This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 12 September 2011 and published on 19 September 2011. It is being issued free of charge to all known recipients of that draft Statutory Instrument.

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.

D R A F T S T A T U T O R Y I N S T R U M E N T S

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(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) 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(**c**) 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(**d**) are amended as follows.

(**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**) S.I. 2010/2221.

Amendment of regulation 1

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

(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(**a**) (false statements made otherwise than on oath);

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

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

(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—

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

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

(c) (i) to make a statement which that person knows to be false or misleading in a material particular; or

(ii) recklessly to make a statement which is false or misleading in a material particular,

where such a statement is made in purported compliance with any requirement imposed under Schedule 3 for the supply of information to an inspector.

(2) A person guilty of an offence under paragraph (1) is liable—

(a) on summary conviction—

(i) in England and Wales or Northern Ireland, to a fine not exceeding the statutory maximum;

(ii) in Scotland, to a fine not exceeding £5,000; or

(**a**) 1911 c.6.

(**b**) 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.

(**c**) S.I. 1979/1714 (N.I. 19).

(b) on conviction on indictment, to a fine.

(3) Where an offence under paragraph (1) is committed by a body corporate and is proved to have been committed with the consent or connivance of an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.

(4) Where an offence under paragraph (1) is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, that partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(5) In this regulation—

(a) "officer", in relation to a body corporate, means—

(i) any director, manager, secretary or other similar officer of the body corporate; or

(ii) any person who was purporting to act in any such capacity;

(b) "partner", in relation to a Scottish partnership, includes any person who was purporting to act as a partner in the partnership.

(6) In paragraph (5) "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(7) Where the commission by any person of an offence under this regulation is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings for the offence are taken against the first-mentioned person.".

Financial provision

5. In paragraph 7(5) of Schedule 2 (provisions to be included in a storage permit)—

(a) after paragraph (b), omit "and";

(b) after paragraph (c), insert—

"and

(d) the obligation to provide the financial contribution to the authority in accordance with regulation 9(5) of the Storage of Carbon Dioxide (Termination of Licences) Regulations 2011.".

Powers of inspectors

6. The Schedule to these Regulations, which inserts Schedule 3 to the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010, has effect.

Review

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

(a) carry out a review of regulations 2 to 6;

(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 Article 15 of the Directive (inspections) (which is implemented by means of regulations 2 to 6) 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 for inspections established by regulations 2 to 6;

(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.

(6) In this regulation, "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(**a**).

Name
Minister of State
Date Department of Energy and Climate Change

SCHEDULE

Regulation 6

Insertion of Schedule 3 to the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010

1. After Schedule 2 to the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010, insert—

"SCHEDULE 3

Powers of inspectors

1. The powers of an inspector are—

(a) to enter, at any reasonable time (or, in an emergency, at any time) any premises, which the inspector has reason to believe it is necessary to enter;

(b) on entering any premises by virtue of sub-paragraph (a), to—

(i) be accompanied by any other inspector and, if the inspector has reasonable cause to apprehend any serious obstruction in the execution of the inspector's duty, a constable; and

(ii) take any equipment or materials that the inspector considers may be required for any purpose for which the power of entry is being exercised;

(c) to make such examination and investigation as the inspector considers necessary, and for this purpose to install or maintain monitoring or other apparatus on the premises;

(d) to direct that those premises or any part of them, or anything in or on them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under sub-paragraph (c);

(**a**) OJ No L 140, 5.6.2009, p 114.

(e) to take such measurements and photographs and make such recordings as the inspector considers necessary for the purpose of any examination or investigation under sub-paragraph (c);

(f) to take samples or cause samples to be taken of any thing found in or on the premises or in any air, water, land or seabed (including the subsoil of the seabed) in, on or in the vicinity of, the premises;

(g) in the case of any thing found in or on the premises, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is necessary);

(h) in the case of any thing mentioned in sub-paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes—

(i) to examine it, or cause it to be examined and do to it anything which the inspector has power to do under that sub-paragraph;

(ii) to ensure that it is not tampered with before the examination of it is completed; and

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations or under Chapter 3 of the Energy Act 2008;

(i) to require any person who the inspector has reasonable cause to believe is able to give any information relevant to any examination or investigation under sub-paragraph (c)—

(i) to attend at a place and time specified by the inspector;

(ii) to answer (in the absence of any person other than persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the inspector thinks fit to ask; and

(iii) to sign a declaration of truth of that person's answers;

(j) to require the production of (or where the information is recorded in computerised form, the furnishing of extracts from), and inspect and take copies of or of any entry in—

(i) any records which are required to be kept by virtue of any provision of any licence or storage permit;

(ii) any records which the inspector considers it necessary to see for the purposes of any examination or investigation under sub-paragraph (c); and

(k) to require any person to afford the inspector such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable the inspector to exercise any of the powers conferred by these Regulations and this Schedule.

2. Where an inspector proposes to exercise the power conferred by paragraph 1(g) in the case of a thing found on any premises, the inspector must, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

3. Before exercising the power conferred by paragraph 1(g), an inspector must consult—

(a) such persons having duties on the premises where the thing is to be dismantled or subjected to the process or test; and

(b) such other persons,

as appear to the inspector appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the inspector proposes to do or cause to be done under the power.".

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"). In particular, they implement Article 15 of the Directive on the inspection of carbon dioxide storage complexes.

The Directive is chiefly implemented by Part 1, Chapter 3 of the Energy Act 2008 (c.32) and by the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) (the "2010 Regulations"), which are amended by these Regulations.

Regulation 3(a) inserts new definitions in the 2010 Regulations. *Regulation 3(b)* amends the definition of "licensing authority" in the licensing regulations is amended so that those regulations apply whenever the Secretary of State is the licensing authority under section 18(2) of the Energy Act 2008, including in respect of activities that take place partly in the territorial sea adjacent to Scotland and partly outside that sea.

Regulation 4 inserts into the 2010 Regulations new regulations 16 to 20, which provide for the routine inspection of carbon dioxide storage complexes and for additional inspections. Reports of the results of those inspections must be produced, provided to the operator and added to the public register provided for under section 29 of the Energy Act 2008. The Secretary of State may appoint inspectors, whose powers are set out in a new Schedule 3 to the 2010 Regulations. Provision is made for the way in which evidence obtained by the inspectors through the use of those powers may be used. Offences are created concerning the obstruction of inspectors, failure to comply with requirements imposed under the 2010 Regulations and the provision of false information in connection with an investigation.

Schedule 2 to the 2010 Regulations, which sets out the provisions that are to be included in a storage permit, is amended by *regulation 5* such that the financial security maintained by the operator must be sufficient to pay the financial contribution required under the Storage of Carbon Dioxide (Termination of Licences) Regulations 2011 (S.I. 2011/1483).

Regulation 7 requires the Secretary of State to review the operation and effect of regulations 2 to 6 and publish a report 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 has been prepared and is published with the Explanatory Memorandum alongside the instrument on www.legislation.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.

Copies of the Impact Assessment and Transposition Note are also available from Ricki Kiff, Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW.

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