

**EXPLANATORY MEMORANDUM TO**  
**THE STORAGE OF CARBON DIOXIDE (AMENDMENT OF THE ENERGY**  
**ACT 2008 ETC.) REGULATIONS 2011**

**2011 No. 2453**

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument extends the geographical scope of the prohibition on carrying out carbon dioxide storage activities without a licence under Part 1, Chapter 3 of the Energy Act 2008 (“Chapter 3”). That prohibition is extended so that it applies onshore in England and Wales and Northern Ireland, and the adjacent internal waters. The Regulations also make a number of consequential amendments to other provisions of Chapter 3.

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

- 3.1 This instrument is made under section 2(2) of the European Communities Act 1972. Those powers cannot be used to create any new criminal offence punishable with a fine of more than level 5 on the standard scale. This instrument therefore provides for a penalty of only £5,000 for the offence of carrying out carbon storage activities without a licence in the territories to which the prohibition in s.17 of the 2008 Act is extended.

4. **Legislative Context**

- 4.1 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 already taken steps to provide a legal framework for the conduct of carbon storage operations in the UK. Chapter 3 provides for a regulatory regime for carbon dioxide storage in the UK offshore area and prohibits carbon storage activities being carried out without a licence.
- 4.2 Although the Directive does not require Member States to license CO<sub>2</sub> storage in any particular part of their territories, effective transposition of the Directive does require that such storage is either prohibited or licensed in accordance with the standards laid down by the Directive. Those requirements apply throughout the territories of the Member States and offshore in their exclusive economic zones and continental shelves (within the meaning of the United Nations Convention on the Law of the Sea).

- 4.3 As part of the transposition of the Directive it is therefore necessary that the prohibition on carbon storage activities without a licence be extended to the onshore area of the United Kingdom. This instrument will effect that extension for England, Wales and Northern Ireland. Extension of Chapter 3 to onshore Scotland has been made in a separate Scottish Statutory Instrument , the Energy Act 2008 (Storage of Carbon Dioxide)(Scotland) Regulations 2011 (S.S.I. 2011/224), which came into force on 1 April 2011.
- 4.4 Additionally, this instrument implements Article 31 of the Directive, which amends Directive 85/337/EEC (the EIA Directive), extending its scope to include new onshore pipelines for the transport of carbon dioxide streams for the purposes of geological storage among the categories of projects for which environmental impact assessment is or may be required. As a result, the Pipe-line Works (Environmental Impact Assessment) Regulations 2000, which implement some aspects of the EIA Directive in Great Britain require corresponding amendments.
- 4.5 A Transposition Note has been prepared, and is attached as an Annex to this Memorandum.

## **5. Territorial Extent and Application**

- 5.1 This instrument extends to the whole of the United Kingdom, with two exceptions.
- Paragraphs (b)(ii) and (c)(iii) of regulation 3(1) do not extend to Scotland, since the provisions of s.18 of the 2008 Act that they amend have already been amended by S.S.I. 2011/224.
  - Regulation 14 does not apply to Northern Ireland since the instrument that it amends, the Pipe-line Works (Environmental Impact Assessment) Regulations 2000 (S.I. 2000/1928) extends only to Great Britain.
- 5.2 Chapter 3 (as amended by S.S.I. 2011/224) currently applies to storage activities within Scotland and the offshore area comprising both the UK territorial sea 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). This Statutory Instrument extends the relevant provisions of the Energy Act 2008 to onshore England, Wales and Northern Ireland and the adjacent internal waters.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **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 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.

## **8. Consultation outcome**

8.1 The offshore licensing regime, which will be extended to onshore England by the Regulations, was the subject of a consultation between 25<sup>th</sup> September and the 30<sup>th</sup> December 2009, and the broader policy on CCS was the subject of a consultation between 30<sup>th</sup> June and 22<sup>nd</sup> September 2008. As this Instrument is purely a technical legal amendments with no available policy options, no further consultations have been undertaken.

## **9. Guidance**

9.1 Guidance on the carbon storage licensing regime has been made available on the DECC website at [https://www.og.decc.gov.uk/regulation/carbon\\_storage/index.htm#](https://www.og.decc.gov.uk/regulation/carbon_storage/index.htm#).

## **10. Impact**

10.1 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. There will be no impact on business from the extension to England and Wales and Northern Ireland of the prohibition on carbon dioxide storage activities without a licence.

10.2 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.

10.3 An Impact Assessment on the Article 31 transposition element of this instrument is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk). No Impact Assessment has been issued for the other elements of this instrument.

## **11. Regulating small business**

11.1 The legislation applies to carbon dioxide 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, a duty to review clause is included in this instrument. 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 the Directive, and or stakeholders' input requests sensible changes, then the Regulations will be amended.

### **13. Contact**

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

**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 (LICENSING ETC.)  
REGULATIONS 2010**

<b>Article</b>	<b>Result to be achieved</b>	<b>Implementation by the <i>Storage of Carbon Dioxide (Amendment of the Energy Act etc.) Regulations 2011</i><sup>1</sup></b>	<b>Comments</b>
<b>2</b>	<b>Scope and prohibition</b>		
<b>2.1</b>	Directive applies to storage in territory of the Member States, together with their exclusive economic zones and continental shelves.	<i>Regulation 2</i> , which amends <i>sections 17(3), (3A) and (4)</i> of the Energy Act. <sup>2</sup>	
<b>23</b>	<b>Competent authority</b>		
	Member States must establish or designate the competent authorities under this Directive.  Where more than one is designated, coordination arrangements must be established.	<i>Regulation 3</i> , which amends <i>section 18</i> .  Co-ordination arrangements will be established by Memoranda of Understanding between the licensing authorities in different parts of the UK.	
<b>28</b>	<b>Penalties</b>		
	Member States must lay down effective, proportionate and dissuasive rules on penalties  and take all measures necessary to implement them	<i>Regulations 6 and 7</i> , which amend <i>sections 22 and 23</i> .	See also <i>section 27</i> (inspectors), as amended by <i>regulation 9</i> . Implemented administratively (see also <i>section 26</i> (injunctions

<sup>1</sup> In this Note, referred to as “the Regulations”. References to a *regulation* are to provisions of the Regulations.

<sup>2</sup> In this Note, referred to as “the Act”. References to a *section* are to sections of the Act.

	and must notify them to Commission		restraining breaches of section 17(1), as amended by <i>regulation 8</i> ) and <i>section 28</i> (criminal proceedings) as amended by <i>regulation 10</i> ) Implemented administratively
<b>31</b>	<b>Amendment of Directive 85/337</b>	<i>Regulation 14</i> , which amends regulation 2 of the Pipe-line Works (Environmental Impact Assessment) Regulations 2000 (S.I. 2000/1928)	

Scrutiny history

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.