

Draft Regulations laid before Parliament under sections 57(9) and 331(3) of the Energy Act 2023, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2024 No.

ENERGY

The Carbon Capture Revenue Support (Directions, Eligibility and Counterparty) Regulations 2024

Made - - - - - ***

Coming into force ***

Before making these Regulations, the Secretary of State has in accordance with section 85 of the Energy Act 2023(a) consulted the persons listed in section 85(2).

In accordance with sections 57(9) and 331(3) of that Act, a draft of these Regulations has been laid before and approved by resolution of each House of Parliament.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 57, 58(2), 68(2), 68(4) and 83(1) of that Act, makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Carbon Capture Revenue Support (Directions, Eligibility and Counterparty) Regulations 2024 and come into force on the day after the day on which they are made.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Interpretation and application

2.—(1) In these Regulations, “the Act” means the Energy Act 2023.

(2) These Regulations only apply for the purposes of a carbon capture revenue support contract(b) entered into pursuant to a direction given by the Secretary of State under section 68(1) of the Act.

(a) 2023 c. 52.

(b) A “carbon capture revenue support contract” is defined by section 67(2) of the Act which for the purposes of these Regulations means a contract entered into by a carbon capture counterparty pursuant to a direction given by the Secretary of State under section 68(1).

Meaning of “eligible” in relation to a carbon capture entity

3.—(1) For the purposes of section 68(4) of the Act, this regulation defines “eligible” in relation to a carbon capture entity(a) that carries on (or is to carry on) in the United Kingdom(b), with a view to the storage(c) of carbon dioxide, activities of capturing carbon dioxide (or any substance consisting primarily of carbon dioxide) that has been produced by commercial or industrial activities.

(2) A carbon capture entity falling within paragraph (1) is, for the purposes of Chapter 1 of Part 2 of the Act, an eligible carbon capture entity if it is not an excluded carbon capture entity.

Meaning of “excluded carbon capture entity”

4.—(1) A carbon capture entity is an “excluded carbon capture entity” if—

- (a) the carbon dioxide (or substance consisting primarily of carbon dioxide) has been produced by the generation of electricity at a generating station;
- (b) the generating station—
 - (i) if located in Great Britain is connected, in respect of all the electricity generated by the generating station, to one or both of—
 - (aa) the Great Britain transmission system;
 - (bb) the Great Britain distribution system; or
 - (ii) if located in Northern Ireland is connected, in respect of all the electricity generated by the generating station, to one or both of—
 - (aa) the Northern Ireland transmission system;
 - (bb) the Northern Ireland distribution system;
- (c) the generating station is not a combined heat and power generating station; and
- (d) the generating station is not an energy recovery generating station.

(2) In this regulation—

“combined heat and power generating station” means a generating station which is (or may be) operated in order to supply to any premises heat produced in association with the electricity generated;

“energy recovery generating station” means a generating station which is fuelled by biomass or waste (or both), but excluding gas formed by the anaerobic digestion of material where that material is, or is derived from, waste;

“Great Britain distribution system” means a distribution system of the kind described in the definition of “distribute” in section 4(4) of the Electricity Act 1989(d);

“Great Britain transmission system” has the same meaning as that given to “transmission system” in section 4(4) of the Electricity Act 1989;

“Northern Ireland distribution system” means a distribution system of the kind described in the definition of “distribute” in article 3 of the Electricity (Northern Ireland) Order 1992(e);

“Northern Ireland transmission system” has the same meaning as that given to “transmission system” in article 3 of the Electricity (Northern Ireland) Order 1992.

(3) In this regulation the following have the same meanings as they are given in regulation 2(1) of the Contracts for Difference (Definition of Eligible Generator) Regulations 2014(f)—

(a) A “carbon capture entity” is defined in section 67(7) of the Act.
(b) See the provision in section 67(8) of the Act as to the meaning of “carrying on activities in the United Kingdom”.
(c) “Storage” is defined in section 67(7) of the Act.
(d) 1989 c. 29.
(e) S.I. 1992/231 (N.I.1); relevant amending instruments are S.I. 2003/419 (N.I. 6) and S.R. 2007 No. 321.
(f) S.I. 2014/2010, amended by S.I. 2018/895; there are other amending instruments but none is relevant.

“anaerobic digestion”;
“biomass”;
“generating station”;
“waste”.

Directions pursuant to section 68(1) of the Energy Act 2023

5.—(1) A direction given by the Secretary of State to a carbon capture counterparty^(a) pursuant to section 68(1) of the Act must—

- (a) be in writing;
- (b) specify the date on which it is given;
- (c) specify the name of the eligible carbon capture entity (and its registered number if it is a company) with whom the carbon capture counterparty is required to offer to contract;
- (d) specify the terms that must be included in the carbon capture revenue support contract to be offered by the carbon capture counterparty to the eligible carbon capture entity;
- (e) prohibit the carbon capture counterparty from modifying those terms (whether by making additions, omissions, amendments, substitutions or otherwise) when offering to contract, except with the prior written consent of the Secretary of State;
- (f) specify the date by the end of which the carbon capture counterparty must comply with the direction; and
- (g) specify the length of time for which the offer must be open for acceptance by the eligible carbon capture entity.

(2) The date specified for the purposes of paragraph (1)(f), must—

- (a) in the case of a direction given on a working day, be no earlier than the twentieth working day beginning with the day on which the direction is given;
- (b) in the case of a direction given on a day which is not a working day, be no earlier than the twentieth working day beginning with the first working day following the day on which the direction is given.

(3) The Secretary of State must send a copy of the direction to the eligible carbon capture entity specified in it by the end of the fifth working day following the day on which the direction is given.

(4) For the purposes of this regulation, “working day” means any day except a Saturday, a Sunday, Christmas day, Good Friday or a bank holiday within the meaning of the Banking and Financial Dealings Act 1971^(b) in England and Wales.

Directions ceasing to have effect

6.—(1) A direction given to a carbon capture counterparty under section 68(1) of the Act ceases to have effect (and any offer made by the carbon capture counterparty pursuant to it lapses), if—

- (a) the carbon capture counterparty receives from the eligible carbon capture entity to whom the offer is made, a notice in writing rejecting the offer (which includes any case where a counter-offer is made by the eligible carbon capture entity);
- (b) no written acceptance of the offer is received by the carbon capture counterparty from the eligible carbon capture entity to whom the offer is made, by the end of the period within which the carbon capture counterparty requires acceptance of the offer to be received by it; or

(a) The expression “carbon capture counterparty” means a person designated under section 67(1) of the Act to be a counterparty for carbon capture revenue support contracts or for any one or more descriptions of carbon capture revenue support contract – see section 67(3).

(b) 1971 c. 80.

(c) the direction is revoked by the Secretary of State pursuant to regulation 7 (Revocation of a direction by the Secretary of State).

(2) Where an offer lapses in the circumstances referred to in paragraph (1), the carbon capture counterparty must forthwith notify the eligible carbon capture entity of that fact.

Revocation of a direction by the Secretary of State

7.—(1) The Secretary of State may by notice in writing revoke a direction given pursuant to section 68(1) of the Act provided that, where an offer has been made pursuant to that direction, that offer has not been accepted in writing by the eligible carbon capture entity to which it was made.

(2) A notice given under paragraph (1) is of no effect unless it is delivered to the eligible carbon capture entity named in that direction and the carbon capture counterparty.

(3) A notice given under paragraph (1) must specify the date on which it is made and identify the direction to which it relates.

Publication of carbon capture revenue support contracts

8.—(1) A carbon capture counterparty must, subject to any exclusion required by virtue of paragraph (2), publish each carbon capture revenue support contract to which it is a party as soon as reasonably practicable.

(2) The carbon capture counterparty must exclude from a carbon capture revenue support contract required to be published by virtue of paragraph (1)—

- (a) any confidential information; and
- (b) any personal data.

(3) For the purposes of paragraph (2)(a), “confidential information” means information other than information to which paragraph (5) applies—

- (a) which is identified in the relevant direction as information to which paragraph (4) applies; or
- (b) in relation to which it is an initial term of the carbon capture revenue support contract that it must not be disclosed.

(4) This paragraph applies to information if, in the opinion of the Secretary of State at the time the relevant direction is given, it is information which—

- (a) constitutes a trade secret; or
- (b) if disclosed—
 - (i) would be likely to prejudice the commercial interests of any person; or
 - (ii) would constitute an actionable breach of confidence.

(5) This paragraph applies to any strike price, capex payment rate and reference price which may be included in the carbon capture revenue support contract.

(6) In this regulation—

“capex payment rate” means the rate, expressed in pounds sterling per tonne of carbon dioxide, determined under a carbon capture revenue support contract so as to ascertain the amount, if any, which is payable under that contract by the carbon capture counterparty in relation to capital expenditure of the eligible carbon capture entity;

“initial term” means a term of a carbon capture revenue support contract which is agreed at the time the carbon capture revenue support contract is first entered into;

“reference price” means the price, expressed in pounds sterling per tonne of carbon dioxide, determined under a carbon capture revenue support contract to be deducted from the strike price in the calculation of the amount, if any, which is payable under that contract by the carbon capture counterparty or the eligible carbon capture entity in respect of carbon dioxide captured by the eligible carbon capture entity;

“relevant direction” means in relation to a carbon capture revenue support contract, the direction given by the Secretary of State under section 68(1) of the Act pursuant to which that contract was offered by the carbon capture counterparty to the eligible carbon capture entity;

“strike price” means the price determined under a carbon capture revenue support contract, expressed in pounds sterling per tonne of carbon dioxide, so as to ascertain the amount, if any, which is payable under that contract by the carbon capture counterparty or the eligible carbon capture entity in respect of carbon dioxide captured by the eligible carbon capture entity.

(7) Nothing in this regulation prevents the inclusion on the register established and maintained under regulation 9(2) of information that the carbon capture counterparty is required to enter onto that register.

Register of carbon capture revenue support contracts

9.—(1) A carbon capture counterparty must, as soon as reasonably practicable, assign a unique identifier to any carbon capture revenue support contract to which it is a party.

(2) A carbon capture counterparty must establish and maintain a register in accordance with the requirements of the Schedule to these Regulations.

(3) The carbon capture counterparty must make arrangements for access to the register to be made available online.

(4) The carbon capture counterparty must make such arrangements as are reasonable in the circumstances, to make the register available for inspection at its premises by any person who requests such access in writing.

Carbon capture counterparties – notification of defaults

10.—(1) A carbon capture counterparty must promptly notify the Secretary of State if it is, or considers that it is likely to be, unable to perform a function conferred on it under or by virtue of—

- (a) the Act;
- (b) subordinate legislation made under the Act; or
- (c) a contract it has entered into in pursuance of the Act or that subordinate legislation.

(2) The carbon capture counterparty must provide such assistance as the Secretary of State may require with a view to securing the performance of that function, including the provision of such information as the Secretary of State may require.

Date *Name*
Parliamentary Under Secretary of State
Department for Energy Security and Net Zero

SCHEDULE

Regulation 9(2)

REGISTER OF CARBON CAPTURE REVENUE SUPPORT CONTRACTS

PART 1

DUTIES OF A CARBON CAPTURE COUNTERPARTY

1. A carbon capture counterparty must maintain the register required to be kept by virtue of regulation 9 in accordance with the requirements set out in this Schedule.

2. A carbon capture counterparty must create an entry on the register in respect of each carbon capture revenue support contract to which it is a party.

3. A carbon capture counterparty may, in addition to any information that is required to be entered onto the register, enter onto the register any other information which it considers would facilitate the administration of carbon capture revenue support contracts.

4. A carbon capture counterparty must, so far as it is reasonably practicable, ensure that entries in the register are accurate.

PART 2

INFORMATION IDENTIFYING THE CONTRACT AND THE ELIGIBLE CARBON CAPTURE ENTITY

The unique identifier

5. A carbon capture counterparty must enter onto the register the unique identifier assigned to each carbon capture revenue support contract pursuant to regulation 9(1).

Information regarding the eligible carbon capture entity

6. A carbon capture counterparty must, in respect of each carbon capture revenue support contract to which it is a party, enter onto the register—

- (a) the name of the eligible carbon capture entity who is a party to that contract;
- (b) the address for correspondence with the eligible carbon capture entity; and
- (c) any unique identifier (for example, a company registration number) assigned to the eligible carbon capture entity by a public authority in the United Kingdom.

PART 3

INFORMATION REGARDING THE FACILITIES WHERE THE CARBON DIOXIDE IS CAPTURED

7. A carbon capture counterparty must, in respect of each carbon capture revenue support contract to which it is a party, enter onto the register—

- (a) the name of the facility at which the carbon dioxide is, or is to be, captured in pursuance of that carbon capture revenue support contract;
- (b) such map grid references as are reasonably necessary to identify the location of the facility at which the carbon dioxide is, or is to be, captured pursuant to that carbon capture revenue support contract;
- (c) the description of carbon capture revenue support contract to which the entry relates (for example, industrial or waste industrial);
- (d) a brief description of the technology used, or to be used, to capture the carbon dioxide (for example, pre or post-combustion capture);
- (e) a brief description of the activity from which the carbon dioxide is, or is to be, produced;
- (f) the identity of any carbon dioxide transport and storage operator being used or to be used by the eligible carbon capture entity;
- (g) the maximum amount of carbon dioxide captured in any one-year period (expressed in tonnes of carbon dioxide) in respect of which the eligible carbon capture entity could receive payments under the carbon capture revenue support contract, as agreed under the carbon capture revenue support contract; and

- (h) the estimate of the carbon dioxide capture rate for the facility (expressed as a percentage), as agreed pursuant to the carbon capture revenue support contract.

PART 4

INFORMATION ABOUT THE COMMENCEMENT AND DURATION OF ACTIVITIES PURSUANT TO THE CONTRACT ETC.

8.—(1) A carbon capture counterparty must, in respect of each carbon capture revenue support contract to which it is a party, enter onto the register—

- (a) the date, agreed pursuant to that contract, on which it is intended the eligible carbon capture entity will start capturing carbon dioxide;
- (b) the dates, agreed pursuant to that contract, of the beginning and end of any period within which it is intended the eligible carbon capture entity will start capturing carbon dioxide;
- (c) the date notified from time to time by the eligible carbon capture entity pursuant to that contract as the date on which it expects to be eligible to receive payments under the contract;
- (d) the date notified by the eligible carbon capture entity pursuant to that contract as the date on which it has met the necessary conditions entitling it to receive payments under that contract;
- (e) the latest day, agreed pursuant to that contract, on which the eligible carbon capture entity can meet the conditions necessary to entitle it to receive payments under the contract; and
- (f) the date on which the contract expires or, in the event of the earlier termination of the contract, the date on which the contract terminated.

(2) But the carbon capture counterparty must omit from the register the information required by sub-paragraph (1)(c) where—

- (a) the eligible carbon capture entity requests this in writing; and
- (b) the carbon capture counterparty considers that if the information were the subject of a request for disclosure under the Freedom of Information Act 2000(a), or the Environmental Information Regulations 2004(b), the carbon capture counterparty would be entitled to withhold the information from disclosure.

PART 5

INFORMATION ABOUT PAYMENT CALCULATIONS UNDER THE CONTRACT

9.—(1) In this Part, “capex payment rate”, “reference price” and “strike price” each has the meaning given to it in regulation 8(6).

(2) A carbon capture counterparty must, in respect of each carbon capture revenue support contract to which it is a party, enter onto the register—

- (a) the strike price on the coming into existence of that contract;
- (b) the strike price prevailing at any other time;
- (c) the capex payment rate on the coming into existence of that contract;
- (d) the capex payment rate prevailing at any other time; and
- (e) the reference price prevailing at any time (or a hyperlink through which the reference price prevailing at any time can be accessed).

(a) 2000 c. 36.
(b) S.I. 2004/3391.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations make provision in connection with the offering by a carbon capture counterparty designated under section 67 of the Energy Act 2023 (“the Act”) of contracts for the capture of carbon dioxide by eligible carbon capture entities (referred to in the Act as “carbon capture revenue support contracts”). Such contracts must be offered following a direction from the Secretary of State pursuant to section 68(1) of the Act. A direction may only be given in favour of an “eligible carbon capture entity”.

Section 68(4) of the Act provides that the Secretary of State must make regulations which define the meaning of “eligible” in relation to a carbon capture entity. Regulation 3 achieves this in relation to carbon capture entities where the carbon dioxide (or substance consisting primarily of carbon dioxide) has been produced by commercial or industrial activities. This provides that a carbon capture entity, where the relevant carbon dioxide (or substance consisting primarily of carbon dioxide) has been produced by commercial or industrial activities, is an “eligible carbon capture entity” provided that it is not an “excluded carbon capture entity”. Regulation 4 defines an “excluded carbon capture entity”.

Regulation 5 makes provision as to the form and content of directions given by the Secretary of State pursuant to section 68 of the Act. Regulation 6 makes provision as to when a direction ceases to have effect. Regulation 7 confers a power on the Secretary of State to revoke directions and sets out the procedure to be followed in such a case.

Regulation 8 contains requirements regarding the publication of contracts entered into pursuant to a direction given by the Secretary of State. Regulation 9 and the Schedule make provision for the creation and maintenance of a register of contracts entered into following a direction given by the Secretary of State. Regulation 10 contains requirements for a counterparty to notify the Secretary of State if it is, or is likely to be, unable to perform its obligations under or by virtue of the Act, regulations made under the Act or a carbon capture revenue support contract.

An impact assessment was prepared for the Act in relation to hydrogen and industrial carbon capture business models and is available from the Department for Energy Security and Net Zero at 3-8 Whitehall Place, London, SW1A 2EG and is published at <https://bills.parliament.uk/bills/3311/publications>.

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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of His Majesty’s Stationery Office and King’s Printer of Acts of Parliament.

£8.14

<http://www.legislation.gov.uk/id/ukdsi/2024/9780348260151>

ISBN 978-0-34-826015-1



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