

Regulatory Triage Assessment

Title of regulatory proposal	Transposition of Directive 2009/31/EC
Lead Department/Agency	DECC
Expected date of implementation	End February 2013 SNR 5
Origin	EU
Date	2 January 2013
Lead Departmental Contact	Gary Mohammed
Departmental Triage Assessment	Low-cost regulation (fast track)

Rationale for intervention and intended effects

Article 33 of Directive 2009/31/EC on the Geological Storage of Carbon Dioxide inserted (with effect from 26 June 2009) a new Article 9a into the Large Combustion Plant Directive (2001/80/EC) requiring that, except for energy from waste, operators of proposed new combustion plants with a rated electricity output of 300MW or more have to carry out an assessment of the technical and economic feasibility of retrofitting carbon capture and storage ("CCS") to their plants at some point during their lifetime. Articles 33/9a further require that if the outcome of the feasibility assessment is positive, the competent authority must require that sufficient space is set aside for the potential future installation of capture plant.

The thinking behind Articles 33/9a is that large combustion electricity generating stations are a major source of anthropogenic carbon dioxide emissions which (because they are emitted in considerable volume from a point source) it is desirable should be captured and stored once the technology is available to do so in a way which is economically feasible for the operators of such plant. Accordingly, if such a plant is to be constructed then it ought to be a condition for allowing the plant to be built then sufficient space should be set aside for future capture plant. The condition of being capable of accommodating CCS at some future time is commonly referred to as being "carbon capture ready", or CCR.

Therefore, since the construction of the relevant type of plant is subject to

specific consenting requirements (originally under the Electricity Act 1989 and now – in England and Wales – the Planning Act 2008), the previous UK and Scottish Governments chose to adopt guidance that set out a firm policy based on the Directives' requirements. That guidance is published in England and Wales as "[Carbon Capture Readiness \(CCR\): A guidance note for Section 36 Electricity Act 1989 consent applications](#)", and in Scotland as "[Thermal Power Stations in Scotland guidance and information on Section 36 of the Electricity Act 1989 under which Scottish Ministers determine consents related to thermal power stations](#)". The [England and Wales guidance](#), was given additional force by its incorporation into the National Policy Statements for Energy EN-1 (Overarching Energy NPS) and EN-2 (Fossil Fuel Electricity Generating Infrastructure NPS), which were approved by Parliament and designated by the Secretary of State for Energy and Climate Change in July 2011.

In our view these arrangements not only implement Articles 33/9a but also provide greater certainty about the terms on which new gas or coal-fired power stations will be consented and ensure that they are not built in locations, or using technologies, which would make retrofit of CCS unfeasible. The choice of policy and guidance, rather than legislation, as the means for implementing the Directives' requirements was deliberate. Guidance was considered a much more suitable medium in which to explain, for example, what is meant by technical and economic feasibility of retrofit and how it may be assessed. However, as a strict matter of the transposition of EU law, these measures had not transposed Articles 33/9a into domestic legislation, and the European Commission has now asked the UK to ensure that the Directives' requirements is set out in legislation.

The need to comply with the Commission's request is given additional urgency by the fact that the Commission considers that complete transposition of Directive 2009/31/EC is effectively a condition of securing funding for the CCS demonstration project(s) under the New Entrant Reserves (NER) programme (this is expected to be worth up to £250m per project).

The Department issued a Press Release on 30 October 2012 detailing the four proposals which had been shortlisted for the CCS Demonstration Scheme. Three of the four shortlisted proposals have also applied to the EC for NER allowances. The Government has written to the Commission to inform them that it is willing to support these projects in the Commission's Competition, subject to their ultimate success in the UK Competition.

Viable policy options (including alternatives to regulation)

What is at issue here is compliance with the terms of Directives which require Member States to take action with certain legal effects. The only potentially viable alternative to making domestic transposing legislation is the one which has already been tried (i.e. use of policy and guidance around the consenting process for relevant plant). However, as noted above, while this has been successful in the sense that the policies adopted by the UK and Scottish Governments have been successfully applied to ensure that new plant of the

relevant type is CCR, the European Commission is not satisfied, that, without legislation, we can be said properly to have implemented Articles 33/9a. The consequences of continued failure to make transposing legislation include infraction proceedings as well as rendering UK CCS projects ineligible for EU funding, with significant knock-on impacts in terms of the potential negative impacts on growth and jobs (as well as progress in understanding of CCS technology) if the absence of such funding causes them not to proceed. *It should be stressed that the making of these Regulations does not require developers to approach the question of CCR feasibility in any way that is different from the approach set out in existing UK policy and guidance.* The Regulations will simply sit underneath the policy and guidance, as the Directives always have, fulfilling the requirement for transposition, but not adding to or detracting from the substance of the policy and guidance.

Initial assessment of business impact

The key costs associated with CCR requirements, either as expressed in Articles 33/9a or as expressed in existing UK policy and guidance, are those of carrying out the assessment of the feasibility of retrofit and, if the assessment is positive, the cost of the additional space for the potential installation of the capture plant. Since the assessment process referred to in the Directives is already part of our consenting arrangements, this measure has no additional impact.

Our *existing* CCR policy requires applicants to demonstrate:

- that sufficient space is available on or near the site to accommodate carbon capture equipment in the future;
- the technical feasibility of retrofitting their chosen carbon capture technology;
- that a suitable area of deep geological storage offshore exists for the storage of captured CO₂ from the proposed power station;
- the technical feasibility of transporting the captured CO₂ to the proposed storage area; and
- the likelihood that it will be economically feasible within the power station's lifetime, to link it to a full CCS chain, covering retrofitting of capture equipment, transport and storage.

Applicants must make clear in their CCR assessments which CCS retrofit, transport and storage technology options are considered the most suitable for their proposed development.

If granted consent, operators of the power station will be required to:

- retain control over sufficient additional space on or near the site on which to install the carbon capture equipment, and the ability to do use it for that purpose (note this can be ownership, by lease or by option);

- submit reports to the Secretary of State for DECC as to whether it remains technically feasible to retrofit CCS to the power station. These reports will be required within 3 months of the commercial operation date of the power station (so avoiding any burden on the operator with an unimplemented consent) and every **two** years thereafter until the plant moves to retrofit CCS.

Background information – cost of administration implementation

An Impact Assessment was conducted when the administrative CCR requirement was introduced in November 2009. This concluded that the CCR requirement imposed an additional cost of less than £2m per plant.

We are of the view that, if anything, the costs associated with demonstrating CCR have been reduced since the CCR was introduced because the land requirement which has to be set aside for CCR purposes since the initial impact assessment is now some 36% less than that indicated in November 2009. This equates to a reduction in the cost of additional land being in the region of £0.3 – 0.6m.

We can conclude with a high level of certainty that the cost of producing the CCR report is unchanged, or if anything reduced now that applicants and their advisors know what the report has to contain to demonstrate CCR, eg only need to assess amine technology as being the most viable means for abstracting carbon and therefore no need to assess other alternative CCS technologies.

We must stress that the new regulations will not impose any new costs on business. The CCR guidance is already in force.

One-in, One-out status

This measure implements an EU requirement and so is out of scope of one in one out. In addition, it imposes no new costs since the existing administrative measures are in practice already delivering the Directives' requirements.

Rationale for Triage rating

There is no additional regulatory requirement from this regulatory measure. Introducing the regulations may be beneficial to the UK and those who are in bidding for the CCS demonstration project(s) in potentially unlocking this funding and avoiding infraction, whilst not adding any additional burden to the electricity generating market.

It therefore meets the criterion of less than £1m gross annual cost to business.

Departmental signoff (SCS):

Date: 8 January 2013

Approved by Giles Scott

Economist signoff (*senior analyst*):

Date: 8 January 2013

Approved by Rocio Concha

Better Regulation Unit signoff:

Date: 8 January 2013

Approved by Jeanie Cruickshank