November 2018

Damee Convener,

The Storage of Carbon Dioxide (Amendment) (EU Exit) Regulations 2018

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, wrote to the Conveners of the Finance & Constitution and Delegated Powers and Legislative Reform Committees on 11 September setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach a notification (Annex A) which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and this is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

BEIS is the lead UK department for this SI which is due to be laid on 29 November and which does not allow for the full 28 days scrutiny period. Officials are in contact to discuss the proposed laying date. However, I would be grateful if you are able to consider this notification in early course.
I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you as soon as possible.

Kind regards

[Signature]

PAUL WHEELHOUSE
NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Storage of Carbon Dioxide (Amendment) (EU Exit) Regulations 2018

1. Brief explanation of law that the proposals amend


2. Summary of the proposals and how these correct deficiencies

Without the CCUS EU Exit SI, in a ‘no deal’ scenario the UK licensing regime for geological storage will cease to function adequately, preventing CCUS projects in UK waters (and onshore in England) from proceeding.

In particular, the licensing authority would be unable the grant the legal consent necessary for geological storage to occur (i.e. a storage permit) and would be obliged to consult the European Commission about decisions taken as part of this process. Provisions imposing obligations and liabilities on geological storage site operators would also cease to function or function sub-optimally where defined with reference to legislation implementing the EU Emissions Trading Scheme (“EU ETS”) and other EU Directives.

3. Why the change is considered necessary

Over time technical requirement specified in the CCS Directive will also become outdated, as the European Commission’s power to amend the technical annexes to the CCS Directive to reflect technical learning and scientific progress does not have a UK domestic law equivalent.

The SI proposed would amend the Storage of Carbon Dioxide (Licensing etc) Regulations 2010 (“Licencing Regulations”), Storage of Carbon Dioxide (Termination of Licences) Regulations 2011 (“Termination Regulations”), and Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 (“Access Regulations”) to address EU Exit related deficiencies outlined above and make other minor EU Exit related amendments. The SI also corrects two minor non-EU Exit related cross-referencing errors.

The SI also provides the Secretary of State with a new power to modify technical requirements specified in the CCS Directive as they apply in areas where the Oil and Gas Authority is the licensing authority to reflect technical progress or developments in scientific knowledge. This is intended to replicate a power currently exercised by the European Commission under the CCS Directive, and to allow UK technical requirements be updated to reflect scientific and technical developments post-EU Exit.

4. Scottish Government categorisation of significance of proposals

Category A – no technical issues have been identified.
5. Impact on devolved areas

As the Termination Regulations and Access Regulations apply onshore in Scotland and in the territorial sea adjacent to Scotland, some of the changes made by this SI would apply in Scotland where legislative competence in relation to CCUS is devolved. The CCUS EU Exit SI does not amend the Scottish equivalent to the Licencing Regulations, the Storage of Carbon Dioxide (Licencing etc) (Scotland) Regulations 2011.

6. Summary of Stakeholder engagement/consultation

There are no CCUS projects currently operating in the UK –no technical issues have been identified - no stakeholder engagement is necessary.

7. Other Impact assessments (if available)

There are no CCUS projects currently operating in the UK –no technical issues have been identified - no impact assessments are available

8. Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation

Scottish Government legal and policy officials have discussed the draft SI prepared by the UK Government and have agreed in principle the approach adopted and have considered the changes proposed and see no issue with these being implemented by the UK Government as proposed.

Separate consideration is also being given to the need to amend the Scottish licencing regulations in due course.

9. Intended laying date of SI

29th November 2018

10. If the Scottish Parliament will not have 28 days to scrutinise Scottish Minister’s proposal to consent, why not?

The letter requesting consent from UK Government was received on 6th November and the UK plan to lay the SI above on the 29th November 2018. This timeframe will clearly not allow for the full agreed 28 day timeline.

Given this circumstance we have made the UK government aware of the problems the timeframe represents for this SI but have also advised that we will proceed in good faith and endeavour to turn-around this request as soon as our processes allow.

11. Information about any time dependency associated with the proposal

The SI is intended to be laid on 29th November 2018 (see point 11 above)

12. Any significant financial implications?

No.