



Energy Act 2008

2008 CHAPTER 32

PART 1

GAS IMPORTATION AND STORAGE

CHAPTER 3

STORAGE OF CARBON DIOXIDE

Activities requiring a licence

17 Prohibition on unlicensed activities

- (1) No person may carry on an activity within subsection (2) except in accordance with a licence.
- (2) The activities are—
 - (a) the use of a controlled place for the storage of carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal);
 - (b) the conversion of any natural feature in a controlled place for the purpose of storing carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal);
 - (c) the exploration of a controlled place with a view to, or in connection with, the carrying on of activities within paragraph (a) or (b);
 - (d) the establishment or maintenance in a controlled place of an installation for the purposes of activities within this subsection.
- (3) In this section, “controlled place” means a place in, under or over—
 - (a) the territorial sea, or
 - (b) waters in a Gas Importation and Storage Zone.

Licensing

18 Licences

- (1) The licensing authority may grant a licence to a person in respect of one or more activities within section 17(2).
- (2) The licensing authority is—
 - (a) in the case of a licence in respect of activities within section 17(2)(a) to (c) and a controlled place which is not in, under or over the territorial sea adjacent to Scotland, the Secretary of State,
 - (b) in the case of a licence in respect of such activities and a controlled place which is in, under or over that territorial sea, the Scottish Ministers,
 - (c) in the case of a licence in respect of such activities and a controlled place only part of which is in, under or over that territorial sea, either the Secretary of State or the Scottish Ministers, and
 - (d) in the case of a licence in respect of activities within section 17(2)(d), whichever of the Secretary of State or the Scottish Ministers licenses the activities for the purposes of which the installation is established or maintained;and in this Chapter references to the licensing authority in relation to a licence falling within paragraph (c) are references to the person who grants the licence or, if the licence has not yet been granted, to whom the application for the licence was made.
- (3) The controlled place in respect of which a licence is granted may be determined by reference to the provisions of a Crown lease which has been or may be granted.
- (4) For this purpose a “Crown lease” means a lease of property forming part of the Crown Estate, or an authorisation to exercise rights forming part of that Estate (whether by virtue of section 1 or otherwise).

19 Requirements relating to grant of licences

- (1) Each licensing authority may by regulations make provision about the circumstances in which it may grant licences, including—
 - (a) provision about the requirements to be met by or in relation to an applicant, and
 - (b) provision about any other requirements which must be met for a licence to be granted.
- (2) Regulations under subsection (1)(a) may, in particular—
 - (a) prescribe the persons, or classes of persons, by whom an application for a licence may be made;
 - (b) prescribe the manner in which an application must be made;
 - (c) prescribe the information which an application must contain and any documents which must accompany it;
 - (d) require an application to be accompanied by a fee of an amount prescribed by, or determined in accordance with, the regulations;
 - (e) require an applicant, before a licence is granted, to make arrangements (whether by way of trust or otherwise) to provide financial security in respect of the applicant’s future obligations relating to the activities under the licence (whether those obligations will or may arise under the licence or otherwise).

20 Terms and conditions

- (1) A licence may be granted on such terms and subject to such conditions as the licensing authority considers appropriate, subject to regulations under section 21.
- (2) Subject to such regulations, a licence may, in particular, include provision of a kind mentioned in subsections (3) to (7).
- (3) A licence may include—
 - (a) provision about the circumstances in which financial security (which may be provided by way of a trust or other arrangements) may be required in respect of the obligations mentioned in section 19(2)(e) (in addition to any security required by virtue of that section), and the form of any such security;
 - (b) provision about the circumstances in which financial security may be released (in whole or in part);
 - (c) provision enabling the licensing authority to review the licence in specified circumstances or at specified intervals;
 - (d) provision enabling the licensing authority, after consulting the licence holder, to modify the licence in specified circumstances (with or without the consent of the licence holder);
 - (e) provision preventing or enabling the licensing authority to prevent a licence holder, in specified circumstances, from carrying on an activity in respect of which the licence was granted;
 - (f) provision about closure of a carbon storage facility;
 - (g) provision about obligations of a licence holder between closure of a carbon storage facility and termination of the licence;
 - (h) provision about termination of the licence (which may include provision about financial arrangements).
- (4) The provisions of a licence may be expressed by reference to provision made in a Crown lease and, in particular, may provide—
 - (a) for the commencement of the licence to be conditional upon the commencement of a Crown lease which has been or may be granted in respect of the controlled place to which the licence relates or any part of that place;
 - (b) for the period of the licence to be determined by reference to the period of such a Crown lease.
- (5) A licence may authorise, in such circumstances and subject to such conditions as are specified, the transfer of the licence to another person (or the inclusion of another person as a joint licence holder).
- (6) The provisions of a licence may include—
 - (a) provision requiring the licence holder to obtain the prior written consent of the licensing authority or another person for specified acts or omissions;
 - (b) provision providing that any such consent may be given subject to conditions.
- (7) The conditions imposed on a consent by virtue of subsection (6)(b) may include conditions requiring, or otherwise providing for, the modification of the licence in such manner as the licensing authority considers appropriate.
- (8) In this section—

“carbon storage facility” means a controlled place, or part of a controlled place, in which carbon dioxide has been stored pursuant to a licence;

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“closure”, in relation to a carbon storage facility, means the point at which carbon dioxide has ceased to be added to the facility and the licence holder intends, or the licensing authority directs in accordance with the licence, that the cessation should be permanent;

“Crown lease” has the same meaning as in section 18;

“specified”, in relation to a licence, means specified in, or determined in accordance with, the licence.

21 Content of licences: regulations

- (1) Each licensing authority may make regulations about the terms and conditions of licences granted by it.
- (2) Regulations under subsection (1) may specify that a licence must contain specified provisions or provisions of a specified description.

Enforcement

22 Offence to carry on unlicensed activities

- (1) It is an offence for a person to carry on an activity within section 17(2) at a controlled place unless, at the time the activity is carried on, that person—
 - (a) has a licence for the carrying on of the activity at that place, or
 - (b) is carrying on the activity on behalf of a person who has such a licence.
- (2) It is an offence for a person to cause or permit another person to commit the offence in subsection (1).
- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding £50,000, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (4) If the activity constituting the offence falls within section 17(2)(c), or relates to the establishment or maintenance of an installation for the purposes of an activity mentioned in that provision, subsection (3) has effect as if—
 - (a) the reference to £50,000 were a reference to the statutory maximum, and
 - (b) the reference to imprisonment were omitted.

23 Offences relating to licences

- (1) An offence is committed by a licence holder if—
 - (a) a thing is done for which the licence specifies that the prior consent of the licensing authority or any other person is required, without that consent first having been obtained;
 - (b) such a thing is done in circumstances where that consent was obtained subject to conditions and those conditions have not been satisfied;
 - (c) the licence holder fails to keep records, give a notice or make a return or report, in accordance with the provisions of the licence;

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- (d) the licence holder breaches any other provision of the licence which is specified, or of a description specified, in an order made by the licensing authority.
- (2) In proceedings against a person for an offence under subsection (1), it is a defence for the person to prove that due diligence was exercised to avoid committing the offence.
- (3) A person guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to a fine not exceeding £50,000, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (4) If an offence under subsection (1) relates to an activity within section 17(2)(c), or relates to the establishment or maintenance of an installation for the purposes of an activity mentioned in that provision, subsection (3) has effect as if—
 - (a) the reference to £50,000 were a reference to the statutory maximum, and
 - (b) the reference to imprisonment were omitted.
- (5) It is an offence for a person to make a statement which the person knows to be false, or recklessly to make a statement which is false, in order to obtain—
 - (a) a licence, or
 - (b) the consent of the licensing authority or any other person for the purposes of any requirement imposed by virtue of section 20(6).
- (6) It is an offence for a person to fail to disclose information which the person knows, or ought to know, to be relevant to an application for—
 - (a) a licence, or
 - (b) the consent of the licensing authority or any other person for the purposes of any requirement imposed by virtue of section 20(6).
- (7) A person guilty of an offence under subsection (5) or (6) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

24 Licensing authority's power of direction

- (1) This section applies if a licence holder fails to comply with any provision of the licence.
- (2) The licensing authority may direct the licence holder to take steps which the licensing authority considers necessary or appropriate to comply with the provision within a period specified in the direction.
- (3) The licensing authority must consult the licence holder before giving a direction under subsection (2).
- (4) If the licence holder fails to comply with a direction under subsection (2), the licensing authority may—
 - (a) comply with the direction on behalf of the licence holder, or
 - (b) make arrangements for another person to do so.
- (5) A person taking action by virtue of subsection (4) may—
 - (a) do anything which the licence holder could have done, and

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- (b) recover from the licence holder any reasonable costs incurred in taking the action.
- (6) A person (“P”) liable to pay any sum by virtue of subsection (5)(b) must also pay interest on that sum for the period beginning with the day on which the person taking action by virtue of subsection (4) notified P of the sum payable and ending with the date of payment.
- (7) The rate of interest payable in accordance with subsection (6) is a rate determined by the licensing authority as comparable with commercial rates.
- (8) The licence holder must provide a person taking action by virtue of subsection (4) with such assistance as the licensing authority may direct.
- (9) The power to give a direction under this section is without prejudice to any provision made in the licence with regard to the enforcement of any of its provisions.

25 Failure to comply with a direction under section 24

- (1) It is an offence for a person to fail to comply with a direction under section 24, unless the person proves that due diligence was exercised in order to avoid the failure.
- (2) A person guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to a fine not exceeding £50,000, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

26 Injunctions restraining breaches of section 17(1)

- (1) Where the Scottish Ministers consider it necessary or expedient to restrain any actual or apprehended breach of section 17(1) in relation to a controlled place in, under or over the territorial sea adjacent to Scotland, they may apply to the Court of Session for an interdict.
- (2) Where the Secretary of State considers it necessary or expedient to restrain any other actual or apprehended breach of section 17(1), the Secretary of State may apply—
 - (a) to the High Court for an injunction, or
 - (b) to the Court of Session for an interdict.
- (3) An application may be made under this section whether or not the applicant has exercised or is proposing to exercise any of the other powers under this Chapter.
- (4) On an application under this section, the Court of Session may grant such an interdict, or the High Court may grant such an injunction, as it thinks appropriate for the purpose of restraining the breach.
- (5) Rules of court may provide for an injunction or interdict to be issued against a person whose identity is unknown.

27 Inspectors

- (1) The Secretary of State may appoint persons to act as inspectors to assist in carrying out the functions of the Secretary of State under this Chapter.

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- (2) The Secretary of State may make payments, by way of remuneration or otherwise, to inspectors appointed under this section.
- (3) The Secretary of State may make regulations about—
 - (a) the powers and duties of inspectors appointed under this section;
 - (b) the powers and duties of any other person acting on the directions of the Secretary of State in connection with a function under this Chapter;
 - (c) the facilities and assistance to be accorded to persons mentioned in paragraph (a) or (b).
- (4) The powers conferred by virtue of subsection (3) may include powers of a kind specified in section 108(4) of the Environment Act 1995 (c. 25) (powers of entry, investigation, etc).
- (5) Any regulations under this section may provide for the creation of offences which are punishable—
 - (a) on summary conviction by a fine not exceeding the statutory maximum or such lesser amount as is specified in the regulations, and
 - (b) on conviction on indictment by a fine.
- (6) This section applies in relation to the Scottish Ministers and the functions of the Scottish Ministers under this Chapter as it applies in relation to the Secretary of State and the functions of the Secretary of State under this Chapter.

28 Criminal proceedings

- (1) Proceedings for a relevant offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (restriction on prosecutions) does not apply to any proceedings for a relevant offence.
- (3) Proceedings for a relevant offence alleged to have been committed in a controlled place 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.
- (4) Proceedings for a relevant offence alleged to have been committed in a controlled place 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.
- (5) In the application of subsection (3) or (4) to an offence created by regulations under section 27—
 - (a) the words “alleged to have been committed in a controlled place” are to be omitted, and
 - (b) the references to a person authorised by the Secretary of State are to be read as references to an inspector appointed under that section.
- (6) In this section “relevant offence” means an offence under this Chapter or created by regulations under section 27.

Registration

29 Requirement for public register

- (1) The Secretary of State must maintain a register containing prescribed information relating to licences.
- (2) Information is not to be included in the register if—
 - (a) the Secretary of State thinks that disclosure of the information would be contrary to the interests of national security, or
 - (b) the licensing authority thinks that disclosure of the information would prejudice to an unreasonable degree a person’s commercial interests.
- (3) Information excluded from the register by virtue of subsection (2)(b) is treated, subject to subsection (4), as ceasing to prejudice a person’s commercial interests at the end of the period of 4 years beginning with the date on which the licensing authority made the decision to exclude it.
- (4) The licensing authority may, on the application of the person whose commercial interests are affected, decide whether the information should be included in the register at the end of the period mentioned in subsection (3) or should continue to be excluded.
- (5) Where information of any description is excluded from the register by virtue of subsection (2)(b), a statement is to be included in the register indicating the existence of information of that description.
- (6) The Secretary of State must—
 - (a) secure that the register maintained under this section is available for inspection by the public free of charge, and
 - (b) afford to members of the public facilities for obtaining copies of entries, on payment of a fee.
- (7) In this section “prescribed” means prescribed by regulations made by the Secretary of State.

Abandonment of offshore installations

30 Abandonment of installations

- (1) Part 4 of the Petroleum Act 1998 (c. 17) (“the 1998 Act”) applies in relation to a carbon storage installation as it applies in relation to an offshore installation within the meaning given by section 44 of the 1998 Act, subject to subsections (2) and (4).
- (2) In relation to a carbon storage installation established or maintained at a controlled place under a licence granted by the Scottish Ministers—
 - (a) the functions conferred on the Secretary of State by Part 4 of the 1998 Act are exercisable by the Scottish Ministers rather than the Secretary of State (and, accordingly, the reference in section 39(6) of the 1998 Act to either House of Parliament is to be read as a reference to the Scottish Parliament), and
 - (b) the Scottish Ministers may make regulations providing that that Part applies with such other modifications as may be specified in the regulations.

- (3) For the purposes of subsection (2), orders under section 33(1) are to be disregarded and installations used for a purpose ancillary to getting petroleum (within the meaning of section 1 of the 1998 Act) are not to be treated as carbon storage installations.
- (4) In relation to any other carbon storage installation, the Secretary of State may make regulations providing that Part 4 of the 1998 Act applies in relation to such an installation with such modifications as may be specified in the regulations.
- (5) In this section, “carbon storage installation” means an installation established or maintained for the purposes of an activity mentioned in section 17(2)(a), (b) or (c).

Termination of the licence

31 Termination of licence: regulations

- (1) The licensing authority may by regulations make provision—
 - (a) about the circumstances in which a licence may be terminated;
 - (b) imposing obligations on the licensing authority in respect of a carbon storage facility on or after the termination of a licence relating to the facility.
- (2) Regulations under this section may, in particular, make provision about financial arrangements to be made in relation to a closed carbon storage facility on or after the termination of a licence relating to the facility.
- (3) A licence has effect subject to any regulations under this section.

Miscellaneous

32 Safety zones

Sections 21, 23 and 24 of the Petroleum Act 1987 (c. 12) (safety zones) apply in relation to a carbon storage installation as they apply in relation to an installation within section 21(1) of that Act.

33 Enhanced petroleum recovery: power to make orders

- (1) The use of carbon dioxide, in a controlled place, for a purpose ancillary to getting petroleum is to be regarded as—
 - (a) an activity within section 17(2), or
 - (b) the storage of gas for the purposes of section 1(3)(b),only in the circumstances specified by the Secretary of State by order.
- (2) Subsection (1) and orders made under it are without prejudice to Part 1 of the Petroleum Act 1998 (c. 17).
- (3) An order under subsection (1) may provide that the use of carbon dioxide, in a designated place, for a purpose ancillary to getting petroleum is to be regarded, for the purposes of this Chapter, as the use of carbon dioxide in a controlled place for such a purpose.

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- (4) A designated place means a place designated by the order which is a place in, under or over waters in an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29), other than waters in a Gas Importation and Storage Zone.
- (5) In this section “petroleum” has the meaning given by section 1 of the Petroleum Act 1998 (c. 17).

34 Power of Secretary of State etc to transfer functions

- (1) The Secretary of State may by order transfer to a public body any function conferred on the Secretary of State by or under this Chapter, other than a power to make regulations or an order.
- (2) A function transferred by an order under subsection (1) reverts to the Secretary of State if the order is revoked.
- (3) An order under subsection (1) may—
 - (a) transfer different functions to different bodies;
 - (b) transfer functions to a body in respect of all activities within section 17(2) or only specified activities;
 - (c) transfer the same function to different bodies in respect of different activities;
 - (d) transfer functions to different bodies in respect of different places.
- (4) An order under subsection (1) may—
 - (a) provide for the Secretary of State to make payments to a body to which a function has been transferred in respect of the body’s expenditure in connection with the exercise of the function;
 - (b) require any fee paid to such a body under this Chapter to be paid into the Consolidated Fund;
 - (c) make such modifications of section 188 of the Energy Act 2004 (c. 20) (power to impose charges to fund energy functions), or any regulations made under that section, as the Secretary of State considers appropriate in consequence of the transfer of a function by virtue of this section.
- (5) The Secretary of State may give a direction to a body to which functions have been transferred under subsection (1) about—
 - (a) whether, or in what circumstances, a function specified in the direction is to be carried out;
 - (b) the manner in which a function specified in the direction is to be carried out.
- (6) A direction under subsection (5) may be general or specific.
- (7) The Secretary of State may not give a direction under subsection (5) without first consulting the body to which the Secretary of State proposes to give the direction.
- (8) This section applies in relation to the Scottish Ministers and any functions conferred on them by or under this Chapter as it applies in relation to the Secretary of State and any functions conferred on the Secretary of State by or under this Chapter, except that—
 - (a) in its application to the Scottish Ministers the reference in subsection (4)(b) to the Consolidated Fund is to be read as a reference to the Scottish Consolidated Fund, and

- (b) the reference in that subsection to section 188 of the Energy Act 2004 (c. 20) is to be read as a reference to that section as applied and modified by subsection (12) (inserted by paragraph 13(e) of Schedule 1 to this Act).

Interpretation

35 Chapter 3: interpretation

(1) In this Chapter—

- “carbon storage facility” has the meaning given by section 20(8);
- “carbon storage installation” has the meaning given by section 30(5);
- “closure”, in relation to a carbon storage facility, has the meaning given by section 20(8);
- “controlled place” has the meaning given by section 17(3);
- “Gas Importation and Storage Zone” means an area designated under section 1(5);
- “installation” includes any floating structure or device maintained on a station by whatever means;
- “licence” means a licence granted under section 18(1), and “licence holder” is to be construed accordingly;
- “licensing authority” has the meaning given by section 18(2).

(2) An Order in Council under section 126(2) of the Scotland Act 1998 (c. 46) (apportionment of sea areas) has effect for the purposes of this Chapter if, or to the extent that, the Order is expressed to apply—

- (a) by virtue of this subsection, for the purposes of this Chapter, or
- (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.