

EXPLANATORY MEMORANDUM TO
THE GAS IMPORTATION AND STORAGE ZONE (DESIGNATION OF AREA)
ORDER 2009

2009 No. 223

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Under Chapter 1 of Part 1 of the Energy Act 2008 provision is made for the vesting in the Crown of certain rights arising under Part V of the United Nations Convention on the Law of the Sea (UNCLOS). Under Part V of UNCLOS, the United Kingdom may claim the exclusive right to explore and exploit areas outside the territorial sea of the United Kingdom for the purposes of gas importation and storage. Under section 1(5) of the Act, a Gas Importation and Storage Zone may be designated as the area within which those rights are to be exercisable. This Order designates the area in question.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 As explained in paragraph 2.1, the Order designates the area within which the United Kingdom's rights to explore and exploit areas beyond the territorial sea for gas importation and storage are to be exercisable. Storage can include both temporary storage (for instance of natural gas), and the permanent sequestration of greenhouse gases such as carbon dioxide.

4.2 The limits of the Gas Importation and Storage Zone are to be co-extensive with the limits of the zone within which the United Kingdom already exercises jurisdiction with respect to marine environmental matters under the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996, as amended by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1997. A similar approach was taken in respect of the designation of the Renewable Energy Zone under section 84 of the Energy Act 2004. These limits either follow or fall within internationally agreed boundaries between the United Kingdom and neighbouring States, and therefore only cover areas within which there can be no objection to the United Kingdom exercising rights to explore and exploit for gas importation and storage purposes.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Article 56(1) of UNCLOS provides that the rights of the coastal state in respect of the exclusive economic zone include, amongst other things, the exploration and exploitation of the seabed and its subsoil, and the waters above it. It also provides jurisdiction for the establishment and use of installations and structures in the area.

7.2 The United Kingdom has previously claimed a number of rights under Article 56(1), but has not yet claimed rights in relation to the unloading and storage of gas. The Energy Act 2008 enables the United Kingdom to claim those rights, by providing for their ownership to be vested in the Crown within areas designated as a “Gas Importation and Storage Zone”.

7.3 Claiming those rights will in turn facilitate two new offshore licensing regimes which will also be created under Part 1 of the Energy Act 2008. These regimes will extend both to the UK territorial sea and to the Gas Importation and Zone.

7.4 The first new regime relates to the unloading and storage of natural gas. The new licensing arrangements will remedy the current fragmented and out of date consents regime and encourage the market to come forward with proposals for sub-sea gas storage and the unloading of gas to a pipeline or an installation at sea. This will facilitate increased supplies of stored natural gas and increased shipments of Liquefied Natural Gas (LNG) to offset the decline in production of gas from the UK Continental Shelf.

7.5 The second new regime relates to the permanent storage of carbon dioxide, as a means of mitigating climate change. This will provide the basis for the UK’s implementation of the EU Directive on the geological storage of carbon dioxide, which has recently been agreed by the EU Council and the European Parliament.

8. Consultation outcome

In relation to the unloading and storage of natural gas, there was a consultation which included a question on the desirability of creating a Gas Importation and Storage Zone. The preference expressed by virtually all respondents was for a fit for purpose regulatory regime including the creation of such a Zone, which would enable operators to obtain rights from The Crown Estate to make exclusive use of areas beyond the territorial sea for gas unloading and storage purposes, and also favoured a new licensing scheme to regulate the activities of unloading and storage.

As the decision to create the Zone had already been taken when the later Carbon Capture and Storage consultation exercise was conducted it was not necessary to consult again on this aspect of the legislation for that regulatory regime.

9. Guidance

9.1 This legislation claims the UK's rights under Article 56(1) of UNCLOS in relation to the unloading and storage of gas within the exclusive economic zone. It is not applicable to provide guidance on at this stage. The Department of Energy and Climate Change will publish full guidance on the unloading and storage of natural gas and the permanent storage of carbon dioxide when the new regimes come into force.

10. Impact

10.1 A separate Impact Assessment has not been prepared for this instrument as it has no direct impact on business, charities or voluntary bodies. An Impact Assessment on the resulting changes to the use of the offshore area was published with the Energy Bill¹.

10.2 There is no impact on the public sector.

10.3 This measure carries no identifiable costs to the Exchequer.

11. Regulating small business

11.1 This measure has no impact on small business.

11.2 The Department of Trade and Industry and subsequently the Department for Business, Enterprise and Regulatory Reform (who were then responsible for the issue) undertook, respectively, the Small Firms Impact Test for the Offshore Natural Gas Storage and Liquefied Natural Gas Import Facilities consultation² in 2006-2007 and the Energy Bill Impact Assessment in 2008³.

12. Monitoring and review

12.1 This legislation provides a framework to enable the introduction of new regimes and will not require any future assessment.

¹ Energy Bill Impact Assessment, May 2008: <http://www.berr.gov.uk/files/file46023.pdf> (from page 47)

² Offshore Natural Gas Storage and Liquefied Natural Gas Import Facilities consultation: <http://www.berr.gov.uk/files/file35073.pdf>

³ See reference at footnote 1 above

13. Contact

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