Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Storage of Carbon Dioxide (Inspections etc.) Regulations 2011 ISBN 978-0-11-151690-4*

Draft Regulations laid before Parliament under section 105(3) of the Energy Act 2008 and 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 (Inspections etc.) Regulations 2011

*Made - - - - *** 2011*

Coming into force in accordance with regulation 1

The Secretary of State is 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 section 105(3) of the Energy Act 2008(**3**) and paragraph 2(2) of Schedule 2 to the European Communities Act 1972.

Accordingly the Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by sections 19, 21, 27 and 104(2) of the Energy Act 2008.

Citation and commencement

1. These Regulations may be cited as the Storage of Carbon Dioxide (Inspections etc.) Regulations 2011, and come into force on the day after the day on which they are made.

Amendment of the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010

2. The Storage of Carbon Dioxide (Licensing etc.) Regulations 2010(**4**) are amended as follows.

Amendment of regulation 1

3. In regulation 1(3) (citation, commencement and interpretation)—

(**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).
(**3**) 2008 c.32.
(**4**) S.I. 2010/2221.

(a) in the appropriate place alphabetically, insert the following—

""entering" in relation to premises includes, where applicable, boarding, and cognate expressions shall be construed accordingly;";

""inspection" means an inspection of a storage complex for the purpose of discharging a function described in sub-paragraph (a) or (b) of regulation 17(2);";

""inspection report" has the meaning given to it in regulation 18(1);";

""inspector" means a person appointed by the authority under section 27(1);";

""premises" includes—

(a) any carbon storage installation; and

(b) any land, vehicle, vessel, aircraft, hovercraft or movable structure, excluding any such thing or part thereof that is used as a dwelling;"; and

""routine inspection" has the meaning given to it in regulation 16(1);";

(b) for the definition of "the authority", substitute—

""the authority" (except in regulation 9) means the Secretary of State as licensing authority under section 18(2);".

Insertion of regulations 16 to 20

4. After regulation 15 (Environmental Damage (Prevention and Remediation) Regulations 2009) insert—

"Inspections and enforcement

Inspections

16.—(1) The authority must carry out an inspection (a "routine inspection") of a storage complex—

(a) during the initial period—

(i) no later than 1 year from the date that period commences; and

(ii) subsequently, no later than 1 year from the date of the immediately previous inspection; and

(b) during the post-closure period—

(i) no later than 5 years from the date that period commences; and

(ii) subsequently, no later than 5 years from the date of the immediately previous inspection.

(2) A routine inspection must include an examination of—

(a) the injection and monitoring facilities; and

(b) the effects on the environment and human health of the activities carried out under the relevant licence.

(3) The authority must carry out an inspection of a storage complex if—

(a) the authority becomes aware of—

(i) leakages or significant irregularities; or

(ii) a breach of the terms or conditions of the relevant storage permit; or

(b) a complaint is made to the authority about the effects of activities carried out under the relevant licence on the environment or to human health, unless the authority believes that complaint is frivolous or vexatious.

(4) The authority may carry out an inspection other than when required under paragraphs (1) or (3) as the authority considers appropriate.

(5) An inspection carried out pursuant to paragraph (3) or (4)—

(a) does not constitute a routine inspection for the purposes of paragraph (1); but

(b) may be carried out simultaneously with a routine inspection.

(6) In this regulation, in relation to any storage complex—

(a) "initial period" means the period commencing on the date on which injection commences at the storage site and ending on the third anniversary of the date of closure of the storage site;

(b) "monitoring facilities" means facilities used for the carrying out of a programme of monitoring pursuant to paragraph 2 of Schedule 2;

(c) "post-closure period" means the period commencing on the day after the third anniversary of the date of closure of the storage site and ending on the date on which the relevant licence is terminated; and

(d) "year" means a period of 12 months.

Appointment of inspectors

17.—(1) An inspector may exercise any of the powers described in Schedule 3 to assist the authority in carrying out its functions under Chapter 3 of the Energy Act 2008.

(2) The functions referred to in paragraph (1) include—

(a) investigating whether—

(i) the provisions of a licence or of any consent granted under a licence; or

(ii) any requirements, restrictions or prohibitions imposed by or under Chapter 3 of the Energy Act 2008,

have been, or are being, complied with; and

(b) monitoring the effects on the environment and on human health of activities authorised by or under a licence.

(2) An inspector must report to the authority in such manner as the authority may direct.

(3) An inspector must, before exercising any of the powers described in Schedule 3, produce evidence of appointment if requested to do so.

Inspection reports

18.—(1) The authority must prepare a written report (an "inspection report") of the results of an inspection.

(2) An inspection report must include—

(a) the authority's assessment of whether or not, in respect of the storage complex inspected—

(i) the provisions of a licence or of any consent granted under a licence; and

(ii) any requirements, restrictions or prohibitions imposed by or under Chapter 3 of the Energy Act 2008,

have been, or are being, complied with; and

(b) a statement as to what action (if any) the authority considers is required to ensure such compliance.

(3) A statement made in an inspection report pursuant to paragraph (2)(b) does not preclude the authority from requiring the licence holder or any other person to take any other action.

(4) The authority must within two months of the completion of an inspection—

(a) provide a copy of the inspection report to the operator of the relevant storage site; and

(b) include the inspection report on the register maintained under section 29(1).

Evidence

19.—(1) An answer given by a person in compliance with a requirement imposed under paragraph 1(i) of Schedule 3 is admissible in evidence in England and Wales or Northern Ireland against that person in any proceedings or, in Scotland, against that person in criminal proceedings.

(2) In criminal proceedings in which a person mentioned in paragraph (1) is charged with an offence to which this paragraph applies, no evidence relating to that person's answer may be adduced and no question relating to it may be asked by or on behalf of the prosecution unless evidence relating to it is adduced by or on behalf of that person.

(3) Paragraph (2) applies to any offence other than one—

(a) under regulation 20(1)(c);

(b) under section 5 of the Perjury Act 1911(**5**) (false statements made otherwise than on oath);

(c) under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995(**6**) (false statements made otherwise than on oath); or

(d) under article 10 of the Perjury (Northern Ireland) Order 1979(**7**).

(4) Nothing in Schedule 3 compels the production by any person of a document of which that person would on ground of legal professional privilege be entitled to withhold production on an order for disclosure or discovery in an action in the High Court or the High Court in Northern Ireland or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.

Offences

20.—(1) It is an offence for a person to—

(a) wilfully obstruct an inspector in the exercise of the powers or duties conferred on the inspector by these Regulations;

(b) fail, without reasonable excuse, to comply with a requirement imposed in pursuance of Schedule 3 or to prevent another person from complying with such a requirement; or

(c) knowingly or recklessly make a statement which that person knows to be false or misleading in a material particular where such a statement is made for the

(**5**) 1911 c.6.
(**6**) 1995 c.39. Amendments made to s.44 by s.200(2)(b) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) are not yet in force.
(**7**) S.I. 1979/1714 (N.I. 19).