
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations form part of the implementation by the United Kingdom of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide (OJ No L 140, 5.6.2009, p 114) (“the Directive”). In particular, they implement Articles 18 and 20 on the transfer of responsibility for a closed storage site and the associated financial mechanism.

The Directive is chiefly implemented by Part 1, Chapter 3 of the Energy Act 2008 and by the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) and the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 (S.S.I. 2011/24) (together the “licensing regulations”).

Regulation 2 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

Regulation 3 provides definitions for terms used in the Regulations. For the most part, the terminology followed coincides with that used in the licensing regulations and in the Directive, and some Directive definitions are incorporated accordingly.

Regulation 4 allows the holder of a licence for a storage site that has been closed to apply to the authority (either the Secretary of State or the Scottish Ministers) for the licence to be terminated. An application must include a transfer report. *Regulation 5* allows the authority to require a transfer report to be provided, if no application is made under regulation 4. *Regulation 6* provides that the authority must provide a copy of the transfer report and other information to the European Commission.

Regulation 7 defines the minimum period, after the closure of a storage site, after which the licence may be terminated. The minimum period is determined by the authority. It must be no less than 20 years, but it can be reduced by the authority if certain conditions are fulfilled.

Regulation 8 sets out the conditions which must be met before a licence is terminated, in respect of a storage site that has been closed by the operator.

Regulation 9 prescribes the basis on which the authority must reach an initial decision whether to terminate a licence. It provides for a draft notice of the termination of a licence to be sent to the European Commission.

Regulation 10 provides that, once a draft termination notice has been prepared, the authority must determine the financial contribution which the operator must make before the licence can be terminated. The operator must be given the opportunity to make representations to the authority about the amount and form of the contribution. Payment of the financial contribution is a condition that must be met before the licence is terminated.

Under *regulation 11*, the authority must consider the European Commission's opinion on the draft termination notice. If the authority then determines that all the transfer conditions set out in *regulation 8*, including the payment of the financial contribution, have been met, then the authority must terminate the licence by issuing a termination notice. If the authority determines that those conditions have not been met, it must notify the licence holder and give the reasons for that determination.

If a storage site is closed by the authority acting as operator after the relevant storage permit has been revoked under the licensing regulations, then the applicable licence will be terminated when the conditions set out in *regulation 12* are met. In this case, there is no obligation for a financial

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contribution to be made under *regulation 10* and it is not necessary for the minimum period determined under *regulation 7* to have elapsed.

Regulation 13 allows the authority, when it serves a notice terminating a licence, to require the licence holders to provide it with information about the storage site, which the authority may use to carry out its functions and, in particular, to discharge the obligations and liabilities transferred to it from the licence holders under *regulations 14* and *15*.

Regulations 14 and *15* deal with the effects of the termination of a licence. *Regulation 14* provides that certain obligations of the operator transfer to the authority. Those obligations are the obligations to carry out monitoring of the storage site and corrective measures where necessary, to remedy environmental damage under the Environmental Liability Directive and to surrender allowances under the greenhouse gas emission trading scheme established by Directive [2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003. *Regulation 15(1)* and *(2)* transfers to the authority, with some exceptions, specified liabilities that have been incurred by the licence holders before the termination of the licence. *Regulation 15(3)* deals with specified liabilities that are incurred after the termination of the licence, which are transferred from those who held that licence to the authority.

Regulation 16 provides that, if the authority incurs costs as a result of the transfer to it of obligations and liabilities under *regulations 14* and *15*, it may recover them from the former operator in the circumstances specified in the regulation.

Regulation 17 enables the authority to obtain information from the licence holders in connection with carrying out its functions under these Regulations.

The authority has powers under section 24 of the Act to give directions following the breach of a licence. *Regulation 18(1)* allows the authority to use those powers where the operator fails to provide a transfer report when required, or to pay the financial contribution, or where the licence holder fails to provide information to the authority under *regulation 13* or *17*.

Regulation 18(2) creates offences in relation to the provision of false information to the authority or failure to disclose relevant information. The penalties for these offences are set out in *regulation 18(2)*. *Regulation 19* prevents a private prosecution for these offences from being brought without the consent of the Director of Public Prosecutions (in England and Wales) or the Director of Public Prosecutions for Northern Ireland.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Ricki Kiff, Energy Development Unit, Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW. Tel: 0300 068 6042; email: ricki.kiff@decc.gsi.gov.uk and is published with the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. A Transposition Note setting out how these Regulations implement the relevant provisions of the Directive is annexed to the Explanatory Memorandum.

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