
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

The Storage of Carbon Dioxide (Licensing etc.) (Scotland) Amendment Regulations 2011

Citation and commencement

1. These Regulations may be cited as the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Amendment Regulations 2011 and come into force on the day after the day on which they are made.

Amendment of the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011

2. The Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011⁽¹⁾ are amended as follows.

Interpretation

3. In regulation 1 (interpretation)—

(a) in paragraph (2)(a) after “2008” insert “and any reference to “Chapter 3” is a reference to Chapter 3 of Part 1 of that Act”;

(b) in paragraph (3), in the appropriate places alphabetically, insert—

““entering” in relation to premises includes, where applicable, boarding, and cognate expressions are to be construed accordingly;”;

““inspection” means an inspection of a storage complex for the purpose of discharging a function described in paragraph (a) or (b) of regulation 15(1);”;

““inspection report” has the meaning given to it in regulation 16(1);”;

““inspector” means a person appointed by the authority under section 27(1);”;

““premises” includes—

(a) any carbon storage installation; and

(b) any land, vehicle, vessel, aircraft, hovercraft, movable structure, excluding any land, vehicle, vessel, aircraft, hovercraft, movable structure or part thereof that is used as a dwelling;”;

““routine inspection” has the meaning given to it in regulation 14(1);”.

Inspections

4. After regulation 13 (post-closure obligations) insert—

“Inspections and enforcement

Inspections

14.—(1) The authority must carry out an inspection (a “routine inspection”) of a storage complex—

- (a) during the initial period—
 - (i) no later than 1 year from the date that period commences; and
 - (ii) subsequently, no later than 1 year from the date of the immediately previous inspection;
- and
- (b) during the post-closure period—
 - (i) no later than 5 years from the date that period commences; and
 - (ii) subsequently, no later than 5 years from the date of the immediately previous inspection.

(2) A routine inspection must include an examination of—

- (a) the injection and monitoring facilities; and
- (b) the effects on the environment and human health of the activities carried out under the relevant licence.

(3) The authority must carry out an inspection of a storage complex if—

- (a) the authority becomes aware of—
 - (i) leakages or significant irregularities; or
 - (ii) a breach of the terms or conditions of the storage permit; or
- (b) a complaint is made to the authority about the effects of activities carried out under the relevant licence on the environment or to human health unless, in the opinion of the authority, that complaint is frivolous or vexatious.

(4) The authority may carry out an inspection other than when required under paragraph (1) or (3) as the authority considers appropriate.

(5) An inspection carried out in accordance with paragraph (3) or (4)—

- (a) does not constitute a routine inspection for the purposes of paragraph (1); but
- (b) may be carried out simultaneously with a routine inspection.

(6) In this regulation, in relation to any storage complex—

- (a) “initial period” means the period commencing on the date on which injection commences at the storage site and ending on the third anniversary of the date of closure of the storage site;
- (b) “monitoring facilities” means facilities used to carry out a programme of monitoring in accordance with paragraph 2 of Schedule 2; and
- (c) “post-closure period” means the period commencing on the day after the third anniversary of the date of closure of the storage site and ending on the date on which the relevant licence is terminated.

Inspectors

15.—(1) An inspector may exercise any of the powers described in Schedule 3 to assist the authority in carrying out its functions under Chapter 3, including—

- (a) investigating whether—
 - (i) the provisions of a licence or of any consent granted under a licence; or
 - (ii) any requirements, restrictions or prohibitions imposed by or under Chapter 3,
have been, or are being, complied with; and
 - (b) monitoring the effects on the environment and on human health of activities authorised by or under a licence.
- (2) An inspector must report to the authority in such manner as the authority may direct.
- (3) An inspector must, before exercising any of the powers described in Schedule 3, produce evidence of appointment if requested to do so.

Inspection reports

16.—(1) The authority must prepare a written report (an “inspection report”) of the results of an inspection.

- (2) An inspection report must include—
- (a) the authority’s assessment of whether, in respect of the storage complex inspected—
 - (i) the provisions of a licence and of any consent granted under a licence; and
 - (ii) any requirements, restrictions or prohibitions imposed by or under Chapter 3,
have been, or are being, complied with; and
 - (b) a statement as to what action (if any) the authority considers is required to ensure compliance.
- (3) A statement made in an inspection report in accordance with paragraph (2)(b) does not preclude the authority from requiring the licence holder or any other person to take any other action.
- (4) The authority must within two months of the completion of an inspection—
- (a) provide a copy of the inspection report to the operator of the relevant storage site; and
 - (b) make the inspection report available for inspection by the public.

Evidence

17.—(1) An answer given by a person in compliance with a requirement imposed under paragraph 1(i) of Schedule 3 is admissible in Scotland against that person in criminal proceedings.

(2) In criminal proceedings in which a person mentioned in paragraph (1) is charged with an offence to which this paragraph applies, no evidence relating to that person’s answer may be adduced and no question relating to it may be asked by or on behalf of the prosecution unless evidence relating to it is adduced by or on behalf of that person.

- (3) Paragraph (2) applies to any offence other than one—
- (a) under regulation 18(1)(c); or
 - (b) under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995(2) (false statements made otherwise than on oath).

(4) Nothing in Schedule 3 compels the production by any person of a document of which that person would, on grounds of legal professional privilege, be entitled to withhold production on an order for the production of documents in an action in the Court of Session.

Offences

18.—(1) It is an offence for a person—

- (a) wilfully to obstruct an inspector in the exercise of the powers or duties conferred on the inspector by these Regulations;
- (b) without reasonable excuse to fail to comply with a requirement imposed under Schedule 3 or to prevent another person from complying with such a requirement; or
- (c) to make a statement—
 - (i) which that person knows to be false or misleading in a material particular; or
 - (ii) recklessly and which is false or misleading in a material particular,
 where that statement is made in purported compliance with any requirement imposed under Schedule 3 for the supply of information to an inspector.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(3) Where—

- (a) an offence under paragraph (1) has been committed by a body corporate or a Scottish partnership; and
- (b) it is proved that the offence was committed with the consent or connivance of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,
 the individual as well as the body corporate or Scottish partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) In paragraph (3), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner.

(5) Where the commission by any person of an offence under this regulation is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings for the offence are taken against the first-mentioned person.”.

Financial provision

5. In paragraph 7(5) (financial security) of Schedule 2 (provisions to be included in a storage permit)—

- (a) after paragraph (b), omit “and”; and
- (b) in paragraph (c) after “Directive”, insert—
 - “; and

- (d) the obligation to provide the financial contribution to the authority in accordance with regulation 10(5) of the Storage of Carbon Dioxide (Termination of Licences) Regulations 2011(3)

Powers of inspectors

6. After Schedule 2 (provisions to be included in a storage permit) insert the Schedule set out in the Schedule to these Regulations.

St Andrew's House,
Edinburgh
Date

Authorised to sign by the Scottish Ministers