

EXECUTIVE NOTE

THE ENERGY ACT 2008 (STORAGE OF CARBON DIOXIDE) (SCOTLAND) REGULATIONS 2011

SSI 2011/224

The Energy Act 2008 (Storage of Carbon Dioxide) (Scotland) Regulations 2011 (“the Regulations”) were made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 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 affirmative resolution 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”).

The provisions of Chapter 3 of Part 1 of the Energy Act 2008 (“the Act”) prohibit the exploration or storage of carbon dioxide without a licence. This prohibition and licensing regime only apply to the offshore area from 0-200 nautical miles. Scottish Ministers are the licensing authority for the territorial waters adjacent to Scotland (0-12 nm) and the Secretary of State for Energy and Climate Change is the licensing authority for the offshore area beyond the 12 mile limit (12-200 nm).

Article 1 of the Directive provides that it applies in the territory of Member States, their exclusive economic zones and their continental shelves. Articles 5 and 6 of the Directive provide that Member States must ensure that no exploration or storage of carbon dioxide takes place without a permit. These Articles are implemented by regulation 2 of the Regulations, which extends the territorial scope of the prohibition of unlicensed activities in Chapter 3 of Part 1 of the Act to onshore Scotland and its internal waters. The Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 make provision for the operation of the licensing regime, and will come into force at the same time as the Regulations.

The Regulations have to be in force by 25 June 2011 to meet the deadline for the transposition of the Directive.

Consultation

A consultation carried out by BERR in June 2008 “Towards Carbon Capture and Storage” sought views on further 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

The amendment of the Act extends the powers of the Scottish Ministers to licence storage of carbon dioxide for the purpose of implementing the Directive. However, Article 4 of the Directive provides that Member States have the right not to allow carbon storage in any part of their territory, and the policy position throughout the United Kingdom is that no licences will be granted for onshore storage of carbon dioxide. In those circumstances, there will be no impact of the costs of business. A full RIA will be carried out for the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2010 referred to above.

Transposition of EU Directive

The Regulations will meet part of the requirements to transpose the EU Directive on CO₂ storage by 25 June 2011. The Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 (S.S.I. 2011/24) implement those Articles of the Directive which deal with the carbon storage licensing regime, and will be accompanied by a detailed Transposition Note.

Scottish Government Energy Markets Division
March 2011