Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No. 0000

ENVIRONMENTAL PROTECTION

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

Made - - - - [***] 2011

Coming into force in accordance with regulation 1

The Secretary of State is a Minister designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) 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—

(**1**) S.I. 2008/301.

(**2**) 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.

(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.

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(**3**);

"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(**4**);

(ii) a construction authorisation;

(iii) development consent granted under section 114 of the Planning Act 2008(**5**);

(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(**6**);

(**3**) 1962 c. 58. The definition is inserted by paragraph 6 of the Schedule.
(**4**) 1998 c. 17.
(**5**) 2008 c. 29.
(**6**) S.I. 2010/2221.

(ii) a storage permit within the meaning of the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011(**7**);

"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(**8**);

"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(**9**);

"diversion" means a diversion (within the meaning of section 66(1) of the Pipe-lines Act 1962(**10**)) 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(**11**);

"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(**12**) or under Part 3 of the Town and Country Planning (Scotland) Act 1997(**13**);

"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;

(**7**) S.S.I. 2011/24.
(**8**) The definition is inserted by paragraph 11(b) of the Schedule.
(**9**) OJ No L 140, 5.6.2009, p 114.
(**10**) 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.
(**11**) 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.
(**12**) 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.
(**13**) 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).

"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_2 stream";

"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;