



Consultation

Geological Storage of Carbon Dioxide in Northern Ireland – Access to Infrastructure Regulations and Licensing etc Regulations - Consultation

Consultation on the Draft Storage of Carbon Dioxide (Access to Infrastructure) Regulations (Northern Ireland) 2015 and the Draft Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015

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INTRODUCTION

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Purpose of the consultation

- 1.1 Council Directive 2009/31/EC on the Geological Storage of Carbon Dioxide (“the Directive”) makes provision for permitting the long-term storage of carbon dioxide within their territories. This consultation considers the steps taken by the United Kingdom to implement the Directive, examines the present position in Northern Ireland and seeks views on further Directive-related proposals for Northern Ireland.
- 1.2 The provisions of the Directive are aimed at mitigating climate change by capturing carbon dioxide from industrial installations, transporting it to a storage site and securing its safe, permanent storage in that site.
- 1.3 Member states retain the right to determine which areas within their territory may be designated as storage sites. The Directive also permits member states not to allow any storage in parts or in the whole of their territory. At present, the Department proposes not to designate any areas within Northern Ireland, including its internal waters, as storage sites for carbon dioxide.
- 1.4 Nevertheless, the Department must take steps to ensure that the requirements of the Directive are fully met in Northern Ireland. This paper outlines existing provisions relating to the storage of carbon dioxide which apply in Northern Ireland and contains further proposals which the Department believes are necessary to meet Northern Ireland’s commitments under the Directive.
- 1.5 The purpose of this consultation paper is to offer consultees the opportunity to comment on these proposals, with the proviso that there may be limited room for manoeuvre in regard to compliance with the Directive.

Consultation Process

1.6 The Consultation will close for responses on **17 September 2015**.

How to respond to this consultation

1.7 Responses to this consultation should reach DETI on or before **17 September 2015** and should be sent, preferably by e-mail, to:

minerals@detini.gov.uk

or by post to:

**Minerals and Petroleum Branch
Department of Enterprise, Trade & Investment
Dundonald House
Upper Newtownards Road
Belfast,
BT4 3SB**

All responses should include the name and postal address of the respondent.

Confidentiality & Data Protection

1.8 Your response may be made public by DETI and placed on the DETI website as part of the consultation process. If you do not want all or part of your response or name made public, please state this clearly in the response by marking your response as 'CONFIDENTIAL'. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

1.9 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA)). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

1.10 In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Copies of the Consultation

- 1.11 This Consultation document is being produced primarily in electronic form and may be accessed on the DETI website: www.detini.gov.uk or may be obtained from the address above or by telephoning 028 9052 0995.
- 1.12 If you require access to this Consultation document in a different format – e.g. Braille, disk, audio cassette, larger font – or in a minority ethnic language please contact the Department on 028 9052 0995 and appropriate arrangements will be made as soon as possible.

DEVELOPMENTS IN THE UNITED KINGDOM

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- 2.1 The Directive confirms the right of member states to determine which areas within their territory are to be made available for the storage of carbon dioxide. There are no plans at present to designate any areas for storage sites onshore in any of the constituent parts of the United Kingdom (UK).
- 2.2 The UK Government regards the capture, transport and storage of carbon dioxide as a potentially effective means of reducing carbon dioxide emissions. If developed on a commercial scale, this process would allow the safe removal and permanent storage of carbon dioxide emissions from coal and gas power stations (as well as from large industrial sources). The UK would thus be able to meet its targets on reducing emissions while ensuring that fossil fuels (coal and gas) could continue to play an important role in electricity generation.
- 2.3 The technologies used in the capture, transport and storage of carbon dioxide have been used for many years individually in the oil and chemical sectors. The lead UK Department (the Department of Energy and Climate Change (DECC)) has introduced a number of demonstration projects to test and operate the full chain of capture, transport and storage at power stations that are already generating electricity in order to prove that these elements can operate effectively as an integrated process and that the process is commercially viable.
- 2.4 It is the intention of the Department of Enterprise, Trade and Investment to await the outcome of these demonstration projects before considering firm policy decisions in regard to the capture, transport and storage of carbon dioxide in Northern Ireland. The projects should provide valuable information about the economic and commercial viability of the process and its potential contribution to reducing carbon emissions in Northern Ireland.

Steps Taken to Implement the Directive

Offshore Storage sites

- 2.5 Before the Directive, the Energy Act 2008, which extends to Northern Ireland, created a licensing regime that governed the offshore storage of carbon dioxide. The regime applied to storage in the offshore area comprising both UK territorial seas (including the territorial seas adjacent to Northern Ireland) and areas beyond those seas which were designated as a gas importation and storage zone under section 1(5) of the Act. The Secretary of State (for Energy and Climate Change) is the licensing authority for offshore storage except within the territorial seas adjacent to Scotland, where responsibility for authorisation falls to Scottish ministers.
- 2.6 A statutory instrument (The Gas Importation and Storage Zone (Designation of Area) Order 2009 (S.I. 2009/223)) designated an area beyond UK territorial seas for the purposes of exploring and exploiting its potential for carbon dioxide storage, among other matters.
- 2.7 Subsequent statutory instruments were made by DECC and Scottish Ministers to establish provisions for the licensing and monitoring of offshore carbon dioxide storage sites. These instruments, which applied to offshore storage sites only before the Energy Act 2008 was amended (see paragraph 2.9 below), were:
- (i) **Licensing** – The Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) and The Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 (S.S.I. 2011/24);
 - (ii) **Termination of licences** – The Storage of Carbon Dioxide (Termination of Licences) Regulations 2011 (S.I. 2011/1483); and
 - (iii) **Inspection arrangements** – The Storage of Carbon Dioxide (Inspections etc.) Regulations 2012 (S.I. 2012/461) and The Storage of Carbon Dioxide (Licensing etc.) (Scotland) Amendment Regulations (S.S.I. 2011/457).
- 2.8 These legislative provisions are supplemented by guidance published by DECC and the Scottish Executive. No action is required in Northern Ireland in respect of offshore storage sites.

Onshore Storage Sites

- 2.9 The scope of the Directive embraces the complete territory of a member state. While there are no plans at present to designate onshore areas for carbon dioxide storage sites in any part of the UK, the provisions of the Energy Act 2008 mentioned in paragraph 2.5 above have been extended to meet the Directive's requirements in terms of scope. The Storage of Carbon Dioxide (Amendment of the Energy Act 2008 etc.) Regulations 2011 (S.I. 2011/2453) extended the territorial scope of the carbon dioxide storage provisions in the Energy Act 2008 to include all onshore parts of England, Wales and Northern Ireland (including their internal waters). Similar amendments were made for Scotland by The Energy Act 2008 (Storage of Carbon Dioxide) (Scotland) Regulations 2011 (S.S.I. 2011/224).
- 2.10 S.I. 2011/2453 extends to Northern Ireland. The Regulations allow the relevant competent authority in England, Wales and Northern Ireland to license carbon

dioxide storage sites onshore. The Department of Enterprise, Trade and Investment was designated as the licensing authority for Northern Ireland (including its internal waters).

Offshore Transport Networks

2.11 The Petroleum Act 1998 extends to Northern Ireland. Part III of this Act provides for a regime for the authorisation by the Secretary of State (for Energy and Climate Change) of the construction of pipelines in, under or over the territorial sea which are used, or intended to be used, to convey carbon dioxide to a storage site. Since these pipeline networks all lie in the UK's territorial seas or beyond, Northern Ireland has no action to take in regard to the authorisation or other arrangements for them.

Onshore Transport Networks

2.12 The Pipelines Act 1962 (and associated subordinate legislation) provides for the transport of carbon dioxide (among other matters) through onshore pipeline networks in Great Britain. There is no equivalent provision in Northern Ireland.

Access to Storage Sites and Transport Networks

2.13 The Directive requires member states to take necessary steps to ensure that potential users are able to obtain access to carbon dioxide storage sites and transport networks. Access must be provided in a fair, transparent and non-discriminatory manner. Member states must also put in place independent arrangements for the settlement of disputes relating to access to storage sites and transport networks.

2.14 These provisions have been implemented for Great Britain by The Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 (S.I. 2011/2305). The Department believes that similar provision is required in Northern Ireland in order to comply with the Directive's requirements.

Other Matters

2.15 The Directive amends other Community legislation which deals mainly with environmental issues. In particular, Article 33 of the Directive requires that, prior to a new combustion plant, with a capacity at or over 300 MWe and of a type covered by the EU Large Combustion Plant Directive, receiving development consent, a number of assessments need to be carried out relating to the technical and economic feasibility of capturing, transporting and storing its emissions of carbon dioxide. These assessments are designed to determine whether it is reasonable to expect that the proposed power station will be fitted with Carbon Capture and Storage (CCS) in the future. Depending on the outcome of those assessments, the Directive then requires space to be set aside to accommodate future carbon capture equipment, making the proposed plant in effect "carbon capture ready".

2.16 The Directive's environmental provisions have generally been applied by amending previous Community environmental requirements. These provisions have been implemented in Northern Ireland by a series of Regulations made by the Department of the Environment.

CURRENT POSITION IN NORTHERN IRELAND

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- 3.1 The steps taken to date in implementing the provisions of the Directive in Northern Ireland are listed in **Annex A**. However, the Department has been monitoring the position in other member states and believes that further action needs to be taken. The purpose of the draft Regulations accompanying this consultation document is to implement those provisions of the Directive which the Department believes are required to complete transposition of the Directive in Northern Ireland. The Directive's provisions are summarised at **Annex B**.

Offshore Carbon Dioxide Storage Sites and Transport Networks

- 3.2 Arrangements for offshore storage sites and transport networks generally fall to the Secretary of State for Energy and Climate Change who (apart from the territorial waters adjacent to Scotland) is designated as the competent authority. Any use of offshore sites or transport networks for carbon dioxide captured in Northern Ireland would have to be the subject of discussions between DECC and this Department, and also between the owners/operators of those sites or networks and potential Northern Ireland users.

Onshore Carbon Dioxide Storage Sites

- 3.3 As mentioned in paragraph 2.10 above, the Department of Enterprise, Trade and Investment is the designated authority for selecting areas of Northern Ireland as possible storage sites for carbon dioxide. In line with the rest of the UK, the Department has no plans to make any areas of Northern Ireland available for the storage of carbon dioxide.

Onshore Carbon Dioxide Transport Networks

- 3.4 As noted in paragraph 2.12 above, there is no legislative provision in Northern Ireland dealing with the transportation of carbon dioxide through pipelines to a storage site. The Department believes that the possibility of anyone applying to construct a carbon dioxide pipeline in Northern Ireland in the foreseeable future

is remote. However, there is a need to provide for this possibility and the draft Regulations published with this consultation document make provision for such an eventuality.

Access to Storage Sites and Transport Networks

- 3.5 As noted in paragraphs 2.13 and 2.14 above, the Directive requires that potential users should be able to obtain access to carbon dioxide storage sites and transport networks. Access must be provided in a fair, transparent and non-discriminatory manner, and independent arrangements must be put in place for the settlement of disputes relating to access to storage sites and transport networks.
- 3.6 It is the view of the European Commission that these provisions of the Directive must be implemented even by member states which do not propose to allow carbon dioxide storage in any part of their territory (offshore and onshore). The Department believes that provision for access to transport networks and storage sites must be made in Northern Ireland and has drafted Regulations for this purpose.

VIEWS ON DRAFT PROPOSALS FOR NORTHERN IRELAND

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- 4.1 The Department of Enterprise, Trade and Investment would welcome any views on the draft Regulations attached at **Annex C**, with the proviso that there may be limited room for manoeuvre in regard to compliance with the Directive.
- 4.2 The Department has taken the lead in regard to implementing the Directive as the original provisions for carbon dioxide storage are contained in the Energy Act 2008. However, the focus of the Directive is environmental protection, with the emphasis on climate change and reducing carbon emissions. The Department of the Environment has been fully involved in the development of the draft Regulations and statutory consultation measures involving that Department have been included in the draft Regulations where appropriate (paragraph 4.12 below).
- 4.3 The aim of the draft Regulations (paragraphs 3.4 to 3.6) is to implement those provisions of the Directive which the Department believes must be transposed to complete implementation of the Directive in Northern Ireland. These are mainly those provisions relating to carbon dioxide storage permits and third party access to storage sites and pipeline networks (Chapters 3 and 5).

Draft Storage of Carbon Dioxide (Access to Infrastructure) Regulations (Northern Ireland) 2015

- 4.4 The draft Access to Infrastructure Regulations implement Articles 21 and 22 of the Directive. These provisions of the Directive require that potential users should be able to obtain access to carbon dioxide storage sites and transport networks. Access must be provided in a fair, transparent and non-discriminatory manner, and independent arrangements must be put in place for the settlement of disputes relating to access to storage sites and transport networks.
- 4.5 It is the view of the European Commission that these provisions of the Directive must be implemented even by member states which do not propose to allow carbon dioxide storage in any part of their territory (offshore and onshore). The Department believes that provision for access to transport networks and storage sites must be made in Northern Ireland.

- 4.6 The draft Regulations follow the model in Statutory Instrument 2011/2305 (paragraph 2.14 above). They set out arrangements which enable third parties to gain access to carbon dioxide storage sites and pipelines where there is spare capacity available. The Regulations require details of capacity to be published by the owner of a storage site or pipeline. They provide that, if an operator refuses to give access to a third party on the grounds of lack of capacity or lack of connection, the operator will make the necessary enhancements where it is economically viable or when a third party is willing to pay for these enhancements, provided that doing so does not have a detrimental impact on the integrity of the storage site or pipeline.
- 4.7 The draft Regulations give the Department power to require information from various persons when it is considering an application for access by a third party. It is an offence for a person to provide false information. The duty to provide the Department with information or to publish capacity information is enforceable by the Department in civil proceedings in the High Court.
- 4.8 Where a person proposes to make an application for planning permission to construct a pipeline, or for a Crown lease in respect of a pipeline in Northern Ireland's internal waters, the person must give the Department not less than six months' notice. It is an offence not to do so. Having considered the details of the proposal the Department can, if it believes it necessary, issue to that person a variation notice requiring changes to the proposed development in relation to its capacity, design or route. If a planning application is submitted before the Department issues a variation notice that application would have to be withdrawn and a new application, meeting the requirements of the variation notice, submitted. It is also an offence to contravene a notice served by the Department where that notice increases the capacity, changes the design or changes the route of a pipeline.
- 4.9 Greater detail on the individual provisions of the draft Regulations is given in the Explanatory Note to those Regulations.

Draft Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015

- 4.10 Draft regulation 6 of the Access to Infrastructure Regulations provides that the Department, when considering an application for a storage permit for a carbon dioxide storage site, may grant a storage permit subject to a condition. This condition may require the capacity of the storage site to be increased or its design to be modified where there is evidence of demand for the grant of storage permits for the construction of further storage sites. The draft Licensing Regulations implement those provisions of the Directive (Chapter 3) which deal with storage permits.
- 4.11 The draft Regulations cover (i) the granting of permits for the operation of carbon dioxide storage (and related exploration activities), (ii) the obligations of a storage operator, for example, in relation to monitoring, reporting and corrective measures while storage activities are taking place, (iii) the operator's continuing obligations for a period after the closure of the store and (iv) the inspection of carbon dioxide storage complexes. Draft regulation 18 creates a number of offences. These are – obstructing inspectors in the exercise of their powers or duties, failing to comply, or preventing another person from complying, with any requirement imposed by Schedule 3 to the Regulations (powers of inspectors) and providing false or misleading information in connection with an investigation.

- 4.12 The draft Regulations follow the model in Statutory Instrument 2010/2221 (paragraph 2.7(i) above) as amended by Statutory Instrument 2012/461 (paragraph 2.7(iii) above). In these Regulations, DECC has sole responsibility for considerations relating to storage permits. In Northern Ireland, the grant, content, review, modification and revocation of storage permits involve, among other matters, consideration of environmental issues and impacts. The draft Regulations therefore include, where appropriate, a requirement on the Department to consult the Department of the Environment.
- 4.13 Greater detail on the individual provisions of the draft Regulations is given in the Explanatory Note to those Regulations.

The Department of Enterprise, Trade and Investment would welcome any views on:

- **the Draft Storage of Carbon Dioxide (Access to Infrastructure) Regulations (Northern Ireland) 2015: and**
- **the Draft Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015**

Anyone responding to this consultation should present their views under the heading of either or both set of draft Regulations.

Annex A
Geological Storage of Carbon
Dioxide – Council Directive
2009/31/EC – Transposition in
Northern Ireland

Annex B
Summary of the Directive’s
Provisions

Annex C
Draft of proposed Regulations

Annex D
Equality, Regulatory and Other
Impact Assessments

Annex A – Geological Storage of Carbon Dioxide – Council Directive 2009/31/EC – Transposition in Northern Ireland

The Energy Act 2008 (Part I, Chapter 3) as amended by The Storage of Carbon Dioxide (Amendment of the Energy Act 2008 etc.) Regulations 2011 (SI 2011/2453) prohibits the carrying out of carbon dioxide storage activities without a licence. The Department of Enterprise, Trade and Investment (DETI) is the licensing authority for such activities in Northern Ireland, including its internal waters. These provisions transpose Articles 2.1, 23 and 28 of the Directive.

In regard to Northern Ireland, the UK's response to the EU Questionnaire on the Implementation of Directive 2009/31/EC on the Geological Storage of Carbon Dioxide (July 2011) advised that "The Northern Ireland Executive has no intention to allow onshore storage in Northern Ireland for the foreseeable future so has chosen to have a simple prohibition without further transposition of the Directive except of Chapter 7".

Chapter 7 of the Directive (Amendments) has been implemented in Northern Ireland by a series of Statutory Rules (subordinate legislation) as follows:

- | | |
|-------------------|--|
| Article 31: | The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 (S.R. 2012 No.59)
Regulation 2(2), Schedule 1, paragraphs 16, 23 and 24, and Schedule 2, paragraphs 3(k) and 10(k) |
| Article 32: | The Groundwater (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011 No.211)
Regulation 2 |
| Articles 33 & 37: | The Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 (S.R. 2013 No.160)
Regulation 7 and Schedule 9, paragraph 4(1)(g) and Regulation 2 and Schedule 1, Chapter 6, Section 6.10 respectively |
| Article 34: | The Environmental Liability (Prevention and Remediation) (Amendment) Regulations (Northern Ireland) 2011 (S.R. 2011 No.210)
Regulation 2 |
| Article 35: | The Waste Regulations (Northern Ireland) 2011 (S.R. 2011 No.127)
Regulations 9(2), 36(c) and 46 |

Annex B – Summary of the Directive’s Provisions

Article 1 of the Directive describes its purpose as establishing a legal framework for the environmentally safe, permanent storage of carbon dioxide.

Article 2 defines the scope of the territory of a member state for the purposes of the Directive. It also provides that the Directive does not apply to carbon dioxide of less than 100 kilotonnes where storage is for the purposes of research, development or testing of new products or processes. Storage of carbon dioxide in the water column is not permitted.

Article 3 defines certain words and expressions for the purposes of the Directive.

Article 4 allows member states to determine the areas within their territory from which storage sites may be designated. This includes the right not to allow for any storage in parts or in the whole of their territory. The Article provides that member states, which intend to allow storage, must undertake an assessment of storage capacity within their territory or parts of it.

Article 5 prohibits any exploration which may be necessary to generate information for the assessment under Article 4 without a permit. Procedures for granting or refusing permits must be open to all entities with the essential capabilities, based on objective, published and non-discriminatory criteria.

Article 6 requires member states to ensure that no storage site is operated without a storage permit, that each site has only one operator and that no conflicting uses are permitted on the site. As with Article 5 permits, procedures for granting or refusing permits must be open to all entities with the essential capabilities, based on objective, published and non-discriminatory criteria.

Article 7 sets out certain matters which must be included in applications for a storage permit.

Article 8 sets out certain conditions which must be met before a storage permit is granted.

Article 9 lists various matters which must be contained in a storage permit.

Article 10 requires member states to make permit applications and related material available to the Commission within a month after receipt. The Commission may or may not issue a non-binding opinion on a draft permit. Member states must notify final decisions on a permit application to the Commission, giving reasons for any departure from the Commission's opinion.

Article 11 requires an operator of a storage site to inform the competent authority within a member state of any changes concerning the operator. The Article sets out various circumstances in which a competent authority is required to review, update or, as a last resort, withdraw the storage permit.

Article 12 provides that a CO₂ stream must consist overwhelmingly of carbon dioxide and requires that traces of incidental substances arising from the source, capture or injection processes must be below certain levels.

Article 13 requires member states to ensure that the operator monitors the injection facilities, the storage complex and the surrounding environment for certain purposes described in the Article.

Article 14 requires the operator to make reports containing certain issues to the competent authority at least once a year.

Article 15 requires competent authorities to carry out routine and non-routine inspections of carbon dioxide storage sites to ensure compliance with the Directive and to monitor the effects on the environment and human health.

Article 16 requires the operator of a storage site to notify the competent authority in the event of any leakages or significant irregularities and to take any necessary corrective measures.

Article 17 sets out the circumstances in which a storage site should be closed, and specifies the responsibilities of the operator before and after a site has been closed.

Article 18 provides that all legal obligations relating to the monitoring and corrective measure requirements of the Directive will transfer from the operator of a site to the competent authority subject to specified conditions having been met.

Article 19 requires member states to ensure that a potential operator of a storage site offers proof of financial security when making application for a storage permit.

Article 20 requires member states to ensure that an operator makes a financial contribution towards post-closure arrangements for a site before any transfer of responsibility under Article 18.

Article 21 requires member states to take necessary steps to ensure that potential users are able to obtain access to carbon dioxide transport networks and storage sites, such access to be provided in a transparent and non-discriminatory manner.

Article 22 requires member states to put in place independent arrangements for the settlement of disputes relating to access to transport networks and storage sites.

Article 23 requires member states one or more competent authorities to fulfil the duties required by the Directive.

Article 24 requires the competent authorities of member states to jointly meet the requirements of the Directive and other relevant Community legislation in cases of transboundary transport or storage of carbon dioxide.

Article 25 requires a competent authority to maintain a register of storage permits granted and of all closed storage sites and surrounding storage complexes.

Article 26 requires member states to make available to the public environmental information relating to the storage of carbon dioxide.

Article 27 requires member states to submit a report to the Commission on implementation of the Directive every three years. This report is to include the register under Article 25.

Article 28 requires member states to prescribe penalties for infringements of the provisions adopted to implement the Directive.

Article 29 allows member states to adopt provisions which amend non-essential elements set out in the Annex I (Criteria for the Characterisation and Assessment of the Potential Storage Complex and Surrounding Area referred to in Article 4(3)) and Annex II (Criteria for Establishing and Updating the Monitoring Plan referred to in Article 13(2) and for Post-closure Monitoring) to the Directive.

Article 30 provides that the Commission will be assisted by the Climate Change Committee.

Articles 31 to 37 amend other Community legislation including Directive 85/337/EEC (Environment Assessment), Directive 2000/60/EC (EU Water Framework Directive), Directive 2001/80/EC (Large Combustion Plants Directive), Directive 2004/35/EC (Environmental Liability Directive), Directive 2006/12/EC (Waste Framework Directive), Regulation (EC) No. 1013/2006 (Shipments of Waste) and Directive 2008/1/EC (Integrated Pollution Prevention and Control Directive).

Article 38 provides that the Commission shall make a report to the European Parliament and to the Council within nine months of receiving the report under Article 27. The Article also sets out the matters which will be addressed in the Commission's report.

Article 39 requires member states to bring into force laws, regulations and administrative measures necessary to ensure compliance with the Directive by 25 June 2011.

Articles 40 and 41 respectively provide for the date on which the Directive will come into force (25 June 2009) and note that the Directive is addressed to member states.

Annex C – Draft of proposed Regulations

2015 No. 000

ENVIRONMENTAL PROTECTION

**The Storage of Carbon Dioxide (Access to Infrastructure)
Regulations (Northern Ireland) 2015**

Made - - - - 000

Coming into operation - 000

The Department of Enterprise, Trade and Investment is a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the environment.

The Department of Enterprise, Trade and Investment makes these Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation and Commencement

1. These Regulations may be cited as the Storage of Carbon Dioxide (Access to Infrastructure) Regulations (Northern Ireland) 2015, and come into operation on [00].

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(c) applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

“access application” has the meaning given to it in regulation 11(1);

“access notice” has the meaning given to it in 11(10);

“associate” has the meaning given to it in regulation 4;

“authorised capacity”, in relation to a storage site, means the total quantity of carbon dioxide authorised to be stored in the storage site in accordance with the storage permit;

“carbon dioxide pipe-line” means—

(a) a pipe-line used to convey carbon dioxide to a storage site; or

(b) a pipe-line which is not being used for any purpose, but which is intended to be used to convey carbon dioxide to a storage site;

“Crown lease” means a lease of any part of the bed of the sea forming part of the Crown Estate, or an authorisation to exercise rights in respect of any such part of that Estate;

(a) S.I. 2008/301.

(b) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

(c) 1954 c. 33 (N.I.).

“the Department” means the Department of Enterprise, Trade and Investment;

“the Directive” means Directive 2009/31/EC(a) of the European Parliament and of the Council on the geological storage of carbon dioxide, as amended by Directive 2011/92/EU(b) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment;

“diversion” means a lateral diversion of any length of a relevant pipe-line (whether or not that pipe-line has been constructed) that is not an offshore pipe-line or of such part of a relevant pipe-line as is not an offshore pipe-line where the diversion is beyond the lateral limits of deviation permitted by planning permission granted in relation to that pipe-line under Part 3 of the Planning Act (Northern Ireland) 2011(c), and “diverted” is to be construed accordingly;

“holder”, in regulations 8 and 9, has the meaning given to it in regulation 8(1)(a);

“injection” means injection of carbon dioxide into a storage site;

“licence” means a licence granted under section 18(1) of the Energy Act 2008(d), and “licence holder” is to be construed accordingly;

“modification notice” has the meaning given to it in regulation 12(2);

“notice” means notice in writing;

“offshore relevant pipe-line” means so much of any relevant pipe-line as is situated in, under or over so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland;

“offshore relevant storage site” means so much of any relevant storage site (including any associated installations, apparatus and works) as is situated in, under or over so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland;

“operator”, in relation to a storage permit, means the person who carries on or (where different) controls activities at the storage site;

“owner” has the meaning given to it in regulation 3;

“pipe-line” has the meaning given to it in regulation 5;

“pipe-line variation notice” has the meaning given to it in regulation 7(3);

“planning authority” means the Department of the Environment or, as the case may be, the district council that has the function of determining the application for planning permission in respect of the relevant infrastructure;

“planning permission” means permission under Part 3 of the Planning Act (Northern Ireland) 2011 ;

“relevant infrastructure” means a relevant pipe-line or a relevant storage site;

“relevant pipe-line” means a carbon dioxide pipe-line situated in, under or over Northern Ireland, including so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland;

“relevant storage site” means a storage site situated—

- (a) in Northern Ireland; or
- (b) in, under or over so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland,

and any associated installations, apparatus and works;

“storage permit” means a storage permit within the meaning of the Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015(e);

“third party”, in regulations 8 and 9, has the meaning given to it in regulation 8(1)(b);

(a) OJ No L 140, 5.6.2009, p.114.
 (b) OJ No L 26, 28.1.2012, p 1.
 (c) 2011 c. 25 (N.I.).
 (d) 2008 c. 32.
 (e) S.R. 2015 No. xxx.

“variation condition” has the meaning given to it in regulation 6(2).

(3) The following expressions have the meanings given by Article 3 of the Directive—

“CO₂ stream”;

“storage site”.

Meaning of “owner”

3.—(1) Except as provided in paragraph (2), in these Regulations “owner”, in relation to relevant infrastructure, means any of the following—

(a) in respect of a relevant storage site—

(i) the operator of the storage site;

(ii) the holder of the storage licence;

(b) in respect of a relevant pipe-line—

(i) a person in whom the pipe-line is vested;

(ii) a lessee and any person occupying or controlling the pipe-line;

(c) a person who has the right to have things conveyed by or stored in a relevant pipe-line or relevant storage site, where such right has been acquired by that person on terms that—

(i) the person is entitled to exercise the right for a period of one year or more; and

(ii) the right is capable of being assigned or otherwise disposed of to another person.

(2) In regulations 12 and 16 and in regulation 9(3) in so far as it relates to regulation 12, “owner”, in relation to relevant infrastructure, means any of the following—

(a) in respect of a relevant storage site—

(i) the operator of the storage site;

(ii) the holder of the storage licence;

(b) in respect of a relevant pipe-line—

(i) a person in whom the pipe-line is vested;

(ii) a lessee and any person occupying or controlling the pipe-line.

(3) In this regulation “storage licence” means the licence under which the use of a place as the storage site is authorised.

Meaning of “associate”

4.—(1) For the purposes of regulations 11(7), 11(9) and 16(3) a person is an associate of another if—

(a) either or both of them is a body corporate, and

(b) one of them controls the other, or both are controlled by the same person or persons,

and paragraphs (2) to (6) set out the circumstances in which one person (“A”) controls another (“B”).

(2) Where B is a company, A controls B if A possesses or is entitled to acquire—

(a) one half or more of the issued share capital of B;

(b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B;

(c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among shareholders; or

(d) such rights as would, in the event of a winding up of B or in any other circumstances, entitle A to receive one half or more of the assets of B which would then be available for distribution among the shareholders.

- (3) Where B is a limited liability partnership, A controls B if A—
- (a) holds the majority of the voting rights in B;
 - (b) is a member of B and has the right to appoint or remove a majority of other members; or
 - (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.

(4) In paragraph (3)(a) and (c) the references to “voting rights” are to rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.

(5) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A’s wishes.

(6) In determining whether, by virtue of paragraphs (2) to (5), A controls B, A is taken to possess—

- (a) any rights and powers possessed by a person as nominee for it; and
- (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).

Meaning of “pipe-line”

5.—(1) Subject to paragraph (2), in these Regulations “pipe-line” means a pipe or system of pipes for the conveyance of any thing, together with any apparatus and works associated with such a pipe or system.

(2) A “pipe-line” does not include—

- (a) a drain or sewer;
- (b) a pipe or system of pipes constituting or comprised in apparatus for heating or cooling or for domestic purposes;
- (c) a pipe or system of pipes on the site of any operations or works to which certain provisions of the Factories Act (Northern Ireland) 1965^(a) apply by virtue of section 125(1) of that Act (building operations and works of engineering construction);
- (d) a pipe or system of pipes wholly situated within the boundaries of any land occupied as a unit for purposes of agriculture (within the meaning of the Agriculture Act (Northern Ireland) 1949^(b)), where the pipe or system of pipes is designed for use for purposes of agriculture;
- (e) a pipe or system of pipes wholly situated in premises used for the purposes of education or research.

(3) For the purposes of these Regulations the following apparatus and works, and no other, shall be treated as being associated with a pipe, or system of pipes, namely—

- (a) apparatus for inducing or facilitating the flow of anything through, or through a part of, the pipe or system;
- (b) valves, valve chambers, manholes, inspection pits and similar works, being works annexed to, or incorporated in the course of, the pipe or system;
- (c) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in sub-paragraph (a) or (b);
- (d) apparatus for the transmission of information for the operation of the pipe or system;
- (e) apparatus for affording cathodic protection to the pipe or system;
- (f) a structure for the exclusive support of a part of the pipe or system;

(a) 1965 c. 20 (N.I.).

(b) 1949 c. 2 (N.I.).

- (g) in relation only to a pipe, or system of pipes, which is used to convey carbon dioxide to a storage site, apparatus for treating and cooling carbon dioxide which is to flow through, or through part of, the pipe or system.

(4) In paragraph (3)(g), the reference to a pipe, or system of pipes, which is used to convey carbon dioxide includes a pipe or system which is not being used for any purpose but which is intended to be used to convey carbon dioxide.

Relevant storage site: variation conditions

6.—(1) Subject to paragraph (5), this regulation applies where an application for a storage permit in respect of a relevant storage site is considered by the Department.

(2) Subject to paragraph (4), where the Department grants the storage permit, it may grant it subject to a condition (a “variation condition”) in accordance with paragraph (3) if the Department is satisfied that—

- (a) there is evidence of demand existing or likely to arise for the grant of storage permits for the construction of further relevant storage sites to be designed for the storage of carbon dioxide;
- (b) compliance with the variation condition will not prejudice the safety or environmental integrity of the relevant storage site concerned; and
- (c) compliance with the variation condition will not prejudice the efficient operation of the relevant storage site concerned.

(3) A variation condition may require—

- (a) the capacity of the relevant storage site to which it relates or of any part of that relevant storage site to be greater than that proposed in the application for the storage permit; or
- (b) the design of the relevant storage site to which it relates to be modified, including by the addition of a junction through which a carbon dioxide pipe-line may be connected to the relevant storage site.

(4) Before exercising the powers conferred by paragraph (2) and regulation 8(1), the Department shall give an opportunity to be heard to—

- (a) the applicant for the storage permit;
- (b) any other person who made representations to the Department as to the matters set out in paragraph (2) or (3);
- (c) any person with a right to have carbon dioxide stored in the proposed relevant storage site;
- (d) the Health and Safety Executive for Northern Ireland;
- (e) the planning authority or in the case of an offshore relevant storage site, the Crown Estate Commissioners.

Pipe-line variation notices

7.—(1) Where a person proposes to make an application for the grant of planning permission for the construction of a relevant pipe-line or, in the case of an offshore relevant pipe-line, the grant of a Crown lease, the person shall give not less than six months’ notice to the Department that such application is to be made.

(2) The notice under paragraph (1) shall give particulars of the proposal and shall—

- (a) specify the points between which the proposed pipe-line is to run and be accompanied by a map on which is delineated the route which it is proposed to take;
- (b) specify the length, diameter and capacity of the proposed pipe-line.

(3) Subject to paragraph (5), the Department may (whether or not notice has been given to it under paragraph (1)), at any time before planning permission or a Crown lease for the construction of the pipe-line is granted, serve a notice (a “pipe-line variation notice”) on the person who

proposes to make, or has made, the application for planning permission or a Crown lease if the Department is satisfied that—

- (a) there is evidence of demand existing or likely to arise for the construction of further pipe-lines to be designed for the conveyance of carbon dioxide;
- (b) the whole or any part of the route to be taken by a further pipe-line will be substantively the same as the route or any part of the route to be taken by the pipe-line to which the application relates;
- (c) compliance with the pipe-line variation notice will not prejudice the safety or environmental integrity of the relevant pipe-line concerned; and
- (d) compliance with the pipe-line variation notice will not prejudice the efficient operation of the relevant pipe-line concerned.

(4) A pipe-line variation notice may direct that—

- (a) the capacity of the relevant pipe-line to which it relates or of any part of that relevant pipe-line shall be greater than that proposed in the application for the grant of planning permission or a Crown lease;
- (b) the design of the relevant pipe-line to which it relates should be modified, including by the addition of a junction through which another pipe-line may be connected to the pipe-line; or
- (c) any of the route of the pipe-line to be different from that so proposed.

(5) Before exercising the powers conferred by paragraph (3) and regulation 8(1), the Department shall—

- (a) consult the planning authority or, in the case of a proposed offshore relevant pipe-line, the Crown Estate Commissioners; and
- (b) give an opportunity to be heard to—
 - (i) the person who proposes to make, or has made, the application for the grant of planning permission or a Crown lease;
 - (ii) any other person who made representations to the Department as to the matters set out in paragraph (3) or (4);
 - (iii) any person with a right to have carbon dioxide conveyed by the proposed relevant pipe-line;
 - (iv) the Health and Safety Executive for Northern Ireland.

(6) The Department shall serve a copy of the pipe-line variation notice on the planning authority or, in the case of an offshore relevant pipe-line, the Crown Estate Commissioners.

Notices relating to costs etc.

8.—(1) Subject to regulation 9(2), where a storage permit is granted subject to a variation condition or a pipe-line variation notice has been served, the Department may serve a notice in accordance with paragraph (2) on—

- (a) the holder of the storage permit or the person to whose benefit the grant of planning permission enures or the person to whom the Crown lease is granted (the “holder”); and
- (b) any other person who made representations to the Department as to the matters set out in regulation 6(2) or (3) or in regulation 7(3) or (4) (the “third party”).

(2) A notice under paragraph (1) shall—

- (a) specify the sums or the method of determining the sums which the Department considers should be paid to the holder by the third party for the purpose of defraying so much of the costs of constructing the relevant infrastructure as is attributable to the variation condition or pipe-line variation notice;
- (b) specify the arrangements which the Department considers should be made by the holder and third party, within a specified period, for the purpose of securing that those sums will

- be paid to the holder if the holder constructs the relevant infrastructure or a relevant part of it, or satisfies the Department that the holder will construct it in accordance with the variation condition or pipe-line variation notice;
- (c) provide that the holder may, if the Department is satisfied that those arrangements have not been made by the third party within the specified period, elect (in the manner specified) that the variation condition or pipe-line variation notice be withdrawn or have effect with such modifications as are so specified with a view to eliminating the consequences of the representations of the third party; and
 - (d) authorise the holder, if the Department is satisfied that the relevant infrastructure or a relevant part of it has been or will be constructed in accordance with the variation condition or pipe-line variation notice, to recover those sums from the third party.
- (3) In paragraph (2) “specified” means specified in the notice.

Acquisition of rights to use proposed relevant infrastructure

9.—(1) Where a relevant storage site is proposed to be constructed pursuant to a storage permit to which a variation condition is attached or a pipe-line variation notice has been served in respect of the proposed construction of a relevant pipe-line, any person other than the holder may make an application to the Department under regulation 11(4) in respect of the proposed relevant infrastructure.

(2) Before serving a notice under regulation 8(1) on a third party, the Department shall give the third party an opportunity to make an application under regulation 11(4) in respect of the proposed relevant infrastructure to which the storage permit, planning permission or Crown lease relates.

(3) In the circumstances set out in paragraphs (1) and (2), regulations 11 and 12 have effect as if references to relevant infrastructure were references to the infrastructure as it would be once constructed in accordance with the variation condition or pipe-line variation notice, and as if references to the owner of the relevant infrastructure were references to the person who will be the owner of the proposed infrastructure.

Pipe-line diversions

10.—(1) If, in respect of a length of proposed relevant pipe-line, a pipe-line variation notice has been served and that pipe-line is to be diverted, the pipe-line shall continue for the purposes of and after the diversion to be subject to any direction contained in the pipe-line variation notice.

(2) If, in respect of a length of relevant pipe-line, any requirements are imposed by virtue of a modification notice and the pipe-line is to be diverted or is subsequently diverted, the pipe-line shall continue for the purposes of and after the diversion to be subject to any requirements imposed by the notice.

Acquisition of rights to use relevant infrastructure

11.—(1) This regulation applies where—

- (a) a person makes an application to the owner of a relevant pipe-line for a right to have carbon dioxide of the composition specified in the application conveyed by the pipe-line during such period as is so specified and in such quantities as are so specified; or
- (b) a person makes an application to the owner of a relevant storage site to have carbon dioxide of the composition specified in the application, injected into the storage site during such period and at such an injection rate as is so specified and stored in the storage site,

and references in these Regulations to the “access application” are to the application made to the owner of the relevant pipe-line or relevant storage site.

(2) Where an access application is made, the applicant and the owner of the relevant infrastructure shall negotiate in good faith and endeavour to reach agreement on the application.

(3) If an access application is refused on the grounds of lack of capacity, the owner shall give the applicant duly substantiated reasons for the refusal.

(4) If the applicant and the owner do not reach agreement on the access application, the applicant may apply to the Department for an access notice which would secure to the applicant the right sought in the access application.

(5) The Department shall not consider an application under paragraph (4) unless it is satisfied that the applicant and the owner have had a reasonable time in which to reach agreement.

(6) When considering an application under paragraph (4) the Department shall—

- (a) decide whether the application is to be—
 - (i) rejected;
 - (ii) adjourned to enable further negotiations between the applicant and the owner; or
 - (iii) considered further;
- (b) give notice of its decision to the applicant; and
- (c) in the case of a decision to consider the application further, give an opportunity to be heard to—
 - (i) the applicant and the owner;
 - (ii) any person with a right to have carbon dioxide conveyed by the pipe-line or stored in the storage site;
 - (iii) the Health and Safety Executive for Northern Ireland; and
 - (iv) such other persons as the Department considers appropriate.

(7) When giving further consideration to an application under paragraph (4), the Department shall (so far as relevant) take into account—

- (a) the capacity which is or can reasonably be made available in a relevant pipe-line;
- (b) the authorised capacity which is or can reasonably be made available in a relevant storage site;
- (c) whether the composition of the CO₂ stream to be conveyed by, injected into or stored in, the relevant infrastructure is compatible with the use of the relevant infrastructure for the purpose for which it has been designed;
- (d) any incompatibilities of technical specification which cannot be reasonably overcome;
- (e) any other difficulties which cannot be reasonably overcome and which could prejudice the efficient, current and planned future transport or storage of carbon dioxide;
- (f) the duly substantiated reasonable needs of the owner and any associate of the owner for the conveyance and storage of carbon dioxide;
- (g) the interests of all users and operators of the relevant infrastructure;
- (h) the proportion of the United Kingdom's carbon dioxide reduction obligations pursuant to international legal instruments and to European Union legislation that will be met through the capture and geological storage of carbon dioxide; and
- (i) the number of parties involved in the dispute.

(8) The Department may serve an access notice only if it is satisfied that—

- (a) the notice will not prejudice—
 - (i) the efficient operation of the relevant infrastructure concerned; or
 - (ii) the safety or environmental security of the conveyance or storage of carbon dioxide by or in the relevant infrastructure concerned; and
- (b) the condition in paragraph (9) is met.

- (9) The condition is that the Department is satisfied that the notice will not prejudice—
- (a) the conveying by or storage in the relevant infrastructure concerned of the quantities of carbon dioxide which the owner or an associate of the owner requires or may reasonably be expected to require; or
 - (b) the conveying by or storage in the relevant infrastructure concerned of the quantities of carbon dioxide which another person with a right to have carbon dioxide so conveyed or stored requires in the exercise of that right.
- (10) The Department may serve a notice (an “access notice”) containing such provisions as the Department considers appropriate for any of the following purposes—
- (a) to secure to the applicant the right sought in the access application;
 - (b) to secure that exercise of the right is not prevented or impeded;
 - (c) to secure to the applicant such ancillary or incidental rights as the Department considers necessary or expedient, which may include the right to have a pipe-line connected to the relevant pipe-line or relevant storage site by the applicant or the owner;
 - (d) to regulate the charges which may be made for the exercise of any right secured by the notice.
- (11) An access notice may also—
- (a) contain provision authorising one or more of the owners to recover from the applicant payments by way of consideration for any right secured by the notice of amounts specified in the notice or determined in accordance with the notice;
 - (b) contain provision permitting a right secured by the notice to be assigned.
- (12) An access notice shall be served on the owner and the applicant.
- (13) An access notice does not have effect unless and until the applicant has given notice to the Department and owner of acceptance of the terms of the access notice in such manner and within such period as is specified in that notice.

Compulsory modifications of relevant infrastructure

- 12.—**(1) This regulation applies where—
- (a) a person has made an access application in respect of a relevant pipe-line or relevant storage site; and
 - (b) the Department is considering whether to serve an access notice which would secure to the applicant the right sought in the application.
- (2) Subject to paragraphs (3) and (6), the Department may serve on the owner of the relevant infrastructure and the applicant a notice in accordance with paragraphs (4) and (5) (a “modification notice”) if it appears to the Department—
- (a) that relevant infrastructure that is the subject of the access application can and should be modified so as to increase its capacity; or
 - (b) that relevant infrastructure that is the subject of the access application can and should be modified by installing in it a junction or other apparatus through which another pipe-line may be connected to the relevant pipe-line or to the relevant storage site.
- (3) The Department shall not serve a modification notice that requires the authorised capacity of a relevant storage site to be increased.
- (4) A modification notice shall—
- (a) specify the modifications which the Department considers should be made to the relevant infrastructure;
 - (b) specify the sums or the method of determining the sums which the Department considers should be paid to the owner by the applicant for the purpose of defraying the cost of the modifications;

- (c) specify the arrangements which the Department considers should be made by the applicant, within a period specified in the notice, for the purpose of securing that those sums will be paid to the owner if the owner carries out the modifications or satisfies the Department that they will be carried out;
- (d) require the owner, if the applicant makes those arrangements within that period, to carry out the modifications within a period specified in the notice; and
- (e) authorise the owner, if the Department is satisfied that the owner has carried out or will carry out the modifications, to recover those sums from the applicant.

(5) A modification notice may also contain provision for the purpose of ensuring that if the carrying out of the modifications prejudices any of the matters referred to in regulation 11(9)(a) or (b), any person who suffers loss as a result may recover from the applicant payments by way of compensation of such amounts as are determined in accordance with the notice.

(6) In considering whether to serve a modification notice, the Department shall—

- (a) take into account (so far as relevant) the matters referred to in regulation 11(7)(a) to (i); and
- (b) give the persons listed in paragraph (7) an opportunity to be heard.

(7) The persons referred to in paragraph (6)(b) are—

- (a) the applicant and the owner;
- (b) any person with a right to have any thing conveyed by the relevant pipe-line or stored in the relevant storage site;
- (c) the Health and Safety Executive for Northern Ireland; and
- (d) such other persons as the Department considers appropriate.

(8) Subject to paragraph (9), if a modification notice contains provision by virtue of paragraph (5) the Department shall give a copy of the notice to every person who has a right to have any thing conveyed by the relevant pipe-line or stored in the relevant storage site.

(9) Before giving a copy of a modification notice under paragraph (8), the Department shall—

- (a) remove from the copy any provision included in the notice by virtue of paragraph (4)(b); and
- (b) after giving the owner and the applicant an opportunity to be heard, remove from the copy any other provision included in the notice which the Department considers may prejudice the commercial interests of the owner or the applicant if not removed.

(10) If the Department serves a modification notice, regulation 11 has effect in relation to the relevant infrastructure concerned as if references to the relevant infrastructure were references to the relevant infrastructure as it would be with the modifications specified in the notice.

(11) A modification notice does not have effect unless and until the Department has served an access notice in respect of the relevant infrastructure that is the subject of the access application.

Variation of access notices and modification notices

13.—(1) Subject to paragraph (2), an access notice or a modification notice may be varied or set aside by the agreement of all the persons on whom it was served.

(2) An agreement to vary or set aside an access notice or a modification notice does not have effect unless all the persons on whom the notice was served have given joint notice to the Department of the agreement.

(3) Subject to paragraph (4), the Department may vary an access notice on the application of one of the persons on whom the notice was served.

(4) The Department may only vary an access notice under paragraph (3) if it is satisfied that the variation is necessary to resolve a dispute that has arisen in connection with the notice between the persons on whom it was served.

(5) In considering whether to vary an access notice the Department shall give an opportunity to be heard to—

- (a) the person on whom the notice was served;
- (b) any person with a right to have any thing conveyed by the relevant pipe-line concerned or stored in the relevant storage site concerned;
- (c) the Health and Safety Executive for Northern Ireland;
- (d) such other persons as the Department considers appropriate.

(6) For the purposes of this regulation, an access notice or a modification notice is to be treated as having been served on a person (“P”) if there has been assigned to P a right which is secured by the notice.

Powers of the Department to require information

14.—(1) The Department may by notice require any person listed in paragraph (2) to provide the Department with specified information for the purpose of enabling the Department to decide—

- (a) whether to exercise any function conferred on the Department by regulation 7, 11, 12 or 13; and
- (b) if so, how to exercise that function.

(2) The persons are—

- (a) a person who proposes to make, or has made, an application for the grant of planning permission for the construction of a relevant pipe-line or, in the case of an offshore relevant pipe-line, the grant of a Crown lease;
- (b) a person who has made or received an access application.

(3) Where a person has applied to the Department under regulation 13(3) for an access notice to be varied, the Department may by notice require any person listed in paragraph (4) to provide the Department with specified information for the purpose of enabling the Department to decide—

- (a) whether to vary the notice; and
- (b) if so, how to vary the notice.

(4) The persons are—

- (a) the person who applied for the notice to be varied;
- (b) any other person on whom the notice was served;
- (c) any person to whom there has been assigned a right which is secured by the notice.

(5) The information which may be required by the Department under paragraph (1) or (3) includes financial information.

(6) The Department shall not disclose to any person any information provided under paragraph (1) or (3) unless—

- (a) the person who provided the information consents to the disclosure; or
- (b) the disclosure is required by virtue of an obligation imposed by law.

(7) In this regulation “specified” means specified in a notice under paragraph (1) or (3).

Effect of access notice and modification notice on other consent regimes

15.—(1) The use of relevant infrastructure by any person in accordance with a right secured to that person by virtue of these Regulations is not a contravention of section 17(1) of the Energy Act 2008.

(2) Subject to paragraph (3), a modification notice requiring a person to carry out modifications authorises that person to carry out the modifications for the purposes of—

- (a) section 17(2)(d) of the Energy Act 2008;

(b) a storage permit under the Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015.

(3) Paragraph (2) does not apply to the extent that a modification notice has been varied by agreement pursuant to regulation 13(1).

Publication of capacity information

16.—(1) The owner of relevant infrastructure shall publish—

- (a) no later than the first anniversary of the relevant date, the information set out in paragraph (3) relating to available capacity and technical and operating requirements for access; and
- (b) any changes to the published information as soon as reasonably practicable after they become effective.

(2) In paragraph (1)(a) the “relevant date”—

- (a) in relation to a relevant storage site, is the date on which the storage permit is granted in respect of the storage site;
- (b) in relation to a relevant pipe-line, is—
 - (i) the date on which planning permission or a Crown lease was granted for the construction of the pipe-line as a relevant pipe-line; or
 - (ii) where the pipe-line was not constructed as a relevant pipe-line, the date on which the pipe-line was first used to convey carbon dioxide for the purposes of an activity within section 17(2)(a) to (c) of the Energy Act 2008.

(3) The information referred to in paragraph (1) is—

- (a) in the case of a relevant storage site, the authorised capacity or in the case of a relevant pipe-line, the capacity which is, or can reasonably be made, available in the relevant infrastructure concerned taking into account the quantities of carbon dioxide which—
 - (i) are required, or may reasonably be expected to be required, to be stored or conveyed by the owner or an associate of the owner for the purposes of any business carried on by the owner or associate; or
 - (ii) are required to be stored or conveyed by another person with a right to have carbon dioxide stored in the relevant storage site or conveyed by the relevant pipe-line in the exercise of that right; and
- (b) subject to paragraph (4), the technical specifications of the CO₂ stream that have to be met in order to secure access to the relevant infrastructure.

(4) If there is no capacity which is or can reasonably be made available, as described in paragraph (3)(a), the owner is not required to publish the information referred to in paragraph (3)(b).

Provision of false information

17.—(1) A person (“P”) is guilty of an offence if, in circumstances falling within paragraph (2), P provides false information to the Department for the purpose of—

- (a) inducing the Department to exercise, or not to exercise, any of the functions conferred on it by these Regulations; or
- (b) inducing the Department to exercise those functions in a particular way.

(2) The circumstances are that, at the time the information is provided, P—

- (a) knows or believes the information to be false; or
- (b) is reckless as to whether or not it is false.

(3) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Proceedings for an offence under paragraph (1) may not be instituted in Northern Ireland except—

- (a) by the Department or by a person authorised to do so by the Department; or
- (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(5) For the purposes of this regulation and regulation 18, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and, where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.

Compliance with pipe-line variation notices

18.—(1) A person (“P”) is guilty of an offence if—

- (a) P fails to comply with regulation 7(1);
- (b) P contravenes a pipe-line variation notice.

(2) A person guilty of an offence under paragraph (1)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person guilty of an offence under paragraph (1)(b) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Civil proceedings

19.—(1) The obligation of a person to comply with a notice under regulation 8(1), an access notice or a modification notice is a duty owed to any person who may be affected by a contravention of the notice.

(2) Where a duty is owed by virtue of paragraph (1) to any person, the duty may be enforced as if it were an obligation contained in a contract between that person and the person who owes the duty.

(3) In any proceedings brought against any person in pursuance of paragraph (2), it shall be a defence for that person to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the notice concerned.

(4) The duty to comply with a notice under regulation 14 or to publish information under regulation 16(1) shall be enforceable by the Department by civil proceedings in the High Court for an injunction or other appropriate relief or remedy.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on [00]



Name
A senior officer of the
Department of Enterprise, Trade and Investment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations form part of the implementation in Northern Ireland (including so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland) of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide (OJ No L 140, 5.6.2009, p. 114) (“the Directive”). They implement Articles 21 and 22 of the Directive on third party access to carbon dioxide storage sites and transport networks.

Regulations 2 to 5 provide definitions for terms used in the Regulations, in particular definitions of “owner”, “associate” and “pipe-line”.

Regulation 6 provides that, in the circumstances set out in the regulation, the Department may, when considering an application for a storage permit for a relevant storage site, grant the storage permit subject to certain conditions requiring the storage site to be constructed to a capacity or design different to that proposed.

Regulation 7 requires a person, who proposes to make an application for the grant of planning permission or a Crown lease for a relevant pipe-line, to give not less than six months’ notice to the Department that such an application is to be made. At any time before the grant is made, the Department may serve a notice on the person requiring the pipe-line to be constructed to a capacity, design or route different to that proposed.

Regulation 8 gives power to the Department, where it has served a notice under regulation 6 or 7, to serve a notice allocating the additional costs of constructing the storage site or pipe-line in conformity with the requirements as to capacity, design and route.

Regulation 9 allows an application for access rights to be made in relation to relevant infrastructure which has yet to be constructed in the circumstances specified in the regulation.

Regulation 10 provides that requirements imposed under regulation 7 or 8 will continue to apply to a relevant pipe-line even where it is diverted beyond the limits permitted under the grant of planning permission or Crown lease.

Regulation 11 provides that, where a person has previously sought to secure access to a relevant pipe-line or storage site by application to the owner, but has not been able to reach agreement with the owner, the person may apply to the Department for a notice granting that access.

Regulation 12 deals with compulsory modifications to a relevant pipe-line or relevant storage site, where an application has been made to an owner, and the Department is considering whether to give an access notice under regulation 11(10). Regulations 11 and 12 each set out the considerations the Department must take into account when deciding how to deal with the application, the process it must follow and what may be required by a notice.

Regulation 13 allows for variation of notices under regulations 11 and 12 once they have been issued, either by agreement among the persons to whom notice is given or, in the case of a notice under regulation 11, by the Department if it is necessary to resolve a dispute about the notice between its recipients.

Regulation 14 gives the Department powers to require information in order for the Department to decide whether to exercise any function under regulation 7, 11, 12 or 13, and if so, how.

Regulation 15 provides that the use of relevant infrastructure in accordance with a right secured by virtue of these Regulations is not a contravention of section 17(1) of the Energy Act 2008 (prohibition on unlicensed activities). It also provides that no additional consent under the statutory provisions specified in the regulation is required for the modification of relevant infrastructure, if that modification is required by the Department under the Regulations.

Regulation 16 requires the owner of relevant infrastructure to publish information about the available capacity in that infrastructure and to update that information when there is a change in the available capacity.

Regulations 17, 18 and 19 provide for the enforcement of the requirements imposed by the Regulations. Regulation 17 creates a new offence of giving false information to the Department for the purpose of influencing the exercise of its functions under the Regulations.

Regulation 18 provides that a person who fails to give notice to the Department under regulation 7(1) or who contravenes a pipe-line variation notice shall be guilty of an offence.

Regulation 19 provides that the duty of a person to comply with a notice under regulation 8(1), an access notice or a modification notice is a duty owed to any person who may be affected by a contravention of the notice, and provides that any such duty may be enforced by a person to whom it is owed as if it were a contractual right. The duty of a person to comply with an information request under regulation 14, or with the publication requirements under regulation 16, is enforceable by civil proceedings by the Department.

2015 No. 000

ENVIRONMENTAL PROTECTION

**The Storage of Carbon Dioxide (Licensing etc.) Regulations
(Northern Ireland) 2015**

Made - - - - 000

Coming into operation - 000

The Department of Enterprise, Trade and Investment is a department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the environment.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Department that it is expedient for references to EU instruments, or provisions of those instruments, in these Regulations to be construed as references to those instruments or provisions as amended from time to time.

Accordingly, the Department of Enterprise, Trade and Investment makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, as read with paragraph 1A of Schedule 2 to that Act(c).

General

Citation and commencement

1. These Regulations may be cited as the Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015, and come into operation on [000].

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(d) applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

(a) any reference to a numbered section is to that section of the Energy Act 2008(e) and any reference to Chapter 3 is a reference to Chapter 3 of Part 1 of that Act; and

(a) S.I. 2008/301

(b) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7)

(c) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006, and amended by S.I. 2007/1388 and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008

(d) 1954 c.33 (N.I.)

(e) 2008 c.32 as amended by S.I. 2011/2453

- (b) any reference (except in paragraph (4)) to an EU instrument, or a provision of such an EU instrument, is to that instrument or provision as amended from time to time.

(3) In these Regulations—

“appraisal term” has the meaning given to it in regulation 4(a);

“the authority” means the Department of Enterprise, Trade and Investment as licensing authority under section 18(2);

“CO₂” means carbon dioxide;

“corrective measures plan” has the meaning given to it in regulation 8(6);

“the Directive” means Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006(a);

“entering”, in relation to premises, includes, where applicable, boarding, and cognate expressions are to be construed accordingly;

“the Environmental Liability Directive” means Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage(b);

“the ETS Directive” means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC(c);

“financial security” includes—

- (a) a charge over a bank account or any other asset;
- (b) a deposit of money;
- (c) a performance bond or guarantee;
- (d) an insurance policy;
- (e) a letter of credit;

“general exploration licence” means a licence granted by the Secretary of State under section 18(1) which authorises only activities within section 17(2)(c) and the establishment or maintenance of an installation in a controlled place for the purpose of such activities and which—

- (a) does not grant to the holder the sole right to carry out exploration of a controlled place, and
- (b) is issued in combination with—
 - (i) a licence under section 4 to explore any controlled place with a view to carrying on activities within section 2(3)(a) to (d) and establish or maintain an installation in a controlled place for the purposes of such exploration, or
 - (ii) a licence under section 3 of the Petroleum Act 1998(d) to search for petroleum;

“injection” means injection of CO₂ into a storage site;

“inspection” means an inspection of a storage complex for the purpose of discharging a function described in sub-paragraph (a) or (b) of regulation 16(1);

(a) OJ No L 140, 5.6.2009, p 114, as amended by Directive 2011/92/EU (OJ No L26 28.1.2012. p.1) of the European Parliament and of the Council

(b) OJ No L 143, 30.4.2004, p 56, as amended by Directives 2006/21/EC (OJ No L 102, 11.4.2006, p 15), 2009/31 EC (OJ No L 140, 5.6.2009, p 114) of the European Parliament and of the Council and 2013/30/EU (OJ No L 178, 28.6.2013, p 66) of the European Parliament and of the Council

(c) OJ No L 275, 25.10.2003, p 32, as amended by Directives 2004/101/EC (OJ No L 338, 13.11.2004, p 18), 2008/101/EC (OJ No L 8, 13.1.2009, p 3) and 2009/29/EC (OJ No L 140, 5.6.2009, p 63) of the European Parliament and Council Directives, Regulation (EC) No 219/2009 of the European Parliament and of the Council (OJ No L 87, 31.3.2009, p 109) and Regulation (EU) No 421/2014 of the European Parliament and of the Council (OJ No L 129, 30.4.2014, p 1)

(d) 1998 c.17

“inspection report” has the meaning given to it in regulation 17(1);

“inspector” means a person appointed by the authority under section 27(1);

“legislation” means legislation in force in the United Kingdom (whether passed, or made, before, after or at the same time as the commencement of these Regulations);

“licence” means a licence (other than a general exploration licence or a Northern Ireland exploration licence) granted by the authority under section 18(1) in respect of activities within section 17(2)(a) to (d), and “licence holder” is to be construed accordingly;

“licensed area” means the area within which activities are authorised under a licence;

“monitoring plan” has the meaning given to it in regulation 8(5);

“Northern Ireland exploration licence” means a licence granted by the authority under section 18(1) which authorises only activities within section 17(2)(c) and the establishment or maintenance of an installation in a controlled place for the purpose of such activities and which—

(a) does not grant to the holder the sole right to carry out exploration of a controlled place, and

(b) is issued in combination with –

(i) a licence under section 2 of the Petroleum (Production) Act (Northern Ireland) 1964(a) to search for petroleum, or

(ii) a prospecting licence under section 11(1)(b) of the Mineral Development Act (Northern Ireland) 1969(b) to search for mines and minerals;

“operator” means the person who carries on or (where different) controls activities (within the meaning of section 17(2)) at a storage site;

“post-closure plan” has the meaning given to it in regulation 13(3) or (4);

“premises” includes—

(a) any carbon storage installation (within the meaning of section 30(5)); and

(b) any land, vehicle, vessel, aircraft, hovercraft or moveable structure, excluding any such thing or part thereof that is used as a dwelling;

“provisional post-closure plan” has the meaning given to it in regulation 13(2);

“routine inspection” has the meaning given to it in regulation 15(1);

“storage permit” means a consent granted under a licence, authorising the use of a place as a storage site;

“target date” has the meaning given to it in regulation 11(3)(a).

(4) The following expressions have the meanings given by Article 3 of the Directive (and cognate expressions are to be construed accordingly)—

“closure” (in relation to a storage site);

“corrective measures”;

“CO₂ plume”;

“CO₂ stream”;

“exploration”;

“hydraulic unit”;

“leakage”;

“migration”;

“significant irregularity”;

“significant risk”;

(a) 1964 c.28 (N.I.)

(b) 1969 c.35 (N.I.)

“storage complex”;
“storage site”;
“substantial change”;
“waste”;
“water column”.

Licences

Limitation on licensing powers

3. A licence shall not be granted for the purpose of storing CO₂ in the water column.

Applications for a licence

4. An application for a licence shall be made in writing to the authority, and shall include either—

- (a) a request that the licence specify a period (the “appraisal term”) during which the licence holder has the right to explore the licensed area before making an application for a storage permit; or
- (b) if no such period is requested, a statement of the reasons why such exploration is not considered necessary.

Appraisal term

5.—(1) A licence shall include an appraisal term where the authority determines that exploration is required to generate the information necessary to select a storage site.

(2) The appraisal term shall not exceed the period necessary to—

- (a) generate the information necessary to select a storage site; and
- (b) prepare the documents required for an application under regulation 7.

(3) Subject to paragraph (2), the appraisal term may be extended by the authority at the written request of the licence holder, under the conditions laid down by the licence, provided that the authority is satisfied that any exploration so far carried out has been in accordance with the licence.

(4) Where a licence includes an appraisal term, the licence (unless sooner determined under any of its provisions) shall cease and determine—

- (a) at the end of the appraisal term, if no application for a storage permit is made before that date; or
- (b) if such an application is refused, when that refusal is notified to the licence holder.

Content of a licence

6. A licence shall include the provisions contained in Schedule 1.

Storage permits

Applications for a storage permit

7.—(1) The licence holder may, under the conditions laid down by the licence, apply to the authority for a storage permit in respect of a storage site within the licensed area.

(2) Where the licence includes an appraisal term, the application may not be made unless the exploration required by the licence has been completed, and all other terms and conditions of the licence have been complied with.

- (3) An application shall be made in writing, and shall contain (at least) the following—
- (a) the name and address of the proposed operator;
 - (b) evidence of the matters referred to in regulation 8(1)(a) to (d);
 - (c) in relation to the CO₂ that is to be contained within the storage site—
 - (i) the total quantity that is to be injected and stored;
 - (ii) a proposed date on which injection is to commence;
 - (iii) the prospective sources and transport methods;
 - (iv) the composition of the CO₂ streams that are to be injected;
 - (v) the proposed injection rates and pressures;
 - (vi) the proposed location of the injection facilities;
 - (d) a description of measures to prevent any significant irregularities;
 - (e) a proposed monitoring plan drawn up in accordance with Annex II to the Directive and that takes into account the obligations imposed on the operator under legislation implementing Article 14 of the ETS Directive;
 - (f) a proposed corrective measures plan;
 - (g) the proposed provisional post-closure plan drawn up in accordance with regulation 13(1);
 - (h) the information required to be provided in relation to the storage site under legislation implementing Article 5 of Directive 2011/92/EU(a) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment;
 - (i) details of a financial security that will satisfy the requirements in paragraph 7(1) of Schedule 2, including proof that (if the storage permit is granted) such a security will be in force before the proposed date on which injection is to commence.
- (4) The authority shall forward to the European Commission—
- (a) the permit application (within one month after receipt); and
 - (b) any other related material that the authority proposes to take into account in considering the application.
- (5) The authority shall also (within one month after receipt) forward a copy of the permit application to the Department of the Environment.

Grant of storage permits

- 8.—**(1) Before granting a storage permit the authority shall be satisfied that—
- (a) the storage complex and the surrounding area have been sufficiently characterised and assessed in accordance with the criteria set out in Annex I to the Directive;
 - (b) no part of the storage complex extends beyond the territories of the member states;
 - (c) under the proposed conditions of use of the storage site, there is no significant risk of leakage or of harm to the environment or human health; and
 - (d) the conditions in paragraph (3) are met.

(2) For the purposes of paragraph (1)(b), the territory of a member state includes its exclusive economic zone and continental shelf within the meaning of Articles 55 and 76 of the United Nations Convention of the Law of the Sea(b).

(a) OJ No L 26, 28.1.2012. p.1. This Directive was implemented in Northern Ireland by S.R. 2012 No. 59
(b) Cmnd. 8941

- (3) The conditions are that the proposed operator—
- (a) is technically competent (including in the operation of environmental management systems), financially sound, and can be relied upon to carry out the functions of an operator; and
 - (b) has in place an appropriate programme of professional and technical development and training.

(4) Where more than one proposed storage site is contained within the same hydraulic unit, before granting a storage permit for either site the authority shall be satisfied that the requirements for the grant of such a permit can be met simultaneously.

- (5) In considering the application for the storage permit, the authority may—
- (a) approve the proposed monitoring plan; or
 - (b) require the applicant to make such modifications to it as the authority (after consulting the applicant) considers necessary,

and (if the permit is granted) the monitoring plan is the plan as so approved or modified.

- (6) In considering the application for the storage permit, the authority may—
- (a) approve the proposed corrective measures plan; or—
 - (b) require the applicant to make such modifications to it as the authority (after consulting the applicant) considers necessary,

and (if the permit is granted) the corrective measures plan is the plan as so approved or modified.

- (7) If the authority is minded to grant a storage permit—
- (a) the authority shall forward a draft of the proposed permit to the European Commission, together with any material taken into consideration that has not already been provided under regulation 7(4); and
 - (b) the authority shall before granting the permit consider any opinion on the draft that is issued under Article 10(1) of the Directive.

- (8) If the authority is minded to grant a storage permit—
- (a) the authority shall forward a draft of the proposed permit to the Department of the Environment; and
 - (b) the authority shall before granting the permit consider any opinion on the draft given by the Department of the Environment within one month of the date on which the draft permit was forwarded to it.

Content of storage permits

- 9.—(1) A storage permit shall include at least the following—
- (a) the name and address of a single person who is a licence holder and who is designated as the operator of the storage site;
 - (b) the precise location and delimitation of the storage site and storage complex, and any relevant information concerning the hydraulic unit;
 - (c) the operational requirements for storage, including—
 - (i) the total quantity of CO₂ authorised to be stored;
 - (ii) the reservoir pressure limits; and
 - (iii) the maximum injection rates and pressures;
 - (d) the provisions relating to acceptance and injection of CO₂, including composition of the CO₂ stream;
 - (e) any other requirements relating to injection and storage that the authority considers necessary, in particular to prevent significant irregularities;

- (f) requirements designed to prevent any undue interference with other uses of the area surrounding the storage site;
 - (g) the provisions relating to monitoring, including the monitoring plan;
 - (h) the provision relating to reporting, and notification of leakages and significant irregularities;
 - (i) the provisions relating to notification and implementation of changes, and to review and modification or revocation of the permit;
 - (j) the provisions relating to corrective measures, including the corrective measures plan;
 - (k) the conditions for closure of the storage site;
 - (l) the provisional post-closure plan; and
 - (m) the provisions relating to financial security.
- (2) In this regulation, “provisions” means the provisions contained in Schedule 2.

Powers and duties of the authority

Corrective measures

10.—(1) This regulation applies where—

- (a) a significant irregularity or a leakage has been detected; and
- (b) the licence under which the storage permit is granted is still in force,

but does not apply where the storage permit has been revoked.

(2) Without prejudice to the obligations of the operator under the provisions in the storage permit included by virtue of regulation 9(1)(j) and paragraph 6 of Schedule 2, or to the powers of the authority under section 24 (licensing authority’s powers of direction),—

- (a) the authority may direct the operator to take any corrective measures (and any measures for the protection of human health) that the authority (after consulting the operator) considers necessary; and
- (b) if the operator fails to take the measures so directed, the authority shall exercise its powers under paragraph (4).

(3) The measures directed to be taken under paragraph (2)(a) may be additional to, or different from, those set out in the corrective measures plan.

(4) Whether or not a direction has been given under paragraph (2) or under section 24—

- (a) the authority may at any time take such measures itself (or arrange for another person to take them on the authority’s behalf); and
- (b) the reasonable costs of doing so shall be paid by the operator.

(5) Section 24(5) to (8) apply to action taken under paragraph (4) as they apply to action taken under section 24(4).

Review, modification and revocation of storage permits

11.—(1) Subject to paragraph (2), where a notification is given under the provisions in a storage permit included by virtue of regulation 9(1)(i) and paragraph 4(1) of Schedule 2, the authority—

- (a) may make such modifications to a storage permit as the authority considers appropriate; and
- (b) shall notify the operator of—
 - (i) the modifications to be made;
 - (ii) the date on which the modifications are to come into effect; and
 - (iii) the date on which the change in question may be implemented.

- (2) Where it appears to the authority that the matters so notified would amount to a substantial change, the authority shall—
- (a) make such modifications to a storage permit as the authority considers appropriate (and give a notification in accordance with paragraph (1)(b)); or
 - (b) notify the operator that the change may not be implemented.
- (3) The authority shall give a notification under paragraph (1)(b) or (2) on or before—
- (a) the date (“the target date”) on which the operator proposes to implement the change notified to the authority under the provisions in a storage permit included by virtue of regulation 9(1)(i) and paragraph 4(1) of Schedule 2; or
 - (b) if the authority considers more time is required to allow it to give the notification, the later date notified by the authority under paragraph (4).
- (4) The authority shall notify the operator of the later date—
- (a) no less than one week before the target date; or
 - (b) if one or more later dates have already been notified by the authority, no less than one week before the date last notified.
- (5) This paragraph applies where the authority becomes aware of—
- (a) any (or any risk of) leakages or significant irregularities;
 - (b) any breach of the terms or conditions of the storage permit; or
 - (c) any scientific finding or technological development which appears to have a bearing on the conduct of operations at the storage site.
- (6) The authority shall consider whether to modify or revoke a storage permit—
- (a) where paragraph (5) applies; and
 - (b) in any event, on the date (“the review date”) falling on the fifth anniversary of the grant of a storage permit, and subsequently on every tenth anniversary of the review date.
- (7) Following that consideration, the authority may—
- (a) make such modifications to a storage permit as the authority considers appropriate; or
 - (b) if it decides that modifications to a storage permit would be insufficient in the light of the matters referred to in paragraph (5), revoke the permit.
- (8) Before making any modification to a storage permit or revoking a storage permit under this regulation, the authority shall consult the operator and any other licence holder.

Consequences of revocation of a storage permit

12.—(1) This regulation applies where the authority has revoked a storage permit under regulation 11(7).

- (2) The authority shall either—
- (a) close the storage site; or
 - (b) consider any application for a new licence (and, if such a licence is granted, for a new storage permit) in respect of the storage site.
- (3) Following the procedure under paragraph (2)(b)—
- (a) if no new storage permit is granted, the authority shall close the storage site (but the existing licence shall continue in force);
 - (b) if a new storage permit is granted, the existing licence shall terminate on the date of that grant.
- (4) Until the storage site is closed, or the new storage permit is granted, the authority is deemed to be the operator of the site for the purposes of the following obligations—
- (a) in relation to the acceptance and injection of CO₂;
 - (b) in relation to monitoring;

- (c) in relation to corrective measures;
 - (d) in relation to the surrender of allowances under legislation implementing the ETS Directive; and
 - (e) under legislation implementing Articles 5(1) and 6(1) of the Environmental Liability Directive.
- (5) Where the storage site is closed under paragraph (2)(a) or (3)(a), the authority—
- (a) is deemed to be the operator of the storage site for the purposes of the obligations referred to in paragraph (4)(b) to (e); and
 - (b) shall ensure that the storage site is sealed and the injection facilities removed (but this is without prejudice to the obligations of any person under Part 4 of the Petroleum Act 1998(a)).
- (6) The holder of the existing licence shall pay to the authority any reasonable costs incurred in meeting the authority’s obligations under paragraph (4) or (5); and section 24(6) and (7) apply to the recovery of such costs as they apply to the recovery of costs under section 24(5).
- (7) In this regulation, “existing licence” means the licence under which the revoked storage permit was granted.
- (8) The authority may consult the Department of the Environment in relation to the carrying out by the authority of the obligations referred to in paragraph (4)(a) to (e) and paragraph (5)(b).

Closure of storage site and post-closure period

Post-closure plan

13.—(1) Before applying for a storage permit, a licence holder shall draw up a proposed provisional post-closure plan that is—

- (a) based on best practice; and
- (b) in accordance with Annex II to the Directive.

(2) Before granting a storage permit, the authority shall—

- (a) approve that proposed plan; or
- (b) require the licence holder to make such modifications to it as the authority (after consulting the licence holder) considers necessary,

and the provisional post-closure plan is the plan so approved or modified.,

(3) The authority may—

- (a) approve a proposed post-closure plan submitted to it for approval in accordance with the provisions in the licence included by virtue of regulation 6 and paragraph 2(1) of Schedule 1; or
- (b) require the operator to make such modifications to it as the authority (after consulting the operator) considers necessary,

and the post-closure plan is the plan so approved or modified.

(4) Where the authority is deemed to be the operator pursuant to regulation 12(5), the post-closure plan is the provisional post-closure plan with such modifications as the authority considers necessary.

Post-closure obligations

14. The closure of a storage site is without prejudice to the obligations of the operator—

(a) Section 30 of the Energy Act 2008 applies Part 4 of the Petroleum Act 1998 (c.17) to carbon dioxide installations (as defined by section 30(5))

- (a) under legislation implementing Articles 5 to 8 of the Environmental Liability Directive;
or
- (b) relating to the surrender of allowances under legislation implementing the ETS Directive.

Inspections

15.—(1) The authority shall carry out an inspection (a “routine inspection”) of a storage complex—

- (a) during the initial period—
 - (i) no later than one year from the date that period commences; and
 - (ii) subsequently, no later than one year from the date of the immediately previous inspection; and
 - (b) during the post-closure period—
 - (i) no later than five years from the date that period commences; and
 - (ii) subsequently, no later than five years from the date of the immediately previous inspection.
- (2) A routine inspection shall include an examination of—
- (a) the injection and monitoring facilities; and
 - (b) the effects from the storage complex on the environment and human health.
- (3) The authority shall carry out an inspection of a storage complex if—
- (a) the authority becomes aware of—
 - (i) leakages or significant irregularities; or
 - (ii) a breach of the terms or conditions of the storage permit; or
 - (b) a complaint is made to the authority about the effects from the storage complex on the environment or human health, unless the authority is of the opinion that the complaint is frivolous or vexatious.
- (4) The authority may carry out an inspection other than when required under paragraph (1) or (3) as the authority considers appropriate.
- (5) An inspection carried out pursuant to paragraph (3) or (4)—
- (a) does not constitute a routine inspection for the purposes of paragraph (1); but
 - (b) may be carried out simultaneously with a routine inspection.
- (6) In this regulation, in relation to a storage complex—
- (a) “initial period” means the period commencing on the date on which injection commences at the storage site and ending on the third anniversary of the date of closure of the storage site;
 - (b) “monitoring facilities” means facilities used for the carrying out of a programme of monitoring pursuant to the provisions in the storage permit included by virtue of regulation 9(1)(g) and paragraph 2 of Schedule 2;
 - (c) “post-closure period” means the period commencing on the day after the third anniversary of the date of closure of the storage site and ending on the date on which the relevant licence is terminated;
 - (d) “year” means a period of twelve months.

Inspectors

16.—(1) Subject to paragraph (3), an inspector may exercise any of the powers set out in Schedule 3 to assist the authority in carrying out its functions under Chapter 3 or these Regulations, including—

- (a) investigating whether—
 - (i) the provisions of a licence, storage permit or any consent granted under a licence; or
 - (ii) any requirements, restrictions or prohibitions imposed by or under Chapter 3 of these Regulations,have been, or are being, complied with; and
- (b) monitoring the effects of activities authorised by or under a licence or from a storage complex on the environment or human health.

(2) An inspector shall report to the authority in such manner as the authority may direct.

(3) Before exercising any of the powers set out in Schedule 3, an inspector shall on request produce evidence of appointment.

Inspection reports

17.—(1) The authority shall prepare a written report (an “inspection report”) of the results of an inspection.

(2) An inspection report shall include—

- (a) the authority’s assessment of whether or not, in respect of the storage complex inspected—
 - (i) the provisions of a licence, storage permit or any consent granted under a licence; and
 - (ii) any requirements, restrictions or prohibitions imposed by or under Chapter 3 or these Regulations,have been, or are being, complied with; and
- (b) a statement as to what action (if any) the authority considers is required to ensure such compliance.

(3) A statement made in an inspection report pursuant to paragraph (2)(b) does not preclude the authority from requiring the licence holder, operator or any other person to take any other action.

(4) The authority shall within two months of the completion of an inspection—

- (a) provide a copy of the inspection report to the operator of the relevant storage complex; and
- (b) make the inspection report available for inspection by the public.

Offences

18.—(1) It is an offence for a person—

- (a) wilfully to obstruct an inspector in the exercise of the powers or duties conferred on the inspector by these Regulations;
- (b) without reasonable excuse, to fail to comply with a requirement imposed under Schedule 3 or to prevent another person from complying with such a requirement; or
- (c) knowingly or recklessly to give information which is false or misleading in a material particular where the information is given in purported compliance with any requirement imposed under Schedule 3 for the supply of information to an inspector.

- (2) A person guilty of an offence under paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.

(3) For the purposes of this regulation, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited”; and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.

(4) Where the commission by any person of an offence under this regulation is due to the act or fault of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings for the offence are taken against the first-mentioned person.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 000



A senior officer of the
Department of Enterprise, Trade and Investment

PROVISIONS TO BE INCLUDED IN A LICENCE

Closure of storage site by the operator

1.—(1) If a storage permit is granted under the licence in respect of a storage site then, subject to regulation 12 of the Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015 (“the Regulations”), the operator shall close the storage site if the conditions referred to in regulation 9(1)(k) of the Regulations are met.

(2) The operator may close the storage site if—

- (a) the consent of the authority has been given following an application under sub-paragraph (3), and
- (b) any conditions attached to that consent have been met.

(3) An application for the authority’s consent to the closure of the storage site shall—

- (a) be made in writing and sent to the Department of Enterprise, Trade and Investment; and
- (b) contain the reasons why the operator proposes to close the storage site.

(4) A storage site shall not be closed under sub-paragraph (1) or (2) until the terms of the post-closure plan have been determined under regulation 13(3) of the Regulations.

Post-closure plan

2.—(1) Prior to the closure of the storage site in accordance with paragraph 1(1) or (2) the operator shall submit a proposed post-closure plan to the authority for approval.

(2) The proposed post-closure plan shall be based on the provisional post-closure plan, subject to any modifications proposed by the operator.

(3) In deciding whether to propose any such modifications, the operator shall take into account—

- (a) an analysis of the relevant risks;
- (b) current best practice; and
- (c) any improvements in the available technology.

Post-closure obligations

3.—(1) After the storage site has been closed and until the licence is terminated, the operator shall continue to comply with the obligations in the storage permit to—

- (a) monitor the storage site;
- (b) report and notify leakages and significant irregularities (with the exception of the obligation to provide information on the quantities, properties and composition of the CO₂ streams that have been delivered to and injected into the storage site); and
- (c) take corrective measures.

(2) For the purpose of complying with the obligations referred to in sub-paragraph (1), any reference to the monitoring plan or the corrective measures plan is to be read as a reference to the post-closure plan.

(3) The operator shall seal the storage site and remove the injection facilities and, where applicable, in accordance with Part 4 of the Petroleum Act 1998.

Extraction of stored CO₂

4. The operator shall not (and shall not permit any other person to) extract stored CO₂ from the storage site except with the prior written consent of the authority and in accordance with any conditions subject to which any such consent is given.

Interpretation

5.—(1) In this licence the following expressions have the meanings given by regulation 2(3) of the Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015—

“the authority”;
“corrective measures plan”;
“injection”;
“licence”;
“monitoring plan”;
“operator”;
“post-closure plan”;
“provisional post-closure plan”; and
“storage permit”.

(2) The following expressions have the meanings given by Article 3 of Directive 2009/31/EC of the European Parliament and of the Council of 29 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (and cognate expressions are to be construed accordingly)—

“closure” (in relation to a storage site);
“corrective measures”;
“CO₂ stream”;
“leakage”;
“significant irregularity”;
“storage site”.

PROVISIONS TO BE INCLUDED IN A STORAGE PERMIT

Acceptance and injection of CO₂

1.—(1) In order to be injected into the storage site the CO₂ stream shall consist overwhelmingly of carbon dioxide, and shall in particular satisfy the conditions in sub-paragraph (2).

(2) The CO₂ stream—

- (a) shall contain no waste or other matter added for the purposes of disposal;
- (b) may contain incidental substances or trace substances (to the extent permitted by any legislation applicable to those substances), but only if the concentration of all such substances are below levels that would—
 - (i) adversely affect the integrity of the storage site or the relevant transport infrastructure, or
 - (ii) pose a significant risk to the environment or human health.

(3) In sub-paragraph (2)—

- (a) “incidental substance” means a substance which has become associated with the CO₂, either at its original source or as a result of the process of capture or injection; and
- (b) “trace substance” means a substance which has been added to the CO₂ in order to assist in the monitoring and verifying of its migration after injection.

(4) Before accepting and injecting the CO₂ stream the operator shall ensure that the conditions in sub-paragraphs (1) and (2) can be met, by carrying out—

- (a) an analysis of the composition of the stream, and in particular of any corrosive substances that may be present in it; and
- (b) an assessment of the risk that the stream will fail to comply with those conditions.

(5) The operator shall maintain a register, at a place and in a manner approved by the authority, of the quantities and properties of the CO₂ streams that have been delivered to, and injected into, the storage site (including the composition of those streams).

Monitoring

2.—(1) The operator shall carry out a programme of monitoring of the storage complex and injection facilities for the purposes specified in sub-paragraph (3).

(2) Such monitoring shall include (where possible) the monitoring of the CO₂ plume, and (where appropriate) of the surrounding environment.

(3) The purposes are—

- (a) the comparison of the actual and modelled behaviour of the CO₂ (and the naturally-occurring formation water) in the storage site;
- (b) the detection of any significant irregularities;
- (c) the detection of any migration of CO₂;
- (d) the detection of any leakage of CO₂;
- (e) the detection of any significant adverse effects on the surrounding environment, and in particular on—
 - (i) drinking water;
 - (ii) human populations; and
 - (iii) users of the surrounding biosphere;
- (f) the assessment of the effectiveness of any corrective measures taken;

- (g) updating the assessment of the safety and integrity, both short-term and long-term, of the storage complex (including the assessment of whether the stored CO₂ will be completely and permanently contained).
- (4) The monitoring shall be based on the monitoring plan.
- (5) The monitoring plan shall be updated in accordance with Annex II to the Directive, and in any event within five years of the original plan, in order to take account of—
 - (a) changes to the assessed risk of leakage;
 - (b) changes to the assessed risks to the environment and human health;
 - (c) new scientific knowledge; and
 - (d) improvements in best available technology.
- (6) The updated plan shall be submitted for approval by the authority.
- (7) The authority may—
 - (a) approve that plan; or
 - (b) require the operator to make such modifications to it as the authority (after consulting the operator) considers necessary,

and the updated monitoring plan is the plan as so approved or modified.

(8) Sub-paragraphs (5) to (7) apply to the further updating of an updated plan as they apply to the updating of the original plan.

Reporting and notification of leakages and significant irregularities

3.—(1) The operator shall send to the authority a report in respect of each reporting period containing the information specified in sub-paragraph (5).

(2) The report shall be sent to the authority no later than four weeks after the end of the relevant reporting period.

(3) Unless the authority determines otherwise under sub-paragraph (4), the reporting periods are the period of one year beginning with the commencement of injection, and each subsequent yearly period.

(4) At any time before the commencement of injection, or during a current reporting period, the authority may notify the operator that (beginning with the next reporting period) reporting periods are to be a period of less than one year as is specified in the notice.

(5) The information is—

- (a) the results of the monitoring carried out in accordance with the provisions of the storage permit (including details of the monitoring technology employed);
- (b) the quantities, properties and composition of the CO₂ streams delivered to and injected into the storage site in the reporting period, and registered by the operator under paragraph 1(5);
- (c) proof that the financial security required by paragraph 7 has come into effect and remains in force;
- (d) any other information requested by the authority that the authority considers relevant for the purposes of assessing compliance with the conditions of the storage permit or for increasing knowledge of the behaviour of the CO₂ stored at the storage site.

(6) If the operator becomes aware of any leakages or significant irregularities, the operator shall immediately notify the authority.

(7) If the operator becomes aware of any leakages or significant irregularities which imply the risk of leakage, the operator shall immediately notify the person who is the regulator in relation to the storage site for the purposes of the legislation implementing the ETS Directive.

Notification and implementation of changes

4.—(1) The operator shall notify the authority of any change planned in the operation of the storage site, including any change concerning the operator.

(2) A notification under sub-paragraph (1) shall specify the date on which the operator proposes to implement the planned change (“the target date”).

(3) Except where sub-paragraph (4) applies, such a notification shall be given at least three months before the target date.

(4) If the change solely concerns the operator, the notification shall be given at least four weeks before the target date.

(5) The change may not be implemented before the later of—

- (a) the target date, or any date notified under regulation 11(4)(b) of the Regulations; or
- (b) the date notified by the authority in accordance with regulation 11(1)(b)(ii) of the Regulations.

(6) The change may not be implemented if the authority gives notification to that effect under regulation 11(2)(b) of the Regulations.

(7) Notwithstanding sub-paragraphs (5) and (6), the change may be implemented on or after the later of the dates referred to in sub-paragraph (5)(a) if the authority has not before then given notification under regulation 11(1)(b)(ii) or (2)(b) of the Regulations.

Review, and modification or revocation of the storage permit

5. The permit shall be reviewed, and where necessary modified or (as a last resort) revoked, by the authority in accordance with regulation 11 of the Regulations.

Corrective measures

6.—(1) If the operator becomes aware of any leakages or significant irregularities, the operator shall take the necessary corrective measures and measures for the protection of human health.

(2) Subject to regulation 10, the measures taken shall include those set out in the corrective measures plan.

Financial security

7.—(1) The operator shall maintain a financial security that—

- (a) is of an amount (“the secured amount”) sufficient to ensure that the obligations specified in sub-paragraph (5) can be met;
- (b) is in force before the commencement of injection; and
- (c) subject to sub-paragraph (2), remains in force until the licence is terminated.

(2) If the storage permit is revoked, the financial security shall remain in force—

- (a) until a new storage permit is granted; or
- (b) if the storage site is closed following such revocation, until the licence is terminated and the financial contribution obligation is fulfilled.

(3) Following receipt of each report made by the operator in accordance with paragraph 3(1) to (5), the authority shall assess whether the secured amount is appropriate in the light of—

- (a) the assessed risk of leakage; and
- (b) the estimated costs of meeting the obligations specified in sub-paragraph (5).

(4) If, following that assessment, the authority decides that the secured amount is to be adjusted—

- (a) the authority shall notify the operator of the new amount that is required; and
- (b) if the secured amount is less than that new amount, the operator shall within three months of receiving that notification—
 - (i) ensure that the secured amount is increased to the new amount; and
 - (ii) furnish evidence of such increase to the authority.

(5) The obligations are—

- (a) all obligations of the operator arising under the storage permit, including those arising in respect of the closure of the storage site and during the period between such closure and the termination of the licence;
- (b) the obligation to pay the authority's costs under regulation 10(4)(b) or 12(6);
- (c) any obligations of the operator arising in respect of the storage site under legislation implementing the ETS Directive; and
- (d) the obligation to provide the financial contribution to the authority in accordance with Article 20(1) of the Directive.

Interpretation

8.—(1) In this storage permit—

(a) “the Regulations” means the Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015;

(b) the following expressions have the meanings given by regulation 2(3);

“the authority”;

“CO₂”

“corrective measures plan”;

“the Directive”;

“financial security”;

“injection”;

“licence”;

“monitoring plan”;

“operator”;

“storage permit”.

(2) The following expressions have the meanings given by Article 3 of the Directive (and cognate expressions are to be construed accordingly)—

“closure” (in relation to a storage site);

“corrective measures”;

“CO₂ plume”;

“CO₂ stream”;

“leakage”;

“migration”;

“significant irregularity”;

“significant risk”;

“storage complex”;

“storage site”;

“waste”.

POWER OF INSPECTORS

1. The powers of an inspector are—
- (a) to enter, at any reasonable time (or, in an emergency, at any time) any premises which the inspector has reason to believe it is necessary to enter;
 - (b) on entering any premises by virtue of sub-paragraph (a), to—
 - (i) be accompanied by any other inspector or person; and
 - (ii) take any equipment or materials,as the inspector considers necessary for the purpose for which entry is made;
 - (c) to make such examination and investigation as the inspector considers necessary, and for this purpose to install or maintain monitoring or other apparatus on the premises;
 - (d) to direct that the premises or any part of them, or any thing in or on them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
 - (e) to take such measurements and photographs and make such recordings as the inspector considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
 - (f) to take samples or cause samples to be taken of any thing found in or on the premises or in any air, water, land or seabed (including the subsoil of the seabed) in, or in the vicinity of, the premises;
 - (g) subject to paragraphs 2 and 3, in the case of any thing found in or on the premises, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);
 - (h) in the case of any thing referred to in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes—
 - (i) to examine it, or cause it to be examined, and do to it anything which the inspector has power to do under that sub-paragraph;
 - (ii) to ensure that it is not tampered with before examination of it is completed; and
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations or under Chapter 3.
 - (i) to require any person whom the inspector has reasonable cause to believe is able to give any information relevant to any examination or investigation under sub-paragraph (c) to provide the inspector with such information as the inspector may reasonably require for the purpose of any such examination or investigation;
 - (j) to require the production of (or where the information is recorded in computerised form, the furnishing of extracts from), and to inspect and take copies of (or of any entry in)—
 - (i) any records which are required to be kept by virtue of any provision of a licence or storage permit; or
 - (ii) any records which the inspector considers it necessary to see for the purposes of an examination or investigation under sub-paragraph (c); and
 - (k) to require any person to afford the inspector such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable the inspector to exercise any of the powers conferred on the inspector by these Regulations and this Schedule.

2. Where an inspector proposes to exercise the power conferred by paragraph 1(g) in the case of any thing found in or on any premises, the inspector shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

3. Before exercising the power conferred by paragraph 1(g), an inspector shall consult—

- (a) such persons having duties on the premises where the thing is to be dismantled or subjected to the process or test; and
- (b) such other persons,

as appear to the inspector appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the inspector proposes to do or cause to be done under the power.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations form part of the implementation in Northern Ireland (including so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland) of Directive 2009/31/EEC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide (OJ No L140, 5.6.2009, p. 114) (“the Directive”).

Part 1, Chapter 3, of the Energy Act 2008 (c.32, as amended by S.I. 2011/2453) (“the Act”) establishes a licensing regime for the storage of carbon dioxide. Section 17 of the Act prohibits the storage of carbon dioxide (with a view to its permanent disposal) except in accordance with a licence granted under section 18(1) of that Act. The licensing authority in relation to Northern Ireland (including so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland) is the Department of Enterprise, Trade and Investment (“the Department”). Permits for the operation of carbon dioxide storage sites are granted under section 18(1) licences.

The Regulations implement Article 2 (in part) and Articles 3 to 17 and 19 of the Directive concerning: (1) the granting of permits for the operation of carbon dioxide storage sites (and related exploration activities); (2) the obligations of the storage operator (for example in relation to monitoring, reporting and corrective measures) whilst storage activities are taking place; (3) the operator’s continuing obligations for a period after the closure of the storage site; and (4) the inspection of carbon dioxide storage complexes.

Regulations 1 and 2 contain citation, commencement and interpretation provisions.

Regulation 3 prevents the licensing of carbon dioxide storage in the water column.

Regulation 4 sets out the requirements for applying for a licence. The application may be for a licence with, or without, an “appraisal term” (during which the holder will have the right to carry on exploration activities with a view to selecting a site for carbon dioxide storage). If an application is made for a licence without an appraisal term, reasons must be given in the application.

Regulation 5 limits the length of the appraisal term to the minimum necessary and identifies when the licence shall cease and determine.

Regulation 6 requires a licence to include the provisions set out in Schedule 1.

Regulation 7 sets out requirements for an application for a permit to store carbon dioxide.

Regulation 8 sets out conditions for the grant of a storage permit, and Regulation 9 sets out minimum requirements for the content of such permits. In particular, a storage permit must designate a single licence holder as the operator of the storage site, provide details of the storage site and surrounding complex, and of the operational requirements for injection and storage. Also to be included are the provisions set out in Schedule 2.

Regulation 10 enables the Department to direct the operator to take corrective measures, in the event of a significant irregularity or leakage, and enables (or in some cases requires) the authority to take such measures itself and to recover reasonable costs from the operator. This is in addition to the operator’s obligations to take corrective measures under the storage permit, and to the authority’s powers under section 24 of the Act (which allows directions to be given following the breach of a licence). Such measures also include measures for the protection of human health.

Regulation 11 enables the licensing authority to modify or revoke the storage permit in certain circumstances. By regulation 11(1) such a modification may be made where a change is planned by the operator, and by regulation 11(2) a modification must be made where the change appears to the authority to be substantial; alternatively in such a case the authority may prohibit the change. (Such planned changes are required to be notified under paragraph 4 of Schedule 2). Regulation 11(5) and (6) set out circumstances in which the authority must consider whether to modify or revoke the permit. This duty arises where the authority receives certain information – for instance

that permit conditions have been breached or that there have been leakages or significant irregularities – and in any event five years after the grant of the permit (and then every ten years).

Regulation 12 deals with the consequences of a storage permit being revoked. The authority may either close the storage site immediately, or first consider applications for a new licence and a new storage permit in respect of the site. If a new storage permit is granted, the existing licence terminates and with it the previous operator's obligation to meet the authority's costs. In all other cases that obligation continues in respect of the store that is now closed, but the authority takes over responsibility for performing the post-closure obligations.

Before a site is closed, the definitive version of a "post-closure plan" must be approved by the authority under Regulation 13.

Regulation 14 deals with liabilities of the operator after the site has been closed. Its obligations to remedy environmental damage under the Environmental Liability Directive will continue, as will those to surrender allowances under the greenhouse gas emission trading scheme established by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003. Such obligations continue until the licence is terminated, as does the obligation to maintain a financial security (see paragraph 7 of Schedule 2).

Regulations 15 to 17, provide for the routine inspection of carbon dioxide storage complexes and for additional inspections. Reports of the results of those inspections must be produced, provided to the operator and made available for public inspection. The authority may appoint inspectors, whose powers are set out in Schedule 3.

Regulation 18 creates offences concerning the obstruction of inspectors, failure to comply with requirements imposed under the regulations and the provision of false information in connection with an investigation.

Schedule 1 contains provisions which must be included in any licence granted by the authority. These are provisions concerning the circumstances in which the storage site is to be closed by the operator, the preparation of the post-closure plan and the liabilities of the operator after the site has been closed. Closure takes place either under the conditions laid down in the storage permit, or on application to the authority (paragraph 1). The proposed post-closure plan submitted by the operator to the authority for approval must be based on the provisional version that was approved when the storage permit was granted, updated as necessary (paragraph 2). The operator must continue to monitor the site, and to comply with its reporting and notification obligations and its obligations to take corrective measures (paragraph 3). The operator must seal the site and remove the injection facilities, where applicable, in accordance with its decommissioning obligations under Part 4 of the Petroleum Act 1998 (c. 17) (paragraph 3).

Schedule 2 contains provisions which must be included in any storage permit granted by the authority. These are provisions concerning: the composition of the carbon dioxide streams that may be injected into the store, including the obligation of the operator to maintain a register of the quantities and properties of the streams injected (paragraph 1); the monitoring of the storage complex and injection facilities, including the drawing up and approval of a monitoring plan (paragraph 2); the submission of periodic reports on monitoring, injection, financial security, and any other information that the authority considers relevant, and the notification of leakages or significant irregularities (paragraph 3); the notification and implementation of changes concerning the operator or the operation of the storage site (paragraph 4); the review and modification or revocation of the permit (paragraph 5); the measures that are to be taken in the event of leakages or significant irregularities (paragraph 6); and the financial security that is to be maintained by the operator (paragraph 7).

Schedule 3 contains provisions which set out the powers of inspectors who may enter any premises which an inspector has reason to believe it is necessary to enter. An inspector may be accompanied and take any necessary equipment or materials. Other powers are specified in paragraph 1 of the Schedule. The inspector must, if requested, exercise his powers in the presence of any person who has responsibilities in relation to those premises (paragraph 2). Before exercising any power to dismantle anything or subject it to any process or test, an inspector must

consult with any person having duties on the premises and such other persons as appear appropriate to the inspector for the purpose of ascertaining what dangers, if any, there may be in doing anything under the power (paragraph 3).

Annex D - Equality, Regulatory and Other Impact Assessments

- 1 Under section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity:
 - between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - between men and women generally;
 - between persons with a disability and persons without; and
 - between persons with dependants and persons without.
- 2 In addition, without prejudice to its obligations above, the Department is also required, in carrying out its functions relating to Northern Ireland, to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group.
- 3 We have carried out an equality screening exercise for the implementation of the Geological Storage of Carbon Dioxide Directive in Northern Ireland. The proposals contained in Section 4 of this consultation are designed to ensure that the Department complies with the Directive in a manner which transposes its provisions equally and without discrimination. There is no differential impact on any of the section 75 groups.
- 4 A full Equality Impact Assessment, therefore, is not required. The equality screening form is available to read on the DETI website www.detini.gov.uk/index/deti-consultations.

Regulatory impact

- 5 There are no plans at present to license carbon dioxide storage activities in Northern Ireland. In fact, information from the CO2 Stored database managed by the Crown Estate and the British Geological Survey, would not suggest that the geology and substrata within the Northern Ireland internal waters will be suitable for the storage of CO2. The prospect of anyone wishing to construct a carbon dioxide pipeline in Northern Ireland is therefore, in the Department's view, remote. In addition, the CCS industry in Northern Ireland is not developed and the viability of an integrated carbon capture, transport and storage process remains to be proven.
- 6 It is against this policy backdrop that a formal Regulatory Impact Assessment has not been prepared. However if any evidence to the contrary, comes to light during this consultation process, it will be considered.
- 7 The Department has screened these proposals, against a variety of impact assessments, including rural, economic, regulatory impact, environmental, legal and health. If you would like a copy of the screening forms, please contact us.



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