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WELSH STATUTORY INSTRUMENTS

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**2019 No. 294 (W. 72)**

**ENVIRONMENTAL PROTECTION, WALES  
ELECTRICITY, WALES**

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

<i>Made</i>	- - - -	<i>18 February 2019</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>20 February 2019</i>
<i>Coming into force</i>	- -	<i>1 April 2019</i>

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:

**Title, commencement and application**

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.

(2) These Regulations apply in relation to Wales.

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

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

**Interpretation**

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

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- (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 It is prospectively repealed by paragraphs 27 and 34 of Schedule 3 to the European Union (Withdrawal) Act [2018 \(c. 16\)](#) from a date to be appointed.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.
- (3) [S.I. 2013/2696](#).

- ““the 1990 Act” means the Town and Country Planning Act 1990(4);”;
- ““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(5);”;
- ““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(6), 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;”.

#### **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

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(4) 1990 c. 8.

(5) 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.

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

(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 CO<sub>2</sub> that would otherwise be emitted from the plant.”

**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 CO<sub>2</sub> 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*  
Minister for Housing and Local Government,  
one of the Welsh Ministers

18 February 2019

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## 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) (OJNo. 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.

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.