

2011 No. 457

ENVIRONMENTAL PROTECTION

**The Storage of Carbon Dioxide (Licensing etc.) (Scotland)
Amendment Regulations 2011**

Made - - - - *22nd December 2011*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and sections 21, 27 and 104(2) of the Energy Act 2008(b) and all other powers enabling them to do so.

In accordance with section 105(3)(c) of the Energy Act 2008 a draft of the Regulations has been laid before, and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Amendment 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.) (Scotland) Regulations 2011

2. The Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011(d) are amended as follows.

Interpretation

3. In regulation 1 (interpretation)—

- (a) in paragraph (2)(a) after “2008” insert “and any reference to “Chapter 3” is a reference to Chapter 3 of Part 1 of that Act”;
- (b) in paragraph (3), in the appropriate places alphabetically, insert—
““entering” in relation to premises includes, where applicable, boarding, and cognate expressions are to be construed accordingly;”;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3); the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and the European Union (Amendment) Act 2008 (c.7), Schedule (1), paragraph 1. The functions conferred upon a Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) 2008 c.32.

(c) Section 105(3) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(d) S.S.I. 2011/24.

““inspection” means an inspection of a storage complex for the purpose of discharging a function described in paragraph (a) or (b) of regulation 15(1);”;

““inspection report” has the meaning given to it in regulation 16(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, movable structure, excluding any land, vehicle, vessel, aircraft, hovercraft, movable structure or part thereof that is used as a dwelling;”;

““routine inspection” has the meaning given to it in regulation 14(1);”.

Inspections

4. After regulation 13 (post-closure obligations) insert—

“Inspections and enforcement

Inspections

14.—(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 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, in the opinion of the authority, that complaint is frivolous or vexatious.

(4) The authority may carry out an inspection other than when required under paragraph (1) or (3) as the authority considers appropriate.

(5) An inspection carried out in accordance with 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 to carry out a programme of monitoring in accordance with paragraph 2 of Schedule 2; and
 - (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.

Inspectors

15.—(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, including—

- (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, 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

16.—(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, in respect of the storage complex inspected—
 - (i) the provisions of a licence and of any consent granted under a licence; and
 - (ii) any requirements, restrictions or prohibitions imposed by or under Chapter 3, have been, or are being, complied with; and
- (b) a statement as to what action (if any) the authority considers is required to ensure compliance.

(3) A statement made in an inspection report in accordance with 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) make the inspection report available for inspection by the public.

Evidence

17.—(1) An answer given by a person in compliance with a requirement imposed under paragraph 1(i) of Schedule 3 is admissible 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 18(1)(c); or
- (b) under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995(a) (false statements made otherwise than on oath).

(4) Nothing in Schedule 3 compels the production by any person of a document of which that person would, on grounds of legal professional privilege, be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

Offences

18.—(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) to make a statement—
 - (i) which that person knows to be false or misleading in a material particular; or
 - (ii) recklessly and which is false or misleading in a material particular,where that 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, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(3) Where—

- (a) an offence under paragraph (1) has been committed by a body corporate or a Scottish partnership; and
- (b) it is proved that the offence was committed with the consent or connivance of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,the individual as well as the body corporate or Scottish partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) In paragraph (3), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner.

(5) 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.”.

(a) 1995 c.39.

Financial provision

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

- (a) after paragraph (b), omit “and”; and
- (b) in paragraph (c) after “Directive”, insert—
 - “; and
 - (d) the obligation to provide the financial contribution to the authority in accordance with regulation 10(5) of the Storage of Carbon Dioxide (Termination of Licences) Regulations 2011^(a)”.

Powers of inspectors

6. After Schedule 2 (provisions to be included in a storage permit) insert the Schedule set out in the Schedule to these Regulations.

St Andrew’s House,
Edinburgh
22nd December 2011

FERGUS EWING
Authorised to sign by the Scottish Ministers

(a) S.I. 2011/1483.

“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, must 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);
 - (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;
 - (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 who 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; or
 - (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 amend the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 (“the 2011 Regulations”) and form part of the implementation of Directive 2009/31/EC of the European Parliament and of the Council 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, which deals with the inspection of carbon dioxide storage complexes.

Regulation 4 inserts new regulations 14 to 18 into the 2011 Regulations. Regulation 14 provides for routine inspections of carbon dioxide storage complexes and for additional inspections. Regulation 15 and Schedule 3 deal with the powers and duties of inspectors appointed under the Energy Act 2008. Regulation 16 imposes a duty on Scottish Ministers, as the licensing authority, to prepare inspection reports. Regulation 17 deals with admissibility of evidence. Regulation 18 creates offences concerning the obstruction of inspectors, failure to comply with the requirements of an inspector and the provision of false information in connection with an investigation. Regulation 6 inserts the new Schedule 3 which is referred to in the new regulation 15.

Regulation 5 amends Schedule 2 to the 2011 Regulations, which sets out the provisions to be included in a storage permit. It is amended to add to the list of obligations for which financial security must be provided, the operator’s obligation to make financial contribution to Scottish Ministers for costs incurred by them after a site is closed.

A regulatory impact assessment has not been produced for this instrument as no impact on the costs of business or the voluntary sector is foreseen.

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