

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL LIABILITY (PREVENTION AND
REMEDICATION) (AMENDMENT) REGULATIONS (NORTHERN
IRELAND) 2011

SR 2011 No. 210

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Statutory Rule implements a technical amendment to Schedule 2 to the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 (the Principal Regulations) to include the geological storage of carbon dioxide as an activity where operators will be liable for environmental damage caused by them.

3. Background

- 3.1. The Principal Regulations were made on 29th June 2009 and came into operation on 24th July 2009. They transposed the EC Environmental Liability Directive 2004/35/EC with regard to the prevention and remedying of environmental damage into domestic legislation.
- 3.2. The Directive has the objective of making operators of activities which cause environmental damage financially liable for that damage (the "polluter pays" principle). It imposes duties on operators of economic activities to take immediate steps to prevent damage if there is an imminent threat, and to control damage which is occurring so as to limit its effects.
- 3.3. Directive 2009/31/EC on the geological storage of carbon dioxide, commonly known as the Carbon Capture and Storage (CCS) Directive, entered into force on 5 June 2009. While it is intended that the CCS Directive is largely implemented at UK level by amending the Energy Act 2008, the CCS Directive also amends a number of other European Directives which are implemented through domestic legislation.
- 3.4. Article 34 of the CCS Directive amends the Environmental Liability Directive 2004/35/EC by an insertion to Annex III to add a paragraph to include the operation of storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide.
- 3.5. Schedule 2 to the Principal Regulations (which details activities causing damage) is amended by the Environmental Liability (Prevention and Remediation) (Amendment) Regulations (Northern Ireland) 2011 (the

amending Regulations) to include the geological storage of carbon dioxide. This transposes Article 34 of the CCS Directive.

4. Consultation

4.1. A consultation on amendments to be made to domestic legislation as a result of the CCS Directive ran from 28 February 2011 until 22 April 2011. No concerns were expressed with regard to the amending Regulations and as such a synopsis of responses in this regard was not completed.

5. Equality Impact

5.1. A screening analysis of the amending Regulations indicated there would be no impact in terms of the main groups relevant to the section 75 categories of the Northern Ireland Act 1998.

5.2. The amending Regulations implement a technical change with no change to policy therefore a full Equality Impact Assessment is not required.

6. Regulatory Impact

6.1. An impact assessment was not carried out in Northern Ireland as we are not currently aware of any individual or organisation planning to undertake carbon capture and storage in Northern Ireland. Therefore there is no immediate impact on businesses or the voluntary sector.

7. Financial Implications

7.1. There are no financial implications associated with the amending Regulations.

8. Section 24 of the Northern Ireland Act 1998

8.1. The amending Regulations do not discriminate on the grounds of religious belief or political opinion nor do they modify the European Communities Act, the Human Rights Act 1998 or other statutory provisions listed in section 7 of the 1998 Act.

9. EU Implications

9.1. The amending Regulations transpose Article 34 of the CCS Directive.

10. Parity or Replicatory Measure

10.1. The amendments are implemented in England and Wales by an amendment to Schedule 2 to the Environmental Damage (Prevention and Remediation) Regulations 2009 by Regulation 15 of the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 and in Scotland by the Environmental Liability (Scotland) Amendment Regulations 2011.

11. Additional Information

11.1. Not applicable.