EXECUTIVE NOTE

THE STORAGE OF CARBON DIOXIDE (INSPECTIONS) (SCOTLAND) REGULATIONS 2011

S.S.I 2011/XXX

The Storage of Carbon Dioxide (Inspections) (Scotland) Regulations 2011 ("the Regulations") were made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 ("the 1972 Act") and sections 21, 27 and 104(2) of the Energy Act 2008 ("the 2008 Act") in partial implementation of an EU Directive whose purpose is to contribute to the fight against climate change. As they make provision for an environmental matter they are within the competence of the Scottish Ministers. The Regulations are subject to the affirmative procedure.

Policy Objectives

The purpose of the Regulations is to partly implement Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide ("the Directive").

Article 15 of the Directive provides that Member States shall ensure that the competent authorities organize a system of routine and non-routine inspections of all storage complexes within the scope of the Directive for the purposes of checking and promoting compliance with the requirements of the Directive and of monitoring the effects on the environment and on human health.

The Regulations amend the Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011 to:

- Provide for routine and non-routine inspections of carbon dioxide storage complexes.
- Set out the powers and duties of inspectors.
- Make provision for the preparation of inspection reports by Scottish Ministers, in their role as licensing authority.
- Create offences relating to obstruction of inspectors, failure to comply and provision of false information. They also make provision regarding admissibility of evidence obtained by inspectors

The Regulations also insert a provision relating to the provision of security by operators for financial obligations for which they are liable after termination of a licence. .

Most of the provisions in the Regulations are made under powers in sections 21, 27 and 104(2) of the 2008 Act. These include regulation 15 (inspectors) and regulation 18 (offences). However, the powers in the 2008 Act do not allow for implementation of all aspects of Article 15 so other provisions are made under section 2(2) of the 1972 Act. These include regulation 14 (inspections) and regulation 16 (inspection reports).

Consultation

A consultation carried out by BERR in June 2008, "Towards Carbon Capture and Storage", sought views on steps that could be taken to prepare for and support the deployment of CCS technologies. The consultation was largely based on the proposals for the Directive. The Scottish Government supported this consultation across the UK on the basis that Scottish industrial stakeholders had expressed a preference for one single UK consultation and the Scottish Ministers have been informed by the views expressed in making this instrument.

Financial Effects

A full RIA was carried out for the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 and this RIA is also relevant to these Regulations.

Transposition of EU Directive

The Regulations will meet part of the requirements to transpose the EU Directive on CO2 storage, and the attached Transposition Note set out how this is done. .

Scottish Government Energy Markets Division
24 August 2011

TRANSPOSITION NOTE

DIRECTIVE 2009/31/EC ON THE GEOLOGICAL STORAGE OF CARBON DIOXIDE ("the Directive")

The Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011 as amended by the Storage of Carbon Dioxide (Inspections) (Scotland) Regulations 2011

Article	Aim	Transposition in Scotland
15	**Inspections**	
15.1	Competent authorities to organise a system of routine and non-routine inspections of all storage complexes	Regulation 14(1) and (3) – routine and non-routine inspections Regulation 15 – Appointment of inspectors Regulation 17 – Admissibility of evidence Regulation 18 – Offences Schedule (3) – Powers of Inspectors The above enable a system of inspections to be enforced.
15.2	Inspections to consist of visits of the surface installations including injection facilities, assessing the injection and monitoring operations carried out by the operator, and checking all relevant records kept by the operator.	Regulation 14(2) Regulation 15 and Schedule 3
15.3	Routine inspections to be carried out at least once per year until 3 years after closure and every 5 years until transfer of responsibility to the competent authority has occurred.	Regulation 14(1)
15.4	Non-routine inspections to be carried out : in the event of a leakage or significant irregularity; if operator's reports have shown non-compliance with permit conditions; to investigate complaints relating to the environment or human health, and any other situations where the competent authority considers this appropriate.	Regulation 14(3) and (4)

15.5	Competent authority to prepare a report evaluating operator's compliance with the requirements of the Directive indicating further action to be taken if required. Report to be sent to operator and made publically available within 2 months of the inspection.	Regulation 16