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STATUTORY RULES OF NORTHERN IRELAND

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**2015 No. 388**

**ENVIRONMENTAL PROTECTION**

**The Storage of Carbon Dioxide (Access to Infrastructure) Regulations (Northern Ireland) 2015**

*Made - - - - 1st December 2015*

*Coming into operation 4th January 2016*

The Department of Enterprise, Trade and Investment is a Department designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to the environment.

The Department of Enterprise, Trade and Investment makes these Regulations in exercise of the powers conferred by section 2(2) of that Act.

**Citation and commencement**

1. These Regulations may be cited as the Storage of Carbon Dioxide (Access to Infrastructure) Regulations (Northern Ireland) 2015, and come into operation on 4th January 2016.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954(3) applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

“access application” has the meaning given to it in regulation 11(1);

“access notice” has the meaning given to it in 11(10);

“associate” has the meaning given to it in regulation 4;

“authorised capacity”, in relation to a storage site, means the total quantity of carbon dioxide authorised to be stored in the storage site in accordance with the storage permit;

“carbon dioxide pipe-line” means—

(a) a pipe-line used to convey carbon dioxide to a storage site; or

(b) a pipe-line which is not being used for any purpose, but which is intended to be used to convey carbon dioxide to a storage site;

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(1) S.I. 2008/301.

(2) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) 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) 1954 c. 33 (N.I.).

“Crown lease” means a lease of any part of the bed of the sea forming part of the Crown Estate, or an authorisation to exercise rights in respect of any such part of that Estate;

“the Department” means the Department of Enterprise, Trade and Investment;

“the Directive” means Directive 2009/31/EC(4) of the European Parliament and of the Council on the geological storage of carbon dioxide, as amended by Directive 2011/92/EU(5) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment;

“diversion” means a lateral diversion of any length of a relevant pipe-line (whether or not that pipe-line has been constructed) that is not an offshore pipe-line or of such part of a relevant pipe-line as is not an offshore relevant pipe-line where the diversion is beyond the lateral limits of deviation permitted by planning permission granted in relation to that pipe-line under Part 3 of the Planning Act (Northern Ireland) 2011(6), and “diverted” is to be construed accordingly;

“holder”, in regulations 8 and 9, has the meaning given to it in regulation 8(1)(a);

“injection” means injection of carbon dioxide into a storage site;

“licence” means a licence granted under section 18(1) of the Energy Act 2008(7), and “licence holder” is to be construed accordingly;

“modification notice” has the meaning given to it in regulation 12(2);

“notice” means notice in writing;

“offshore relevant pipe-line” means so much of any relevant pipe-line as is situated in, under or over so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland;

“offshore relevant storage site” means so much of any relevant storage site (including any associated installations, apparatus and works) as is situated in, under or over so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland;

“operator”, in relation to a storage permit, means the person who carries on or (where different) controls activities at the storage site;

“owner” has the meaning given to it in regulation 3;

“pipe-line” has the meaning given to it in regulation 5;

“pipe-line variation notice” has the meaning given to it in regulation 7(3);

“planning authority” means the Department of the Environment or, as the case may be, the district council that has the function of determining the application for planning permission in respect of the relevant infrastructure;

“planning permission” means permission under Part 3 of the Planning Act (Northern Ireland) 2011;

“relevant infrastructure” means a relevant pipe-line or a relevant storage site;

“relevant pipe-line” means a carbon dioxide pipe-line situated in, under or over Northern Ireland, including so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland;

“relevant storage site” means a storage site situated—

- (a) in Northern Ireland; or
- (b) in, under or over so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland,

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(4) OJ No L 140, 5.6.2009, p.114.

(5) OJ No L 26, 28.1.2012, p 1.

(6) 2011 c. 25 (N.I.).

(7) 2008 c. 32.

and any associated installations, apparatus and works;

“storage permit” means a storage permit within the meaning of the Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015(8);

“third party”, in regulations 8 and 9, has the meaning given to it in regulation 8(1)(b);

“variation condition” has the meaning given to it in regulation 6(2).

(3) The following expressions have the meanings given by Article 3 of the Directive—

“CO<sub>2</sub> stream”;

“storage site”.

### **Meaning of “owner”**

**3.—**(1) Except as provided in paragraph (2), in these Regulations “owner”, in relation to relevant infrastructure, means any of the following—

(a) in respect of a relevant storage site—

(i) the operator of the storage site;

(ii) the holder of the storage licence;

(b) in respect of a relevant pipe-line—

(i) a person in whom the pipe-line is vested;

(ii) a lessee and any person occupying or controlling the pipe-line;

(c) a person who has the right to have things conveyed by or stored in a relevant pipe-line or relevant storage site, where such right has been acquired by that person on terms that—

(i) the person is entitled to exercise the right for a period of one year or more; and

(ii) the right is capable of being assigned or otherwise disposed of to another person.

(2) In regulations 12 and 16 and in regulation 9(3) in so far as it relates to regulation 12, “owner”, in relation to relevant infrastructure, means any of the following—

(a) in respect of a relevant storage site—

(i) the operator of the storage site;

(ii) the holder of the storage licence;

(b) in respect of a relevant pipe-line—

(i) a person in whom the pipe-line is vested;

(ii) a lessee and any person occupying or controlling the pipe-line.

(3) In this regulation “storage licence” means the licence under which the use of a place as the storage site is authorised.

### **Meaning of “associate”**

**4.—**(1) For the purposes of regulations 11(7), 11(9) and 16(3) a person is an associate of another if—

(a) either or both of them is a body corporate, and

(b) one of them controls the other, or both are controlled by the same person or persons, and paragraphs (2) to (6) set out the circumstances in which one person (“A”) controls another (“B”).

(2) Where B is a company, A controls B if A possesses or is entitled to acquire—

- (a) one half or more of the issued share capital of B;
  - (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B;
  - (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among shareholders; or
  - (d) such rights as would, in the event of a winding up of B or in any other circumstances, entitle A to receive one half or more of the assets of B which would then be available for distribution among the shareholders.
- (3) Where B is a limited liability partnership, A controls B if A—
- (a) holds the majority of the voting rights in B;
  - (b) is a member of B and has the right to appoint or remove a majority of other members; or
  - (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.
- (4) In paragraph (3)(a) and (c) the references to “voting rights” are to rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (5) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A’s wishes.
- (6) In determining whether, by virtue of paragraphs (2) to (5), A controls B, A is taken to possess —
- (a) any rights and powers possessed by a person as nominee for it; and
  - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).

### **Meaning of “pipe-line”**

**5.—(1)** Subject to paragraph (2), in these Regulations “pipe-line” means a pipe or system of pipes for the conveyance of any thing, together with any apparatus and works associated with such a pipe or system.

- (2) A “pipe-line” does not include—
- (a) a drain or sewer;
  - (b) a pipe or system of pipes constituting or comprised in apparatus for heating or cooling or for domestic purposes;
  - (c) a pipe or system of pipes on the site of any operations or works to which certain provisions of the Factories Act (Northern Ireland) 1965<sup>(9)</sup> apply by virtue of section 125(1) of that Act (building operations and works of engineering construction);
  - (d) a pipe or system of pipes wholly situated within the boundaries of any land occupied as a unit for purposes of agriculture (within the meaning of the Agriculture Act (Northern Ireland) 1949<sup>(10)</sup>), where the pipe or system of pipes is designed for use for purposes of agriculture;
  - (e) a pipe or system of pipes wholly situated in premises used for the purposes of education or research.

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<sup>(9)</sup> 1965 c. 20 (N.I.).

<sup>(10)</sup> 1949 c. 2 (N.I.).

(3) For the purposes of these Regulations the following apparatus and works, and no other, shall be treated as being associated with a pipe, or system of pipes, namely—

- (a) apparatus for inducing or facilitating the flow of anything through, or through a part of, the pipe or system;
- (b) valves, valve chambers, manholes, inspection pits and similar works, being works annexed to, or incorporated in the course of, the pipe or system;
- (c) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in sub-paragraph (a) or (b);
- (d) apparatus for the transmission of information for the operation of the pipe or system;
- (e) apparatus for affording cathodic protection to the pipe or system;
- (f) a structure for the exclusive support of a part of the pipe or system;
- (g) in relation only to a pipe, or system of pipes, which is used to convey carbon dioxide to a storage site, apparatus for treating and cooling carbon dioxide which is to flow through, or through part of, the pipe or system.

(4) In paragraph (3)(g), the reference to a pipe, or system of pipes, which is used to convey carbon dioxide includes a pipe or system which is not being used for any purpose but which is intended to be used to convey carbon dioxide.

#### **Relevant storage site: variation conditions**

6.—(1) Subject to paragraph (5), this regulation applies where an application for a storage permit in respect of a relevant storage site is considered by the Department.

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

- (a) there is evidence of demand existing or likely to arise for the grant of storage permits for the construction of further relevant storage sites to be designed for the storage of carbon dioxide;
- (b) compliance with the variation condition will not prejudice the safety or environmental integrity of the relevant storage site concerned; and
- (c) compliance with the variation condition will not prejudice the efficient operation of the relevant storage site concerned.

(3) A variation condition may require—

- (a) the capacity of the relevant storage site to which it relates or of any part of that relevant storage site to be greater than that proposed in the application for the storage permit; or
- (b) the design of the relevant storage site to which it relates to be modified, including by the addition of a junction through which a carbon dioxide pipe-line may be connected to the relevant storage site.

(4) Before exercising the powers conferred by paragraph (2) and regulation 8(1), the Department shall give an opportunity to be heard to—

- (a) the applicant for the storage permit;
- (b) any other person who made representations to the Department as to the matters set out in paragraph (2) or (3);
- (c) any person with a right to have carbon dioxide stored in the proposed relevant storage site;
- (d) the Health and Safety Executive for Northern Ireland;

- (e) the planning authority or, in the case of an offshore relevant storage site, the Crown Estate Commissioners.

### **Pipe-line variation notices**

7.—(1) Where a person proposes to make an application for the grant of planning permission for the construction of a relevant pipe-line or, in the case of an offshore relevant pipe-line, the grant of a Crown lease, the person shall give not less than six months' notice to the Department that such application is to be made.

(2) The notice under paragraph (1) shall give particulars of the proposal and shall—

- (a) specify the points between which the proposed pipe-line is to run and be accompanied by a map on which is delineated the route which it is proposed to take;
- (b) specify the length, diameter and capacity of the proposed pipe-line.

(3) Subject to paragraph (5), the Department may (whether or not notice has been given to it under paragraph (1)), at any time before planning permission or a Crown lease for the construction of the pipe-line is granted, serve a notice (a “pipe-line variation notice”) on the person who proposes to make, or has made, the application for planning permission or a Crown lease if the Department is satisfied that—

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

(4) A pipe-line variation notice may direct that—

- (a) the capacity of the relevant pipe-line to which it relates or of any part of that relevant pipe-line shall be greater than that proposed in the application for the grant of planning permission or a Crown lease;
- (b) the design of the relevant pipe-line to which it relates should be modified, including by the addition of a junction through which another pipe-line may be connected to the pipe-line; or
- (c) any of the route of the pipe-line to be different from that so proposed.

(5) Before exercising the powers conferred by paragraph (3) and regulation 8(1), the Department shall—

- (a) consult the planning authority or, in the case of a proposed offshore relevant pipe-line, the Crown Estate Commissioners; and
- (b) give an opportunity to be heard to—
  - (i) the person who proposes to make, or has made, the application for the grant of planning permission or a Crown lease;
  - (ii) any other person who made representations to the Department as to the matters set out in paragraph (3) or (4);
  - (iii) any person with a right to have carbon dioxide conveyed by the proposed relevant pipe-line;
  - (iv) the Health and Safety Executive for Northern Ireland.

(6) The Department shall serve a copy of the pipe-line variation notice on the planning authority or, in the case of an offshore relevant pipe-line, the Crown Estate Commissioners.

**Notices relating to costs etc.**

8.—(1) Subject to regulation 9(2), where a storage permit is granted subject to a variation condition or a pipe-line variation notice has been served, the Department may serve a notice in accordance with paragraph (2) on—

- (a) the holder of the storage permit or the person to whose benefit the grant of planning permission enures or the person to whom the Crown lease is granted (the “holder”); and
- (b) any other person who made representations to the Department as to the matters set out in regulation 6(2) or (3) or in regulation 7(3) or (4) (the “third party”).

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

- (a) specify the sums or the method of determining the sums which the Department 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 pipe-line variation notice;
- (b) specify the arrangements which the Department considers should be made by the holder and third party, within a specified period, for the purpose of securing 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 Department that the holder will construct it in accordance with the variation condition or pipe-line variation notice;
- (c) provide that the holder may, if the Department is satisfied that those arrangements have not been made by the third party within the specified period, elect (in the manner specified) that the variation condition or pipe-line variation notice be withdrawn or 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 Department 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 pipe-line variation notice, to recover those sums from the third party.

(3) In paragraph (2) “specified” means specified in the notice.

**Acquisition of rights to use proposed relevant infrastructure**

9.—(1) Where a relevant storage site is proposed to be constructed pursuant to a storage permit to which a variation condition is attached or a pipe-line variation notice has been served in respect of the proposed construction of a relevant pipe-line, any person other than the holder may make an application to the Department under regulation 11(4) in respect of the proposed relevant infrastructure.

(2) Before serving a notice under regulation 8(1) on a third party, the Department shall give the third party an opportunity to make an application under regulation 11(4) in respect of the proposed relevant infrastructure to which the storage permit, planning permission or Crown lease relates.

(3) In the circumstances set out in paragraphs (1) and (2), regulations 11 and 12 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 pipe-line 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.

### **Pipe-line diversions**

**10.**—(1) If, in respect of a length of proposed relevant pipe-line, a pipe-line variation notice has been served and that pipe-line is to be diverted, the pipe-line shall continue for the purposes of and after the diversion to be subject to any direction contained in the pipe-line variation notice.

(2) If, in respect of a length of relevant pipe-line, any requirements are imposed by virtue of a modification notice and the pipe-line is to be diverted or is subsequently diverted, the pipe-line shall continue for the purposes of and after the diversion to be subject to any requirements imposed by the notice.

### **Acquisition of rights to use relevant infrastructure**

**11.**—(1) This regulation applies where—

- (a) a person makes an application to the owner of a relevant pipe-line for a right to have carbon dioxide of the composition specified in the application conveyed by the pipe-line during such period as is so specified and in such quantities as are so specified; or
- (b) a person makes an application to the owner of a relevant storage site to have carbon dioxide of the composition specified in the application, injected into the storage site during such period and at such an injection rate as is so specified and stored in the storage site,

and references in these Regulations to the “access application” are to the application made to the owner of the relevant pipe-line or relevant storage site.

(2) Where an access application is made, the applicant and the owner of the relevant infrastructure shall negotiate in good faith and endeavour to reach agreement on the application.

(3) If an access application is refused on the grounds of lack of capacity, the owner shall give the applicant duly substantiated reasons for the refusal.

(4) If the applicant and the owner do not reach agreement on the access application, the applicant may apply to the Department for an access notice which would secure to the applicant the right sought in the access application.

(5) The Department shall not consider an application under paragraph (4) unless it is satisfied that the applicant and the owner have had a reasonable time in which to reach agreement.

(6) When considering an application under paragraph (4) the Department shall—

- (a) decide whether the application is to be—
  - (i) rejected;
  - (ii) adjourned to enable further negotiations between the applicant and the owner; or
  - (iii) considered further;
- (b) give notice of its decision to the applicant; and
- (c) in the case of a decision to consider the application further, give an opportunity to be heard to—
  - (i) the applicant and the owner;
  - (ii) any person with a right to have carbon dioxide conveyed by the pipe-line or stored in the storage site;
  - (iii) the Health and Safety Executive for Northern Ireland; and
  - (iv) such other persons as the Department considers appropriate.

(7) When giving further consideration to an application under paragraph (4), the Department shall (so far as relevant) take into account—

- (a) the capacity which is or can reasonably be made available in a relevant pipe-line;



- (b) the authorised capacity which is or can reasonably be made available in a relevant storage site;
  - (c) whether the composition of the CO<sub>2</sub> stream to be conveyed by, injected into or stored in, the relevant infrastructure is compatible with the use of the relevant infrastructure for the purpose for which it has been designed;
  - (d) any incompatibilities of technical specification which cannot be reasonably overcome;
  - (e) any other difficulties which cannot be reasonably overcome and which could prejudice the efficient, current and planned future transport or storage of carbon dioxide;
  - (f) the duly substantiated reasonable needs of the owner and any associate of the owner for the conveyance and storage of carbon dioxide;
  - (g) the interests of all users and operators of the relevant infrastructure;
  - (h) the proportion of the United Kingdom's carbon dioxide reduction obligations pursuant to international legal instruments and to European Union legislation that will be met through the capture and geological storage of carbon dioxide; and
  - (i) the number of parties involved in the dispute.
- (8) The Department may serve an access notice only if it is satisfied that—
- (a) the notice will not prejudice—
    - (i) the efficient operation of the relevant infrastructure concerned; or
    - (ii) the safety or environmental security of the conveyance or storage of carbon dioxide by or in the relevant infrastructure concerned; and
  - (b) the condition in paragraph (9) is met.
- (9) The condition is that the Department is satisfied that the notice will not prejudice—
- (a) the conveying by or storage in the relevant infrastructure concerned of the quantities of carbon dioxide which the owner or an associate of the owner requires or may reasonably be expected to require; or
  - (b) the conveying by or storage in the relevant infrastructure concerned of the quantities of carbon dioxide which another person with a right to have carbon dioxide so conveyed or stored requires in the exercise of that right.
- (10) The Department may serve a notice (an “access notice”) containing such provisions as the Department considers appropriate for any of the following purposes—
- (a) to secure to the applicant the right sought in the access application;
  - (b) to secure that exercise of the right is not prevented or impeded;
  - (c) to secure to the applicant such ancillary or incidental rights as the Department considers necessary or expedient, which may include the right to have a pipe-line connected to the relevant pipe-line or relevant storage site by the applicant or the owner;
  - (d) to regulate the charges which may be made for the exercise of any right secured by the notice.
- (11) An access notice may also—
- (a) contain provision authorising one or more of the owners to recover from the applicant payments by way of consideration for any right secured by the notice of amounts specified in the notice or determined in accordance with the notice;
  - (b) contain provision permitting a right secured by the notice to be assigned.
- (12) An access notice shall be served on the owner and the applicant.

(13) An access notice does not have effect unless and until the applicant has given notice to the Department and owner of acceptance of the terms of the access notice in such manner and within such period as is specified in that notice.

### **Compulsory modifications of relevant infrastructure**

**12.**—(1) This regulation applies where—

- (a) a person has made an access application in respect of a relevant pipe-line or relevant storage site; and
- (b) the Department is considering whether to serve an access notice which would secure to the applicant the right sought in the application.

(2) Subject to paragraphs (3) and (6), the Department may serve on the owner of the relevant infrastructure and the applicant a notice in accordance with paragraphs (4) and (5) (a “modification notice”) if it appears to the Department—

- (a) that relevant infrastructure that is the subject of the access application can and should be modified so as to increase its capacity; or
- (b) that relevant infrastructure that is the subject of the access application can and should be modified by installing in it a junction or other apparatus through which another pipe-line may be connected to the relevant pipe-line or to the relevant storage site.

(3) The Department shall not serve a modification notice that requires the authorised capacity of a relevant storage site to be increased.

(4) A modification notice shall—

- (a) specify the modifications which the Department considers should be made to the relevant infrastructure;
- (b) specify the sums or the method of determining the sums which the Department considers should be paid to the owner by the applicant for the purpose of defraying the cost of the modifications;
- (c) specify the arrangements which the Department considers should be made by the applicant, within a period specified in the notice, for the purpose of securing that those sums will be paid to the owner if the owner carries out the modifications or satisfies the Department that they will be carried out;
- (d) require the owner, if the applicant makes those arrangements within that period, to carry out the modifications within a period specified in the notice; and
- (e) authorise the owner, if the Department is satisfied that the owner has carried out or will carry out the modifications, to recover those sums from the applicant.

(5) A modification notice may also contain provision for the purpose of ensuring that if the carrying out of the modifications prejudices any of the matters referred to in regulation 11(9)(a) or (b), any person who suffers loss as a result may recover from the applicant payments by way of compensation of such amounts as are determined in accordance with the notice.

(6) In considering whether to serve a modification notice, the Department shall—

- (a) take into account (so far as relevant) the matters referred to in regulation 11(7)(a) to (i); and
- (b) give the persons listed in paragraph (7) an opportunity to be heard.

(7) The persons referred to in paragraph (6)(b) are—

- (a) the applicant and the owner;
- (b) any person with a right to have any thing conveyed by the relevant pipe-line or stored in the relevant storage site;

- (c) the Health and Safety Executive for Northern Ireland; and
- (d) such other persons as the Department considers appropriate.

(8) Subject to paragraph (9), if a modification notice contains provision by virtue of paragraph (5) the Department shall give a copy of the notice to every person who has a right to have any thing conveyed by the relevant pipe-line or stored in the relevant storage site.

- (9) Before giving a copy of a modification notice under paragraph (8), the Department shall—
- (a) remove from the copy any provision included in the notice by virtue of paragraph (4)(b); and
  - (b) after giving the owner and the applicant an opportunity to be heard, remove from the copy any other provision included in the notice which the Department considers may prejudice the commercial interests of the owner or the applicant if not removed.

(10) If the Department serves a modification notice, regulation 11 has effect in relation to the relevant infrastructure concerned as if references to the relevant infrastructure were references to the relevant infrastructure as it would be with the modifications specified in the notice.

(11) A modification notice does not have effect unless and until the Department has served an access notice in respect of the relevant infrastructure that is the subject of the access application.

#### **Variation of access notices and modification notices**

**13.**—(1) Subject to paragraph (2), an access notice or a modification notice may be varied or set aside by the agreement of all the persons on whom it was served.

(2) An agreement to vary or set aside an access notice or a modification notice does not have effect unless all the persons on whom the notice was served have given joint notice to the Department of the agreement.

(3) Subject to paragraph (4), the Department may vary an access notice on the application of one of the persons on whom the notice was served.

(4) The Department may only vary an access notice under paragraph (3) if it is satisfied that the variation is necessary to resolve a dispute that has arisen in connection with the notice between the persons on whom it was served.

(5) In considering whether to vary an access notice the Department shall give an opportunity to be heard to—

- (a) the person on whom the notice was served;
- (b) any person with a right to have any thing conveyed by the relevant pipe-line concerned or stored in the relevant storage site concerned;
- (c) the Health and Safety Executive for Northern Ireland; and
- (d) such other persons as the Department considers appropriate.

(6) For the purposes of this regulation, an access notice or a modification notice is to be treated as having been served on a person (“P”) if there has been assigned to P a right which is secured by the notice.

#### **Powers of the Department to require information**

**14.**—(1) The Department may by notice require any person listed in paragraph (2) to provide the Department with specified information for the purpose of enabling the Department to decide—

- (a) whether to exercise any function conferred on the Department by regulation 7, 11, 12 or 13; and
- (b) if so, how to exercise that function.

- (2) The persons are—
- (a) a person who proposes to make, or has made, an application for the grant of planning permission for the construction of a relevant pipe-line or, in the case of an offshore relevant pipe-line, the grant of a Crown lease;
  - (b) a person who has made or received an access application.
- (3) Where a person has applied to the Department under regulation 13(3) for an access notice to be varied, the Department may by notice require any person listed in paragraph (4) to provide the Department with specified information for the purpose of enabling the Department to decide—
- (a) whether to vary the notice; and
  - (b) if so, how to vary the notice.
- (4) The persons are—
- (a) the person who applied for the notice to be varied;
  - (b) any other person on whom the notice was served;
  - (c) any person to whom there has been assigned a right which is secured by the notice.
- (5) The information which may be required by the Department under paragraph (1) or (3) includes financial information.
- (6) The Department shall not disclose to any person any information provided under paragraph (1) or (3) unless—
- (a) the person who provided the information consents to the disclosure; or
  - (b) the disclosure is required by virtue of an obligation imposed by law.
- (7) In this regulation “specified” means specified in a notice under paragraph (1) or (3).

#### **Effect of access notice and modification notice on other consent regimes**

- 15.**—(1) The use of relevant infrastructure by any person in accordance with a right secured to that person by virtue of these Regulations is not a contravention of section 17(1) of the Energy Act 2008.
- (2) Subject to paragraph (3), a modification notice requiring a person to carry out modifications authorises that person to carry out the modifications for the purposes of—
- (a) section 17(2)(d) of the Energy Act 2008;
  - (b) a storage permit under the Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015.
- (3) Paragraph (2) does not apply to the extent that a modification notice has been varied by agreement pursuant to regulation 13(1).

#### **Publication of capacity information**

- 16.**—(1) The owner of relevant infrastructure shall publish—
- (a) no later than the first anniversary of the relevant date, the information set out in paragraph (3) relating to available capacity and technical and operating requirements for access; and
  - (b) any changes to the published information as soon as reasonably practicable after they become effective.
- (2) In paragraph (1)(a) the “relevant date”—
- (a) in relation to a relevant storage site, is the date on which the storage permit is granted in respect of the storage site;

- (b) in relation to a relevant pipe-line, is—
  - (i) the date on which planning permission or a Crown lease was granted for the construction of the pipe-line as a relevant pipe-line; or
  - (ii) where the pipe-line was not constructed as a relevant pipe-line, the date on which the pipe-line was first used to convey carbon dioxide for the purposes of an activity within section 17(2)(a) to (c) of the Energy Act 2008.
- (3) The information referred to in paragraph (1) is—
  - (a) in the case of a relevant storage site, the authorised capacity or in the case of a relevant pipe-line, the capacity which is, or can reasonably be made, available in the relevant infrastructure concerned taking into account the quantities of carbon dioxide which—
    - (i) are required, or may reasonably be expected to be required, to be stored or conveyed by the owner or an associate of the owner for the purposes of any business carried on by the owner or associate; or
    - (ii) are required to be stored or conveyed by another person with a right to have carbon dioxide stored in the relevant storage site or conveyed by the relevant pipe-line in the exercise of that right; and
  - (b) subject to paragraph (4), the technical specifications of the CO<sub>2</sub> stream that have to be met in order to secure access to the relevant infrastructure.
- (4) If there is no capacity which is or can reasonably be made available, as described in paragraph (3)(a), the owner is not required to publish the information referred to in paragraph (3)(b).

### **Provision of false information**

- 17.—(1) A person (“P”) is guilty of an offence if, in circumstances falling within paragraph (2), P provides false information to the Department for the purpose of—
- (a) inducing the Department to exercise, or not to exercise, any of the functions conferred on it by these Regulations; or
  - (b) inducing the Department to exercise those functions in a particular way.
- (2) The circumstances are that, at the time the information is provided, P—
- (a) knows or believes the information to be false; or
  - (b) is reckless as to whether or not it is false.
- (3) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Proceedings for an offence under paragraph (1) may not be instituted in Northern Ireland except—
- (a) by the Department or by a person authorised to do so by the Department; or
  - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) For the purposes of this regulation and regulation 18, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and, where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.

### **Compliance with pipe-line variation notices**

- 18.—(1) A person (“P”) is guilty of an offence if—
- (a) P fails to comply with regulation 7(1);

- (b) P contravenes a pipe-line variation notice.
- (2) A person guilty of an offence under paragraph (1)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A person guilty of an offence under paragraph (1)(b) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.

### **Civil proceedings**

19.—(1) The obligation of a person to comply with a notice under regulation 8(1), an access notice or a modification notice is a duty owed to any person who may be affected by a contravention of the notice.

(2) Where a duty is owed by virtue of paragraph (1) to any person, the duty may be enforced as if it were an obligation contained in a contract between that person and the person who owes the duty.

(3) In any proceedings brought against any person in pursuance of paragraph (2), it shall be a defence for that person to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the notice concerned.

(4) The duty to comply with a notice under regulation 14 or to publish information under regulation 16(1) shall be enforceable by the Department by civil proceedings in the High Court for an injunction or other appropriate relief or remedy.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 1st December 2015.



*Mike Thompson*  
A senior officer of the  
Department of Enterprise, Trade and Investment

## EXPLANATORY NOTE

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

These Regulations form part of the implementation in Northern Ireland 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”). They implement Articles 21 and 22 of the Directive on third party access to carbon dioxide storage sites and transport networks.

Regulations 2 to 5 provide definitions for terms used in the Regulations, in particular definitions of “owner”, “associate” and “pipe-line”.

Regulation 6 provides that, in the circumstances set out in the regulation, the Department may, when considering an application for a storage permit for a relevant storage site, grant the storage permit subject to certain conditions requiring the storage site to be constructed to a capacity or design different to that proposed.

Regulation 7 requires a person, who proposes to make an application for the grant of planning permission or a Crown lease for a relevant pipe-line, to give not less than six months’ notice to the Department that such an application is to be made. At any time before the grant is made, the Department may serve a notice on the person requiring the pipe-line to be constructed to a capacity, design or route different to that proposed.

Regulation 8 gives power to the Department, where it has served a notice under regulation 6 or 7, to serve a notice allocating the additional costs of constructing the storage site or pipe-line in conformity with the requirements as to capacity, design and route.

Regulation 9 allows an application for access rights to be made in relation to relevant infrastructure which has yet to be constructed in the circumstances specified in the regulation.

Regulation 10 provides that requirements imposed under regulation 7 or 8 will continue to apply to a relevant pipe-line even where it is diverted beyond the limits permitted under the grant of planning permission or Crown lease.

Regulation 11 provides that, where a person has previously sought to secure access to a relevant pipe-line or storage site by application to the owner, but has not been able to reach agreement with the owner, the person may apply to the Department for a notice granting that access.

Regulation 12 deals with compulsory modifications to a relevant pipe-line or relevant storage site, where an application has been made to an owner, and the Department is considering whether to give an access notice under regulation 11(10). Regulations 11 and 12 each set out the considerations the Department must take into account when deciding how to deal with the application, the process it must follow and what may be required by a notice.

Regulation 13 allows for variation of notices under regulations 11 and 12 once they have been issued, either by agreement among the persons to whom notice is given or, in the case of a notice under regulation 11, by the Department if it is necessary to resolve a dispute about the notice between its recipients.

Regulation 14 gives the Department powers to require information in order for the Department to decide whether to exercise any function under regulation 7, 11, 12 or 13, and if so, how.

Regulation 15 provides that the use of relevant infrastructure in accordance with a right secured by virtue of these Regulations is not a contravention of section 17(1) of the Energy Act 2008 (prohibition on unlicensed activities). It also provides that no additional consent under the statutory

provisions specified in the regulation is required for the modification of relevant infrastructure, if that modification is required by the Department under the Regulations.

Regulation 16 requires the owner of relevant infrastructure to publish information about the available capacity in that infrastructure and to update that information when there is a change in the available capacity.

Regulations 17, 18 and 19 provide for the enforcement of the requirements imposed by the Regulations. Regulation 17 creates a new offence of giving false information to the Department for the purpose of influencing the exercise of its functions under the Regulations.

Regulation 18 provides that a person who fails to give notice to the Department under regulation 7(1) or who contravenes a pipe-line variation notice shall be guilty of an offence.

Regulation 19 provides that the duty of a person to comply with a notice under regulation 8(1), an access notice or a modification notice is a duty owed to any person who may be affected by a contravention of the notice, and provides that any such duty may be enforced by a person to whom it is owed as if it were a contractual right. The duty of a person to comply with an information request under regulation 14, or with the publication requirements under regulation 16, is enforceable by civil proceedings by the Department.