EXPLANATORY MEMORANDUM TO

THE CARBON DIOXIDE TRANSPORT AND STORAGE (LICENSED OPERATORS) ADMINISTRATION (ENGLAND AND WALES) RULES 2025

2025 No. 1135

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Minister Sarah Jones, Minister of State at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

2.2 Matthew Taylor, Director for Carbon Dioxide Transport and Storage Policy, at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Emma Drinkwater at the Department for Energy Security and Net Zero (emma.drinkwater@energysecurity.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Chapter 4 of Part 1 of the Energy Act 2023 makes available a special administration regime for Carbon Dioxide Transport and Storage (T&S) Companies. A T&S Company is a company which holds a licence under section 7 of the Energy Act 2023.

4.2 The aforementioned provisions in the Energy Act 2023 apply (with modifications) much of Chapter 3 of Part 3 of the Energy Act 2004, which provides for a special administration regime for certain energy companies. In turn, the Energy Act 2004 applies provisions in the Insolvency Act 1986 relating to normal administration and modifies them for the specific purposes of the special administration regime.

4.3 This statutory instrument sets out the detailed rules and procedures of the special administration regime which applies to T&S Companies.

Where does the legislation extend to, and apply?

4.4 The territorial extent and application of this instrument is England and Wales only. It is intended that a further instrument will follow in due course which will extend and apply to Scotland.

5. Policy Context

What is being done and why?

5.1 Carbon capture and storage is the process of capturing carbon dioxide and permanently storing it, deep underground where it cannot enter the atmosphere. Carbon dioxide transport and storage (T&S) networks will act as the enabling infrastructure for carbon capture from a range of sources, which could include power plants, industrial facilities, low carbon hydrogen production, and greenhouse gas removal technologies.

5.2 Under Part 1 of the 2023 Energy Act, the Secretary of State has the power to grant a Carbon Dioxide Transport and Storage Company (T&SCo) a licence which gives it a right to receive a regulated revenue in relation to the provision of carbon dioxide transport and storage services. This regulated revenue would be in the form of a fee charged to users of the transport and storage network, where users of the network could include energy producers, industrial users or producers of low carbon hydrogen. Users of the network may be funded via a government support contract or via a levy . The economic regulator for carbon dioxide transport and storage projects has the powers and will have the information needed to regulate T&SCo allowed revenue to ensure costs passed on to users are economic and efficient.

5.3 Part 1 of the 2023 Act introduces a special administration regime (SAR) for the purpose of prioritising the rescue of a T&SCo and continuation of the T&SCo's assets in a T&SCo insolvency scenario. The 2023 Act applies the provisions of the Energy Act 2004 designed for an energy administration order, to a T&S administration order, with appropriate amendments to ensure the SAR works properly for T&SCos. Section 411 of the Insolvency Act 1986 provides for the establishment of insolvency rules to supplement the provisions in that Act. Rather than amend these Rules to apply to SARs in the energy sector, separate insolvency rules have been established, the most recent example of which is the Relevant Licensee Nuclear Company Administration Rules (England and Wales) Rules 2023. The 2023 Act extends the ability of the Secretary of State to make company insolvency rules, pursuant to section 411 of the Insolvency Act, for the purposes of giving effect to Special Administration Orders for T&SCos.

5.4 Implementing a SAR for T&SCos is intended to reduce the risk of users of a T&S network of being deprived of the ability to have their captured carbon dioxide transported and stored should a T&SCo be unable to pay its debts, It also maintains the benefit of keeping the T&S network operational which is likely to offer the most optimal result for users connected to the network and for taxpayers and consumers.

5.5 Due to the protections provided by the Government to the first licensed T&SCos it is very unlikely that a T&SCo would become insolvent, however, should this occur the 2023 Act creates a process whereby the Secretary of State, or the Gas and Electricity Markets Authority (GEMA) with the permission of the Secretary of State, would be able to apply to the courts for the appointment of a T&S administrator. The objective of the administration is to secure that transport and storage services commences or continues and to bring the T&SCo SAR to an end through a rescue or a transfer as a going concern. Introduction of the SAR rules ensures the full operability of SAR, thus ensuring that the administrator is able to fulfil the objectives of the administration order. The T&S administrator will need to ensure that the company continues to comply with all its regulatory and legal requirements, in a manner which ensures compliance with safety, security and environmental provisions related to the T&S Network.

What was the previous policy, how is this different?

5.6 Prior to this instrument, we are relying on The Insolvency Rules 2016 (IR2016) if a company was to become insolvent. The IR2016 don't provide the specific detail required for licensed T&SCo's.

6. Legislative and Legal Context

How has the law changed?

6.1 The primary legislative provisions which establish the SAR work by applying, with appropriate modification, the energy network operator's SAR provisions in the Energy Act 2004. Those provisions in the Energy Act 2004, in turn, apply provisions in the Insolvency Act 1986 relating to normal administration and modify them for the specific purposes of the special administration regime. The energy supply company SAR, which was established by sections 94 to 102 of the Energy Act 2011, works in a similar way and the drafting of the provisions was largely based on the equivalent provisions in the Energy Act 2011.

6.2 The power to make the rules is conferred by section 411 of the Insolvency Act 1986 and section 159(3) of the Energy Act 2004, as applied by section 45 of the 2023 Act.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The process for developing this instrument has included informal consultation with the Insolvency Service, and Companies House. Statutory consultation was carried out with the Insolvency Rules Committee. Amendments were made as a result, in particular to reflect elements of the Insolvency (England and Wales) Rules 2016, in order to improve and clarify some of the procedures for the SAR process. A public consultation was not carried out because these Rules apply in the case of insolvency of a licensed T&SCo and are not of any wider application.

8. Applicable Guidance

8.1 No guidance is required for this statutory instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full impact assessment has not been prepared for this intervention because the preferred option falls below the threshold for producing one. Introducing a SAR in the event of insolvency of a T&SCo in the T&S network is an administrative measure and there are no direct costs to businesses, consumers, or government from the instrument itself. In the unlikely event of T&SCo insolvency this intervention will facilitate the ongoing operation of the T&S network, in a manner which is efficient, economical and ensures compliance with safety and security of the transport and storage network, or the part of that network, to which the licence relates.

9.2 This intervention will also aid in realising wider benefits. Introducing a SAR in the event of insolvency will ensure that the T&S network stays operational. This will

ensure the successful transport and storage of captured carbon dioxide, increasing the likelihood of the Government meeting its climate change objectives; namely the UK's legally binding commitment to reduce greenhouse gas emissions to net zero by 2050.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because there is no additional administrative burden on carbon dioxide transport and storage licensees.

9.4 The legislation does not disproportionately impact small or micro businesses.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause, and, in line with section 28 of the Small Business, Enterprise and Employment Act 2015, Sarah Jones, Minister of State for Industry, has made the following statement:

"In my view including a requirement for review in this instrument would be disproportionate, taking into account the economic impact the instrument is likely to have on any qualifying activity since its use is expected to be infrequent. However, the Rules will be kept under regular review to keep pace with any relevant changes in the Energy Act 2023, Energy Act 2004, and insolvency law."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This Department considered stand-alone rules were appropriate because the special administration regime is different to "regular" administration. This is also the approach frequently used for other special administration regimes.

11.2 This instrument is based in part on The Relevant Licensee Nuclear Company Administration SAR Rules (RLNC) (the Relevant Licensee Nuclear Company Administration (England and Wales) Rules 2023, S.I. 2023/712) and the smart meter communication licensee (SMCL) SAR rules (the Smart Meter Communication Licensee Administration (England and Wales) Rules 2020, S.I. 2020/629) which are partly based on the SAR rules for licensed gas and electricity suppliers (the Energy Supply Company Administration Rules 2013, S.I. 2013/1046) and the Housing Administration Rules (England and Wales) Rules 2018, S.I. 2018/719. Like the SMCL and Housing Administration SAR rules, these rules take into account some of the modernisation to insolvency proceedings contained in the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024).

11.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").