STATUTORY RULES OF NORTHERN IRELAND

2015 No. 387

ENVIRONMENTAL PROTECTION

The Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015

Made - - - -	*1st December 2015*
Coming into operation	*4th January 2016*

The Department of Enterprise, Trade and Investment is a department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the environment.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Department that it is expedient for references to EU instruments, or provisions of those instruments, in these Regulations to be construed as references to those instruments or provisions as amended from time to time.

Accordingly, the Department of Enterprise, Trade and Investment makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, as read with paragraph 1A of Schedule 2 to that Act(**3**).

General

Citation and commencement

1. These Regulations may be cited as the Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015, and come into operation on 4th January 2016.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**4**) applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

(a) any reference to a numbered section is to that section of the Energy Act 2008(**5**) and any reference to Chapter 3 is a reference to Chapter 3 of Part 1 of that Act; and

(**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**) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006, and amended by S.I. 2007/1388 and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008
(**4**) 1954 c.33 (N.I.)
(**5**) 2008 c.32 as amended by S.I. 2011/2453

(b) any reference (except in paragraph (4)) to an EU instrument, or a provision of such an EU instrument, is to that instrument or provision as amended from time to time.

(3) In these Regulations—

"appraisal term" has the meaning given to it in regulation 4(a);

"the authority" means the Department of Enterprise, Trade and Investment as licensing authority under section 18(2);

"CO_2" means carbon dioxide;

"corrective measures plan" has the meaning given to it in regulation 8(6);

"the Directive" means Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 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(**6**);

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

"the Environmental Liability Directive" means Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage(**7**);

"the ETS Directive" means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC(**8**);

"financial security" includes—

(a) a charge over a bank account or any other asset;

(b) a deposit of money;

(c) a performance bond or guarantee;

(d) an insurance policy;

(e) a letter of credit;

"injection" means injection of CO_2 into a storage site;

"inspection" means an inspection of a storage complex for the purpose of discharging a function described in sub-paragraph (a) or (b) of regulation 16(1);

"inspection report" has the meaning given to it in regulation 17(1);

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

"legislation" means legislation in force in the United Kingdom (whether passed, or made, before, after or at the same time as the commencement of these Regulations);

"licence" means a licence (other than a Northern Ireland exploration licence) granted by the authority under section 18(1) in respect of activities within section 17(2)(a) to (d), and "licence holder" is to be construed accordingly;

"licensed area" means the area within which activities are authorised under a licence;

(**6**) OJ No L 140, 5.6.2009, p 114, as amended by Directive 2011/92/EU (OJ No L26 28.1.2012. p.1) of the European Parliament and of the Council

(**7**) OJ No L 143, 30.4.2004, p 56, as amended by Directives 2006/21/EC (OJ No L 102, 11.4.2006, p 15), 2009/31 EC (OJ No L 140, 5.6.2009, p 114) and 2013/30/EU (OJ No L 178, 28.6.2013, p 66) of the European Parliament and of the Council

(**8**) OJ No L 275, 25.10.2003, p 32, as amended by Directives 2004/101/EC (OJ No L 338, 13.11.2004, p 18) and 2008/101/EC (OJ No L 8, 13.1.2009, p 3) of the European Parliament and of the Council, Regulation (EC) No 219/2009 of the European Parliament and of the Council (OJ No L 87, 31.3.2009, p 109) Directive 2009/29/EC (OJ No L 140, 5.6.2009, p 63) of the European Parliament and Council and Regulation (EU) No 421/2014 of the European Parliament and of the Council (OJ No L 129, 30.4.2014, p 1)

"monitoring plan" has the meaning given to it in regulation 8(5);

"Northern Ireland exploration licence" means a licence granted by the authority under section 18(1) which authorises only activities within section 17(2)(c) and the establishment or maintenance of an installation in a controlled place for the purpose of such activities and which—

(a) does not grant to the holder the sole right to carry out exploration of a controlled place, and

(b) is issued in combination with –

(i) a licence under section 2 of the Petroleum (Production) Act (Northern Ireland) 1964(**9**) to search for petroleum;

(ii) a prospecting licence under section 11(1)(b) of the Mineral Development Act (Northern Ireland) 1969(**10**) to search for mines and minerals;

(iii) a licence under section 3 of the Petroleum Act 1998(**11**) to search for petroleum; or

(iv) a licence under section 4 to explore any controlled place with a view to carrying on activities within section 2(3)(a) to (d) and establish or maintain an installation in a controlled place for the purposes of such exploration;

"operator" means the person who carries on or (where different) controls activities (within the meaning of section 17(2)) at a storage site;

"post-closure plan" has the meaning given to it in regulation 13(3) or (4);

"premises" includes—

(a) any carbon storage installation (within the meaning of section 30(5)); and

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

"provisional post-closure plan" has the meaning given to it in regulation 13(2);

"routine inspection" has the meaning given to it in regulation 15(1);

"storage permit" means a consent granted under a licence, authorising the use of a place as a storage site;

"target date" has the meaning given to it in regulation 11(3)(a).

(4) The following expressions have the meanings given by Article 3 of the Directive (and cognate expressions are to be construed accordingly)—

"closure" (in relation to a storage site);

"corrective measures";

"CO_2 plume";

"CO_2 stream";

"exploration";

"hydraulic unit";

"leakage";

"migration";

"significant irregularity";

"significant risk";

(**9**) 1964 c.28 (N.I.)
(**10**) 1969 c.35 (N.I.)
(**11**) 1998 c.17

"storage complex";

"storage site";

"substantial change";

"waste";

"water column".

Licences

Limitation on licensing powers

3. A licence shall not be granted for the purpose of storing CO_2 in the water column.

Applications for a licence

4. An application for a licence shall be made in writing to the authority, and shall include either—

(a) a request that the licence specify a period (the "appraisal term") during which the licence holder has the right to explore the licensed area before making an application for a storage permit; or

(b) if no such period is requested, a statement of the reasons why such exploration is not considered necessary.

Appraisal term

5.—(1) A licence shall include an appraisal term where the authority determines that exploration is required to generate the information necessary to select a storage site.

(2) The appraisal term shall not exceed the period necessary to—

(a) generate the information necessary to select a storage site; and

(b) prepare the documents required for an application under regulation 7.

(3) Subject to paragraph (2), the appraisal term may be extended by the authority at the written request of the licence holder, under the conditions laid down by the licence, provided that the authority is satisfied that any exploration so far carried out has been in accordance with the licence.

(4) Where a licence includes an appraisal term, the licence (unless sooner determined under any of its provisions) shall cease and determine—

(a) at the end of the appraisal term, if no application for a storage permit is made before that date; or

(b) if such an application is refused, when that refusal is notified to the licence holder.

Content of a licence

6. A licence shall include the provisions contained in Schedule 1.

Storage permits

Applications for a storage permit

7.—(1) The licence holder may, under the conditions laid down by the licence, apply to the authority for a storage permit in respect of a storage site within the licensed area.

(2) Where the licence includes an appraisal term, the application may not be made unless the exploration required by the licence has been completed, and all other terms and conditions of the licence have been complied with.

(3) An application shall be made in writing, and shall contain (at least) the following—

(a) the name and address of the proposed operator;

(b) evidence of the matters referred to in regulation 8(1)(a) to (d);

(c) in relation to the CO_2 that is to be contained within the storage site—

(i) the total quantity that is to be injected and stored;

(ii) a proposed date on which injection is to commence;

(iii) the prospective sources and transport methods;

(iv) the composition of the CO_2 streams that are to be injected;

(v) the proposed injection rates and pressures;

(vi) the proposed location of the injection facilities;

(d) a description of measures to prevent any significant irregularities;

(e) a proposed monitoring plan drawn up in accordance with Annex II to the Directive and that takes into account the obligations imposed on the operator under legislation implementing Article 14 of the ETS Directive;

(f) a proposed corrective measures plan;

(g) the proposed provisional post-closure plan drawn up in accordance with regulation 13(1);

(h) the information required to be provided in relation to the storage site under legislation implementing Article 5 of Directive 2011/92/EU(**12**) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment;

(i) details of a financial security that will satisfy the requirements in paragraph 7(1) of Schedule 2, including proof that (if the storage permit is granted) such a security will be in force before the proposed date on which injection is to commence.

(4) The authority shall forward to the European Commission—

(a) the permit application (within one month after receipt); and

(b) any other related material that the authority proposes to take into account in considering the application.

(5) The authority shall also (within one month after receipt) forward a copy of the permit application to the Department of the Environment.

Grant of storage permits

8.—(1) Before granting a storage permit the authority shall be satisfied that—

(a) the storage complex and the surrounding area have been sufficiently characterised and assessed in accordance with the criteria set out in Annex I to the Directive;

(b) no part of the storage complex extends beyond the territories of the member states;

(c) under the proposed conditions of use of the storage site, there is no significant risk of leakage or of harm to the environment or human health; and

(d) the conditions in paragraph (3) are met.

(2) For the purposes of paragraph (1)(b), the territory of a member state includes its exclusive economic zone and continental shelf within the meaning of Articles 55 and 76 of the United Nations Convention on the Law of the Sea(**13**).

(3) The conditions are that the proposed operator—

(**12**) OJ No L 26, 28.1.2012. p.1. This Directive was implemented in Northern Ireland by S.R. 2012 No. 59
(**13**) Cmnd. 8941