

**2013 No. 2696**

**ENVIRONMENTAL PROTECTION**

**ELECTRICITY**

**The Carbon Capture Readiness (Electricity Generating Stations)  
Regulations 2013**

<i>Made</i> - - - -	<i>17th October 2013</i>
<i>Laid before Parliament</i>	<i>22nd October 2013</i>
<i>Coming into force</i> - -	<i>25th November 2013</i>

The Secretary of State is designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to the environment.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of that Act.

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 and come into force on 25th November 2013.

(2) These Regulations extend to Great Britain.

**Interpretation**

**2.**—(1) In these Regulations—

“the 2008 Act” means the Planning Act 2008<sup>(c)</sup>;

“appropriate authority” means—

(a) in relation to a combustion plant in England and Wales, the Secretary of State; and

(b) in relation to a combustion plant in Scotland, the Scottish Ministers;

“CCR assessment”, in relation to a combustion plant, means an assessment as to whether the CCR conditions are met in relation to that plant;

“CO<sub>2</sub>” means carbon dioxide;

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(a) S.I. 2008/301.

(b) 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).

(c) 2008 c. 29. Relevant amendments have been made by Chapter 6 of Part 6 of, and Part 20 of Schedule 25 to, the Localism Act 2011 (c. 20). Modifications to the application of relevant provisions of the 2008 Act in Scotland are made under Schedule 12 to the 2008 Act.

“combustion plant” means any technical apparatus in which fuels are oxidised in order to use the heat thus generated, but does not include the types of plant listed in points (a) to (j) of Article 28 of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast)(a);

“consent order” means an order granting development consent within the meaning of section 31 of the 2008 Act;

“relevant consent order” means a consent order—

- (a) for the construction of a combustion plant with a rated electrical output of 300 megawatts or more; or
- (b) for a relevant extension;

“relevant extension” means an extension to a combustion plant which will have the effect of increasing the rated electrical output of the plant to 300 megawatts or more;

“relevant section 36 consent” means a section 36 consent—

- (a) for the construction of a combustion plant with a rated electrical output of 300 megawatts or more; or
- (b) for a relevant extension;

“section 36 consent” means a consent under section 36 of the Electricity Act 1989(b); and

“storage site” has the meaning given by Article 3 of Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide(c).

(2) For the purposes of these Regulations, the CCR conditions are met in relation to a combustion plant, if, in respect of all of its expected emissions of CO<sub>2</sub>—

- (a) suitable storage sites are available;
- (b) it is technically and economically feasible to retrofit the plant with the equipment necessary to capture that CO<sub>2</sub>; and
- (c) it is technically and economically feasible to transport such captured CO<sub>2</sub> to the storage sites referred to in sub-paragraph (a).

### **Development consent: determination of carbon capture readiness and requirements to be imposed where CCR conditions are met**

3.—(1) The Secretary of State must not make a relevant consent order unless the Secretary of State has determined whether the CCR conditions are met in relation to the combustion plant to which the consent order relates.

(2) The Secretary of State’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 consent order; and
- (b) any other available information, particularly concerning the protection of the environment and human health.

(3) If the Secretary of State—

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

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

(b) 1989 c. 29. Section 36 was amended by section 93(1) and (3) of the Energy Act 2004 (c. 20); paragraph 32 of Schedule 2 to the Planning Act 2008 (c. 29); and section 12(7)(a) and (8) of the Marine and Coastal Access Act 2009 (c. 23). Relevant amendments were also made in relation to Scotland by S.I. 2006/1054. Functions of the Secretary of State under section 36(1), (5) and (7) have been transferred to the Marine Management Organisation by section 12(1) to (4) of the Marine and Coastal Access Act 2009 as regards certain offshore generating stations. Functions of the Secretary of State under section 36 have been transferred to the Scottish Ministers by S.I. 2006/1040, in so far as exercisable in or as regards Scotland (see also S.I. 2005/3153).

(c) OJ No. L140, 5.6.2009, p.114.

the Secretary of State must include a requirement in the relevant consent order that suitable space is set aside for the equipment necessary to capture and compress all of the CO<sub>2</sub> that would otherwise be emitted from the plant.

(4) In this regulation, in the case of a consent order for a relevant extension, references to a “combustion plant” are references to that plant as extended.

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

4.—(1) The Secretary of State must not—

- (a) change a consent order in respect of a combustion plant 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 300 megawatts or more; or
- (b) change a relevant consent order in such a way as to enable a combustion plant to increase its rated electrical output,

unless the Secretary of State has 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”).

(2) The Secretary of State’s determination under paragraph (1) must be made on the basis of—

- (a) a CCR assessment of the modified plant prepared by—
  - (i) where an application was made for the consent order to be changed, the person who made the application;
  - (ii) the operator of the combustion plant; or
  - (iii) a person who intends to operate the combustion plant; and
- (b) any other available information, particularly concerning the protection of the environment and human health.

(3) If the Secretary of State—

- (a) determines that the CCR conditions are met in relation to a combustion plant; and
- (b) decides to—
  - (i) change a consent order in respect of that plant in the way described in paragraph (1)(a); or
  - (ii) change a relevant consent order in respect of that plant in the way described in paragraph (1)(b),

the Secretary of State 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 CO<sub>2</sub> that would otherwise be emitted from the plant.

(4) In this regulation, “change” means to make a change using the powers conferred by Schedule 6 to the 2008 Act(a).

#### **Section 36 consent: determination of carbon capture readiness and conditions to be imposed where CCR conditions are met**

5.—(1) The appropriate authority must not grant a relevant section 36 consent unless the appropriate authority has determined whether the CCR conditions are met in relation to the combustion plant to which the section 36 consent relates.

(2) The appropriate authority’s determination under paragraph (1) must be made on the basis of—

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(a) Relevant amendments to Schedule 6 to the 2008 Act have been made by Chapter 6 of Part 6 of, and Part 20 of Schedule 25 to, the Localism Act 2011 (c. 20).

- (a) a CCR assessment of the combustion plant prepared by the person who made the application for the relevant section 36 consent; and
  - (b) any other available information, particularly concerning the protection of the environment and human health.
- (3) If the appropriate authority—
- (a) determines that the CCR conditions are met in relation to a combustion plant; and
  - (b) decides to grant a relevant section 36 consent in respect of that plant,

it must include in the relevant section 36 consent a condition that suitable space is set aside for the equipment necessary to capture and compress all of the CO<sub>2</sub> that would otherwise be emitted from the plant.

(4) In this regulation, in the case of a section 36 consent for a relevant extension, references to a “combustion plant” are references to that plant as extended.

**Variations of section 36 consents: determination of carbon capture readiness and conditions to be imposed where CCR conditions are met**

- 6.—(1) The appropriate authority must not—
- (a) vary a section 36 consent in respect of a combustion plant 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 300 megawatts or more; or
  - (b) vary a relevant section 36 consent in such a way as to enable a combustion plant to increase its rated electrical output,

unless the appropriate authority has determined whether the CCR conditions are met in relation to the combustion plant, as constructed or extended in accordance with the section 36 consent as so varied (“the modified plant”).

- (2) The appropriate authority’s determination under paragraph (1) must be made on the basis of—
- (a) a CCR assessment of the modified plant prepared by the person who applied for the section 36 consent to be varied; and
  - (b) any other available information, particularly concerning the protection of the environment and human health.
- (3) If the appropriate authority—
- (a) determines that the CCR conditions are met in relation to a combustion plant; and
  - (b) decides to—
    - (i) vary a section 36 consent in respect of that plant in the way described in paragraph (1)(a); or
    - (ii) vary a relevant section 36 consent in respect of that plant in the way described in paragraph (1)(b),

it must ensure that the section 36 consent (as varied) includes a condition that suitable space is set aside for the equipment necessary to capture and compress all of the CO<sub>2</sub> that would otherwise be emitted from the plant.

(4) In this regulation, “vary” means to make a variation under section 36C of the Electricity Act 1989(a).

**Review**

7. Before 30th November 2018, the Secretary of State must—

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(a) Section 36C was inserted by section 20(2) of the Growth and Infrastructure Act 2013 (c. 27).

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

17th October 2013

*Michael Fallon*  
Minister of State for Energy  
Department of Energy and Climate Change

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations implement 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) (“the 2010 Directive”). Article 36 of the 2010 Directive replicates the requirements of Article 9a of Directive 2001/80/EC of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from large combustion plants (OJ No. L309, 27.11.2001, p.1) (“the 2001 Directive”)(a).

These Regulations relate to orders for development consent under the Planning Act 2008 (c. 29) and to consents under section 36 of the Electricity Act 1989 (c. 29) for the construction of combustion plants with a rated electrical output of 300 megawatts or more (and for extensions to combustion plants which will have the effect of increasing the rated electrical output of the plant to 300 megawatts or more). Before making such an order (regulation 3) or granting such a consent (regulation 5) the Secretary of State or Scottish Ministers (as applicable) must determine whether certain conditions are met relating to the feasibility of carbon capture and storage. If the conditions are met, the order or consent must include requirements or 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. Regulations 4 and 6 make similar provision in the case of changes or variations to development consent orders or section 36 consents respectively, where the change or variation would enable a combustion plant to have a rated electrical output of 300 megawatts or more, or, in the case of a plant with an existing rated electrical output of 300 megawatts or more, would enable an increase in the rated electrical output of that plant.

An impact assessment was prepared in 2009 in relation to the adoption of policy and guidance for development consent orders and section 36 consents which reflected the requirements of Article 9a of the 2001 Directive (now contained in Article 36 of the 2010 Directive). An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. The 2009 impact assessment can be obtained from the Department of Energy and Climate Change, Energy Markets Unit, 4th Floor, 3 Whitehall Place, London, SW1A 2AW. Copies have been placed in the libraries of both Houses of Parliament.

A transposition note setting out how the 2010 Directive is transposed into the law of England and Wales is available and has been published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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(a) 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).

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£5.75

UK201310211 10/2013 19585

<http://www.legislation.gov.uk/id/uksi/2013/2696>

ISBN 978-0-11-110506-1



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