for Wales.

(2) Mae'r Rheoliadau hyn yn gymwys o ran Cymru.

(2) These Regulations apply in relation to Wales.

Diwygio Rheoliadau Parodrydd i Ddal Carbon (Gorsafoedd Cynhyrchu Trydan) 2013

2. Mae Rheoliadau Parodrydd i Ddal Carbon (Gorsafoedd Cynhyrchu Trydan) 2013(1) wedi eu diwygio fel a nodir yn rheoliadau 3 i 5.

Amendment of the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013

2. The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013(1) are amended as set out in regulations 3 to 5.

Dehongli

3. Yn rheoliad 2(1) (dehongli) yn y manau priodol mewnosoder y diffiniadau a ganlyn—

““the 1990 Act” means the Town and Country Planning Act 1990(2);”;

““devolved combustion plant” means a combustion plant in Wales with a related electrical output of between 300 and 350 megawatts;”;

““local planning authority” and “planning permission” have the meanings given in section 336 of the 1990 Act(3);”;

““relevant planning authority” means in relation to a relevant planning permission—

(a) where the development to which the application relates is of national significance for the purposes of section 62D of the 1990 Act(4), the Welsh Ministers;

(b) in all other cases, the local planning authority;”;

““relevant planning permission” means a planning permission—

(a) for the construction of a devolved combustion plant; or

(b) for an extension or alteration to a combustion plant in Wales which will have the effect of increasing the rated electrical output of the plant to between 300 and 350 megawatts;”.

Interpretation

3. In regulation 2(1) (interpretation) at the appropriate places insert the following definitions—

““the 1990 Act” means the Town and Country Planning Act 1990(2);”;

““devolved combustion plant” means a combustion plant in Wales with a related electrical output of between 300 and 350 megawatts;”;

““local planning authority” and “planning permission” have the meanings given in section 336 of the 1990 Act(3);”;

““relevant planning authority” means in relation to a relevant planning permission—

(a) where the development to which the application relates is of national significance for the purposes of section 62D of the 1990 Act(4), the Welsh Ministers;

(b) in all other cases, the local planning authority;”;

““relevant planning permission” means a planning permission—

(a) for the construction of a devolved combustion plant; or

(b) for an extension or alteration to a combustion plant in Wales which will have the effect of increasing the rated electrical output of the plant to between 300 and 350 megawatts;”.

(1) O.S. 2013/2696.

(2) 1990 p. 8.

(3) Diwygiwyd adran 336 gan Ran 1 o Atodlen 19 i Ddeddf Cynllunio a Digolledu 1991 (p. 34) a chan O.S. 2006/1281. Nid yw'r diwygiadau eraill yn berthnasol i'r Rheoliadau hyn.

(4) Mewnosodwyd adran 62D gan adran 19 o Ddeddf Cynllunio (Cymru) 2015 (decc 4).

(1) S.I. 2013/2696.

(2) 1990 c. 8.

(3) Section 336 was amended by Part 1 of Schedule 19 to the Planning and Compensation Act 1991 (c. 34) and by S.I. 2006/1281. Other amendments are not relevant to these Regulations.

(4) Section 62D was inserted by section 19 of the Planning (Wales) Act 2015 (anaw 4).

Newidiadau i orchmynon cydsyniad i ddatblygiad: penderfynu'r parodrwydd i ddal carbon a'r gofynion sydd i'w gosod pan fo'r amodau ynglŷn â pharodrwydd i ddal carbon wedi eu bodloni

4. Yn rheoliad 4 (newidiadau i orchmynon cydsyniad i ddatblygiad)—

- (a) ar ddiwedd paragraff (1) ar ôl “(“the modified plant”)” mewnosoder “(but see paragraph (1A))”;
- (b) ar ôl paragraff (1) mewnosoder—
“(1A) The Welsh Ministers must not—
 - (a) change a consent order in respect of a combustion plant in Wales with a rated electrical output of less than 300 megawatts in such a way as to enable the plant to have a rated electrical output of between 300 and 350 megawatts; or
 - (b) change a relevant consent order in respect of a devolved combustion plant in such a way as to enable a combustion plant to increase its rated electrical output to a maximum of 350 megawatts,

unless the Welsh Ministers have determined whether the CCR conditions are met in relation to the combustion plant, as constructed or extended in accordance with the consent order as so changed (“the modified plant”).”;

- (c) ym mharagraff (2) ar ôl “determination under paragraph (1)” mewnosoder “and the Welsh Ministers’ determination under paragraph (1A)”;
- (d) ym mharagraff (3)(a) ar ôl “determines” mewnosoder “under paragraph (1)”;
- (e) ar ôl paragraff (3) mewnosoder—
“(3A) If the Welsh Ministers—
 - (a) determine under paragraph (1A) that the CCR conditions are met in relation to a combustion plant; and
 - (b) decide to—
 - (i) change a consent order in respect of that plant in the way described in paragraph (1A)(a); or
 - (ii) change a relevant consent order in respect of that plant in the way described in paragraph (1A)(b),

the Welsh Ministers must ensure that the consent order (as changed) includes a requirement that suitable space is set aside for the equipment necessary to capture and compress all of the CO₂ that would otherwise be emitted from the plant.”

Changes to development consent orders: determination of carbon capture readiness and requirements to be imposed where CCR conditions are met

4. In regulation 4 (changes to development consent orders)—

- (a) at the end of paragraph (1) after “(“the modified plant”)” insert “(but see paragraph (1A))”;
- (b) after paragraph (1) insert—
“(1A) The Welsh Ministers must not—
 - (a) change a consent order in respect of a combustion plant in Wales with a rated electrical output of less than 300 megawatts in such a way as to enable the plant to have a rated electrical output of between 300 and 350 megawatts; or
 - (b) change a relevant consent order in respect of a devolved combustion plant in such a way as to enable a combustion plant to increase its rated electrical output to a maximum of 350 megawatts,

unless the Welsh Ministers have determined whether the CCR conditions are met in relation to the combustion plant, as constructed or extended in accordance with the consent order as so changed (“the modified plant”).”;

- (c) in paragraph (2) after “determination under paragraph (1)” insert “and the Welsh Ministers’ determination under paragraph (1A)”;
- (d) in paragraph (3)(a) after “determines” insert “under paragraph (1)”;
- (e) after paragraph (3) insert—
“(3A) If the Welsh Ministers—
 - (a) determine under paragraph (1A) that the CCR conditions are met in relation to a combustion plant; and
 - (b) decide to—
 - (i) change a consent order in respect of that plant in the way described in paragraph (1A)(a); or
 - (ii) change a relevant consent order in respect of that plant in the way described in paragraph (1A)(b),

the Welsh Ministers must ensure that the consent order (as changed) includes a requirement that suitable space is set aside for the equipment necessary to capture and compress all of the CO₂ that would otherwise be emitted from the plant.”

Ceisiadau am ganiatâd datblygu perthnasol: penderfynu'r parodrwydd i ddal carbon a'r gofynion sydd i'w gosod pan fo'r amodau ynglŷn â pharodrwydd i ddal carbon wedi eu bodloni

5. Ar ôl rheoliad 6 (amrywiadau i gydsyniadau adran 36) mewnosoder—

“Applications for planning permission: determination of carbon capture readiness and requirements to be imposed where CCR conditions are met

6A.—(1) The relevant planning authority must not grant a relevant planning permission unless the relevant planning authority has determined whether the CCR conditions are met in relation to the combustion plant to which the planning permission relates.

(2) The relevant planning authority's determination under paragraph (1) must be made on the basis of—

- (a) a CCR assessment of the combustion plant prepared by the person who made the application for the relevant planning permission; and
- (b) any other available information, particularly concerning the protection of the environment and human health.

(3) If the relevant planning authority—

- (a) determines that the CCR conditions are met in relation to a combustion plant; and
- (b) decides to grant a relevant planning permission in respect of that plant,

the relevant planning authority must include a requirement in the relevant planning permission that suitable space is set aside for the equipment necessary to capture and compress all of the CO₂ that would otherwise be emitted from the plant.

(4) In this regulation, in the case of a planning permission for an extension to a combustion plant which will have the effect of increasing the rated electrical output of the plant to between 300 and 350 megawatts, references to a “combustion plant” are references to that plant as extended.”

Applications for relevant planning permission: determination of carbon capture readiness and requirements to be imposed where CCR conditions are met

5. After regulation 6 (variations of section 36 consents) insert—

“Applications for planning permission: determination of carbon capture readiness and requirements to be imposed where CCR conditions are met

6A.—(1) The relevant planning authority must not grant a relevant planning permission unless the relevant planning authority has determined whether the CCR conditions are met in relation to the combustion plant to which the planning permission relates.

(2) The relevant planning authority's determination under paragraph (1) must be made on the basis of—

- (a) a CCR assessment of the combustion plant prepared by the person who made the application for the relevant planning permission; and
- (b) any other available information, particularly concerning the protection of the environment and human health.

(3) If the relevant planning authority—

- (a) determines that the CCR conditions are met in relation to a combustion plant; and
- (b) decides to grant a relevant planning permission in respect of that plant,

the relevant planning authority must include a requirement in the relevant planning permission that suitable space is set aside for the equipment necessary to capture and compress all of the CO₂ that would otherwise be emitted from the plant.

(4) In this regulation, in the case of a planning permission for an extension to a combustion plant which will have the effect of increasing the rated electrical output of the plant to between 300 and 350 megawatts, references to a “combustion plant” are references to that plant as extended.”

Julie James

Y Gweinidog Tai a Llywodraeth Leol, un o
Weinidogion Cymru
18 Chwefror 2019

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Minister for Housing and Local Government, one of
the Welsh Ministers
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