

2011 No. 2305

ENVIRONMENTAL PROTECTION

**The Storage of Carbon Dioxide (Access to Infrastructure)
Regulations 2011**

Made - - - - *15th September 2011*

Coming into force in accordance with regulation 1

The Secretary of State is a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the environment.

A draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament in accordance with paragraph 2(2) of Schedule 2 to that Act.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of that Act.

General

Citation and commencement

1. These Regulations may be cited as the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011, and come into force on the day after the day on which they are made.

Review

2.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of regulations 3 to 22, except in so far as they apply to relevant infrastructure in Scotland or to any function exercised by the Scottish Ministers;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Articles 21 and 22 of the Directive (which are implemented by means of regulations 3 to 22) are implemented in other member States.

(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). Section 57(1) of the Scotland Act 1998 (c. 46) provides that despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown shall continue to be exercisable by that Minister as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972. Under paragraph 5 of Schedule 3 of the Government of Wales Act 2006 (c. 32), any power of a Ministers of the Crown to make subordinate legislation which has been transferred to the Welsh Ministers continues to be exercisable by the Minister of the Crown as it would be had it not been transferred, for the purpose of implementing any Community obligation of the United Kingdom.

- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system relating to third party access to relevant infrastructure established by regulations 3 to 22;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) In this regulation, “review period” means—
- (a) the period of five years beginning with the day on which these Regulations come into force; and
 - (b) subject to paragraph (5), each successive period of five years.
- (5) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

Interpretation

3.—(1) In these Regulations—

“access application” has the meaning given to it in regulation 12(1);

“associate” has the meaning given to it in regulation 6;

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

“authority” means the authority in accordance with regulation 4;

“carbon dioxide pipe-line” has the meaning given to it in section 66(1) of the Pipe-lines Act 1962(a);

“consent” means—

(a) in the case of a relevant pipeline—

- (i) an authorisation given for the purposes of section 14(1)(a) of the Petroleum Act 1998(b);
- (ii) a construction authorisation;
- (iii) development consent granted under section 114 of the Planning Act 2008(c);

(b) in the case of a relevant storage site—

- (i) a storage permit within the meaning of the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010(d);
- (ii) a storage permit within the meaning of the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011(e);

“construction authorisation” means a construction authorisation under section 1 of the Pipe-lines Act 1962;

“controlled carbon dioxide pipeline” has the meaning given to it in section 28(1) of the Petroleum Act 1998(f);

“controlled pipeline” and “controlled waters” have the meanings given in section 14(2) of the Petroleum Act 1998;

“Directive” means Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC,

(a) 1962 c. 58. The definition is inserted by paragraph 6 of the Schedule.

(b) 1998 c. 17.

(c) 2008 c. 29.

(d) S.I. 2010/2221.

(e) S.S.I. 2011/24.

(f) The definition is inserted by paragraph 11(b) of the Schedule.

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);

“diversion” means a diversion (within the meaning of section 66(1) of the Pipe-lines Act 1962(b)) of a relevant pipeline that is not a controlled pipeline or of such part of a relevant pipeline as is not a controlled pipeline and “diverted” is to be construed accordingly;

“Gas Importation and Storage Zone” has the meaning given to it in section 1(5) of the Energy Act 2008(c);

“holder”, in regulations 9 and 10 has the meaning given to it in regulation 9(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 and “licence holder” is to be construed accordingly;

“modification notice” has the meaning given to it in regulation 13(2);

“notice” means notice in writing;

“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 5;

“pipeline variation notice” has the meaning given to it in regulation 8(2);

“planning permission” means permission under Part 3 of the Town and Country Planning Act 1990(d) or under Part 3 of the Town and Country Planning (Scotland) Act 1997(e);

“relevant infrastructure” means a relevant pipeline or a relevant storage site;

“relevant pipeline” means—

- (a) a controlled carbon dioxide pipeline; or
- (b) a carbon dioxide pipe-line situated in, under or over Great Britain, including so much of the internal waters of the United Kingdom as are adjacent to Great Britain;

“relevant storage site” means a storage site situated—

- (a) in Great Britain; or
- (b) in, under or over—
 - (i) so much of the internal waters of the United Kingdom as are adjacent to Great Britain,
 - (ii) the territorial sea of the United Kingdom, or
 - (iii) waters in a Gas Importation and Storage Zone,

and any associated installations, apparatus and works;

“third party”, in regulations 9 and 10, has the meaning given to it in regulation 9(1)(b);

“variation condition” has the meaning given to it in regulation 7(2).

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

“CO₂ stream”;

(a) OJ No L 140, 5.6.2009, p 114.

(b) The definition was inserted by S.I. 1999/742 and amended by section 36 of, and paragraphs 5 and 7(a) of Schedule 2 to, the Planning Act 2008.

(c) 2008 c. 32. The Gas Importation and Storage Zone was designated under the Gas Importation and Storage Zone (Designation of Area) Order 2009 (S.I. 2009/223). An amendment to section 1(5) by the Marine and Coastal Access Act 2009 (c. 23) has not yet been commenced.

(d) 1990 c.8; Part 3 was amended by the Planning and Compensation Act 1991 (c. 34), the Transport and Works Act 1992 (c. 42), the Environment Act 1995 (c. 25), the Planning and Compulsory Purchase Act 2004 (c. 5), the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999/293), the Greater London Authority Act 2007 (c. 24) and the Planning Act 2008. There are other amendments and modifications not relevant to these Regulations.

(e) 1997 c. 8; Part 3 was amended by the Environmental Impact Assessment (Scotland) Regulations 1999 (S.S.I. 1999/1) the Planning etc. (Scotland) Act 2006 (asp 17) and the Planning and Compulsory Purchase Act 2004 (c. 5).

“storage site”.

Meaning of “authority”

4.—(1) For the purposes of regulation 7 and of regulations 9, 10 and 12 in so far as they relate to variation conditions the authority is that one of—

- (a) the Secretary of State;
- (b) the Infrastructure Planning Commission’s Council or a Panel of the Infrastructure Planning Commission, appointed under section 65 of the Planning Act 2008; or
- (c) the Scottish Ministers,

that has the function of deciding the application for consent in respect of the relevant infrastructure.

(2) For the purposes of regulation 8 and of regulations 9, 10 and 12 in so far as they relate to pipeline variation notices, the authority is—

- (a) the Scottish Ministers, in relation to pipelines which begin and end in Scotland;
- (b) the Secretary of State, in relation to any other pipeline.

(3) Subject to paragraphs (1) and (2), for the purposes of regulations 12 to 15 and regulation 20(3) the authority is—

- (a) the licensing authority for the relevant storage site, pursuant to section 18(2) of the Energy Act 2008;
- (b) the Scottish Ministers, in relation to so much of a relevant pipeline as is—
 - (i) in Scotland; or
 - (ii) in, under or over so much of the internal waters or the territorial sea of the United Kingdom as are adjacent to Scotland;
- (c) the Secretary of State, in relation to so much of a relevant pipeline as is—
 - (i) in England or Wales; or
 - (ii) in, under or over so much of the internal waters of the United Kingdom as are adjacent to England or Wales;
 - (iii) in, under or over controlled waters other than the territorial sea adjacent to Scotland.

Meaning of “owner”

5.—(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 holders of the storage licence;
- (b) in respect of a relevant pipeline—
 - (i) a person in whom the pipeline is vested;
 - (ii) a lessee and any person occupying or controlling the pipeline;
- (c) a person who has the right to have things conveyed by or stored in a relevant pipeline or relevant storage site, where such a 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 13 and 17 and in regulation 10(3) in so far as it relates to regulation 13, “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 holders of the storage licence;
- (b) in respect of a relevant pipeline—
 - (i) a person in whom the pipeline is vested;
 - (ii) a lessee and any person occupying or controlling the pipeline.

(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”

6.—(1) For the purposes of regulations 12(5), 12(7) and 17(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 the shareholders; or
- (d) such rights as would, in the event of the 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 a majority of the voting rights in B;
- (b) is a member of B and has a 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 the 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).

Variation conditions

Variation conditions

7.—(1) Subject to paragraph (5), this regulation applies where an application for a consent in respect of relevant infrastructure is considered by the authority.

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

- (a) there is evidence of demand existing or likely to arise for the grant of such consents for the construction of further relevant infrastructure to be designed for the conveyance or storage of carbon dioxide;
- (b) where the further relevant infrastructure is a pipeline, the whole or any part of the route to be taken by a further pipeline would be substantially the same as the route or any part of the route to be taken by the pipeline to which the application relates;
- (c) compliance with the variation condition will not prejudice the safety or environmental integrity of the relevant infrastructure; and
- (d) compliance with the variation condition will not prejudice the efficient operation of the relevant infrastructure concerned.

(3) A variation condition under paragraph (2) may require—

- (a) the capacity of the relevant infrastructure to which it relates or of any part of that relevant infrastructure to be greater than that proposed in the application for the consent;
- (b) the design of the relevant infrastructure to which it relates to be modified, including by the addition of a junction through which another pipeline may be connected to the relevant pipeline or to the relevant storage site; or
- (c) in relation only to a controlled carbon dioxide pipeline, any of the route of the pipeline to be different from that so proposed.

(4) Before exercising the powers conferred by paragraph (2) and regulation 9(1), the authority must give an opportunity to be heard to—

- (a) the applicant for the consent;
- (b) any other person who made representations to the authority as to the matters set out in paragraphs (2) or (3);
- (c) any person with a right to have carbon dioxide conveyed by or stored in the proposed relevant infrastructure;
- (d) the Health and Safety Executive or the Health and Safety Executive for Northern Ireland, as appropriate.

(5) This regulation does not apply where the application for a consent is an application for the grant of a construction authorisation which relates to the construction of a diversion.

Pipeline variation notices

8.—(1) This regulation applies where an application is made for the grant of planning permission for the construction of a relevant pipeline.

(2) Subject to paragraph (4) the authority may, at any time before planning permission for the construction of the pipeline is granted, serve a notice (a “pipeline variation notice”) on the person who made the application for planning permission if the authority is satisfied that—

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

(3) A pipeline variation notice under paragraph (2) may direct that—

- (a) the capacity of the relevant pipeline to which it relates or of any part of that relevant pipeline must be greater than that proposed in the application for the grant of planning permission; or
 - (b) the design of the relevant pipeline to which it relates should be modified, including by the addition of a junction through which another pipeline may be connected to the pipeline.
- (4) Before exercising the powers conferred by paragraph (2) and regulation 9(1), the authority must give an opportunity to be heard to—
- (a) the person who has applied for planning permission;
 - (b) any other person who made representations to the authority as to the matters set out in paragraphs (2) or (3);
 - (c) any person with a right to have carbon dioxide conveyed by the proposed relevant pipeline;
 - (d) the Health and Safety Executive or the Health and Safety Executive for Northern Ireland, as appropriate.

Notices relating to costs etc.

9.—(1) Where a consent contains a variation condition under regulation 7, or a pipeline variation notice has been served under regulation 8, the authority may serve a notice in accordance with paragraph (2) on—

- (a) the holder of the consent or the person to whose benefit the grant of planning permission enures (the “holder”); and
- (b) any other person who made representations to the authority as to the matters set out in regulations 7(2) or 7(3) or regulations 8(2) or 8(3), as applicable (the “third party”).

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

- (a) specify the sums or the method of determining the sums which the authority 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 pipeline variation notice;
- (b) require the third party to make, within the period specified for the purpose in the notice, arrangements which the authority considers are appropriate to secure 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 authority that the holder will construct it, in accordance with the variation condition or pipeline variation notice;
- (c) provide that the holder may, if those arrangements are not made by the third party within the period specified in the notice, elect (in the manner specified in the notice) that the variation condition or pipeline variation notice is, as specified in the notice, to be withdrawn or to 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 authority 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 pipeline variation notice, to recover those sums from the third party.

Acquisition of rights to use proposed relevant infrastructure

10.—(1) Where relevant infrastructure is proposed to be constructed pursuant to a consent to which a variation condition is attached by virtue of regulation 7(2) or in accordance with a pipeline variation notice, any person other than the holder may make an application under regulation 12(2) in respect of the proposed relevant infrastructure.

(2) Before serving a notice under regulation 9(1) on a third party, the authority must give that person an opportunity to make an application under regulation 12(2) in respect of the proposed relevant infrastructure to which the consent or planning permission relates.

(3) In the circumstances set out in paragraphs (1) and (2), regulations 12 and 13 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 pipeline 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.

Diversions

11.—(1) If, in respect of a length of proposed relevant pipeline—

- (a) a variation condition has been imposed under regulation 7(2) or a pipeline variation notice has been served under regulation 8(2), and
- (b) that pipeline is to be diverted,

then the pipeline continues for the purposes of and after the diversion to be subject to any such condition or any direction contained in such notice.

(2) If, in respect of a length of relevant pipeline, any requirements are imposed by virtue of a modification notice under regulation 13 and the pipeline is to be diverted or is subsequently diverted, the pipeline continues for the purposes of and after the diversion to be subject to any such requirements imposed by such notice.

Acquisition of rights

Acquisition of rights to use relevant infrastructure

12.—(1) This regulation applies where—

- (a) a person makes an application to the owner of a relevant pipeline for a right to have carbon dioxide of the composition specified in the application conveyed by the pipeline 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, in such quantities as are so specified, injected into the storage site during such period as is so specified 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 pipeline or relevant storage site.

(2) If the applicant and the owner do not reach agreement on the access application, the applicant may apply to the authority for a notice under paragraph (8) which would secure to the applicant the right sought in the access application.

(3) The authority may not consider an application under paragraph (2) unless satisfied that the applicant and the owner have had a reasonable time in which to reach agreement.

(4) When considering an application under paragraph (2) the authority must—

- (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,and
- (b) 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) the operator of the relevant infrastructure;
 - (iii) any person with a right to have carbon dioxide conveyed by the pipeline or stored in the storage site;

- (iv) the Health and Safety Executive or the Health and Safety Executive for Northern Ireland, as appropriate; and
 - (v) such other persons as the authority considers appropriate.
- (5) When giving further consideration to an application under paragraph (2), the authority must (so far as relevant) take into account—
- (a) capacity which is or can reasonably be made available in a relevant pipeline;
 - (b) authorised capacity which is or can reasonably be made available in a relevant storage site;
 - (c) that 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 reasonably be overcome;
 - (e) any other difficulties which cannot reasonably be overcome and which could prejudice the efficient, current and planned future transport or storage of carbon dioxide;
 - (f) the 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 capture and geological storage of carbon dioxide; and
 - (i) the number of parties involved in the dispute.
- (6) The authority may serve a notice under paragraph (8) only if 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; and
 - (b) the condition in paragraph (7) is met.
- (7) The condition in this paragraph is that the authority is satisfied that the notice will not prejudice—
- (a) the conveying by or storage in the relevant infrastructure 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 of the quantities of carbon dioxide which another person with a right to have carbon dioxide so conveyed or stored requires to be conveyed or stored in the exercise of that right.
- (8) A notice under this paragraph may contain such provisions as the authority 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 authority considers necessary or expedient, which may include the right to have a pipeline connected to the relevant pipeline 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.
- (9) A notice under paragraph (8) 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 or a duty imposed by the notice to be assigned.

(10) A notice under paragraph (8) is to be served on the owner and the applicant.

(11) A notice under paragraph (8) does not come into force unless and until the applicant indicates acceptance of the terms of the notice in such manner and within such period as is specified in the notice.

Compulsory modifications

Compulsory modifications of relevant infrastructure

13.—(1) This regulation applies where—

- (a) a person has made an access application in respect of a relevant pipeline or relevant storage site; and
- (b) the authority is considering whether to serve a notice under regulation 12(8) which would secure to the applicant the right sought in the application.

(2) If it appears to the authority—

- (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 the 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 pipeline may be connected to the relevant pipeline or to the relevant storage site,

then (subject to paragraph (3)) the authority may serve on the owner of the relevant infrastructure and the applicant a notice in accordance with paragraphs (4) and (5) (a “modification notice”).

(3) The authority may not serve a modification notice that requires the authorised capacity of a relevant storage site to be increased.

(4) A modification notice must—

- (a) specify the modifications which the authority considers should be made to the relevant infrastructure;
- (b) specify the sums or the method of determining the sums which the authority considers should be paid to one or more of the owners by the applicant for the purpose of defraying the cost of the modifications;
- (c) require the applicant to make, within the period specified for the purpose in the notice, arrangements which the authority considers appropriate to secure that those sums will be paid to one or more of the owners if the owner carries out the modifications or satisfies the authority 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 for the purpose in the notice; and
- (e) authorise one or more of the owners, if the authority 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 12(7)(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) If a modification notice contains provision by virtue of paragraph (5) the authority must give a copy of the notice to every person who has a right to have anything conveyed by the pipeline or stored in the storage site.

(7) Before giving a copy of a modification notice under paragraph (6), the authority must—

- (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 authority considers may prejudice the commercial interests of the owner or the applicant if not removed.
- (8) In considering whether to serve a modification notice, the authority must—
- (a) take into account (so far as relevant) the matters referred to in regulation 12(5)(a) to (i); and
 - (b) give the persons listed in paragraph (9) an opportunity to be heard.
- (9) The persons referred to in paragraph (8)(b) are—
- (a) the applicant and the owner;
 - (b) any person with a right to have anything conveyed by the relevant pipeline or stored in the relevant storage site;
 - (c) the Health and Safety Executive or the Health and Safety Executive for Northern Ireland, as appropriate; and
 - (d) such other persons as the authority considers appropriate.
- (10) If the authority serves a modification notice, regulation 12 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 come into force unless and until the authority serves a notice under regulation 12(8) in respect of the relevant infrastructure that is the subject of the access application.

Variation of notices under sections 12 and 13

- 14.—**(1) A modification notice or a notice under regulation 12(8) may be varied or set aside by the agreement of all the persons on whom it was served.
- (2) The authority may vary a notice under regulation 12(8) on the application of one of the persons on whom the notice was served.
- (3) But the authority may do so only if 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.
- (4) In considering whether to vary a notice the authority must give an opportunity to be heard to—
- (a) the persons on whom the notice was served;
 - (b) any person with a right to have anything conveyed by the relevant pipeline concerned or stored in the relevant storage site concerned;
 - (c) the Health and Safety Executive or the Health and Safety Executive for Northern Ireland, as appropriate; and
 - (d) such other persons as the authority considers appropriate.
- (5) For the purposes of this regulation, a modification notice or a notice under regulation 12(8) 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 or a duty which is imposed by the notice.

Powers to require information and effect of notices

Powers of the authority to require information

- 15.—**(1) The authority may by notice require a person who has made or received an access application to provide the authority with specified information for the purpose of enabling the authority to decide—
- (a) whether to exercise any function conferred on the authority by regulations 12, 13 or 14; and

(b) if so, how to exercise the function.

(2) Where a person has applied to the authority under regulation 14 for a notice to be varied, the authority may by notice require any person within paragraph (3) to provide the authority with specified information for the purpose of enabling the authority to decide—

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

(3) Those 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 or a duty which is imposed by the notice.

(4) The information that may be required under paragraphs (1) and (2) includes financial information.

(5) The authority may not disclose to any person any information obtained under paragraph (1) or (2) unless—

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

(6) In this regulation, “specified” means specified in a notice under paragraph (1) or (2).

Requirements for consents

16.—(1) The use of infrastructure by any person in accordance with a right secured to that person by virtue of these regulations is not a contravention of—

- (a) section 14(1) of the Petroleum Act 1998; or
- (b) 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 14(1) of the Petroleum Act 1998 (but nothing in Schedule 2 of that Act shall apply to such a notice);
- (b) section 1 of the Pipe-lines Act 1962(a);
- (c) section 31 of the Planning Act 2008;
- (d) section 17(2)(d) of the Energy Act 2008;
- (e) a storage permit under the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 or the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2010;
- (f) Part 3 of the Town and Country Planning Act 1990 or Part 3 of the Town and Country Planning (Scotland) Act 1997.

(3) Paragraph (2) does not apply to the extent that a modification notice has been varied by agreement pursuant to regulation 14(1).

(a) Section 1 was amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 36 of, and paragraphs 5 and 6 of Schedule 2 to, the Planning Act 2008 and by paragraph 2(2) of the Schedule to the Deregulation (Pipe-lines) Order 1999 (S.I. 1999/742) and paragraph 4 of the Schedule to the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007 (S.I. 2007/1519).

Publication requirements

Publication of capacity

- 17.—(1) The owner of relevant infrastructure must 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), the “relevant date”—
- (a) in relation to a relevant storage site, means the date on which consent is granted in respect of the storage site;
 - (b) in relation to a relevant pipeline, means—
 - (i) the date on which consent or planning permission was granted for the construction of the pipeline as a relevant pipeline; or
 - (ii) where the pipeline was not constructed as a relevant pipeline, the date on which the pipeline 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 pipeline the capacity, or in the case of a relevant storage site the authorised capacity, which is or can reasonably be made available in the relevant infrastructure in question taking into account the quantities of carbon dioxide which—
 - (i) are required or may reasonably be expected to be required to be conveyed or stored 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 conveyed or stored by another person with a right to have carbon dioxide conveyed by the relevant pipeline or stored in the relevant storage site in the exercise of that right; and
 - (b) subject to paragraph (4), the technical specifications of the CO₂ stream that must 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 subparagraph (3)(a), the owner is not required to publish the information mentioned in paragraph (3)(b).

Enforcement

Provision of false information

- 18.—(1) A person (“P”) is guilty of an offence if, in circumstances falling within paragraph (2), P provides false information to the authority for the purpose of—
- (a) inducing the authority to exercise or not to exercise any of the functions conferred on it by these Regulations; or
 - (b) inducing the authority to exercise any of those functions in a particular way.
- (2) Those 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 England and Wales except—

- (a) by the Secretary of State or by a person authorised to do so by the Secretary of State; or
- (b) by or with the consent of the Director of Public Prosecutions.

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

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

(6) Where an offence under paragraph (1) or (2) is committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.

(7) Where the affairs of a body corporate are managed by its members, paragraph (6) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of the body corporate.

(8) In this regulation, "officer", in relation to a body corporate, means—

- (a) any director, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity.

Construction authorisations and pipeline variation notices

19.—(1) For the purposes of sections 1 and 4 of the Pipe-lines Act 1962(**a**), the works for the construction of a relevant pipeline are deemed to have been executed in contravention of section 1(1) of that Act where the relevant pipeline is constructed—

- (a) pursuant to a construction authorisation to which a variation condition is attached by virtue of regulation 7; and
- (b) without conformity to that condition.

(2) For the purposes of Part 7 of the Town and Country Planning Act 1990(**b**) and Part 6 of the Town and Country Planning (Scotland) Act 1997(**c**), the construction of a relevant pipeline is deemed to have constituted a failure to comply with a condition or limitation subject to which planning permission has been granted where—

- (a) a pipeline variation notice is served under regulation 8(2) in respect of the relevant pipeline; and
- (b) the relevant pipeline is constructed without conformity to that notice.

Civil proceedings

20.—(1) The duty of a person to comply with a notice under regulation 9(1) or 12(8) or a modification notice under regulation 13(2) is a duty owed to any person who may be affected by a failure to comply with it.

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

(3) Compliance with the duties in regulations 15 and 17 shall be enforceable by the appropriate authority by civil proceedings for an injunction or interdict or other appropriate relief or remedy.

(4) Civil proceedings under paragraph (3) are to be brought—

- (a) in England and Wales, in the High Court,
- (b) in Northern Ireland, in the High Court or

(a) Section 4 has been amended by paragraph 2(2) of the Schedule to the Deregulation (Pipe-lines) Order 1999 (S.I. 1999/742) and paragraph 4 of the Schedule to the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments) Order 2007 (S.I. 2007/1519).

(b) Part 7 was amended by sections 1 to 11 of the Planning and Compensation Act 1991.

(c) Part 6 was amended by sections 25 to 27 of the Planning etc. (Scotland) Act 2006.

(c) in Scotland, in the Court of Session.

Miscellaneous

Service of documents

21.—(1) Subsections (1) to (3) of section 49 of the Pipe-lines Act 1962 have effect as if references to that Act included references to these Regulations.

(2) In the application of paragraph (1) to Northern Ireland, section 49(1) to (3) of the Pipe-lines Act 1962 shall have effect as if it extended to Northern Ireland.

Amendments

22. The amendments set out in the Schedule have effect.

Charles Hendry
Minister of State

15th September 2011

Department of Energy and Climate Change

SCHEDULE

Regulation 22

Amendments

Pipe-lines Act 1962

1. The Pipe-lines Act 1962 is amended as follows.

2. In section 9 (provisions for securing that a pipe-line is so constructed as to reduce necessity for construction of others)(a), for subsection (6), substitute—

“(6) This section does not apply where the application for the grant of a pipe-line construction authorisation relates to the construction of—

- (a) a diversion, or
- (b) a carbon dioxide pipe-line.”.

3. In section 9A (provisions for securing that an additional pipe-line is so constructed as to reduce necessity for construction of other pipe-lines)(b), after subsection (1), insert—

“(1ZA) This section does not apply where the application for the grant of planning permission relates to the construction of a carbon dioxide pipe-line.”.

4. In section 10 (provisions for securing that a pipe-line is so used as to reduce necessity for construction of others)(c)—

- (a) for paragraph (b) of subsection (1), substitute—

-
- (a) Section 9 was amended by paragraph 6 of the Schedule to the Deregulation (Pipe-lines) Order 1999, paragraph 1 of Schedule 1 to the Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937) and section 151(1) of the Energy Act 2004 (c. 20). It was modified, in respect of the maximum fine, by sections 37, 38 and 46 of Criminal Justice Act 1982. An amendment by Schedule 23 to the Energy Act 2004 (c. 20) is not yet in force.
 - (b) Section 9A was inserted by paragraph 7 of the Schedule to the Deregulation (Pipe-lines) Order 1999 and was amended by paragraph 2 of Schedule 1 to the Gas (Third Party Access and Accounts) Regulations 2000 and section 151(1) of the Energy Act 2004. An amendment by Schedule 23 to the Energy Act 2004 (is not yet in force).
 - (c) Section 10(1) was amended by paragraph 3 of Schedule 1 to the Gas (Third Party Access and Accounts) Regulations 2000 and by section 151(2) of the Energy Act 2004.

- “(b) any other pipe-line which—
 - (i) is constructed pursuant to a pipe-line construction authorisation; and
 - (ii) does not fall within subsection (1A);”;
- (b) after subsection (1), insert—
 - “(1A) The following pipe-lines fall within this subsection—
 - (a) an upstream petroleum pipe-line;
 - (b) a carbon dioxide pipe-line;
 - (c) a pipe-line comprised in a gas interconnector.”; and
 - (c) in subsection (2), for “the foregoing subsection”, substitute “subsection (1)”.
- 5. In section 65 (meaning of “pipe-line”)(a)—**
 - (a) in subsection (2), after paragraph (f), insert—
 - “(fa)in relation only to a pipe, or system of pipes, which is used to convey carbon dioxide to a carbon dioxide storage site, apparatus for treating and cooling carbon dioxide which is to flow through, or through any part of, the pipe or system;”;
 - (b) after subsection (2), insert—
 - “(3) In subsection (2)(fa), the reference to a pipe, or system of pipes, being 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.”.
- 6. In section 66(1) (interpretation)(b), after the definition of “agricultural unit”, insert—**
 - ““carbon dioxide pipe-line” means—
 - (a) a pipe-line used to convey carbon dioxide to a carbon dioxide 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 such a site;
 - “carbon dioxide storage site” means a facility—
 - (a) for the storage of carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal); and
 - (b) in respect of the use of which a person is required to have a licence under section 18 of the Energy Act 2008;”.

Petroleum Act 1998

7. The Petroleum Act 1998 is amended as follows.

- 8. In section 15 (authorisations)(c)—**
 - (a) in subsection (3)(c)(i) and (iii), at the end insert “(subject to subsection (3A))”;
 - (b) after subsection (3), insert—
 - “(3A) The power conferred by virtue of paragraph (c)(i) or (iii) of subsection (3) is not exercisable to the extent that the powers conferred by regulation 7 of the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 are exercisable.”;
 - (c) in subsection (5), at the beginning insert “Subject to subsection (5A),”;
 - (d) after subsection (5), insert—

(a) Section 65(2) was amended by paragraph 8 of Schedule 1 to the Gas (Third Party Access and Accounts) Regulations 2000.
 (b) Section 66(1) has been amended by regulation 2(2)(b) of the Pipe-lines (Metrication) Regulations 1992 (S.I. 1992/449), by paragraph 15(b) of the Schedule to the Deregulation (Pipe-lines) Order 1999 and paragraphs 5 and 7 of Schedule 2 to the Planning Act 2008. There are other amendments which are not relevant to these Regulations.
 (c) Section 15 was amended by paragraph 1 of Schedule 4 to the Gas (Third Party Access and Accounts) Regulations 2000.

“(5A) Subsection (6) does not apply where the term is a variation condition imposed by virtue of regulation 7 of the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011.”.

9. In section 16 (compulsory modifications of pipelines)(a), before subsection (1), insert—

“(A1) This section applies to controlled pipelines, other than those which are excepted from the operation of this section.

(A2) Controlled carbon dioxide pipelines are excepted from the operation of this section.”.

10. In section 17 (acquisition of rights to use pipelines)(b), after subsection (1A) insert—

“(1B) This section also does not apply to controlled carbon dioxide pipelines.”.

11. In section 28(1) (interpretation of Part 3 of the Petroleum Act 1998)(c)—

(a) in the appropriate place, insert—

““carbon dioxide storage site” means a facility—

(a) for the storage of carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal); and

(b) in respect of the use of which a person is required to have a licence under section 18 of the Energy Act 2008;”;

““controlled carbon dioxide pipeline” means any controlled pipeline or one of a network of controlled pipelines—

(a) which is used to convey carbon dioxide to a carbon dioxide storage site, or

(b) which is not being used for any purpose but which is intended to be used to convey carbon dioxide to such a site;”;

(b) for the definition of “controlled petroleum pipeline”, substitute—

““controlled petroleum pipeline” means any controlled pipeline or one of a network of controlled pipelines—

(a) which is operated or constructed as part of a petroleum production project and is not a controlled carbon dioxide pipeline; or

(b) which is used to convey petroleum from the site of one or more such projects—

(i) directly to premises, in order for that petroleum to be used at those premises for power generation or for an industrial process;

(ii) directly to a place outside Great Britain;

(iii) directly to a terminal; or

(iv) indirectly to a terminal by way of one or more other terminals, whether or not such intermediate terminals are of the same kind as the final terminal;”.

12. In paragraph 4 of Schedule 2—

(a) in sub-paragraph (1), at the beginning, insert “Subject to sub-paragraph (1A),”; and

(b) after sub-paragraph (1), insert—

“(1A) This paragraph does not apply to the extent that the powers conferred by regulation 7 of the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 are exercisable in relation to the matters mentioned in sub-paragraph (1)(a) or (b).”.

(a) Section 16(1) was amended by paragraph 2 of Schedule 4 to the Gas (Third Party Access and Accounts) Regulations 2000.
(b) Section 17(1A) was inserted by paragraph 3 of Schedule 4 to the Gas (Third Party Access and Accounts) Regulations 2000 and was amended by section 151(5)(a) of the Energy Act 2004.
(c) Section 28(1) has been amended but the amendments are not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations form part of the implementation by the United Kingdom 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”). In particular, they implement Articles 21 and 22 of the Directive, on third party access to carbon dioxide storage sites and transport networks.

The Directive is chiefly implemented by Part 1, Chapter 3 of the Energy Act 2008 (c.32) and by the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) (the “2010 Regulations”) and the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 (S.S.I. 2011/24) (the “Scottish Regulations”).

Regulation 2 requires the Secretary of State to review the operation and effect of regulations 3 to 22, except in so far as they apply to infrastructure in Scotland or to functions which are exercised by the Scottish Ministers. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

Regulations 3 to 6 provide definitions for terms used in the Regulations. *Regulation 4* sets out which authority will exercise functions conferred by the Regulations in relation to certain types of infrastructure, depending on its location.

Regulation 7 provides that, in the circumstances set out in the regulation, the authority may, when granting consent for relevant infrastructure, include conditions in that consent requiring the infrastructure to be constructed to a capacity, design or (in the case of an offshore pipeline) route different to that proposed. *Regulation 8* provides that, where a pipeline requires planning permission rather than a consent that is granted by the authority, the authority may (before planning permission has been granted) require the infrastructure to be constructed to a capacity, design or (in the case of an offshore pipeline) route different to that proposed. *Regulation 9* gives power to the authority, where it has served a notice under *regulation 7* or *8*, to serve a notice allocating the additional costs of constructing the pipeline in conformity with the requirements as to capacity, design and route.

Regulation 11 provides that requirements imposed under *regulation 7* or *8* will continue to apply to an onshore pipeline even where it is diverted beyond the limits permitted under the relevant construction consent.

Regulation 12 provides that, where a person has previously sought to secure access to a relevant pipeline or storage site by application to the owner, but has not been able to reach agreement with the owner, he may apply to the appropriate authority for a notice granting that access. *Regulation 10* allows an application for access rights to be made in relation to relevant infrastructure which has yet to be constructed, in the specified circumstances.

Regulation 13 deals with compulsory modifications to the infrastructure in question, where an application has been made to an owner, and the authority is considering whether to give an access notice under *regulation 12(8)*. *Regulations 12* and *13* each set out the considerations the authority must take into account when deciding how to deal with the application, the process the authority must follow and what may be required by a notice.

Regulation 14 allows for variation of notices under *regulations 12* and *13* 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 12*, by the authority if it is necessary to resolve a dispute about the notice between its recipients.

Regulation 15 gives the authority powers to require information in order for the authority to decide whether to exercise any function under *regulations 12, 13* or *14*, and if so, how.

Regulation 16 provides that no additional consent under the enactments specified in the regulation is required for the use or modification of infrastructure, if that use or modification is required by an authority under the Regulations.

Regulation 17 requires the owner of 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 18, 19 and 20 provides for the enforcement of the requirements imposed in these Regulations. *Regulation 18* creates a new offence, for the giving of false information to the authority for the purpose of influencing the exercise of its functions under the Regulations. *Regulation 19* provides that a failure to comply with the requirements of a notice under *regulation 7* constitutes a contravention of the specified sections of the Pipe-lines Act 1962 (c.58). A failure to comply with the requirements of a notice under *regulation 8* constitutes a failure to comply with the conditions of planning permission.

Regulation 20 provides that the duty of a person to comply with an access notice or a modification notice is a duty owed to any person who may be affected by a failure to comply with it, 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 15*, or with the publication requirements under *regulation 18*, is enforceable by civil proceedings by the appropriate authority.

The *Schedule* amends the parts of the Petroleum Act 1998 (c.17) and the Pipe-lines Act 1962 which set out the current regime for third party access to offshore pipelines, and for onshore pipelines, respectively, so that they no longer apply to carbon dioxide pipelines within the scope of the Regulations.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been prepared, and is available on the website of the Department of Energy and Climate Change at: http://www.decc.gov.uk/en/content/cms/consultations/ccs_3rd_party/ccs_3rd_party.aspx.

The impact assessment and a Transposition Note setting out how these Regulations implement the relevant provisions of the Directive are annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

Copies of the Impact Assessment and Transposition Note are also available from Brian Allison, Office of Carbon Capture and Storage, Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW.

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STATUTORY INSTRUMENTS

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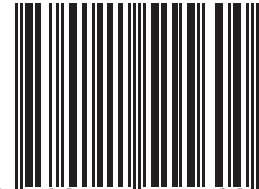
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