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DRAFT STATUTORY INSTRUMENTS

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**2011 No.**

**The Storage of Carbon Dioxide (Access  
to Infrastructure) Regulations 2011**

*Compulsory modifications*

**Compulsory modifications of relevant infrastructure**

**13.**—(1) This regulation applies where—

- (a) a person has made an access application in respect of a relevant pipeline or relevant storage site; and
- (b) the authority is considering whether to serve a notice under regulation 12(8) which would secure to the applicant the right sought in the application.

(2) If it appears to the authority—

- (a) that relevant infrastructure that is the subject of the access application can and should be modified so as to increase its capacity, or
- (b) that the relevant infrastructure that is the subject of the access application can and should be modified by installing in it a junction or other apparatus through which another pipeline may be connected to the relevant pipeline or to the relevant storage site,

then (subject to paragraph (3)) the authority may serve on the owner of the relevant infrastructure and the applicant a notice in accordance with paragraphs (4) and (5) (a “modification notice”).

(3) The authority may not serve a modification notice that requires the authorised capacity of a relevant storage site to be increased.

(4) A modification notice must—

- (a) specify the modifications which the authority considers should be made to the relevant infrastructure;
- (b) specify the sums or the method of determining the sums which the authority considers should be paid to one or more of the owners by the applicant for the purpose of defraying the cost of the modifications;
- (c) require the applicant to make, within the period specified for the purpose in the notice, arrangements which the authority considers appropriate to secure that those sums will be paid to one or more of the owners if the owner carries out the modifications or satisfies the authority that they will be carried out;
- (d) require the owner, if the applicant makes those arrangements within that period, to carry out the modifications within a period specified for the purpose in the notice; and
- (e) authorise one or more of the owners, if the authority is satisfied that the owner has carried out or will carry out the modifications, to recover those sums from the applicant.

(5) A modification notice may also contain provision for the purpose of ensuring that if the carrying out of the modifications prejudices any of the matters referred to in regulation 12(7)(a) or (b), any person who suffers loss as a result may recover from the applicant payments by way of compensation, of such amounts as are determined in accordance with the notice.

(6) If a modification notice contains provision by virtue of paragraph (5) the authority must give a copy of the notice to every person who has a right to have anything conveyed by the pipeline or stored in the storage site.

(7) Before giving a copy of a modification notice under paragraph (6), the authority must—

- (a) remove from the copy any provision included in the notice by virtue of paragraph (4)(b); and
- (b) after giving the owner and the applicant an opportunity to be heard, remove from the copy any other provision included in the notice which the authority considers may prejudice the commercial interests of the owner or the applicant if not removed.

(8) In considering whether to serve a modification notice, the authority must—

- (a) take into account (so far as relevant) the matters referred to in regulation 12(5)(a) to (i); and
- (b) give the persons listed in paragraph (9) an opportunity to be heard.

(9) The persons referred to in paragraph (8)(b) are—

- (a) the applicant and the owner;
- (b) any person with a right to have anything conveyed by the relevant pipeline or stored in the relevant storage site;
- (c) the Health and Safety Executive or the Health and Safety Executive for Northern Ireland, as appropriate; and
- (d) such other persons as the authority considers appropriate.

(10) If the authority serves a modification notice, regulation 12 has effect in relation to the relevant infrastructure concerned as if references to the relevant infrastructure were references to the relevant infrastructure as it would be with the modifications specified in the notice.

(11) A modification notice does not come into force unless and until the authority serves a notice under regulation 12(8) in respect of the relevant infrastructure that is the subject of the access application.

### **Variation of notices under sections 12 and 13**

14.—(1) A modification notice or a notice under regulation 12(8) may be varied or set aside by the agreement of all the persons on whom it was served.

(2) The authority may vary a notice under regulation 12(8) on the application of one of the persons on whom the notice was served.

(3) But the authority may do so only if satisfied that the variation is necessary to resolve a dispute that has arisen in connection with the notice between the persons on whom it was served.

(4) In considering whether to vary a notice the authority must give an opportunity to be heard to—

- (a) the persons on whom the notice was served;
- (b) any person with a right to have anything conveyed by the relevant pipeline concerned or stored in the relevant storage site concerned;
- (c) the Health and Safety Executive or the Health and Safety Executive for Northern Ireland, as appropriate; and
- (d) such other persons as the authority considers appropriate.

(5) For the purposes of this regulation, a modification notice or a notice under regulation 12(8) is to be treated as having been served on a person (“P”) if there has been assigned to P a right which is secured by the notice or a duty which is imposed by the notice.