

EXPLANATORY MEMORANDUM TO
The Emissions Performance Standard Monitoring and Enforcement Regulations
(Northern Ireland) 2016

SR 2016 No. 28

Introduction

1. This Explanatory Memorandum has been prepared by the Department of the Environment (the Department) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
2. The Statutory Rule is made under section 60(2) of, and Schedule 5 to, the Energy Act and is subject to the negative resolution process.

Purpose

3. The Statutory Rule sets out the approach and requirements placed on operators and the chief inspector for monitoring compliance with the Emissions Performance Standard (EPS) by operators of fossil fuel plants. These arrangements follow closely and use the same information as those that are in place under the EU Emissions Trading Scheme. Provision is made for the principles that will apply and the mechanisms that will be available to the chief inspector in respect of sanctions in the event of a breach of the EPS. It also makes provision for an appeals mechanism, the publication of information and provides for the Department to make a charging scheme.

Background

4. The Energy Act 2013 established an Emissions Performance Standard (EPS) limiting the carbon dioxide emissions from new fossil fuel power stations. The Energy Act also contains powers to allow for regulations to be made in relation to the application and modification of the emissions limit duty UK wide and for the creation of arrangements necessary for monitoring compliance with, and enforcement of, the EPS.
5. The EPS applies to all new fossil fuel electricity generation plants that are above 50MWe and receive development consent after 18 February 2014, the point at which EPS and the Energy Act 2013 came into force.
6. In April 2012, during drafting of the Energy Act, the Department of Enterprise, Trade and Investment sought and got the agreement of the Executive to a Legislative Consent Motion in order to extend powers for electricity market reform to Northern Ireland via the Energy Act. This consented to the EPS being set UK wide and gave powers to the Department of Energy and Climate Change (DECC) to bring forward secondary legislation for the application and modification of the emissions duty limit (sections 57 to 59 of the Energy Act 2013).

7. Section 60 of the Energy Act, however, makes it the duty of the appropriate national authority, by regulations, to make arrangements for monitoring compliance with, and enforcement of, the emissions limit duty. For the purposes of this section only, the Department of the Environment is the appropriate national authority in Northern Ireland.

Consultation

8. Northern Ireland participated in a UK wide consultation that ran from 25 September to 6 November 2014 proposing UK wide legislation relating to the application and modification of the emissions limit duty imposed on operators of fossil fuel generation plants under the EPS. The consultation also proposed the monitoring and enforcement arrangements for England and Wales. Twelve responses were received, however, none came from Northern Ireland consultees.
9. A consultation on proposed Northern Ireland EPS Monitoring and Enforcement Regulations, similar to those introduced in England, ran from 16 September to 11 November 2015. One response was received supportive of the proposals although did highlight the conflict between limiting coal fired electricity generation whilst wider UK government policy was reducing subsidies for the renewable energy sector. The response gave no basis to review the policy intentions or the draft Regulations.

Equality Impact Assessment

10. In accordance with the Departments' obligations under Section 75 of the Northern Ireland Act 1998, the equality implications of the proposed Regulations were assessed by a screening exercise. The Departments consider that the Statutory Rule will not result in any equality differentials amongst Section 75 groups and that a full Equality Impact Assessment is not required.

Regulatory Impact Assessment

11. An Impact Assessment was carried out by DECC on a UK-wide basis at the same time as the UK wide consultation. This was published along with the Government response to the consultation document on 14 January 2015 and may be viewed at <https://www.gov.uk/government/organisations/department-of-energy-climate-change>

Financial Implications

12. The impact assessment for the UK wide EPS regulations notes total costs for eligible operators consist of both one-off and on-going costs. One-off costs comprise the administrative expenses incurred during the initial information exchange between the Regulator and each eligible operator to establish the EPS value of the new plant (£7,500 per plant). They also include a cost on the Regulator to make its central I.T. system fit for purpose (£45,000). On-going costs take into consideration the annual costs associated with monitoring the EPS for eligible plants. They are estimated to be £3,500 per plant per annum.

There is also an expected annual cost of £500 for the Regulator to update their website.

Section 24 of the Northern Ireland Act 1998

13. A Human Rights screening exercise has been completed which concluded that no Convention Rights are engaged by the Statutory Rule, which is, therefore, deemed to comply with Section 24 of the Northern Ireland Act 1998.

EU Implications

14. There are no EU implications, however, the reduction in CO₂ emissions will contribute to UK efforts to meet EU greenhouse gas emissions of a 40% reduction by 2030.

Parity or Replicatory Measure

15. The Emissions Performance Standard Regulations 2015 came into force on 24th March 2015. These made provisions relating to the application and modification of the emissions limit duty imposed on operators of fossil fuel generation plants under the EPS that apply UK wide and the EPS monitoring and enforcement arrangements for England. The Devolved Administrations are introducing legislation for the EPS monitoring and enforcement arrangements in their jurisdictions.

Additional Information

16. Not applicable.