

*This Statutory Instrument corrects an error in [S.I. 2010/2221](#) and is being issued free of charge to all known recipients of that Statutory Instrument.*

*Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

# **EXITING THE EUROPEAN UNION ENVIRONMENTAL PROTECTION**

## **The Storage of Carbon Dioxide (Amendment and Power to Modify) (EU Exit) Regulations 2018**

*Made* - - - -

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*Coming into force in accordance with regulation 1*

The Secretary of State is designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the environment.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018<sup>(3)</sup>.

In accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018 a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

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(1) [S.I. 2008/301](#).

(2) [1972 c. 68](#). Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 ([c. 51](#)) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 ([c. 7](#)).

(3) [2018 c. 16](#).

## PART 1

### General

#### Citation and commencement

1.—(1) These Regulations may be cited as the Storage of Carbon Dioxide (Amendment and Power to Modify) (EU Exit) Regulations 2018.

(2) This regulation and Part 3 come into force on the day before that on which exit day falls.

(3) The remainder of the Regulations come into force on exit day.

## PART 2

### Amendments made under the European Union (Withdrawal) Act 2018 to legislation relating to the storage of carbon dioxide

#### Amendments to the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010

2.—(1) The Storage of Carbon Dioxide (Licensing etc.) Regulations 2010<sup>(4)</sup> are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation)—

(a) in paragraph (3)—

(i) after the definition of “the authority” insert—

““climate change legislation” means—

(a) legislation which before exit day implemented the ETS Directive;

(b) regulations made under Part 3 of the Climate Change Act 2008<sup>(5)</sup> on or after exit day, which impose obligations similar to obligations which existed, on the day before exit day, under legislation which implemented the ETS Directive; or

(c) legislation which levies a tax in relation to greenhouse gas emissions attributable to a person;”;

(ii) after the definition of “the Directive” insert—

““emissions” (except in the definitions of “the ETS Directive” and “Monitoring Regulation”) has the meaning given by section 97 of the Climate Change Act 2008;”;

(iii) after the definition of “general exploration licence” insert—

““greenhouse gas” (except in the definitions of “the ETS Directive” and “Monitoring Regulation”) has the meaning given by section 92 of the Climate Change Act 2008;”;

(iv) in the definition of “legislation”, before “means” insert “(except in paragraph (b) of the definition of “climate change legislation”)”;

(v) after the definition of “monitoring plan” insert—

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<sup>(4)</sup> S.I. 2010/2221, amended by the Energy Act 2016 (c. 70), Schedule 1, Part 2, paragraphs 77-80, S.I. 2012/461 and S.I. 2016/912.

<sup>(5)</sup> 2008 c. 27, to which there are amendments not relevant to these Regulations.

- “Monitoring Regulation” means [Commission Regulation \(EU\) No 601/2012](#) of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council.”;
- (b) in paragraph (4), omit “substantial change”;
- (c) after paragraph (4), insert—
- “(5) In these Regulations, for the purposes of any reference to Annex II to the Directive, Article 13(2) of the Directive shall be read as if for the words “guidelines established pursuant to Article 14 and Article 23(2) of [Directive 2003/87/EC](#)” there were substituted “Monitoring Regulation”.”.
- (3) In regulation 6 (applications for a storage permit)—
- (a) in paragraph (3)(e), for the words after “under” substitute “the Monitoring Regulation”;
- (b) in paragraph (3)(h), for “implementing” substitute “which before exit day implemented”;
- (c) omit paragraph (4).
- (4) In regulation 7 (grant of storage permits)—
- (a) in paragraph (1)(b)—
- (i) for “territories” substitute “territory”;
- (ii) for “member States” substitute “United Kingdom or another state which is party to an agreement with the United Kingdom concerning cross-boundary cooperation in relation to the complex”;
- (b) in paragraph (2), for “member State” substitute “state”;
- (c) omit paragraph (7).
- (5) In regulation 9(3) (information to be published on the register), omit sub-paragraph (f).
- (6) In regulation 11 (review, modification and revocation of storage permit), after paragraph (8) insert—
- “(9) In this regulation “substantial change” means any change not provided for in the storage permit which may have a significant effect on the environment or human health.”.
- (7) In regulation 12 (consequences of revocation of a storage permit)—
- (a) for paragraph (4)(d), substitute—
- “(d) in relation to the offset of emissions which are leakage under climate change legislation (if any); and”;
- (b) in paragraph (4)(e), for “implementing” substitute “which before exit day implemented”.
- (8) In regulation 14 (post-closure obligations)—
- (a) in paragraph (a), for “implementing” substitute “which before exit day implemented”;
- (b) for paragraph (b), substitute—
- “(b) relating to the offset of emissions which are leakage under climate change legislation (if any).”.
- (9) In paragraph 3(7) of Schedule 2—
- (a) after “person” insert “(if any)”;
- (b) after “to” insert “emissions from”;
- (c) for “legislation implementing the ETS Directive” substitute “climate change legislation”.
- (10) In paragraph 7 of Schedule 2—

- (a) for sub-paragraph (5)(c) substitute—
  - “(c) any obligations of the operator arising in respect of the storage site under climate change legislation which relate to—
    - (i) monitoring, reporting or verification of greenhouse gas emissions; or
    - (ii) the offset of emissions which are leakage,
 of which the authority has notified the operator under sub-paragraph (5A); and”;
- (b) after sub-paragraph (5) insert—
  - “(5A) The authority must notify the operator of any climate change legislation it considers gives rise to obligations which should be taken into account under sub-paragraph (5)(c).”.

### **Amendments to the Storage of Carbon Dioxide (Termination of Licences) Regulations 2011**

**3.—(1)** The Storage of Carbon Dioxide (Termination of Licences) Regulations 2011(6) are amended as follows.

- (2) Omit regulation 6 (information to be provided to the European Commission).
- (3) In regulation 9 (issuing a draft termination notice), omit paragraph (4).
- (4) In regulation 11 (serving a termination notice), omit paragraphs (1)(a) and (3).
- (5) In regulation 14 (transfer of obligations)—
  - (a) for paragraph (2)(c), substitute—
    - “(c) the offset of emissions which are leakage under climate change legislation (if any); and”;
  - (b) in paragraph (2)(d), for “implementing” substitute “which before exit day implemented”;
  - (c) for paragraph (3), substitute—
    - “(3) In this regulation—
      - (a) “climate change legislation” means—
        - (i) legislation which before exit day implemented the ETS Directive;
        - (ii) regulations made under Part 3 of the Climate Change Act 2008 on or after exit day, which impose obligations similar to obligations which existed, on the day before exit day, under legislation which implemented the ETS Directive; or
        - (iii) legislation which levies a tax in relation to greenhouse gas emissions attributable to a person;
      - (b) “corrective measures” has the meaning given to it by Article 3 of the Directive;
      - (c) “emissions” (except in sub-paragraphs (d) and (g)) has the meaning given to it by section 97 of the Climate Change Act 2008;
      - (d) “ETS Directive” means [Directive 2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council [Directive 96/61/EC](#);
      - (e) “greenhouse gas” (except in sub-paragraphs (d) and (g)) has the meaning given to it by section 92 of the Climate Change Act 2008;

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(6) [S.I. 2011/1483](#), amended by [S.I. 2016/912](#).

- (f) “legislation” (except in sub-paragraph (a)(ii)) means legislation in force in the United Kingdom (whether passed, or made, before or after the commencement of these Regulations);
- (g) for the purposes of the references to Article 13 of the Directive and Annex II to the Directive in paragraph (2)(a), Article 13(2) shall be read as if for the words “guidelines established pursuant to Article 14 and Article 23(2) of [Directive 2003/87/EC](#)” there were substituted “[Commission Regulation \(EU\) No 601/2012](#) of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council”.”.

#### **Amendments to the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011**

4.—(1) The Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011(7) are amended as follows.

(2) In regulation 12(5)(h) (acquisition of rights to use relevant infrastructure), omit “and to European Union legislation”.

### **PART 3**

#### **Amendments made under section 2(2) of the European Communities Act 1972 to legislation relating to the storage of carbon dioxide**

#### **Amendments to the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010**

5.—(1) The Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 are amended as follows.

(2) In regulation 6(3)(h) (applications for a storage permit), for the words after “implementing” substitute “Article 5 of [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment(8)”.

(3) In paragraph 7(5)(d) of Schedule 2, for “9(5)” substitute “10(5)”.

### **PART 4**

#### **Power to modify application of Annexes I and II to the Directive**

#### **Power to modify application of Annexes I and II to the Directive**

6.—(1) This regulation applies to activities in respect of which the OGA is the licencing authority under section 18(2) of the Energy Act 2008(9).

(2) Subject to paragraph (3), the Secretary of State may by regulations made by statutory instrument modify the requirements of Annex I or II to the Directive as they apply for the purposes of the relevant Regulations, to reflect technical progress or developments in scientific knowledge.

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(7) [S.I. 2011/2305](#).

(8) OJ No. L 26, 28.1.2012, p. 1, as amended by [Directive 2014/52/EU](#).

(9) [2008 c. 32](#). Section 18(2) was amended by Energy Act 2016, Schedule 1, Part 1, paragraph 53, [S.I. 2011/2453](#), [S.I. 2017/524](#) and [S.S.I. 2011/224](#)

- (3) Regulations under this regulation must not adversely affect—
- (a) the ability of the OGA to determine whether the requirements in regulation 7(1)(c) of the Licencing Regulations are satisfied, or
  - (b) monitoring for the purposes specified in paragraph 2(3) of Schedule 2 to the Licencing Regulations.
- (4) Before making regulations under this regulation the Secretary of State must consult the OGA.
- (5) Regulations under this regulation are subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this regulation—
- “the Directive” means [Directive 2009/31/EC](#) of the European Parliament and of the Council of 23 April 2009 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](#)<sup>(10)</sup>;
- “Licencing Regulations” means the Storage of Carbon Dioxide (Licencing etc.) Regulations 2010;
- “the OGA” means the Oil and Gas Authority;
- “the relevant Regulations” means—
- (a) the Licencing Regulations (including provisions in Schedule 1 or 2 included in a licence or storage permit);
  - (b) the Storage of Carbon Dioxide (Termination of Licences) Regulations 2011; and
  - (c) [Commission Regulation \(EU\) No 601/2012](#) of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council.

Date

*Name*  
Minister of State for Energy and Clean Growth  
Department for Business, Energy and Industrial  
Strategy

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<sup>(10)</sup> OJ No L 140, 5.6.2009, p 114, as last amended by Decision (EU) 2018/853 of the European Parliament and of the Council of 30 May 2018 OJ L 150, 14.6.2018.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (a), (b), (c), (d), (f) and (g) of section 8(2) of the 2018 Act) arising from the withdrawal of the UK from the European Union. Part 3 of these Regulations is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (c. 68) and makes other minor corrections (which come into force before exit day).

Parts 2 and 3 of these Regulations make amendments to secondary legislation in the field of environmental protection and, in particular, amend legislation relating to the geological storage of carbon dioxide. Part 4 of the Regulations gives the Secretary of State the power to modify technical requirements applicable to storage sites regulated by the Oil and Gas Authority.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.