

Consultation

Proposal to introduce a health and safety policy re-opener to carbon dioxide transport & storage licences

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Consultation Proposal to introduce a health and safety policy re-opener to carbon dioxide transport & storage licences

Executive summary

We¹ are consulting on a proposal to introduce a new uncertainty mechanism into the carbon dioxide transport and storage (CCS) licences held by Net Zero North Sea Storage Ltd and Liverpool Bay CCS Ltd. The proposed mechanism would provide a new re-opener through which the Licensees could request adjustments to allowances where unforeseen changes in CCS-specific health and safety policy require material changes to construction or operational practices.

We welcome responses from all interested parties, particularly those with an interest in carbon capture and storage.

Unless otherwise stated, capitalised terms used in this document will have the meaning given to them in the [Licences](#).

This document outlines the scope and purpose of the consultation, sets out the consultation questions, and provides details on how to submit a response. Following the close of the consultation, we will consider all responses. In having regard to the principle of transparency we will publish the non-confidential responses we receive alongside a decision on next steps on our website at [Carbon capture and storage consultations | Ofgem](#). If you would like your response – in whole or in part – to be treated as confidential, please explain why and clearly identify the information concerned. Where possible, confidential material should be provided in a separate appendix to your response.

¹ The terms “the Authority”, “we”, and “us” are used interchangeably in this document

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1. Introduction

Purpose of this consultation

- 1.1 This consultation sets out our proposal to introduce a new re-opener mechanism (the **‘H&S Policy Re-opener’**) to the carbon dioxide transport and storage licences (the **‘Licence(s)’**) for Net Zero North Sea Storage Ltd and Liverpool Bay CCS Ltd (the **‘Licensee(s)’**).
- 1.2 This consultation aims to outline the policy intent behind the re-opener, the options considered, questions we are looking to answer, and our ‘minded to’ position.
- 1.3 The proposed re-opener mechanism would allow the Licensees to request adjustment to allowances where policy changes, or new requirements, specific to CCS, are placed on a Licensee relating to health and safety.
- 1.4 Section 1 will outline the purpose of the consultation, related publications, explain the background, policy context, purpose of re-opener mechanisms within the Licence, and summarise the consultation stages. Section 2 will explain the detail of the intent behind the H&S Policy Re-opener, while Section 3 will discuss options considered, and how we believe the re-opener supports our duties under the Energy Act 2023.

Background & context: the Licences and re-openers

- 1.5 CCS Licences were awarded under the Energy Act 2023 to Net Zero North Sea Storage Ltd (December 2024) and Liverpool Bay CCS Ltd (April 2025) by the Secretary of State, with Ofgem taking over as the economic regulator following Licence Award.
- 1.6 The Licences establish a regime of ex-ante economic regulation, whereby Licensees are provided allowances upfront against a business plan for a proposed scope of work which must be delivered. In business-as-usual operations this would typically be done on a cycle of 5-year price control periods, however the timing of first regulatory period may be slightly different as it is currently linked to each Licensee reaching commercial operations. The regime relies on setting efficient allowances up front, with costs logged against these allowances once money has been spent. The costs are then recovered through the Allowed Revenue calculated by Ofgem on an annual basis, similar to the way in which gas and electricity networks recover revenue. The regime relies on incentives to encourage the Licensees to spend efficiently against the allowances set upfront, with cost sharing incentives on overspend and underspend. CCS Licensees do not

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receive an Allowed Revenue during construction and commissioning of the networks, and will only receive this once they reach commercial operations.

- 1.7 At the point at which business plans are approved and ex ante allowances set, sometimes there is not sufficient certainty on the need for a particular piece of work, the scope of work, or the costs associated with a piece of work. One of the ways in which this type of uncertainty can be managed is through the use of re-openers.
- 1.8 Re-openers are conditions built into the Licence that allow a Licensee to submit a business plan to Ofgem, upon receipt of which Ofgem may determine adjustments to aspects of the Licence. Typically adjustments may be made to the approved scope of work, the cost allowances, and / or target milestone dates.
- 1.9 One of the re-opener mechanisms that was included in the Licences at Licence Award was the Qualifying Change in Law mechanism under Special Condition J2. This allows changes to be made to the scope, costs, conditions of the Licence and schedule of the projects, including the potential for new development activities to be included. This can be triggered following a change in law, published guidance, or ruling from a court that was not foreseeable, that applies either to a specific project or to the provision of services similar to that which is provided by the Licensee. The full wording should be read in the [Licences as published](#).
- 1.10 Since the Licences were awarded, engagement with the Licensees has highlighted a potential gap in the current framework. There is a risk that changes in health and safety policy by the Health & Safety Executive ('HSE') or other safety regulator, or changes in how that policy is applied to these first-of-a-kind projects, could require modifications to the design, construction, or operation of CCS infrastructure. In some cases, those changes may give rise to material additional costs without constituting a Qualifying Change in Law. Where such changes could not reasonably have been foreseen, we consider the resulting risk to be largely outside the Licensees' control and their ability to manage or mitigate. It is our view that not providing a mechanism for recovery of costs in the event that these risks materialise may drive the wrong behaviours by developers. Further it may potentially impact the financing of future CCS projects due to the perceived regulatory risks driving additional costs that will be borne by users of the networks.
- 1.11 The proposed H&S Policy Re-opener seeks to cover this gap, ensuring the appropriate risk allocation, while complying with relevant health and safety policy.

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Consultation stages

Stage 1 Consultation open: 15 October 2026.

Stage 2 Consultation closes (awaiting decision). Deadline for responses: 06 November 2026.

Stage 3 Responses reviewed and outcome published: December 2026.

Stage 4 (TBD) Statutory consultation on the modification of the Licences.

How to respond

We want to hear from anyone interested in this consultation. Please send your response to the person or team named on the front page of this document.

We have asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

We will publish non-confidential responses on our website.

Your response, data, and confidentiality

You can ask us to keep your response, or parts of your response, confidential. We will respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations, or where you give us explicit permission to disclose.

If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you do wish to be kept confidential and those that you do not wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we will contact you to discuss which parts of the information in your response should be kept confidential and which can be published. We might ask for reasons why.

If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the United Kingdom's withdrawal from the European Union ('**UK GDPR**'), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 1.

If you wish to respond confidentially, we will keep your response confidential, but we will publish the number, but not the names, of confidential responses we receive. We

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will not link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

How to track the progress of a consultation

1. Find the web page for the call for input you would like to receive updates on.
2. Click 'Get emails about this page', enter your email address and click 'Submit'.
3. You will receive an email to notify you when it has changed status.

A consultation has three stages: 'Open', 'Closed (awaiting decision)', and 'Closed (with decision)'.

2. H&S Policy Re-opener

Health & safety risks in the current Licence framework

- 2.1 The application of health and safety policy to CCS Licensees is a type of regulatory risk common to many infrastructure projects. Where CCS differs is that these projects are first-of-a-kind in the UK, so there is limited pre-existing precedent for the application of health and safety policy and / or legislation to carbon capture and storage.
- 2.2 This first-of-a-kind nature creates additional risks for CCS Licensees, that are asymmetric in nature, and which the Licensees have limited opportunity to mitigate.
- 2.3 The nature of the ex-ante regime means that business plans and allowances are likely to be set before engagement with the HSE is sufficiently developed to understand the application of regulatory policy relating to health and safety to specific projects. This risk is highest during the construction and early operational phase of the projects.

Policy intent behind the H&S Policy Re-opener

- 2.4 The intent of the changes we propose is to drive the right behaviours from current and prospective CCS transport and storage companies by ensuring risk allocation is appropriate. It is also to ensure asymmetric regulatory risks that are specific to CCS, are allocated appropriately. Proportionate risk allocation ultimately lowers costs to users, by supporting the value for money of future investment decisions in CCS.

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Features of the H&S Policy Re-opener

2.5 If a decision is made to proceed with the introduction of the re-opener, the Licence text will be consulted on as part of a statutory consultation under section 13 of the Energy Act 2023.

2.6 Key features of the re-opener are:

- **Change directed in writing:** The required health and safety change must be directed in writing and relate to a new or materially changed regulatory position.
- **Demonstration of Good Industry Practice:** The Licensee must be able to demonstrate that their original design, construction, or operation of the network was in accordance with Good Industry Practice and that the directed change was unforeseeable.
- **CCS-specific changes:** The re-opener may only be triggered by policy that is specific to the operation or construction of CCS infrastructure. More general requirements related to health and safety that apply to any working environment will not be included. The requirements must relate to specified legislation under which the HSE, or other competent authority, may impose requirements related to the safe construction and operation of CCS infrastructure. The following pieces of legislation have been identified:
 - the Health and Safety at Work etc. Act 1974, the Pipelines Safety Regulations 1996, the Management of Health and Safety at Work Regulations 1999, the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995, the Offshore Installations and Wells (Design and Construction, etc.) Regulations 1996, the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015, the Pressure Systems Safety Regulations 2000 and any enactment which amends, re-enacts or replaces any of those enactments in relation to substantially the same subject matter.
- **Materiality threshold of £5 million:** The re-opener will have a threshold for the impact of the change that must be met. Changes that have an impact below this will not meet the criteria for the re-opener. We propose this is set at £5 million and will apply to the aggregate net adjustment to Capex and Opex reasonably expected to be required for each change i.e. changes cannot be grouped.

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- **Impact cap of £30 million:** The re-opener will have an impact cap above which no additional increase will be made to allowances. This provides limited coverage for additional works and limited design changes. Costs that are incurred above this may still be recoverable through the Licence, however may be subject to the cost-sharing incentive. Major changes driven by changes to legislation or guidance published by the HSE may still be captured by the existing Qualifying Change in Law re-opener offering greater protection. We propose a cap of £30 million and welcome evidence on whether this is an appropriate level. The cap would apply to the aggregate net adjustment to Capex and Opex that may be made in respect of a single qualifying changed regulatory position.
- **No adjustments to target dates:** The re-opener will not adjust target milestone dates as set out in the Technical Details Document appendix to the Licences. Activities defined as Phase 1 Activities under the Licence and appendices are required to be completed before the Licensee can reach commercial operations. Phase 2 Activities are required to be completed under the Licence, with milestone dates given, but can take place after commercial operations. Target milestone dates for Phase 1 Activities are already subject to additional schedule contingency via the Longstop Date, and additional flexibility is given to defer certain activities into the operational period, with approval from Ofgem. For Phase 2 Activities, existing target dates are commonly able to be amended by direction by the regulator. We do not consider that an additional mechanism is required through this re-opener.
- **Limited protection for changes to the scope of the network:** Limited changed to provide clarity and consistency in the description of the project and the ability of the Licensee to recover spend where additional infrastructure is required. Adjustments will be allowed to the scope of the approved project to ensure the costs are not outside the scope of the approved network and therefore do not constitute Excluded Project Spend.

Examples of where the proposed re-opener may apply

2.7 The examples below are high level scenarios to assist in illustrating the intent of the mechanism at this stage. They may not reflect the final drafting of any subsequent Licence modification, and do not prejudice Ofgem's decisions on any future re-opener applications. These will be assessed against Licence conditions in force at the time of the application, with decisions made on a case-by-case basis.

2.8 Where the re-opener may apply:

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- 1) A Licensee proposes to construct a new carbon dioxide pipeline, in line with industry standards and expectations, and submits a business case to Ofgem for approval.
- 2) Ofgem reviews the business case and approves allowances against the expected scope of work.
- 3) During or after construction, the Health & Safety Executive communicates a requirement in writing, specific to the operation of CCS infrastructure, requiring an additional feature that was not previously expected and could not reasonably have been anticipated at the time of submission and approval of the business case.
- 4) The new requirement results in significant additional costs.

2.9 Where the re-opener may not apply:

- 1) A Licensee is constructing a carbon dioxide pipeline as part of its approved scope of work under the Licence, where allowances have already been approved.
- 2) During construction the Licensee is required to make changes to its design following engagement with the Health & Safety Executive.
- 3) The changes are required because the original design did not meet established industry standards, or because the issues identified should reasonably have been addressed during the early design of the pipeline, before approval of the allowance for construction.

3. Rationale

Ofgem duties and decision making

3.1 Ofgem's objectives relating to CCS are set out under [section 1 of the Energy Act 2023](#). The points that are most relevant to the proposed modification are summarised below. Our principal objectives are to:

- s1(1)(a) protect the interests of current and future transport and storage network users;
- s1(1)(b) protect the interests of any consumers whose interests the Secretary of State or the economic regulator (as the case may be) considers may be impacted by the exercise of their respective functions under this Part;
- s1(1)(c) promote the efficient and economic development and operation of transport and storage networks, having regard to the need for licence holders to be able to finance their licensable activities.

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3.2 s1(3) of the Energy Act 2023 also requires that we must carry out our functions in a manner we consider is best calculated to further the principal, wherever appropriate by (among other things):

- promoting the resilience of transport and storage networks; and
- protecting the public from dangers arising from the construction, operation and decommissioning of infrastructure used for the purposes of carbon dioxide transport and storage.

Options considered

3.3 In considering the proposal we considered a ‘do nothing’ option, maintaining the current Licence, along with different ways of introducing a new re-opener mechanism, or considering the later introduction of protections.

Option 1: Do nothing

3.4 This would maintain the current drafting and offer no additional protections to Licensees.

Option 2: Amend the Qualifying Change in Law Mechanism

3.5 This would amend existing mechanisms to bring the health and safety related policy changes within scope. The existing Change in Scope or Qualifying Change in Law mechanisms allow for significant changes to be made to the scope of the project, cost, Licence conditions and schedule.

Option 3: Introduce a new Health & Safety Policy Re-opener

3.6 This would introduce an entirely new mechanism. The level of protection offered could be tailored specifically to the issue at hand without any need to adjust existing mechanisms.

Option 4: Consider adjustments at the end of the current price control

3.7 This would amount to, in effect, an ex-post adjustment to allowances following the first Periodic Review (occurring between three and four years following the commencement of commercial operations). This would avoid introducing a new uncertainty mechanism.

Our ‘minded to’ position

3.8 Our position is that Option 3, introducing a new H&S Policy Re-opener, is the most appropriate option.

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3.9 Option 1 is not preferred, as we believe it is inconsistent with our objectives to offer some protection to Licensees for the following reasons:

- This specific regulatory risk is challenging for projects to fully mitigate due to a timing mismatch between the ex-ante nature of setting allowances against business plans under the RAB regime and the timeline of engagement with relevant regulators on health and safety issues. Outcomes of engagement with regulators on health and safety issues are only likely to be known at a later date. It is our view that this is consistent with our objectives under s1(1)(c) in allowing for efficient and economic development of networks, while having regard to the resilience of the networks, and protecting the public from dangers arising from the operation of the networks.
- With the CCS regime under development and more networks looking to make final investment decisions and secure financing, ensuring regulatory risks specific to the CCS sector are appropriately allocated will contribute to the investability of the sector. This leads to lower returns being required to attract investment, and therefore lower costs for future users of the networks, while also contributing to more efficient and economic development. This is consistent with our objectives under s1(1)(a) – (c).
- Projects carrying additional risk on this issue may require higher contingency in allowances, or be incentivised to “gold plate” designs, leading to poor value for money for users that will ultimately bear the costs. Avoiding these outcomes is consistent with our objectives under s1(1)(a) – (c), over the long term leading to lower costs and better value for money.

3.10 Option 2 is not preferred, as amending an existing re-opener would complicate the mechanism and would not easily allow us to tailor the level of protection, given the broad scope of adjustments that can be made under the existing mechanisms.

3.11 Option 3 is preferred over Option 4 as it provides greater understanding for industry participants on the how adjustments will be handled, and aligns with [existing precedent from gas distribution](#). Option 4 may prolong uncertainty and in doing so, may not achieve the outcomes desired.

Questions

3.12 We are seeking answers to the following questions. Any evidence that can be supplied will help to strengthen responses and our basis for making decisions.

Questions

Q1. Do you agree with our proposal to introduce the H&S Policy Re-opener?

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- Q2. Do you agree with the decision to limit the scope of the re-opener to changes that are specific to the construction and operation of CCS infrastructure?
- Q3. Do you agree with the introduction of a materiality threshold and an impact cap?
- Q4. Do you propose any alternative calibration of the level of the materiality threshold and impact cap?
- Q5. Do you agree with limiting protection for changes to scope and schedule of the projects?
- Q6. Do you agree with the list of legislation under which requirements may be imposed? Should any be added or removed?
- Q7. Do you agree or disagree with any of the other criteria suggested?

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Next steps

Following the closure of this consultation we will review responses and publish the outcome. If the outcome is that we proceed with the re-opener, we will publish a statutory consultation in line with section 13 of the Energy Act 2023 with the updated Licence drafting.

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Send us your feedback

We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this consultation. We would also like to get your answers to these questions:

- Do you have any comments about the quality of this document?
- Do you have any comments about its tone and content?
- Was it easy to read and understand? Or could it have been better written?
- Are its conclusions balanced?
- Did it make reasoned recommendations?
- Do you have any further comments?

Please send your feedback to stakeholders@ofgem.gov.uk.

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Appendix 1. Privacy policy

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name, address, and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, “Ofgem”). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

4. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for 6 months following the later of the publication of the outcome of this policy consultation, or a final decision on any subsequent statutory licence modification made in accordance with section 13 of the Energy Act 2023 following the outcome of this consultation.

5. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data

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- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
 - to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/> or telephone 0303 123 1113.

6. Your personal data will not be sent overseas.

7. Your personal data will not be used for any automated decision making.

8. Your personal data will be stored in a secure government IT system.

9. More information

For more information on how Ofgem processes your data, view our [Ofgem privacy policy](#).