

ENERGY ACT 2008

EXPLANATORY NOTES

Chapter 3: Storage of Carbon Dioxide

Commentary on Sections Enforcement

Section 22: Offence to carry on unlicensed activities

64. This section makes it an offence for a person to carry out any of the activities listed in section 17 unless that person has a licence issued under section 18, or is a person (such as a contractor or sub-contractor) who carries out the relevant activity on behalf of a licensed person. It is also an offence to cause or permit such unlicensed activities to be carried out (for example by getting a contractor to do so).
65. *Subsection (3)* sets out the penalties for those offences (on summary conviction, a fine not exceeding £50,000 and, on conviction on indictment, imprisonment for a term not exceeding two years or an unlimited fine, or both). These penalties are set at the same level as those in Part 2 of the [Food and Environment Protection Act 1985 \(c. 48\)](#) (FEPA), as amended by the [Environmental Protection Act 1990 \(c. 43\)](#).
66. *Subsection (4)* provides, however, for a lesser penalty in circumstances where the activities in question are limited to exploration (rather than for instance the activity of carbon dioxide storage). On summary conviction, a person will be liable to a fine not exceeding the statutory maximum (currently £5,000 in England, Wales and Northern Ireland and £10,000 in Scotland) and, on conviction on indictment, to an unlimited fine.

Section 23: Offences relating to licences

67. Once a licence has been granted, it will also be an offence to breach certain of its provisions. *Subsection (1)* specifies breaches which will give rise to an offence, and gives the licensing authority a power to specify by order (subject to the negative resolution procedure – see section 105) further kinds of breaches of licences that will amount to an offence. Other enforcement powers will be available in respect of breaches which are not criminal offences: see in particular section 24. The breaches attracting criminal penalties under the present section include:
- doing something that requires the licensing authority's consent, without obtaining such consent (for example, where the regulatory authority's consent is required before commencing injection of carbon dioxide); and
 - a failure to keep records, notify, or make a return or report, as required by the licence.
68. Only the licence holder will be liable for offences under this section, including where the act or omission in question results from the behaviour, for example, of a contractor. However, *subsection (2)* provides that licence holder will have a defence if it can show that it exercised due diligence in trying to avoid committing the offence. In

circumstances where the contractor was responsible for a breach, the licence holder would have to show, for example, that it had exercised due diligence in supervising the behaviour of the contractor.

69. *Subsections (3) and (4)* set out the penalties for those offences. These are identical to those for undertaking a licensable activity without a licence (section 22 (3)) (a fine not exceeding £50,000 and, on conviction on indictment, imprisonment not exceeding two years or an unlimited fine, or both; and lesser penalties in relation to exploration activities: on summary conviction, a fine not exceeding the statutory maximum (currently £5,000 in England, Wales and Northern Ireland and £10,000 in Scotland) and, on conviction on indictment, an unlimited fine).
70. *Subsections (5) and (6)* create offences where a person knowingly or recklessly makes a false statement in order to obtain a licence, or any required consent, or fails to disclose information which that person knows, or ought to know, to be relevant to a licence application or to that consent. *Subsection (7)* sets out the penalties for the offences in *subsections (5) and (6)*: on summary conviction, the person found guilty of the offence would be liable to a fine not exceeding the statutory maximum (currently £5,000 in England, Wales and Northern Ireland and £10,000 in Scotland), or, on conviction on indictment, an unlimited fine.

Section 24: Licensing authority's power of direction

71. Where there has been a breach of a licence condition, this section enables the licensing authority (or an authority to which the relevant function has been transferred under section 34), to direct that the licence holder takes appropriate steps to remedy the breach. For example, if the licence requires equipment to be maintained to a good standard, a direction may require the equipment to be repaired or replaced. *Subsection (3)* requires the licence holder to be consulted before a direction is made.
72. If the licence holder fails to comply with the direction, the licensing authority (or the Authority to which the function is transferred), may, under *subsections (4) to (8)*, ensure that the necessary action is taken, at the expense of the licence holder, and (if so directed) with the latter's assistance.
73. *Subsection (9)* ensures that this section does not affect any provision made by the licence itself for its enforcement (for instance, the licence may itself give the licensing authority powers of direction in certain circumstances).

Section 25: Failure to comply with a direction under section 24

74. *Subsection (1)* of this section provides that a failure to comply with a direction under section 24 is a criminal offence, with the penalties set out in *subsection (2)*: a fine of up to the statutory maximum (currently £5,000 in England, Wales and Northern Ireland and £10,000 in Scotland) on summary conviction, or an unlimited fine for conviction on indictment.

Section 26: Injunctions restraining breaches of section 17(1)

75. This section gives the Scottish Ministers (or an authority to which the relevant function has been transferred under section 34) the power to apply to the Court of Session for an interdict to restrain any actual or apprehended breach of section 17(1) in relation to a controlled place within the territorial sea adjacent to Scotland. In the case of any other such actual or apprehended breach, it gives the Secretary of State (or an authority to which the relevant function has been transferred under section 34) the power to apply to the High Court for an injunction or the Court of Session for an interdict.
76. For example, where there is evidence that a carbon dioxide storage-related activity is being carried out without a licence within the territorial sea adjacent to Scotland, the Scottish Ministers may apply to the Court of Session for an interdict requiring

the operator to cease the activity. The Secretary of State, similarly, may apply for an injunction to the High Court (or, where appropriate, for an interdict to the Court of Session) where he becomes aware that such unlicensed activities are being carried out, for instance, in a place outside UK territorial waters but within a Gas Importation and Storage Zone designated under section 1. The powers created by this section are in addition to any other powers the Scottish Ministers or the Secretary of State may have under this Chapter.

Section 27: Inspectors

77. *Subsections (1) and (2)* of this section allow the Secretary of State or (by *subsection (6)*) the Scottish Ministers, or an authority to which the relevant function has been transferred under section 34, to appoint persons to act as inspectors to assist in the carrying out of their functions under this Chapter, and enable the inspectors to be remunerated.
78. *Subsection (3)* gives the Secretary of State or (by *subsection (6)*) the Scottish Ministers the power to make regulations (subject to the negative resolution procedure – see section 105) setting out the powers and duties of the inspectors, and of any other person acting on their directions in connection with a function under this Chapter (such persons may include, for example, surveyors or other contractors instructed by the Secretary of State or the Scottish Ministers). These are likely to include, for example powers of entry, investigation and the right to take samples.
79. *Subsection (5)* enables such regulations to create criminal offences (for example it might be an offence to obstruct an inspector in the exercise of functions under the regulations). Such offences would attract the penalty of a fine not exceeding the statutory maximum (currently £5,000 in England, Wales and Northern Ireland and £10,000 in Scotland) or such lesser amount as is specified in the regulations, on summary conviction or, on conviction on indictment, an unlimited fine.

Section 28: Criminal proceedings

80. *Subsection (1)* ensures that an offence arising by virtue of the provisions of this Chapter may be prosecuted in any part of the United Kingdom, regardless of the offshore location at which the offence may have been committed.
81. *Subsections (3) and (4)* ensure that prosecutions for such offences alleged to have been committed in a controlled place (i.e. within the territorial sea or a Gas Importation and Storage Zone) may be brought only by the Secretary of State or a person authorised by the Secretary of State (or an authority to which the relevant function has been transferred under section 34 or a person authorised by such an authority), or by or with the consent of the Director of Public Prosecutions (or the Director of Public Prosecutions for Northern Ireland). Such provision is unnecessary in relation to Scotland, as there all prosecutions are brought by or on behalf of the Lord Advocate.
82. *Subsection (5)* provides that the same restrictions procedure will apply to any prosecution for an offence created by regulations under section 27, except that references to a person authorised by the Secretary of State (or by an authority to which the relevant function has been transferred under section 34) are to be read as references to an inspector.