

EXPLANATORY MEMORANDUM TO
THE CARBON CAPTURE REVENUE SUPPORT (DIRECTIONS, ELIGIBILITY
AND COUNTERPARTY) REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

- 2.1 Lord Callanan, Parliamentary Under Secretary of State (Minister for Energy Efficiency and Green Finance), at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Paro Konar, Co-Director for the Hydrogen and Industrial Carbon Capture Directorate, at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Daniel Cowley at the Department for Energy Security and Net Zero. Telephone: 07835137524 or email: daniel.cowley@energysecurity.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 These Regulations set out the meaning of "eligible" in relation to a carbon capture entity as required under Chapter 1 Part 2 of the Energy Act 2023 ("the Act"). These Regulations establish the process by which the Secretary of State can direct a carbon capture counterparty to offer to contract with an eligible carbon capture entity, and set out requirements that certain information must be published by the counterparty in respect of contracts entered into, as well as requirements on the counterparty to promptly notify the Secretary of State if it is, or considers it is likely to be, unable to perform its functions.

Where does the legislation extend to, and apply?

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom. The activities of a carbon capture entity may take place in, above or below the territorial sea adjacent to the United Kingdom and waters in a Renewable Energy Zone (within the meaning of Chapter 2 of Part 2 of the Energy Act 2004).

5. Policy Context

What is being done and why?

- 5.1 This instrument concerns the implementation of the Industrial Carbon Capture Business Models (“ICCBMs”) which are intended to support the ambition set out in the Net Zero Strategy to deliver Carbon Capture Usage and Storage (“CCUS”) in four industrial clusters and capture and store 20-30 megatonnes of carbon dioxide (MtCO₂) per annum by 2030, where captured industrial emissions make up 6 MtCO₂ per annum by 2030 and increase to 9 MtCO₂ per annum by 2035. Opportunities from the domestic market for CCUS (across industry, power, and the transport and storage networks) could support £4-5 billion in GVA by 2050 and up to 50,000 jobs by 2030. Industrial carbon capture is considered critical to decarbonising industries with hard to abate emissions and achieving our ambition to reach net zero by 2050.
- 5.2 The ICCBMs have been designed to incentivise the deployment of carbon capture technology by industrial and waste users who often have no viable alternative to achieve deep decarbonisation. Similar to the Contracts for Difference (CfD) scheme, the government’s main mechanism for supporting low-carbon electricity generation, revenue support will be delivered through a private law contract between an eligible carbon capture entity and a carbon capture counterparty.
- 5.3 Initial Industrial Carbon Capture (“ICC”) projects will be selected through an allocation process run by the Department before proceeding to bilateral negotiations. Once negotiations are completed, it is anticipated that successful projects would receive an offer to contract from the counterparty, following a direction to make that offer by the Secretary of State.
- 5.4 These regulations are needed to determine who can be offered a carbon capture revenue support contract, to set out the process governing how the Secretary of State can direct a carbon capture counterparty to offer to contract, to set out requirements for what information about the contracts would need to be made publicly available, and to help ensure the Secretary of State is aware of any potential issues with a counterparty being able to fulfil its role.

Determine the meaning of eligible

- 5.5 The Act states that only an “eligible carbon capture entity” can be offered a carbon capture revenue support contract and section 68(4) requires revenue support regulations to make provision for determining the meaning of “eligible” in relation to a carbon capture entity.
- 5.6 The Regulations set out that to be eligible, a carbon capture entity, where the carbon dioxide (or substance consisting primarily of carbon dioxide) has been produced by commercial or industrial activities, must not be an “excluded carbon capture entity”.
- 5.7 A carbon capture entity is an excluded carbon capture entity if it captures carbon dioxide produced by the generation of electricity at a generating station, the generating station is connected to one or both of the transmission system and the distribution system in respect of all of the electricity generated by the generating station, and the generating station is not either a combined heat and power generating station or an energy recovery generating station.
- 5.8 It should be noted these regulations only form one part of the assessment for whether projects could be awarded an ICC BM contract. Further eligibility criteria are expected to be set for individual allocation rounds in allocation guidance.

Direction by Secretary of State

- 5.9 The Secretary of State may, under section 68(1) of the Act, in accordance with any provision made by revenue support regulations, direct a carbon capture counterparty to offer to contract with an eligible carbon capture entity of the Act. These Regulations set out various requirements in respect of a direction, including that it must be in writing, specify a date by when the counterparty must comply with the direction, and specify the period for which the counterparty must keep the offer to contract open for acceptance. A direction will prohibit the counterparty from modifying the terms of the contract offered without prior written consent of the Secretary of State. Additionally, these Regulations set out the circumstances in which a direction ceases to have effect and enable the Secretary of State to revoke a direction before it has been accepted by the eligible carbon capture entity.

Information Publication

- 5.10 Given the emergent stage of carbon capture in the UK, with no commercial scale projects in operation, it is important that information about their deployment is made available publicly. Sharing information and data in a transparent and open way will help ensure the application of the business models is better understood, enabling potential applicants to plan accordingly and facilitating public scrutiny.
- 5.11 To that end, these Regulations include provisions mandating a counterparty to publish each carbon capture revenue support contract entered into pursuant to a direction from the Secretary of State under section 68(1), apart from redactions of confidential information and personal data. To ensure important information is readily accessible, the Regulations also place an obligation on the carbon capture counterparty to establish and maintain a public register that captures key project information.

Counterparty notification of defaults

- 5.12 The role of a carbon capture counterparty is essential in the ongoing management of contracts and administration of payments to projects supported through the business models. To help ensure the smooth operation of the business models, regulations require a carbon capture counterparty to provide prompt notification to the Secretary of State if it is, or considers that it is likely to be, unable to perform its functions as carbon capture counterparty.

What was the previous policy, how is this different?

- 5.13 This is the first time the UK government has introduced regulations for carbon capture revenue support contracts and therefore there was no previous policy.

6. Legislative and Legal Context

How has the law changed?

- 6.1 The Energy Act 2023 (“the Act”) makes provision for the implementation of the carbon capture business models. These regulations have been drafted for the ICCBMs. These business models have been designed to incentivise the deployment of carbon capture technology by industrial users who often have no viable alternative to achieve deep decarbonisation; thereby supporting the UK’s net zero ambitions. These regulations may be amended in future to enable revenue support contracts to be entered into in respect of other descriptions of carbon capture business model.
- 6.2 Section 57(1) sets out the overarching power for the Secretary of State to make regulations in relation to revenue support contracts (including the funding of liabilities

and costs in relation to such contracts). There are a number of provisions in Chapter 1, Part 2 of the Act which set out the matters which regulations made under the overarching power in section 57(1) may cover.

- 6.3 The Act gives the Secretary of State the power to designate a person to be a counterparty for carbon capture revenue support contracts (a ‘carbon capture counterparty’). Under section 68(1) the Secretary of State has a power to, in accordance with any provision made by revenue support regulations, direct a carbon capture counterparty to offer to contract with an eligible carbon capture entity. This instrument will define the meaning of “eligible” in relation to a carbon capture entity where the relevant carbon dioxide (or substance consisting primarily of carbon dioxide) has been produced by commercial or industrial activities, which will enable the Secretary of State to be able to direct a carbon capture counterparty to offer to contract with an eligible carbon capture entity.
- 6.4 Section 68(2) of the Act provides for revenue support regulations to make further provision about a direction under section 68(1), in particular the circumstances in which a direction may or must be given and the terms it may or must specify. Section 83(1) enables revenue support regulations to make provision about the publication of information and advice. This instrument sets out the process which the Secretary of State must follow when issuing a direction to offer to contract, and information about carbon capture revenue support contracts a carbon capture counterparty must publish.
- 6.5 Section 58(1)(b) of the Act states that a revenue support counterparty (which includes a carbon capture counterparty) must act in accordance with any provision included in revenue support regulations, and section 58(2) provides that revenue support regulations may make provision specifying things that a revenue support counterparty may or must do. Given the critical role of a carbon capture counterparty to effectively deliver a carbon capture revenue support contract, this instrument will require a carbon capture counterparty to promptly notify the Secretary of State if it is, or considers it is likely to be, unable to perform its functions.

Why was this approach taken to change the law?

- 6.6 The ICC business models are required to incentivise the deployment of carbon capture technology by industrial users who often have no viable alternative to achieve deep decarbonisation. The business models will provide the revenue support needed to unlock the private investment and scale up deployment in order to deliver the government’s ambitions. Revenue support regulations are needed to set out the requirements for an entity to be considered an “eligible carbon capture entity”; and therefore, be able to receive revenue support funding through a carbon capture revenue support contract.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The policy set out in this instrument was subject to a 6-week consultation by the Department. “Hydrogen production and industrial carbon capture business models: Consultation in respect of revenue support regulations relating to directions to a counterparty, publication of information and eligibility” was published on 30 March 2023 for stakeholders to provide feedback.
- 7.2 The department received 28 responses to the consultation from organisations and members of the public. The consultation proposals were largely supported by

respondents, with some adjustments, as set out below, made based on feedback received.

- 7.3 The consultation set out a proposed approach for who should and should not be an eligible carbon capture entity. This included taking a technology neutral approach (e.g. not requiring, for the purposes of defining eligibility, the use of any particular carbon capture technology) and not including any restrictions in the revenue support regulations as to the class of persons who can be eligible (e.g. by limiting eligibility only to certain types of corporate entity).
- 7.4 We also proposed that the regulations exclude from eligibility entities capturing carbon dioxide from power generation facilities that are solely connected to the electricity transmission or distribution network. We proposed an exemption to this exclusion for combined heat and power (CHP) and energy from waste (EfW) plants. We proposed to base definitions in the regulations of the “power generation facilities”, “CHP plants” and “EfW plants” on those set out in the 2014 Contracts for Difference (Definition of Eligible Generator) Regulations.
- 7.5 Based on the feedback we received to the consultation, we have changed the scope of what we consider constitutes an EfW plant by removing the requirement for it to be connected to a CHP plant. This will ensure we do not exclude plants operating without CHP. We also further considered the exclusion of gasification or pyrolysis we had originally proposed and have decided to remove this exclusion. This will ensure we do not exclude different types of energy recovery generating station. As a consequence of this change, we decided to use the term “energy recovery generating station” instead of EfW plant.
- 7.6 We also proposed in the consultation that a person who (i) is carrying on activities of capturing carbon dioxide (or any substance consisting primarily of carbon dioxide) that has been produced by commercial or industrial activities, with a view to its permanent geological storage and (ii) is not party to a carbon capture revenue support contract; would not be eligible under the revenue support regulations.
- 7.7 Some respondents highlighted a number of possible future scenarios where this exclusion, aimed to ensure support was only provided to new capture facilities and not to support any that had been established already without government support, could conceivably have a hindering effect on business model support to the sector. This was not our intention and so we decided not to reflect this proposal within the regulations.
- 7.8 The consultation, and Government response to the consultation, are published on gov.uk at: <https://www.gov.uk/government/consultations/proposals-for-hydrogen-production-and-industrial-carbon-capture-regulations>
- 7.9 The Devolved Administrations were consulted on the draft regulations in accordance with the provisions of section 85 of the Energy Act 2023.

8. Applicable Guidance

- 8.1 The Government Response to the consultation informing this instrument was published on 30 October 2023. The Government Response sets out the views of stakeholders in response to the previously proposed policy positions, and an explanation of the final policy decisions taken.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because we do not foresee any direct impact on business. These provisions do not directly regulate business activity. Any cost impacts related to the familiarisation and compliance with regulations would be voluntary.

Impact on businesses, charities and voluntary bodies

- 9.2 These regulations do not directly impose any new duties on a person, or require any changes of behaviour. Whilst they make eligible and ineligible certain classes of person to benefit from a carbon capture revenue support contract, applying for a carbon capture revenue support contract is voluntary. There is no, or no significant, direct impact on business, charities or voluntary bodies. We therefore think it is appropriate that the regulations will come into force on the day after the day on which they are made. Bringing the regulations into force as soon as possible will increase stakeholder confidence in the government's ability to deliver the programme to agreed timelines.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 The public sector is impacted in respect of the carbon capture counterparty, which is expected to be the Low Carbon Contracts Company ("LCCC"), a private company limited by shares and wholly owned by the Secretary of State. These Regulations would, following any designation of the LCCC as a carbon capture counterparty and its consent to that designation, impose new duties on the LCCC as carbon capture counterparty, for example with regard to making offers to contract and information publication duties.
- 9.5 The ICCBMs will be Exchequer funded.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is through a wider monitoring and evaluation framework to track progress against the Sixth Carbon Budget and net zero targets.
- 10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Lord Callanan has made the following statement:
- “In my view the provisions of The Carbon Capture Revenue Support (Directions, Eligibility and Counterparty) Regulations 2023 do not require a review clause as they will be monitored through a wider monitoring and evaluation framework to track progress against the Sixth Carbon Budget and net zero targets.”

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 11.1 These Regulations are the first to be made using the powers contained in Chapter 1 of Part 2 of the Act under sections 57, 58(2), 68(2), 68(4) and 83(1) to define an eligible

carbon capture entity, make further provision about directions from the Secretary of State to a carbon capture counterparty to offer to contract and the publication of information by a carbon capture counterparty and to require a carbon capture counterparty to promptly notify the Secretary of State if it is, or considers it is likely to be, unable to perform its functions.

12. European Convention on Human Rights

- 12.1 Lord Callanan, Parliamentary Under Secretary of State (Minister for Energy Efficiency and Green Finance), at the Department for Energy Security and Net Zero, has made the following statement regarding Human Rights:

“In my view the provisions of The Carbon Capture Revenue Support (Directions, Eligibility and Counterparty) Regulations 2023 are compatible with the Convention rights”.

13. The Relevant European Union Acts

This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).