

2011 No. 2453

ENVIRONMENTAL PROTECTION

The Storage of Carbon Dioxide (Amendment of the Energy Act 2008 etc.) Regulations 2011

<i>Made</i>	- - - -	<i>11th October 2011</i>
<i>Laid before Parliament</i>		<i>14th October 2011</i>
<i>Coming into force</i>	- -	<i>16th November 2011</i>

The Secretary of State is designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the environment.

Accordingly, in exercise of the powers conferred by section 2(2) of that Act, the Secretary of State makes the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Storage of Carbon Dioxide (Amendment of the Energy Act 2008 etc.) Regulations 2011 and come into force on 16th November 2011.

(2) Subject to paragraphs (3) and (4), these Regulations extend to England and Wales, Scotland and Northern Ireland.

(3) Paragraphs (b)(ii) and (c)(iii) of regulation 3(1) extend to England and Wales and Northern Ireland only.

(4) Regulation 14 extends to England and Wales and Scotland only.

(5) Regulations 2 to 13 amend the Energy Act 2008^(c) and a reference in those regulations to a numbered section is to that section of the Energy Act 2008.

Amendment of section 17

2. In section 17 (prohibition on unlicensed activities)^(d), after subsection (3) insert—

“(3A) In this section, “controlled place” also includes a place—

- (a) in England, Wales or Northern Ireland, or
- (b) in, under or over so much of the internal waters of the United Kingdom as are adjacent to England, Wales or Northern Ireland.”.

(a) S.I. 2008/301.

(b) 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).

(c) 2008 c. 32.

(d) In relation to Scotland, under S.S.I. 2011/224 a new subsection (4) was added to section 17.

Amendment of section 18

3.—(1) In subsection (2) of section 18(a) (licences)—

- (a) in paragraph (a)—
 - (i) for “a controlled place which is not” substitute “an offshore controlled place which is not”;
 - (ii) before “, the Secretary of State” insert “(an “offshore UK-controlled place”);”;
- (b) in paragraph (b)—
 - (i) for “such activities”, substitute “activities within section 17(2)(a) to (c)”;
 - (ii) for “that territorial sea”, substitute “the territorial sea adjacent to Scotland”;
- (c) in paragraph (c)—
 - (i) for “such activities”, substitute “activities within section 17(2)(a) to (c)”;
 - (ii) for “a controlled place”, substitute “an offshore controlled place”;
 - (iii) for “that territorial sea”, substitute “the territorial sea adjacent to Scotland”;
- (d) after paragraph (c), omit “and” and insert—
 - “(ca) in the case of a licence in respect of activities within section 17(2)(a) to (c) and an English controlled place, the Secretary of State,
 - (cb) in the case of a licence in respect of activities within section 17(2)(a) to (c) and a Welsh controlled place, the Welsh Ministers,
 - (cc) in the case of a licence in respect of activities within section 17(2)(a) to (c) and a Northern Ireland controlled place, the Department of Enterprise, Trade and Investment in Northern Ireland,
 - (cd) in the case of a licence in respect of activities within section 17(2)(a) to (c) and a controlled place part of which is a Welsh controlled place and the rest of which is an English controlled place or an offshore UK-controlled place (or a combination of such places), either the Welsh Ministers or the Secretary of State,
 - (ce) in the case of a licence in respect of activities within section 17(2)(a) to (c) and a controlled place part of which is a Northern Ireland controlled place and the rest of which is an offshore UK-controlled place, either the Department of Enterprise, Trade and Investment in Northern Ireland or the Secretary of State, and”;
- (e) in paragraph (d), after “the Secretary of State”, insert “, the Welsh Ministers, the Department of Enterprise, Trade and Investment in Northern Ireland”;
- (f) after “a licence falling within paragraph (c)”, insert “, (cd) or (ce)”.

(2) After subsection (4) of section 18, insert—

“(4A) In this section—

“English controlled place” means a controlled place in England or in, under or over so much of the internal waters of the United Kingdom as are adjacent to England;

“Northern Ireland controlled place” means a controlled place in Northern Ireland or in, under or over so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland;

“Welsh controlled place” means a controlled place in Wales or in, under or over so much of the internal waters of the United Kingdom as are adjacent to Wales.”.

Amendment of section 19

4. In section 19 (requirements relating to grant of licences), after subsection (2) insert—

(a) In relation to Scotland, paragraphs (a), (b) and (c) of section 18(2) were amended under S.S.I. 2011/224.

“(3) In subsection (1) “licensing authority” does not include the Welsh Ministers or the Department of Enterprise, Trade and Investment in Northern Ireland.”.

Amendment of section 21

5. In section 21 (content of licences: regulations), after subsection (2) insert—

“(3) In subsection (1) “licensing authority” does not include the Welsh Ministers or the Department of Enterprise, Trade and Investment in Northern Ireland.”.

Amendment of section 22

6. In section 22 (offence to carry on unlicensed activities)(a), after subsection (4) insert—

“(4A) If the activity constituting the offence is carried on at an English controlled place, a Welsh controlled place or a Northern Ireland controlled place, subsection (3) has effect as if the reference to £50,000 were a reference to the statutory maximum.”.

Amendment of section 23

7. In section 23 (offences relating to licences), after subsection (7) insert—

“(8) In subsection (1)(d) “licensing authority” does not include the Welsh Ministers or the Department of Enterprise, Trade and Investment in Northern Ireland.”.

Amendment of section 26

8. In section 26(b) (injunctions restraining breaches of section 17(1))—

(a) before subsection (1) insert—

“(A1) Where the Secretary of State considers it necessary or expedient to restrain any actual or apprehended breach of section 17(1) in relation to an English controlled place, the Secretary of State may apply to the High Court for an injunction.

“(A2) Where the Welsh Ministers consider it necessary or expedient to restrain any actual or apprehended breach of section 17(1) in relation to a Welsh controlled place, they may apply to the High Court for an injunction.”;

(b) after subsection (1) insert—

“(1A) Where the Department of Enterprise, Trade and Investment in Northern Ireland considers it necessary or expedient to restrain any actual or apprehended breach of section 17(1) in relation to a Northern Ireland controlled place, it may apply to the High Court for an injunction.”;

(c) in subsection (2)—

(i) omit “other”;

(ii) after “actual or apprehended breach of section 17(1)”, insert “in relation to an offshore UK-controlled place”.

Amendment of section 27

9. In section 27 (inspectors), after subsection (6) insert—

“(7) Subsections (1) and (2) apply in relation to the Welsh Ministers and the Department of Enterprise, Trade and Investment in Northern Ireland and their respective functions under this Chapter as they apply in relation to the Secretary of State and the functions of the Secretary of State under this Chapter.”.

(a) In relation to Scotland, a new subsection (5) was inserted into section 22 under S.S.I. 2011/224.

(b) In relation to Scotland, section 26(1) was amended by S.S.I. 2011/224.

Amendment of section 28

10. In section 28 (criminal proceedings) in subsections (3), (4) and (5)(a) for “a controlled place” substitute “an offshore controlled place”.

Amendment of section 30

11. In section 30 (abandonment of installations)—

(a) in subsection (5) after “means an installation” insert “falling within subsection (6) that is”; and

(b) after that subsection insert—

“(6) An installation falls within this subsection if it is established or maintained in the water, or on the foreshore or other land intermittently covered with water, and is not connected with dry land by a permanent structure providing access at all times and for all purposes.”.

Amendment of section 31

12. After subsection (3) of section 31 (termination of licences: regulations), insert—

“(4) In subsection (1) “licensing authority” does not include the Welsh Ministers or the Department of Enterprise, Trade and Investment in Northern Ireland.”.

Amendment of section 35

13.—(1) In section 35(1) (Chapter 3: interpretation)(a)—

(a) in the definition of “controlled place”, after “17(3)” insert “and (3A)”;

(b) in the appropriate place insert—

““English controlled place” has the meaning given by section 18(4A);”;

““Northern Ireland controlled place” has the meaning given by section 18(4A);”;

““offshore controlled place” means a place that is mentioned in section 17(3);”;

““offshore UK-controlled place” has the meaning given by section 18(2)(a);”;

““Welsh controlled place” has the meaning given by section 18(4A).”.

(2) After section 35(2), insert—

“(3) An Order in Council under section 98(8) of the Northern Ireland Act 1998(b) has effect for the purposes of this Chapter if, or to the extent that, the Order in Council is expressed to apply—

(a) by virtue of this subsection, for the purposes of this Chapter, or

(b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.

(4) An order or Order in Council made under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006(c) (apportionment of sea areas) has effect for the purposes of this Chapter if, or to the extent that, the order or Order in Council is expressed to apply—

(a) by virtue of this subsection, for the purposes of this Chapter, or

(b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.”.

(a) In relation to Scotland, section 35(1) was amended by S.S.I. 2011/224.

(b) 1998 c. 47.

(c) 2006 c. 32.

Amendment of the Pipe-line Works (Environmental Impact Assessment) Regulations 2000

14.—(1) The Pipe-line Works (Environmental Impact Assessment) Regulations 2000(a) are amended as follows.

(2) In regulation 2, in the definition of “relevant pipe-line works”, after “any pipe-line which is intended to convey oil or gas”, insert—

“(aa) any pipe-line which is intended to convey carbon dioxide streams for the purposes of geological storage, including associated booster stations;”.

Review

15.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of regulations 2 to 14;
- (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 2(1) and 6(1) of the Directive (which are implemented by means of regulations 2 to 13), and Article 31(1)(a) and (2)(b) of the Directive (which are implemented by means of regulation 14) are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by—
 - (i) the extension of the prohibition on unlicensed activities established by regulations 2 to 13; and
 - (ii) the regulatory system for environmental impact assessment for certain pipelines established by regulation 14;
- (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—

- (a) “review period” means—
 - (i) the period of five years beginning with the day on which these Regulations come into force; and
 - (ii) subject to paragraph (5), each successive period of five years; and
- (b) “the 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(b).

(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 laid.

Charles Hendry
Minister of State

11th October 2011

Department of Energy and Climate Change

(a) S.I. 2000/1928. The Regulations were amended by the Pipe-line Works (Environmental Impact Assessment) (Amendment) Regulations 2007 (S.I. 2007/1992). Certain functions under this regulation are transferred, in so far as they are exercisable in or as regards Scotland, to the Scottish Ministers, by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2000 (S.I. 2000/3253). There are other amending instruments but none is relevant.

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations form part of the implementation by the United Kingdom of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide (OJ No L 140, 5.6.2009, p.114) (“the Directive”).

The Regulations extend the territorial scope of Part 1, Chapter 3, of the Energy Act 2008 (c. 32) (“the Act”) to all parts of England, Wales, Northern Ireland and their internal waters. As enacted, that Chapter applied to the United Kingdom territorial sea and the Gas Importation and Storage Zone referred to in section 1 of the Act (designated by S.I. 2009/223). The Regulations also implement Article 31 of the Directive which amends Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ No L 175, 5.7.1985, p. 40).

The extension of Part 1 to all parts of Scotland and its internal waters is made by the Energy Act 2008 (Storage of Carbon Dioxide) (Scotland) Regulations 2011 (S.S.I. 2011/224) (the “Scottish Regulations”).

Regulation 2 adds to the definition of a “controlled place” under section 17 of the Act, so that it also includes England, Wales, Northern Ireland and places in, under and over the adjacent internal waters.

Under *regulation 3*, section 18 of the Act is amended. The Department of Enterprise, Trade and Investment in Northern Ireland will have functions under Chapter 3 in respect of Northern Ireland and the adjacent internal waters. The Welsh Ministers will have functions under Chapter 3 in respect of Wales and the adjacent internal waters. The Secretary of State will have functions under Chapter 3 in respect of England and the adjacent internal waters as well as his existing functions in respect of the territorial sea of the United Kingdom (except the territorial sea adjacent to Scotland) and the Gas Importation and Storage Zone. Where a carbon storage activity takes place partly in an area for which one licensing authority is responsible and partly in another area, provision is made to allow either of the relevant licensing authorities to exercise functions under Chapter 3 in respect of that activity.

Sections 19, 21, 23(1) and 31 of the Act confer powers on a licensing authority to make subordinate legislation about licences. *Regulations 4, 5, 7 and 12* amend those sections to provide that the Department of Enterprise, Trade and Investment in Northern Ireland and the Welsh Ministers, as licensing authorities, do not have power under those sections to make such subordinate legislation.

Regulation 6 amends section 22, to modify the penalties that can be imposed on summary conviction further to the extension of the territorial scope of Part 1 under the amended section 17.

Regulations 8, 9, 10, 11 and 13 make consequential amendments.

Under *regulation 14*, the Pipe-line Works (Environmental Impact Assessment) Regulations 2000 (S.I 2000/1928) are amended to include pipelines for the conveyance of carbon dioxide in the definition of “relevant pipe-lines” in respect of which an environmental impact assessment is required.

Regulation 15 requires the Secretary of State to review the operation and effect of these Regulations and lay a report before Parliament within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Ricki Kiff, Energy Development Unit, Department of

Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW. Tel: 0300 068 6042; email: ricki.kiff@decc.gsi.gov.uk.

A Transposition Note setting out how these Regulations implement the relevant provisions of the Directive is annexed to the Explanatory Memorandum that is available alongside the instrument on www.legislation.gov.uk.

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STATUTORY INSTRUMENTS

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