EXPLANATORY MEMORANDUM TO

THE STORAGE OF CARBON DIOXIDE (INSPECTIONS AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2012

2012 No. 461

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument forms 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 Directive"). The Government has laid licensing regulations (S.I. 2010.No 2221) which transpose into UK law most of the requirements of the Directive. One of the provisions of the Directive that is still to be addressed is Article 15 on Inspections.

2.2 Article 15 requires that the competent authorities organise 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 effects on the environment and on human health. It states that inspections should include activities such as visits to the surface installations, including the injection facilities, assessing the injection and monitoring operations carried out by the operator and checking all relevant records kept by the operator.

2.3 Article 15 further requires that routine inspections shall be carried out at least once a year until three years after the closure of a storage site and, subsequently, every five years until responsibility for the relevant storage site is transferred to the competent authority. Routine inspections are required to examine the relevant injection and monitoring facilities as well as the full range of relevant effects from the storage complex on the environment and on human health.

2.4 Article 15 requires that non-routine inspections shall be carried out:

- if the competent authority has been notified or made aware of leakages or significant irregularities pursuant to Article 16(1) of the Directive (which requires operators to give notice of such occurrences);
- if the reports made by the operator pursuant to Article 14 have shown insufficient compliance with the permit conditions;
- to investigate serious complaints related to the environment or human health; and
- in other situations where the competent authority considers this appropriate.

2.5 Article 15 also requires that following each inspection, the competent authority must prepare a report on the results of the inspection. The report must evaluate compliance with the requirements of this Directive and indicate whether or not further action is necessary. The report must be communicated to the operator concerned and be made publicly available in accordance with relevant Community legislation within two months of the inspection.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Regulations will come into force on the day after being made. This is a shorter period than might usually be expected for an instrument which creates a criminal offence, but DECC considers that the short time period is justifiable in this case, in order that the Regulations can be brought into force as soon after the transposition deadline for the Directive as possible and in light of the high level of awareness of the proposed new regime among those affected.

4. Legislative Context

4.1 Part 1, Chapter 3, of the Energy Act 2008 ("the Act") provides for a licensing regime governing the permanent storage of carbon dioxide. Section 27 of the 2008 Act confers a power on the Secretary of State to appoint inspectors to assist in carrying out the functions of the Secretary of State under Chapter 3, and to make regulations about their powers and duties.

4.2 In making this instrument the powers in section 27 of the Energy Act 2008 are used for the first time.

4.3 A Transposition Note has been prepared, and is attached as an Annex to this Memorandum.

5. Territorial Extent and Application

5.1 The instrument applies to licences granted by the Secretary of State under s.18 of the Energy Act 2008 (as amended by S.S.I. 2011/224) for storage within the offshore area comprising both the UK territorial sea (except the UK territorial sea adjacent to Scotland), and the area extending beyond the territorial sea that has been designated as a Gas Importation and Storage Zone ("GISZ") under section 1(5) of that Act: see the Gas Storage and Importation Zone (Designation of Area) Order 2009 (SI 2009/223). Regulations extending the relevant provisions of the Energy Act 2008 to onshore England, Wales and Northern Ireland are intended to be made soon in order that the prohibition on carbon dioxide storage without a licence extends to the entire territory of the UK.

6. European Convention on Human Rights

Charles Hendry, the Minister of State for Energy, has made the following statement regarding Human Rights:

In my view the provisions of the Storage of Carbon Dioxide (Inspections etc.) Regulations 2011 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 As already noted, this instrument forms 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 Directive").

7.2 The Government is committed to making the UK a leading player in carbon capture and storage (CCS). Creating an effective fit for purpose licensing regime is necessary to ensure the safe long-term storage of carbon dioxide and therefore a necessary condition for the effective deployment of CCS and achievement of the Government's energy and climate change objectives. The present Regulations are an essential in ensuring compliance with the Directive, and putting in place an important element of such a licensing regime to ensure the safe long-term storage of carbon dioxide.

8. Consultation outcome

8.1 No consultation was held in view of the limited options available for complying with the strict requirements of the Directive.

9. Guidance

9.1 Guidance on the regime will be made available on the DECC website.

10. Impact

10.1 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

10.2 The impact on charities or voluntary bodies is likely to be none, as projects will be taken forward by commercial operators such as the oil and gas industry and other large industrial players. The impact on those operators will be positive, as they will benefit from an established licensing regime in compliance with the Directive.

10.3 The impact on the public sector is negligible as DECC will be the regulatory authority and will accommodate this new area of work within its current resource head room.

11. Regulating small business

11.1 The legislation applies to CO2 storage operators irrespective of size. However, because of the complexity and scale of these activities it is unlikely to be an activity in which SME's are actively involved.

12. Monitoring & review

12.1.1 In line with the new sun-setting guidance, DECC have inserted a duty to review clause in the Storage of Carbon Dioxide (Inspections and Miscellaneous Amendments) Regulations 2011. The review date will be in 2016. The EU Commission will undertake a review of the effectiveness of the Directive in 2015. If the Commission review makes recommendations on the implementation of Article 15

of the Directive, and or stakeholders input requests sensible changes, then the Regulation will be amended or redrafted.

13. Contact

Ricki Kiff at the Department of Energy and Climate Change. Tel: 0300 068 6042 or email: ricki.kiff@decc.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX

DIRECTIVE 2009/31/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE GEOLOGICAL STORAGE OF CARBON DIOXIDE

TRANSPOSITION NOTE

FOR

THE STORAGE OF CARBON DIOXIDE (INSPECTIONS AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2011

Article	**Result to be achieved**	**Implementation by the *Storage of Carbon Dioxide (Licensing etc.) Regulations 2010*[1] *as amended by the Storage of Carbon Dioxide (Inspections etc.) Regulations 2011***	**Comments**
15	**Inspections**		
15.1	Competent authorities to organise a system of routine and non-routine inspections of all storage complexes.	Regulations 16 and 17 and Schedule 3	
15.2	Inspections to include visits to surface installations, assessment of injection and monitoring operations and checking records.	Regulation 17 and Schedule 3	
15.3	Routine inspections required annually until three years after closure and every five years until transfer of responsibility to the competent authority.	Regulation 16(1) and (2)	
15.4	Circumstances in which non-routine inspections are to be carried out.	Regulation 16(3)	
15.5	Reports on inspection results.	Regulation 18	

Scrutiny history

[1] In this Note, referred to as "the Regulations". References to a *regulation* or *Schedule* are to provisions of the Regulations.

EM 5835/08 of 23 January 2008 was considered in (Commons) European Scrutiny Committee on 5 March 2008 and referred for debate in Europe Committee. The Commons cleared the EM on 2 June 2008. The EM was cleared by the Lords on 19 November 2008 after referral to sub-committee and requests for further information.