

**EXPLANATORY MEMORANDUM TO
THE STORAGE OF CARBON DIOXIDE (ACCESS TO INFRASTRUCTURE)
REGULATIONS (NORTHERN IRELAND) 2015**

S.R. 2015 No. 388

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Enterprise, Trade and Investment (“the Department”) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to negative resolution procedure.

2. Purpose

- 2.1 The purpose of the Statutory Rule is to implement Articles 21 and 22 of Directive 2009/31/EC of the European Parliament and of the Council dated 23 April 2009 on the Geological Storage of Carbon Dioxide (the “Directive”). Articles 21 and 22 relate to third party access to infrastructure for the transport and storage of carbon dioxide on a fair and transparent basis.

3. The Directive and this Statutory Rule

- 3.1 The purpose of the Directive is to establish a legal framework for the environmentally safe geological storage of carbon dioxide. Such a framework had been established in the UK by Part 1, Chapter 3, of the Energy Act 2008 (“the Act”), which extends to Northern Ireland. The Act provides for a licensing regime governing the permanent storage of carbon dioxide. The scope of its provisions were extended by the Carbon Dioxide Storage (Amendment of the Energy Act 2008 etc.) Regulations 2011 (S.I. 2011/2453) to cover (among other areas) all onshore areas of Northern Ireland, including its internal waters.
- 3.2 The Directive requires member states to ensure that third parties are able to obtain fair and open access to transport networks and storage sites. It requires the arrangements to be transparent and non-discriminatory. Member states must also ensure that, if the operator of a carbon dioxide pipe-line or storage site refuses to give access to a third party on grounds of lack of capacity or lack of connection, then the operator makes the necessary enhancements where it is economically viable or when a potential customer is willing to pay for these enhancements, provided that doing so does not have a detrimental impact on the integrity of the pipeline or storage site.

- 3.3 This Statutory Rule gives the Department powers (where appropriate) – when considering an application for a carbon dioxide storage permit or where a person proposes to make an application for planning permission or a Crown lease to construct a carbon dioxide pipe-line – to ensure that a third party gains access to that storage site or pipe-line (relevant infrastructure). Also, where a person has made an application for access to existing relevant infrastructure, the Department may enable access by serving a notice on the owner requiring modifications to that infrastructure. The owner of relevant infrastructure is required to publish information about the available capacity in that infrastructure. This duty on the owner of relevant infrastructure is enforceable by civil proceedings by the Department.
- 3.4 The Rule gives the Department powers to require information to enable it to exercise any function under the Statutory Rule – again, this is enforceable by civil proceedings. It is an offence to give the Department false information. It is also an offence for any person who applies for planning permission or a Crown lease to construct a carbon dioxide pipe-line not to give the Department at least six months’ notice of their intention to make such an application.
- 3.5 A Transposition Note has been prepared and is attached as an Annex to this Memorandum.

4. Consultation

- 4.1. The Department has consulted on draft Regulations to implement Articles 21 and 22 of the Directive in Northern Ireland. There were just 5 responses to the consultation all of which offered no comment.

5. Equality Impact

- 5.1. In accordance with its obligations under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the provisions of the Statutory Rule and has concluded that an equality impact assessment is not necessary.

6. Regulatory Impact

- 6.1. The Department has no plans to make any part of Northern Ireland available for carbon dioxide storage. It also believes that the prospect of anyone wishing to construct a carbon dioxide pipe-line is remote. A Regulatory Impact Assessment has not been prepared for the Statutory Rule because it has no general impact on business, charities or voluntary bodies.

7. Financial Implications

- 7.1. The Statutory Rule has no financial implications apart from the impact on administrative resources to implement the Directive.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department believes that this Statutory Rule is compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. The Statutory Rule implements Articles 21 and 22 of the Directive. The relationship between the individual regulations and the provisions of the Directive is set out in the attached Transposition Note.
- 9.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972. Statutory Instrument 2008/301 designates any Northern Ireland Department in relation to the environment.

10. Parity or Replicatory Measure

- 10.1. The Statutory Rule extends to Northern Ireland including the UK internal waters adjacent to Northern Ireland. The Department of Energy and Climate Change implemented Articles 21 and 22 of the Directive on 16th September 2011 by means of Statutory Instrument 2011/2305 which applies to carbon dioxide pipelines and storage sites in Great Britain, including its internal waters, and in the UK territorial seas. It also applies to carbon dioxide storage sites in any area beyond the territorial seas that has been designated as a Gas Importation and Storage Zone under section 1(5) of the Energy Act 2008.

11. Additional Information

- 11.1. Not applicable.

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 (ACCESS TO INFRASTRUCTURE) REGULATIONS (NORTHERN IRELAND) 2015

Article	Result to be achieved	Implementation by the Storage of Carbon Dioxide (Access to Infrastructure) Regulations (Northern Ireland) 2015
21.1	To ensure that potential users are able to obtain access to carbon dioxide transport networks and storage sites	The Regulations as a whole.
21.2	<p>To ensure that access is provided in a transparent and non-discriminatory manner, taking account of:</p> <p>(a) the storage capacity which is or can reasonably be made available within the areas determined under Article 4, and the transport capacity which is or can reasonably be made available;</p> <p>(b) the proportion of its CO₂ reduction obligations pursuant to international legal instruments and to Community legislation that it intends to meet through capture and geological storage of</p>	<p>Regulations 11 and 16.</p> <p>Regulation 11(7)(a) and (b).</p> <p>Regulation 11(7)(h).</p>

	<p>CO2;</p> <p>(c) the need to refuse access where there is an incompatibility of technical specifications which cannot be reasonably overcome;</p> <p>(d) the need to respect the duly substantiated reasonable needs of the owner or operator of the storage site or of the transport network and the interests of all other users of the storage or the network or relevant processing or handling facilities who may be affected.</p>	<p>Regulation 11(7)(c), (d) and (e).</p> <p>Regulation 11(7)(f) and (g).</p>
21.3	To allow operators of transport networks and storage sites to refuse access on the grounds of lack of capacity	Regulation 11(1) to (4).
21.4	To ensure that members states take measures to ensure that operators make necessary enhancements to relevant infrastructure as far as it is economic to do so	Regulation 12.
22.1	To ensure that dispute settlement arrangements are in place, including an independent authority with access to all	Regulations 11 to 14.

22.2	<p>relevant information</p> <p>In the event of cross-border disputes, the dispute settlement arrangements of the Member State having jurisdiction over the transport network or the storage site to which access has been refused shall be applied.</p> <p>Where, in cross-border disputes, more than one Member State covers the transport network or storage site concerned, the Member States concerned shall consult with a view to ensuring that this Directive is applied consistently.</p>	<p>Does not require transposition.</p> <p>To be implemented administratively.</p>
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