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## Authorisation of carbon dioxide storage offshore Scotland – anticipated effects of further devolution

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Dr Peter Brownsort, 11<sup>th</sup> June 2015

### Background

Following the Scottish referendum in 2014, the Smith Commission Agreement<sup>1</sup> proposed devolution of further powers to the Scottish Government including some affecting the authorisation of carbon dioxide (CO<sub>2</sub>) storage under the seabed offshore Scotland. The Secretary of State for Scotland presented a Command Paper<sup>2</sup> to Parliament in January 2015 setting out proposals and draft legislation to take the Smith Commission Agreement forward, with the intention that this could be quickly enacted in the new parliamentary session following the 2015 general election.

The present document summarises how the proposed legislation will affect authorisation of CO<sub>2</sub> storage offshore Scotland.

### Current situation

Currently there are two main parts to authorisation.<sup>3</sup> A potential storage operator must obtain a lease from The Crown Estate (TCE) for the right to store CO<sub>2</sub> under the seabed in the offshore area comprising both the UK territorial waters and the designated gas importation and storage zone.<sup>4</sup> The operator must also obtain a licence, and subsequently a storage permit, from either the Secretary of State for Energy and Climate Change, or, if the operation is within Scottish territorial waters,<sup>5</sup> from Scottish Ministers. The intention is that these two aspects of authorisation are progressed in parallel by TCE and the Department for Energy and Climate Change (DECC).<sup>6</sup>

### Proposed changes under further devolution

Under the proposals in the Command Paper the existing Scottish functions of TCE Commissioners may be transferred to the Scottish Ministers or their nominee. This will allow Scottish Ministers, or their nominee, to grant an operator a lease to the right to store CO<sub>2</sub> under the seabed in the entire Scottish zone,<sup>7</sup> out to 200 nautical miles offshore. However, there are no changes proposed to the requirement for an operator to obtain a licence, and subsequently a storage permit, from DECC.

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<sup>1</sup> Smith Commission Agreement. [https://www.smith-commission.scot/wp-content/uploads/2014/11/The\\_Smith\\_Commission\\_Report-1.pdf](https://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf)

<sup>2</sup> Scotland in the United Kingdom – An enduring settlement. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/397079/Scotland\\_EnduringSettlement\\_acc.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397079/Scotland_EnduringSettlement_acc.pdf)

<sup>3</sup> Energy Act 2008. <http://www.legislation.gov.uk/ukpga/2008/32/contents> . Summarised in: Oil and Gas – Licensing for carbon storage. <https://www.gov.uk/oil-and-gas-licensing-for-carbon-storage--3>

<sup>4</sup> That is, all waters out to 200 nautical miles from the agreed baselines, over which the Crown claims rights under the United Nations Convention on the Law of the Sea.

<sup>5</sup> Scottish territorial waters generally extend 12 nautical miles from the agreed baselines.

<sup>6</sup> Offshore carbon storage licence – application guidance. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/15085/cs-appformguide.doc](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15085/cs-appformguide.doc)

<sup>7</sup> The area out to 200 nautical miles from agreed baselines, as defined in the Scottish Adjacent Waters Boundaries Order 1999. <http://www.legislation.gov.uk/uksi/1999/1126/made>