

ENERGY ACT 2010

EXPLANATORY NOTES

PART 1: CARBON CAPTURE AND STORAGE AND DECARBONISATION

Commentary on Sections

Financial Assistance

Section 1: Financial Assistance

20. This section gives the Secretary of State the power to provide financial assistance for CCS demonstration projects, and for the installation of additional CCS capacity (referred to in the Act and below as additional CCS use) at a future date (subsections (1) and (2)). The Government intends that the additional CCS use will be the retrofit of further CCS capacity limited to the power stations that already have a CCS demonstration project receiving financial support. The section also provides an alternative mechanism for disbursing financial assistance for CCS demonstration projects and additional CCS use, by enabling the Secretary of State to make “assistance schemes” through which the administrator provides the financial assistance (subsections (3) and (4)).

Section 2: Assistance schemes: further provision

21. This section makes provision about assistance schemes made by the Secretary of State under section 1(3) and section 1(4). Subsection (1) provides that an assistance scheme may impose obligations or confer functions on a person. This would include the imposition of obligations or functions on the participants (those carrying out the CCS demonstration projects and additional CCS use) and the administrator, but might also be used, for example, to confer monitoring functions on persons such as the Environment Agency.
22. Subsection (2) provides a non-exhaustive list of matters which may be covered by schemes, including:
- activities to be carried out as part of the CCS demonstration project or installation of additional CCS capacity;
 - level of financial assistance to be provided and how that amount may be calculated;
 - arrangements for the postponement, reduction or withdrawal of financial assistance;
 - administration of the scheme;
 - monitoring and assessment of CCS demonstration projects and additional CCS use;
 - arrangements for the publication of knowledge generated by the project;
 - changes to activities or the participants in the scheme (e.g. as result of changes in ownership);
 - termination of the scheme;

- compliance with the scheme; and
 - establishment of a review and/or appeal process for resolving disputes.
23. Subsection (3) gives the Secretary of State power to amend or revoke assistance schemes. Before making, amending or revoking an assistance scheme, subsection (4) places a requirement on the Secretary of State to consult the administrator of the scheme, the Scottish Ministers (if the assisted activities are in Scotland) and any other person that the Secretary of State thinks appropriate. There is also a requirement for the Secretary of State to lay before Parliament any assistance scheme that has been made or amended (subsection (5)) and a requirement that where an assistance scheme is revoked the Secretary of State lay a memorandum of revocation before Parliament (subsection (6)).
24. Subsections (7) and (8) require that an assistance scheme can only be made with the consent of all those who would be participants in it (those carrying out the CCS demonstration project or additional CCS use). These subsections also set out that a scheme can be amended with the consent of the participants (or those who would be participants) and can be revoked with the consent of the participants. The Secretary of State may also amend or revoke a scheme, without the consent of participants, where the conditions set out under the scheme, or regulations relating to the scheme, allow it.

Section 3: Regulations relating to assistance schemes

25. This section gives the Secretary of State the power to make regulations regarding assistance schemes. These regulations may make provision about any of the matters specified in section 2(2) (see paragraph 22 above), including provision to impose civil penalties for non-compliance with assistance schemes (which can only be made in regulations). Regulations may not apply to an existing assistance scheme without the consent of all participants (subsection (3)). Before making regulations, subsection (4) places a requirement on the Secretary of State to consult the administrator of the scheme, the Scottish Ministers and any other person that the Secretary of State thinks appropriate. This consultation may occur before or after commencement of this power.

Electricity supply levy

Section 4: Electricity supply levy

26. This section gives the Secretary of State the power to make regulations that place a levy on electricity supplies, to be paid by electricity suppliers, based on the provision of financial assistance for CCS demonstration projects and for additional CCS use at those projects (subsections (1) and (2)).
27. Subsections (3) and (4) provide flexibility in the charging of the levy. Under subsection (3), the Secretary of State can make regulations so that the levy varies in different cases; this might be used, for example, to set different rates for different classes of energy suppliers. Subsection (4) allows provision to be made to exempt certain types of electricity supplies from the levy (for example, based on who the consumer of the electricity will be).
28. Subsection (5) provides a non-exhaustive list of matters about which the regulations may make provision, including:
- what constitutes, for the purposes of the levy, an electricity supply and an electricity supplier;
 - the payment of the levy, including the payment of interest in respect of late payments;
 - enforcement of payment of the levy, including through the imposition of civil penalties;

- the general arrangements for the administration of the levy;
 - requirements for the provision, and audit, of information by suppliers;
 - insolvency of persons liable to pay the levy (which would enable provision to be made to ensure that there is no shortfall in the funds raised in the event a supplier becomes insolvent); and
 - the establishment of a review and/or appeals process for resolving disputes.
29. Before making regulations regarding the levy, subsection (6) places a requirement on the Secretary of State to consult the administrator of the levy mechanism and any other person that the Secretary of State thinks appropriate. This consultation may occur before or after commencement of this power.

Reports

Section 5: Reports on decarbonisation and CCS progress

30. This section requires the Government to produce reports every 3 years (starting in 2012) on progress towards decarbonisation of (i.e. reducing the amounts of carbon dioxide emitted into the atmosphere from) electricity generation. The report will need to include specific coverage of the progress made in reducing emissions from coal-fired power generation and progress in the development and use of CCS technologies (subsection (1)).
31. The report will also need to include an assessment of whether CCS technology has been successfully demonstrated (or, if not, when it will be demonstrated) in terms of capturing and storing the carbon emissions from commercial-scale electricity generation and whether coal-fired power stations given planning consent from 1st January 2020 can be expected to have CCS technology fitted to their full generating capacity (subsection (2)).
32. The final required element of the report is a review of whether, in the light of its other findings, Government policies should be revised (subsection (3)).
33. When preparing the report, the Secretary of State will need to consult Scottish and Welsh Ministers, and the report will need to take into account any relevant points raised by the Climate Change Committee in their regular reports on progress towards the Government's carbon reduction targets made under the Climate Change Act 2008 (subsection (4)).
34. Subsection (5) and the definitions of "reporting period" in subsection (6) mean that the first report will need to be produced in 2012 and cover the period between the Act coming into force and the end of 2011. The second report will be published in 2015 and cover the 3 year period between 2012 and 2014. Subsequent reports will be published at 3-yearly intervals thereafter.

General

Section 6: The administrator

35. This section provides (subsection (1)) for Ofgem to be the body that administers both the collection of the levy and the provision, through assistance schemes, of financial assistance for CCS demonstration projects and for additional CCS use. It also gives the Secretary of State power, through regulations, to transfer the function of administrator to another public body, including to himself (subsection (2)). Before making regulations, subsection (3) places a requirement on the Secretary of State to consult the administrator and any other person that the Secretary of State thinks appropriate.

Sections 7 & 8: CCS demonstration projects and additional CCS use & Interpretation of Part

36. These sections set out the definitions for a number of terms used in this Part. In particular, section 7(1) defines “CCS demonstration project” to mean the demonstration and assessment of CCS technology through its use in commercial electricity generation, and work required to prepare for or assess the feasibility of this (for example, a Front-End Engineering and Design study). Section 7(2) defines “additional CCS use” as the use of CCS technology in commercial electricity generation outside the confines of a CCS demonstration project as well as work required to prepare for or assess the feasibility of such use. This means the retrofit of additional CCS capacity to power stations that already have a CCS demonstration project.
37. “Commercial electricity generation” is defined in section 7(4) to mean the generation of electricity on a commercial scale. The financial support mechanism could therefore be used to support CCS demonstration projects on any form of commercial electricity generation; however, as set out at paragraph 13, the Government’s intention is to use the mechanism to support projects on 4 coal-fired power stations.
38. A number of the terms used in these definitions (e.g. “carbon capture and storage technology” and “carbon dioxide”) are also defined.