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## STATUTORY INSTRUMENTS

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# 2011 No. 2305

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

### *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.

#### **Commencement Information**

**II** Reg. 1 in force at 16.9.2011, see [reg. 1](#)

#### **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.
- (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.

### Commencement Information

**12** Reg. 2 in force at 16.9.2011, see [reg. 1](#)

### 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\(1\)](#);

“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\(2\)](#);

(ii) a construction authorisation;

(iii) development consent granted under section [114](#) of the Planning Act [2008\(3\)](#);

(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\(4\)](#);

(ii) a storage permit within the meaning of the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations [2011\(5\)](#);

“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\(6\)](#);

“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](#), 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\(7\)](#);

“diversion” means a diversion (within the meaning of section [66\(1\)](#) of the Pipe-lines Act [1962\(8\)](#)) 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;

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(1) [1962 c. 58](#). The definition is inserted by paragraph 6 of the Schedule.

(2) [1998 c. 17](#).

(3) [2008 c. 29](#).

(4) [S.I. 2010/2221](#).

(5) [S.S.I. 2011/24](#).

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

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

(8) 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.

“Gas Importation and Storage Zone” has the meaning given to it in section 1(5) of the Energy Act 2008(9);

“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(10) or under Part 3 of the Town and Country Planning (Scotland) Act 1997(11);

“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—

“CO<sub>2</sub> stream”;

“storage site”.

#### Commencement Information

**I3** Reg. 3 in force at 16.9.2011, see [reg. 1](#)

(9) 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.

(10) 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.

(11) 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).

### 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.

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#### Commencement Information

**I4** Reg. 4 in force at 16.9.2011, see [reg. 1](#)

### 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.

#### Commencement Information

**I5** Reg. 5 in force at 16.9.2011, see [reg. 1](#)

#### 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).

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**Commencement Information**

**I6** Reg. 6 in force at 16.9.2011, see [reg. 1](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011, Cross Heading: General.