



# Energy Act 2023

## 2023 CHAPTER 52

### PART 2

#### CARBON DIOXIDE CAPTURE, STORAGE ETC AND HYDROGEN PRODUCTION, TRANSPORT AND STORAGE

### CHAPTER 2

#### DECOMMISSIONING OF CARBON STORAGE INSTALLATIONS

##### *Financing of costs of decommissioning etc*

## 92 Financing of costs of decommissioning etc

- (1) The Secretary of State may by regulations make provision for requiring relevant persons to provide security for the performance of obligations relating to the future abandonment or decommissioning of carbon dioxide-related sites, pipelines or installations.
- (2) For the purposes of [subsection \(1\)](#) an installation, site or pipeline is “carbon dioxide-related” if it is, or is to be, used for a purpose related to the geological storage, or transportation, of carbon dioxide.
- (3) In this section references to an installation, site or pipeline include one that is located in, under or over—
  - (a) the territorial sea adjacent to the United Kingdom, or
  - (b) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008).
- (4) The following provisions of this section are without prejudice to the generality of [subsection \(1\)](#).
- (5) In this section “relevant person” means a person who—

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- (a) holds a licence under [section 7](#), or
  - (b) is a person to whom a notice has been, or may be, given under section 29 of the Petroleum Act 1998 (preparation of abandonment programmes) in respect of a carbon storage installation.
- (6) Regulations under [subsection \(1\)](#) may—
- (a) require relevant persons to provide the Secretary of State with estimates of costs that are likely to be incurred in connection with obligations such as are mentioned in subsection (1) (“decommissioning costs”);
  - (b) make provision about the estimation of decommissioning costs and about the manner in which such estimates are to be verified (which may include provision requiring verification by an independent third party);
  - (c) require relevant persons to review estimates of decommissioning costs at times, or at intervals, specified in the regulations;
  - (d) make provision about the approval by the Secretary of State of estimates of such costs;
  - (e) provide for information specified, or of a description specified, in the regulations to be supplied to the Secretary of State by relevant persons at such intervals, or on such occasions, as may be prescribed by the regulations;
  - (f) require the Secretary of State to consult the Oil and Gas Authority or any other person specified in the regulations before exercising functions by virtue of [paragraph \(d\)](#).
- (7) Regulations under [subsection \(1\)](#) may make provision—
- (a) requiring that security for the discharge of liabilities in respect of decommissioning costs must be provided by way of a fund (a “decommissioning fund”);
  - (b) about the management of decommissioning funds;
  - (c) about payments to a relevant person, or another person, from such funds;
  - (d) providing for payments from such funds to be subject to the approval of the Secretary of State;
  - (e) imposing on a relevant authority functions with regard to—
    - (i) the monitoring and oversight of decommissioning funds;
    - (ii) the approval of any matter relating to such a fund.
- (8) This section is without prejudice to the breadth of subsection (4) of section 30 of the Energy Act 2008.
- (9) Regulations under subsection (1) may require the Secretary of State to publish guidance about—
- (a) estimates of decommissioning costs (including factors which it may be appropriate to consider in deciding whether or not to approve estimates of such costs);
  - (b) the structure, accrual and management of decommissioning funds.
- (10) Guidance by virtue of this section may make different provision for different cases or circumstances.
- (11) In this section—
- “carbon storage installation” has the same meaning as in section 30 of the Energy Act 2008;

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“decommissioning costs” is to be interpreted in accordance with subsection (6)(a);

“decommissioning fund” is to be interpreted in accordance with subsection (7)(a);

“economic regulator” has the same meaning as in Part 1 (see section 55);

“geological storage” has the same meaning as in Part 1 (see section 55);

“relevant authority” means the Secretary of State, the economic regulator or the Oil and Gas Authority.

#### Commencement Information

**II** S. 92 in force at 26.12.2023, see s. 334(3)(b)

### 93 Section 92: supplementary

- (1) Regulations under section 92(1) may make provision—
  - (a) enabling a relevant authority to charge fees to relevant persons in order to cover the costs of the exercise of the authority’s functions under the regulations;
  - (b) about how fees payable by virtue of the regulations are to be determined;
  - (c) about when fees payable by virtue of the regulations are to be paid.
- (2) Regulations under section 92(1) may make provision about the supplying of information, including—
  - (a) provision for the Secretary of State to require any other person to supply information to the Secretary of State for the purposes of the Secretary of State’s functions under regulations under that section;
  - (b) about the sharing by the Secretary of State with the Oil and Gas Authority or the economic regulator of information about funds established as mentioned in section 92(7)(a).
- (3) Regulations under section 92(1) may make provision about compliance with requirements imposed by or under the regulations, including—
  - (a) provision imposing civil penalties;
  - (b) provision making it an offence to contravene specified provisions of the regulations.
- (4) Where regulations under section 92(1) provide for the imposition of a civil penalty, they must also provide for a right of appeal against the imposition of the penalty.
- (5) Where regulations under section 92(1) create an offence, they must also make provision as to the mode of trial and punishment of offences, but—
  - (a) any provision as to punishment on summary conviction must not authorise imprisonment or, in the case of summary conviction in Scotland or Northern Ireland, a fine exceeding the statutory maximum;
  - (b) any provision as to punishment on conviction on indictment must not authorise imprisonment for a term exceeding 2 years.
- (6) Regulations under section 92(1) may—
  - (a) make different provision for different purposes;
  - (b) create exceptions to any requirement imposed by the regulations.

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- (7) Regulations under [section 92\(1\)](#) may confer any function on any person.
- (8) Regulations under [section 92\(1\)](#) may provide for a function conferred on a person to be exercisable on that person’s behalf by another person.
- (9) In this section—  
     “economic regulator” has the same meaning as in [Part 1](#) (see [section 55](#));  
     “relevant authority” means the Secretary of State, the economic regulator or the Oil and Gas Authority;  
     “relevant person” has the same meaning as in [section 92](#).
- (10) Regulations under [section 92\(1\)](#) may make any amendments of—  
     (a) the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 ([S.I. 2010/2221](#)),  
     (b) the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 ([S.S.I. 2011/24](#)),  
     (c) the Storage of Carbon Dioxide (Termination of Licences) Regulations 2011 ([S.I. 2011/1483](#)), or  
     (d) the Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015 ([S.R. \(N.I.\) 2015 No. 387](#)),  
 that the Secretary of State considers appropriate in consequence of, or of provision made under, [section 92](#) or this section.
- (11) Regulations under [section 92\(1\)](#) containing any of the following (with or without other provision) are subject to the affirmative procedure—  
     (a) provision creating a criminal offence;  
     (b) provision creating a civil penalty.
- (12) Any other regulations under [section 92\(1\)](#) are subject to the negative procedure.

**Commencement Information**

**I2** [S. 93](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

**94 Regulations under [section 92\(1\)](#): procedure with devolved authorities**

- (1) Before making regulations under [section 92\(1\)](#) that contain provision within devolved competence, the Secretary of State must give notice to each relevant devolved authority—  
     (a) stating that the Secretary of State proposes to make regulations under [section 92\(1\)](#), and  
     (b) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations may be made with respect to the provision within the relevant devolved competence,  
 and must consider any representations duly made and not withdrawn.
- (2) In this section, “relevant devolved authority”, in relation to regulations, means—  
     (a) the Scottish Ministers, if the regulations contain provision within Scottish devolved competence;

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- (b) the Welsh Ministers, if the regulations contain provision within Welsh devolved competence;
  - (c) the Department for the Economy in Northern Ireland, if the regulations contain provision within Northern Ireland devolved competence;
- and “the relevant devolved competence”, in relation to a relevant devolved authority, is to be construed accordingly.

(3) For the purposes of this section, provision—

- (a) is within Scottish devolved competence if it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
- (b) is within Welsh devolved competence if it would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006);
- (c) is within Northern Ireland devolved competence if it—
  - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
  - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998;

and references to provision being within devolved competence are to provision that is within Scottish, Welsh or Northern Ireland devolved competence.

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**Commencement Information**

**I3** S. 94 in force at 26.12.2023, see s. 334(3)(b)

**Changes to legislation:**

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