

## **EXECUTIVE NOTE**

### **THE ENVIRONMENTAL LIABILITY (SCOTLAND) AMENDMENT REGULATIONS 2011**

#### **SSI 2011/116**

The Environmental Liability (Scotland) Amendment Regulations 2011 (“the Regulations”) were made in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the 1972 Act”). The Regulations are subject to negative 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 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (“the Directive”). The Directive establishes a legal framework for the environmentally safe geological storage of carbon dioxide to contribute to the fight against climate change. Geological storage means injection and storage of carbon storage in undersea geological formations. This will mean that carbon dioxide created by fossil fuel power stations or other industrial processes can be transported to, and then injected into, suitably safe storage sites.

This meets EU, UK and Scottish requirements to reduce emissions of greenhouse gases and prevent dangerous climate change. The Scottish Government has a clear policy to decarbonise electricity generation by 2030, and carbon capture and storage is a key technology which will support this. The Regulations implement the requirements of the Directive by broadening the scope of the environmental legislation framework that has been developed for the offshore oil and gas industry to protect the environment, so that this legislation also applies to this new type of development.

The Regulations implement Article 34 of the Directive, which amends Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (O.J. No. L 143, 30.4.2004). The Regulations amend the Environmental Liability (Scotland) Regulations 2009 to add the operation of carbon storage sites to the list of activities to which those Regulations apply.

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 and Business Regulatory Impact Assessment**

Using current known proposals for Carbon Capture and Storage, the Department of Energy and Climate Change prepared an extensive Business Regulatory Impact Assessment. The costs outlined in that BRIA are likely to be applicable UK wide and it therefore forms the basis for the BRIA in Scotland. However, the BRIA refers only to DECC’s role in the licensing scheme to be operated by the Secretary of State, and in so far as the BRIA is relevant to Scotland and the Scottish licensing regime, that role will be fulfilled by the Scottish Ministers.

## **Transposition of EU Directive**

The Regulations will meet part of the requirements to transpose the EU Directive on CO<sub>2</sub> storage by 25 June 2011. The remaining Articles of the Directive were implemented by legislative provision introduced in January 2011, or are to be implemented by further provision at UK level in time for 25 June 2011, the date by which the Directive must be implemented.

Scottish Government  
Energy Directorate  
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