
DRAFT STATUTORY INSTRUMENTS

2011 No.

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

Variation conditions

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7.—(1) Subject to paragraph (5), this regulation applies where an application for a consent in respect of relevant infrastructure is considered by the authority.

(2) Subject to paragraph (4), where the authority grants the consent, it may grant it subject to a condition (a “variation condition”) in accordance with paragraph (3) if the authority is satisfied that—

- (a) there is evidence of demand existing or likely to arise for the grant of such consents for the construction of further relevant infrastructure to be designed for the conveyance or storage of carbon dioxide;
- (b) where the further relevant infrastructure is a pipeline, the whole or any part of the route to be taken by a further pipeline would be substantially the same as the route or any part of the route to be taken by the pipeline to which the application relates;
- (c) compliance with the variation condition will not prejudice the safety or environmental integrity of the relevant infrastructure; and
- (d) compliance with the variation condition will not prejudice the efficient operation of the relevant infrastructure concerned.

(3) A variation condition under paragraph (2) may require—

- (a) the capacity of the relevant infrastructure to which it relates or of any part of that relevant infrastructure to be greater than that proposed in the application for the consent;
- (b) the design of the relevant infrastructure to which it relates to be modified, including by the addition of a junction through which another pipeline may be connected to the relevant pipeline or to the relevant storage site; or
- (c) in relation only to a controlled carbon dioxide pipeline, any of the route of the pipeline to be different from that so proposed.

(4) Before exercising the powers conferred by paragraph (2) and regulation 9(1), the authority must give an opportunity to be heard to—

- (a) the applicant for the consent;
- (b) any other person who made representations to the authority as to the matters set out in paragraphs (2) or (3);
- (c) any person with a right to have carbon dioxide conveyed by or stored in the proposed relevant infrastructure;
- (d) the Health and Safety Executive or the Health and Safety Executive for Northern Ireland, as appropriate.

(5) This regulation does not apply where the application for a consent is an application for the grant of a construction authorisation which relates to the construction of a diversion.

Pipeline variation notices

8.—(1) This regulation applies where an application is made for the grant of planning permission for the construction of a relevant pipeline.

(2) Subject to paragraph (4) the authority may, at any time before planning permission for the construction of the pipeline is granted, serve a notice (a “pipeline variation notice”) on the person who made the application for planning permission if the authority is satisfied that—

- (a) there is evidence of demand existing or likely to arise for the grant of planning permission or a consent for the construction of further pipelines to be designed for the conveyance of carbon dioxide;
- (b) the whole or any part of the route to be taken by a further pipeline will be substantially the same as the route or any part of the route to be taken by the pipeline to which the application relates;
- (c) compliance with the pipeline variation notice will not prejudice the safety or environmental integrity of the relevant pipeline; and
- (d) compliance with the pipeline variation notice will not prejudice the efficient operation of the pipeline concerned.

(3) A pipeline variation notice under paragraph (2) may direct that—

- (a) the capacity of the relevant pipeline to which it relates or of any part of that relevant pipeline must be greater than that proposed in the application for the grant of planning permission; or
- (b) the design of the relevant pipeline to which it relates should be modified, including by the addition of a junction through which another pipeline may be connected to the pipeline.

(4) Before exercising the powers conferred by paragraph (2) and regulation 9(1), the authority must give an opportunity to be heard to—

- (a) the person who has applied for planning permission;
- (b) any other person who made representations to the authority as to the matters set out in paragraphs (2) or (3);
- (c) any person with a right to have carbon dioxide conveyed by the proposed relevant pipeline;
- (d) the Health and Safety Executive or the Health and Safety Executive for Northern Ireland, as appropriate.

Notices relating to costs etc.

9.—(1) Where a consent contains a variation condition under regulation 7, or a pipeline variation notice has been served under regulation 8, the authority may serve a notice in accordance with paragraph (2) on—

- (a) the holder of the consent or the person to whose benefit the grant of planning permission enures (the “holder”); and
- (b) any other person who made representations to the authority as to the matters set out in regulations 7(2) or 7(3) or regulations 8(2) or 8(3), as applicable (the “third party”).

(2) A notice under paragraph (1) must—

- (a) specify the sums or the method of determining the sums which the authority considers should be paid to the holder by the third party for the purpose of defraying so much of the

costs of constructing the relevant infrastructure as is attributable to the variation condition or pipeline variation notice;

- (b) require the third party to make, within the period specified for the purpose in the notice, arrangements which the authority considers are appropriate to secure that those sums will be paid to the holder if the holder constructs the relevant infrastructure or a relevant part of it, or satisfies the authority that the holder will construct it, in accordance with the variation condition or pipeline variation notice;
- (c) provide that the holder may, if those arrangements are not made by the third party within the period specified in the notice, elect (in the manner specified in the notice) that the variation condition or pipeline variation notice is, as specified in the notice, to be withdrawn or to have effect with such modifications as are so specified with a view to eliminating the consequences of the representations of the third party; and
- (d) authorise the holder, if the authority is satisfied that the relevant infrastructure or a relevant part of it has been or will be constructed in accordance with the variation condition or pipeline variation notice, to recover those sums from the third party.

Acquisition of rights to use proposed relevant infrastructure

10.—(1) Where relevant infrastructure is proposed to be constructed pursuant to a consent to which a variation condition is attached by virtue of regulation 7(2) or in accordance with a pipeline variation notice, any person other than the holder may make an application under regulation 12(2) in respect of the proposed relevant infrastructure.

(2) Before serving a notice under regulation 9(1) on a third party, the authority must give that person an opportunity to make an application under regulation 12(2) in respect of the proposed relevant infrastructure to which the consent or planning permission relates.

(3) In the circumstances set out in paragraphs (1) and (2), regulations 12 and 13 have effect as if references to relevant infrastructure were references to the infrastructure as it would be once constructed in accordance with the variation condition or pipeline variation notice, and as if references to the owner of the relevant infrastructure were references to the person who will be the owner of the proposed infrastructure.

Diversions

11.—(1) If, in respect of a length of proposed relevant pipeline—

- (a) a variation condition has been imposed under regulation 7(2) or a pipeline variation notice has been served under regulation 8(2), and
- (b) that pipeline is to be diverted,

then the pipeline continues for the purposes of and after the diversion to be subject to any such condition or any direction contained in such notice.

(2) If, in respect of a length of relevant pipeline, any requirements are imposed by virtue of a modification notice under regulation 13 and the pipeline is to be diverted or is subsequently diverted, the pipeline continues for the purposes of and after the diversion to be subject to any such requirements imposed by such notice.