

2011 No. 1483

ENVIRONMENTAL PROTECTION

**The Storage of Carbon Dioxide (Termination of Licences)
Regulations 2011**

<i>Made</i> - - - -	<i>10th June 2011</i>
<i>Laid before Parliament</i>	<i>15th June 2011</i>
<i>Coming into force</i> - -	<i>11th July 2011</i>

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.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act, and it appears to the Secretary of State that it is necessary or expedient for certain references to EU instruments, or provisions of those instruments, in these Regulations to be construed as references to those instruments or provisions as amended from time to time.

Accordingly the Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of, as read with paragraph 1A of Schedule 2 to, that Act, and by section 31 of the Energy Act 2008^(c).

General

Citation and commencement

1. These Regulations may be cited as the Storage of Carbon Dioxide (Termination of Licences) Regulations 2011, and come into force on 11th July 2011.

Review

- 2.—(1) Before the end of each review period, the Secretary of State must—
- (a) carry out a review of regulations 3 to 19, except in so far as they apply to any licence granted or function exercised by the Scottish Ministers;
 - (b) set out the conclusions of the review in a report; and
 - (c) publish the report.

(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). Section 57(1) of the Scotland Act 1998 (c.46) provides that despite the transfer to the Scottish Ministers of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown shall continue to be exercisable by that Minister as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

(c) 2008 c.32.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Articles 18 and 20 of the Directive (which are implemented by means of regulations 3 to 19) 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 established by regulations 3 to 19;
- (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.

Interpretation

3.—(1) In these Regulations—

- (a) any reference to a numbered section is to that section of the Energy Act 2008; and
- (b) subject to paragraph (2), any reference to an EU instrument, or a provision of such an instrument, is to that instrument or provision as amended from time to time.

(2) Paragraph (1)(b) does not apply to the definitions referred to in paragraph (4), regulation 14(3) or regulation 15(3)(c).

(3) In these Regulations—

“abandonment programme”, in respect of a licence, means the abandonment programme (within the meaning of section 29(1) of the Petroleum Act 1998^(a)) applicable to an installation established or maintained in accordance with that licence for the purposes of an activity mentioned in section 17(2)(a), (b) or (c);

“applicant” means a licence holder who has made a termination application;

“authority” means either—

- (a) the Secretary of State; or
- (b) the Scottish Ministers,

as licensing authority in accordance with section 18(2);

“CO₂” means carbon dioxide;

“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^(b);

“licence” has the meaning given to it in the licensing regulations (and “licence holder” is to be construed accordingly);

“licensing regulations” means the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010^(c) or, in respect of licences issued by the Scottish Ministers, the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011^(d);

(a) 1998 c.17.

(b) OJ No L 140, 5.6.2009, p 114.

(c) S.I. 2010/2221.

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

“notice” means notice in writing (and “notification” and “notify” shall be construed accordingly);

“operator”, in relation to a storage permit, means the person who carries on or (where different) controls activities at the storage site or, where a storage permit has been terminated or revoked, the person who carried on or (where different) controlled activities at the storage site immediately before such termination or revocation;

“post-transfer costs” means the costs for which the authority will be liable as a result of the transfer of obligations and liabilities to the authority pursuant to regulations 14 and 15;

“storage permit” has the meaning given to it in the licensing regulations;

“termination application” means an application under regulation 4 for termination of a licence;

“termination notice” means a notice served by the authority as required by regulation 11(2)(a) or regulation 12(2);

“transfer report” means a report that complies with Article 18(2) of the Directive.

(4) In these Regulations, the following expressions have the meanings given by Article 3 of the Directive (and cognate terms shall be construed accordingly)—

“closure”;

“leakage”;

“storage site”.

Applications and information

Applications for termination

4.—(1) Where a storage site has been closed in accordance with the terms of a licence, the licence holder may apply to the authority for the licence to be terminated.

(2) An application for termination of a licence must—

- (a) be made in writing to the authority; and
- (b) include a transfer report in respect of the storage site permitted under the licence.

Request for a transfer report

5.—(1) Where—

- (a) a storage site has been closed in accordance with the terms of a licence, and
- (b) no termination application has been made to the authority,

the authority may request the operator to provide a transfer report within the period specified in the request.

(2) Where the authority requests a transfer report under paragraph (1), the operator must, within the specified period, provide to the authority—

- (a) a transfer report; or
- (b) a statement of the reasons why the operator is unable to provide a transfer report.

Information to be provided to the European Commission

6. Where the authority receives a transfer report under regulation 4(2)(b) or 5(2)(a) the authority must provide to the European Commission—

- (a) a copy of the transfer report (within one month after receipt); and
- (b) when it complies with subparagraph (a), or as soon as practicable thereafter, any other related material that the authority proposes to take into account in considering whether or not to prepare a draft termination notice under regulation 9(2).

Minimum period

7.—(1) When the authority approves a proposed post-closure plan in respect of a storage site in accordance with the licensing regulations, the authority must determine the minimum period (the “minimum period”) that must elapse between the date of closure of the storage site and the termination of the licence.

(2) Subject to paragraph (3), the minimum period must be no less than twenty years from the date of the closure of the storage site.

(3) Where the minimum period has not elapsed and the authority considers that the condition set out in regulation 8(a) has been met, the authority may reduce the period determined under paragraph (1), which reduced period becomes the minimum period.

(4) The authority must notify the licence holder, as soon as reasonably practicable, of the minimum period determined under paragraph (1) or (3).

Transfer conditions

8. For the purposes of regulations 9 to 11, the transfer conditions are that—

- (a) all available evidence indicates that the stored CO₂ will be completely and permanently contained;
- (b) the minimum period (determined under regulation 7) has elapsed;
- (c) the operator has provided the financial contribution notified to it under regulation 10(4);
- (d) the storage site has been sealed and the injection facilities have been removed; and
- (e) the abandonment programme has been carried out in accordance with Part 4 of the Petroleum Act 1998(a).

Issuing a draft termination notice

9.—(1) Paragraph (2) applies where the authority receives a transfer report under regulation 4(2)(b) or 5(2)(a).

(2) Where this paragraph applies, the authority must prepare a draft termination notice if it is satisfied that—

- (a) the transfer report complies with Article 18(2) of the Directive; and
- (b) the conditions listed in regulation 8(a) and (b) have been met in respect of the storage site.

(3) Where a draft termination notice is prepared under paragraph (2), the authority must prepare a statement of—

- (a) the method by which the authority will determine whether or not the conditions listed in regulation 8(d) and (e) have been met; and
- (b) whether any part of the abandonment programme remains to be carried out.

(4) No later than 28 days after the authority completes the preparation of a draft termination notice, the authority must forward to the European Commission—

- (a) a copy of the notice and of the statements prepared under paragraph (3); and
- (b) any material taken into consideration by the authority in preparing the notice that has not already been provided to the Commission under regulation 6(b).

(5) Where the authority is not satisfied under paragraph (2), the authority must as soon as reasonably practicable notify the licence holder of the reasons for its decision.

(a) Section 30 of the Energy Act 2008 (c.32) applies Part 4 of the Petroleum Act 1998 to carbon storage installations (as defined by section 30(5)).

Financial obligations

10.—(1) Where the authority prepares a draft termination notice under regulation 9(2), it must determine the amount and form of financial contribution from the operator that the authority considers will be sufficient to cover the expected post-transfer costs.

- (2) In determining the amount and form of financial contribution, the authority must—
 - (a) take into account the factors set out in Article 20(1) of the Directive; and
 - (b) consider any representations received from the operator pursuant to paragraph (3).
- (3) The authority must—
 - (a) notify the operator of the determination it intends to make;
 - (b) in that notification give the operator at least 28 days in which to make written representations to the authority.
- (4) The authority must notify the operator of—
 - (a) the authority’s determination of the amount and form of the financial contribution; and
 - (b) the date by which the financial contribution must be provided to the authority.
- (5) The operator must provide the financial contribution to the authority in accordance with the notification made under paragraph (4).

Serving a termination notice

11.—(1) Where the authority has prepared a draft termination notice under regulation 9(2), it must—

- (a) consider any opinion on the draft notice issued by the Commission under Article 18(4) of the Directive; and
- (b) determine whether or not each transfer condition set out in regulation 8 has been met.
- (2) Where the authority determines that each transfer condition set out in regulation 8—
 - (a) has been met, it must serve a termination notice in accordance with regulation 13(1); or
 - (b) has not been met, it must notify the licence-holder of that determination and the reasons for it.
- (3) No later than 28 days after issuing a termination notice under paragraph (2)(a), the authority must—
 - (a) provide a copy of a termination notice to the European Commission; and
 - (b) state to the European Commission the reasons for any departure from the Commission’s opinion issued under Article 18(4) of the Directive.
- (4) Where—
 - (a) paragraph (2)(b) applies;
 - (b) the operator has provided the financial contribution notified to it under regulation 10(4); and
 - (c) the operator requests the return or release of that contribution,the authority must comply with that request within 90 days of receipt of the request.

Termination where a storage site has been closed after the revocation of a storage permit

Serving a termination notice after revocation of a storage permit

12.—(1) Paragraph (2) applies where a storage site is closed pursuant to regulation 13(2)(a) or (3)(a) of the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 or regulation 12(2)(a) or (3)(a) of the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011.

(2) Where this paragraph applies, the authority must serve a termination notice in accordance with regulation 13(1) if it is satisfied that in respect of the storage site—

- (a) all available evidence indicates that the stored CO₂ will be completely and permanently contained; and
- (b) the storage site is sealed and the injection facilities have been removed.

Content and effects of a termination notice

Termination notices and the provision of information

13.—(1) A termination notice must be served on the licence holder and must specify the time and date when the licence terminates.

(2) Where the authority serves a termination notice, the authority may by written notice to the licence holder require the licence holder to provide the authority with all records, returns, plans, maps, samples, data and other information that the licence holder holds in respect of the storage site.

(3) The authority may use any information provided to it under paragraph (2) for the purposes of carrying out the obligations transferred to it under regulation 14 or discharging the liabilities transferred to it under regulation 15, or such of its other functions as the authority considers appropriate.

Transfer of obligations

14.—(1) Except as provided in paragraph (2) and regulation 15, the termination of a licence does not affect any obligation imposed upon, or liability incurred by, the licence holder.

(2) Immediately on the termination of a licence, there are transferred from the licence holder to the authority the licence holder's obligations in relation to—

- (a) monitoring, pursuant to Articles 13 and 18(6) and Annex II of the Directive;
- (b) corrective measures;
- (c) the surrender of allowances in the event of leakages under legislation implementing Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC(a); and
- (d) preventive and remedial action under legislation implementing Articles 5(1) and 6(1) of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage(b).

(3) In this regulation, “corrective measures” has the meaning given to it by Article 3 of the Directive.

Transfer of liabilities

15.—(1) Immediately on the termination of a licence, there are transferred from the licence holder to the authority any leakage liabilities incurred by the licence holder prior to termination of the licence, subject to paragraph (2).

(2) There is no transfer to the authority of any leakage liabilities that, on the termination of the licence, constitute a debt or a judgment debt for a liquidated sum where that debt—

(a) OJ No L 275, 25.10.2003, p 32; amended by European Parliament and Council Directives 2004/101/EC (OJ No L 338, 13.11.2004, p 18), 2008/101/EC (OJ No L 8, 13.1.2009, p 3) and 2009/29/EC (OJ No L 140, 5.6.2009, p 63), and by Regulation (EC) No 219/2009 of the European Parliament and of the Council of 11 March 2009 (OJ No L 87, 31.3.2009, p 109).

(b) OJ No L 143, 30.4.2004, p 56; amended by European Parliament and Council Directives 2006/21/EC (OJ No L 102, 11.4.2006, p 15) and 2009/31/EC.

- (a) was payable by the licence holder before the termination of the licence; or
 - (b) is payable by the licence holder after the termination of the licence but at a time which is certain.
- (3) In this regulation—
- (a) “judgment debt” has the meaning given to it in section 104 of the Tribunals, Courts and Enforcement Act 2007(a);
 - (b) “leakage liabilities” means any liabilities, whether future or present, actual or contingent, arising from leakage from the storage complex to which the relevant licence relates and includes liabilities for personal injury, damage to property and economic loss; and
 - (c) “storage complex” has the meaning given to it by Article 3 of the Directive.

Recovery of costs

16.—(1) The authority may recover from the operator any costs which the authority incurs in consequence of the transfer of obligations or liabilities under regulation 14 or 15, to the extent that such costs arise due to fault on the part of the operator.

(2) For the purposes of paragraph (1), fault includes negligence, deceit, or a failure to exercise due diligence.

(3) Sums due by the operator pursuant to this regulation are recoverable by the authority as a civil debt.

Compliance

Information

17. The licence holder must (to the extent it is not obliged to do so under the licence), provide the authority with such information as the authority may from time to time request for the purpose of determining whether—

- (a) to request a transfer report from the operator pursuant to regulation 5; or
- (b) to exercise any other function conferred on the authority by these Regulations.

Enforcement

18.—(1) A failure by—

- (a) the operator to comply with regulation 5(2) or 10(5); or
- (b) a licence holder to comply with regulation 13(2) or 17,

is deemed, for the purposes of section 24 (licensing authority’s power of direction), to be a breach of a provision of the licence, even where a licence has terminated.

(2) It is an offence for—

- (a) a person to make a statement which the person knows to be false or recklessly to make a statement which is false—
 - (i) in order to obtain the termination of a licence; or
 - (ii) in a transfer report;

or

- (b) a licence holder to fail to disclose information which the licence holder knows, or ought to know, to be relevant to the authority’s decision to serve a notice under regulation 11(2) or 12(2).

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

(a) 2007 c.15.

- (a) on summary conviction—
 - (i) in England and Wales or Northern Ireland, to a fine not exceeding the statutory maximum; or
 - (ii) in Scotland, to a fine not exceeding £5,000; or
- (b) on conviction on indictment, to a fine.

(4) Where an offence under paragraph (2) 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.

(5) Where an offence under paragraph (2) 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.

(6) 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.

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

Criminal proceedings

19.—(1) Proceedings for an offence under regulation 18(2) may not be instituted in England and Wales except—

- (a) by the Secretary of State or a person authorised by the Secretary of State; or
- (b) by or with the consent of the Director of Public Prosecutions.

(2) Proceedings for an offence under regulation 18(2) may not be instituted in Northern Ireland except—

- (a) by the Secretary of State or a person authorised by the Secretary of State; or
- (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.

10th June 2011

Charles Hendry
Minister of State
Department of Energy and Climate Change

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 Articles 18 and 20 on the transfer of responsibility for a closed storage site and the associated financial mechanism.

The Directive is chiefly implemented by Part 1, Chapter 3 of the Energy Act 2008 and by the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) and the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 (S.S.I. 2011/24) (together the “licensing regulations”).

Regulation 2 requires the Secretary of State to review the operation and effect of these Regulations 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.

Regulation 3 provides definitions for terms used in the Regulations. For the most part, the terminology followed coincides with that used in the licensing regulations and in the Directive, and some Directive definitions are incorporated accordingly.

Regulation 4 allows the holder of a licence for a storage site that has been closed to apply to the authority (either the Secretary of State or the Scottish Ministers) for the licence to be terminated. An application must include a transfer report. *Regulation 5* allows the authority to require a transfer report to be provided, if no application is made under regulation 4. *Regulation 6* provides that the authority must provide a copy of the transfer report and other information to the European Commission.

Regulation 7 defines the minimum period, after the closure of a storage site, after which the licence may be terminated. The minimum period is determined by the authority. It must be no less than 20 years, but it can be reduced by the authority if certain conditions are fulfilled.

Regulation 8 sets out the conditions which must be met before a licence is terminated, in respect of a storage site that has been closed by the operator.

Regulation 9 prescribes the basis on which the authority must reach an initial decision whether to terminate a licence. It provides for a draft notice of the termination of a licence to be sent to the European Commission.

Regulation 10 provides that, once a draft termination notice has been prepared, the authority must determine the financial contribution which the operator must make before the licence can be terminated. The operator must be given the opportunity to make representations to the authority about the amount and form of the contribution. Payment of the financial contribution is a condition that must be met before the licence is terminated.

Under *regulation 11*, the authority must consider the European Commission’s opinion on the draft termination notice. If the authority then determines that all the transfer conditions set out in *regulation 8*, including the payment of the financial contribution, have been met, then the authority must terminate the licence by issuing a termination notice. If the authority determines that those conditions have not been met, it must notify the licence holder and give the reasons for that determination.

If a storage site is closed by the authority acting as operator after the relevant storage permit has been revoked under the licensing regulations, then the applicable licence will be terminated when the conditions set out in *regulation 12* are met. In this case, there is no obligation for a financial contribution to be made under *regulation 10* and it is not necessary for the minimum period determined under *regulation 7* to have elapsed.

Regulation 13 allows the authority, when it serves a notice terminating a licence, to require the licence holders to provide it with information about the storage site, which the authority may use to carry out its functions and, in particular, to discharge the obligations and liabilities transferred to it from the licence holders under *regulations 14* and *15*.

Regulations 14 and *15* deal with the effects of the termination of a licence. *Regulation 14* provides that certain obligations of the operator transfer to the authority. Those obligations are the obligations to carry out monitoring of the storage site and corrective measures where necessary, to remedy environmental damage under the Environmental Liability Directive and to surrender allowances under the greenhouse gas emission trading scheme established by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003. *Regulation 15(1)* and *(2)* transfers to the authority, with some exceptions, specified liabilities that have been incurred by the licence holders before the termination of the licence. *Regulation 15(3)* deals with specified liabilities that are incurred after the termination of the licence, which are transferred from those who held that licence to the authority.

Regulation 16 provides that, if the authority incurs costs as a result of the transfer to it of obligations and liabilities under *regulations 14* and *15*, it may recover them from the former operator in the circumstances specified in the regulation.

Regulation 17 enables the authority to obtain information from the licence holders in connection with carrying out its functions under these Regulations.

The authority has powers under section 24 of the Act to give directions following the breach of a licence. *Regulation 18(1)* allows the authority to use those powers where the operator fails to provide a transfer report when required, or to pay the financial contribution, or where the licence holder fails to provide information to the authority under *regulation 13* or *17*.

Regulation 18(2) creates offences in relation to the provision of false information to the authority or failure to disclose relevant information. The penalties for these offences are set out in *regulation 18(2)*. *Regulation 19* prevents a private prosecution for these offences from being brought without the consent of the Director of Public Prosecutions (in England and Wales) or the Director of Public Prosecutions for Northern Ireland.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Ricki Kiff, Energy Development Unit, Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW. Tel: 0300 068 6042; email: ricki.kiff@decc.gsi.gov.uk and is published with the Explanatory Memorandum which is available 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.

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STATUTORY INSTRUMENTS

2011 No. 1483

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The Storage of Carbon Dioxide (Termination of Licences)
Regulations 2011

£5.75