EXPLANATORY MEMORANDUM TO

THE STORAGE OF CARBON DIOXIDE (AMENDMENT) (EU EXIT) REGULATIONS 2022

2022 No. 1190

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business Energy and Industrial Strategy and is laid before Parliament by Command of His Majesty.

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

2. Purpose of the instrument

2.1 The purpose of this Instrument is to amend The Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 and The Storage of Carbon Dioxide (Termination of Licenses) Regulations 2011 ("Amended Regulations"), which form part of the United Kingdom's implementation of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide ("the CCS Directive"). This instrument makes minor amendments to the Amended Regulations to address failures of retained EU law to operate effectively and other deficiencies arising due to the United Kingdom's withdrawal from the European Union ("EU").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was laid for sifting by the sifting committees on 17 October 2022. The sifting committees agreed that the negative procedure will apply. This instrument, The Storage of Carbon Dioxide (Amendment) (EU Exit) Regulations 2022, will come into force on 12 December 2022 and is made using powers in the European Union (Withdrawal) Act 2018.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the same territorial extent as the legislation it amends. The territorial extent of the legislation is the UK.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is set out below.

4.3 The Storage of Carbon Dioxide (Licensing etc) Regulations 2010: with one exception, applies in respect of licences issued by the Oil and Gas Authority ("OGA"). Regulation 9 applies in respect of licences issued by any licensing authority within the meaning of section 18(2) of the Energy Act 2008 (i.e., the OGA, the Scottish Ministers, Welsh Ministers or the Department of Enterprise, Trade and Investment in Northern Ireland).

4.4 The Storage of Carbon Dioxide (Termination of Licenses) Regulations 2011 apply in respect of licenses issued by the OGA or the Scottish Ministers.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument makes amendments to the Amended Regulations, which form part of the UK's implementation of the CCS Directive to preserve the functionality of the existing CCUS licensing regime.

6.2 The Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) govern the licensing of geological storage of carbon dioxide including the obligations of the operators of a storage site whilst storage activities are taking place and after the site is closed.

6.3 The Storage of Carbon Dioxide (Termination of Licence) Regulations 2011 (S.I. 2011/1483) establish a process allowing licensees to apply to terminate their licence and transfer ongoing obligation in relation to the storage site to the state, once a storage site has been closed for a minimum period (normally 20 years).

6.4 This Instrument makes minor amendments to the Amended Regulations to correct deficiencies arising due to the United Kingdom's withdrawal from the EU and to address failures of retained EU law to operate effectively.

6.5 Regulations 3 and 10 amend the definition of climate change legislation to reflect UK legislation after exit from the EU in respect of greenhouse gas emissions trading schemes. The following legislation is now listed in the Amended Regulations; the Greenhouse Gas Emissions Trading Scheme Regulations 2012 ("2012 Regulations") and the Greenhouse Gas Emissions Trading Scheme Order 2020 ("2020 Order"). The 2020 Order would not have been caught by the previous definition of climate change legislation, which used the term "regulation".

6.6 The remaining regulations substitute "exit day" for "IP completion day", which is necessary so that the Amended Regulations capture any amendments made to the CCS Directive in the period between the UK's exit from the EU (as was the reference in the legislation) and the end of the transition period, as was the intention of the original legislation.

7. Policy background

What is being done and why?

7.1 The government sees an opportunity in the UK in becoming a global technology leader in CCUS. The Ten Point Plan for a Green Industrial Revolution outlined the ambition to deploy CCUS in a minimum of two industrial clusters by the mid-2020s, and four by 2030 at the latest. As stated in the Net Zero Strategy, our aim is to use CCUS technology to capture and store 20-30MtCO2 per year by 2030, forming the foundations for future investment and potential export opportunities. Maintaining an effective, fit for purpose licensing regime for geological storage is necessary for the effective deployment of CCUS, enabling the safe long-term storage of carbon dioxide.

The Amended Regulations outline obligations and responsibilities arising from emissions which are leakage under climate change legislation. Those emissions are covered by UK legislation dealing with the emissions trading scheme ("ETS"). These amendments make sure that both CCUS and ETS work together effectively.

The instrument will ensure that domestic arrangements relating to the UK's withdrawal from the EU ETS are included within the definition of "climate change legislation" for the purposes of CCUS. Making these amendments is necessary for the Amended Regulations to function without deficiencies.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 The CCS Directive establishes a legal framework for the environmentally safe geological storage of carbon dioxide. It covers all carbon dioxide storage in geological formations in the EU and the entire lifetime of storage sites. As explained in paragraph 6.1 this Instrument amends the Amended Regulations that form part of UK's implementation of the CCS Directive.

Why is it being changed?

7.3 It is the Government's stated ambition is to deploy Carbon Capture, Usage and Storage (CCUS) in a minimum of two industrial clusters by the mid-2020s, and four by 2030 at the latest. Our aim is to use CCUS technology to capture and store 20-30MtCO2 per year by 2030, forming the foundations for future investment and potential export opportunities. Pursuant to this ambition, it is necessary to ensure the regulatory regime for geological storage of carbon dioxide remains functional following the United Kingdom's withdrawal from the EU.

Without this Instrument, the UK licensing regime for geological storage of carbon dioxide will cease to function adequately. The changes being made by this Instrument provide clarity on emissions obligations under climate change legislation by referencing emission trading schemes legislation as well as substituting references to 'exit day' with 'IP completion day'.

What will it now do?

7.4 The regulatory regime relating to geological storage of carbon dioxide will be able to continue to operate effectively similar to the way it did before the UK left the EU.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of [the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no plans for consolidation.

10. Consultation outcome

10.1 The Department for Business, Energy and Industrial Strategy has not undertaken a public consultation in relation to this instrument but has engaged with the OGA and devolved administrations about the proposed changes.

11. Guidance

11.1 No guidance is necessary.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because it makes only minor changes to address deficiencies in retained EU law. The impact on businesses and the public sector is limited to minor familiarisation costs.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The instrument implements amendments to the Amended Regulations relating to the geological storage of carbon dioxide that would otherwise no longer operate effectively once the UK has left the EU in order to help smooth the transition for all businesses irrespective of their size.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed.

14.2 As this instrument is made under the European Union (Withdrawal) Act, no review clause is required.

15. Contact

15.1 Andrew Russell at the Department for Business, Energy and Industrial Strategy can be contacted by email at Andrew.Russell@Beis.gov.uk with any queries regarding the instrument.

15.2 Matthew Taylor, Deputy Director for Carbon, Capture, Usage and Storage, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Graham Stuart MP, Minister of State for Climate at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Sifting statement(s)

1.1 The Minister for Climate, Graham Stuart MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Storage of Carbon Dioxide (Amendment) (EU Exit) Regulations 2022 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is the case because: because this legislation does not fall within the categories for which use of the affirmative procedure is required under the Withdrawal Act, i.e., transfer an EU legislative function to a UK body, relate to fees, create or widen the scope of a criminal offence, create or amend a power to legislate. The aim is simply to make the existing legislation operable after the UK withdraws from the EU.

2. Appropriateness statement

2.1 The Minister for Climate, Graham Stuart MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Storage of Carbon Dioxide (Amendment) (EU Exit) Regulations 2022 does no more than is appropriate".

2.2 This is the case because: the instrument goes no further than what is appropriate to ensure the regulatory regime relating to geological storage of carbon dioxide continues to function effectively once the UK has left the EU.

3. Good reasons

3.1 The Minister for Climate, Graham Stuart MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

3.2 These are: explained in subsections 7.1-7.4

4. Equalities

4.1 The Minister for Climate, Graham Stuart MP, has made the following statement(s):

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

4.2 The Minister for Climate, Graham Stuart MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Graham Stuart MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

5. Explanations

5.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.