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By email to [ccustandsconsultations@energysecurity.gov.uk](mailto:ccustandsconsultations@energysecurity.gov.uk)

**CCUS: Ensuring fair access to CO<sub>2</sub> infrastructure consultation**

Dear Sir or Madam

Fuels Industry UK represents the six main oil refining and marketing companies operating in the UK. The Fuels Industry UK member companies – bp, Essar, Esso Petroleum, Phillips 66, Shell, and Valero – are together responsible for the sourcing and supply of product meeting over 85% of UK inland demand, accounting for over a third of total primary UK energy<sup>1</sup>.

The refining and downstream oil sector is vital in supporting UK economic activity. It provides a secure supply of affordable energy for road and rail transport, aviation, and marine applications, as well as for commercial and domestic heating. It also supplies base fluids for use in lubricants, bitumen for use in road surfacing, and graphite for use in electric vehicle batteries and as electrodes in steel and aluminium manufacture.

Fuels Industry UK welcomes the opportunity to respond to the consultation on CCUS: fair access to CO<sub>2</sub> infrastructure

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<sup>1</sup> Based on the Department of Energy Security and Net Zero Digest of UK Energy Statistics 2024

Our responses to the consultation questions are given in Attachment 1.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Chris Gould', is displayed within a light blue rectangular background.

Chris Gould

Energy Transition Lead, Fuels Industry UK

## **Attachment 1: Fuels Industry UK Response**

### **1. Do you have views on the extent to which the Access to Infrastructure Regulations are still needed, and if so, whether they could be amended to avoid duplication, particularly where the economic licensing regime might provide similar or improved outcomes?**

Fuels Industry UK's view is that a clear and stable legislative framework is needed to enable investment in UK Carbon Capture, Usage and Storage (CCUS) infrastructure. We note that this infrastructure is still at an early, and nascent stage in the UK and the investment climate remains fragile for this sector. As such, the potential withdrawal of this legislation must be carefully considered to ensure that it does not undermine either cases for investment or create investor uncertainty.

The implications of the DESNZ stated vision <sup>2</sup> of moving from an economic licencing regime to a market-based approach on the enacting legislation needs to be considered. For example, if the current access to infrastructure legislation is repealed at this time, will it need to be reintroduced in the future as the sector moves to a market-based approach? If that is the case, then a short-term duplication may not be a significant issue for the industry; retaining it also avoids creating undue market uncertainty.

We note that the access to infrastructure regulations <sup>3</sup> also contain a reference to the Pipelines Act 1962; removal of the legislation without adequately addressing this reference may have unintended consequences for the legality of CO<sub>2</sub> pipeline transport. If the access to infrastructure regulations is withdrawn, then there needs to be replacement legislation in place to ensure that CO<sub>2</sub> can be legally transported through pipelines.

Finally, we note that the Access to Infrastructure legislation contains no reference to Non-Pipeline Transport (NPT). We also note the comments in the consultation that this will be covered in the NPT consultation <sup>4</sup>. However, we would like to make the point in this consultation that the Access to Infrastructure legislation should be amended to include NPT CO<sub>2</sub>. This will enhance the scope of the CCUS legislation, enhancing the business case for investment at this crucial time in the development of the sector.

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<sup>2</sup> <https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-a-vision-to-establish-a-competitive-market>

<sup>3</sup> <https://www.legislation.gov.uk/uksi/2011/2305/note>

<sup>4</sup> <https://www.gov.uk/government/consultations/carbon-capture-usage-and-storage-ccus-non-pipeline-transport>

## **2. Do you have views on which technical or capacity information CO<sub>2</sub> transport and storage operators should be required to publish to enable fair and transparent access to CO<sub>2</sub> infrastructure?**

Given the nascent nature of the industry at this time, and the commercial sensitivities involved we would suggest that the government should be cautious about publishing technical or capacity information at this time.

We would also ask the government to be clear on the rationale and expected benefits of publishing this information under an economic licencing regime, where there is limited access available to projects other than those being supported.

The decision on publishing this information can be revisited in due course, as the market matures and moves away from the economic licencing regime.

## **3. Do you have views on how the process for securing access to CO<sub>2</sub> infrastructure should operate in the future? Please give reasons for your answer.**

In an economic licencing regime environment, there should be a clear and published overarching strategy in place on how access to CO<sub>2</sub> infrastructure is allocated. This is especially the case where capacity and access are constrained.

As we discuss in our response to the previous call for evidence on non-pipeline transport and cross-border CO<sub>2</sub> networks <sup>5</sup>, the government should consider the need for a strategic approach, potentially creating hubs, where CO<sub>2</sub> can be aggregated from rail and road tanker solutions, before being shipped to the final storage reservoirs. This would minimise costs for participants looking to store CO<sub>2</sub> and minimise market distortions between UK regions. There is a potential role for large CO<sub>2</sub> sources such as refineries to act as aggregators in this scenario, subject to the development of appropriate support to enable final investment decisions to be made.

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<sup>5</sup> <https://www.fuelsindustryuk.org/media/52iejzp/fuels-industry-uk-ccus-npt-call-for-evidence-response.pdf>

**4. Do you think the approach to acquiring access rights should vary in different circumstances? Please give reasons for your answer.**

There should be as consistent an approach to acquiring access rights as far as possible, in order to ensure a level playing field across the UK.

The government needs to be clear on if it is applying access rights to the CCUS sector under an economic licencing regime, or a market-based approach. A market-based approach should not have different access rights across different schemes as this would create market distortions and be potentially anti-competitive.

**5. Do you have views on third-party access rights in respect of CO2 infrastructure that has been granted an exemption from the requirement to hold an economic licence? If so, how should these obligations be applied?**

Fuels Industry UK provided a response to the call for evidence on licence exemptions<sup>6</sup> in 2023.

We note the proposals at that time were either mainly for an exemption for spur pipelines connected to existing infrastructure (which should be covered under an existing licence) or for small volumes associated with research. Provided that these the only cases that are exempt from holding a licence, then we would see not issue with third party access rights. If the basis for exemptions has changed, then this position may need to be revised.

Exemptions may be included in an amendment to the Access to Infrastructure legislation. As discussed in our response to Q1, the same amendment could also be used to enable NPT access to infrastructure, which is currently not referenced.

**6. To what extent do you agree that the considerations set out in regulation 12 of the Access to Infrastructure Regulations reflect the relevant considerations for determining an access request? Please give reasons for your answer.**

We note that CCUS infrastructure is still at an early, and nascent stage in the UK and continues to develop.

With that in mind, the considerations set out in regulation 12 of the Access to Infrastructure Regulations reflect the relevant considerations for determining an access request as known at this time. They should continue to be reviewed as the sector develops.

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<sup>6</sup> <https://www.fuelsindustryuk.org/media/ugch4y1n/carbon-dioxide-licence-exemptions.pdf>

We note that the Access to Infrastructure legislation contains no reference to NPT. We also note the comments in the consultation that this will be covered in the NPT consultation. However, we would like to make the point in this consultation that the Access to Infrastructure legislation should be amended to include NPT CO<sub>2</sub>. This will enhance the scope of the CCUS legislation, enhancing the business case for investment at this crucial time

**7. Do you have views on whether the considerations set out in regulation 12 also reflect the appropriate considerations for determining access to CO<sub>2</sub> infrastructure that is exempt from the requirement to hold an economic licence? Please give reasons for your answer.**

Fuels Industry UK provided a response to the call for evidence on licence exemptions in 2023.

We note the proposals at that time were either for an exemption for spur pipelines connected to existing infrastructure (which should be covered under an existing licence) or for small volumes associated with research. Provided that these the only cases that are exempt from holding a licence, then issues with the application of the considerations set out in Article 12 are not likely to be of significant concern. If the basis for exemptions has changed, then this position may need to be revised.

**8. Are there any other circumstances where access to CO<sub>2</sub> infrastructure should be able to be refused? Please give reasons for your answer.**

Fuels Industry UK is not aware of any other circumstances where access to CO<sub>2</sub> infrastructure should be able to be refused.

**9. Do you have views on the process for determining disputes over access requests, including the appropriate authority to determine such disputes? Please give reasons for your answer.**

The approach outlined in the consultation would appear to be a reasonable and pragmatic approach.

It is also consistent with the approach already taken in other related sectors, such as the oil and gas sector, where similar issues exist and are well managed.

**10. Do you have views on whether the approach to dispute resolution should be different for CO2 infrastructure that is exempt from the requirement to hold an economic licence? Please give reasons for your answer.**

Fuels Industry UK provided a response to the call for evidence on licence exemptions in 2023.

We note the proposals at that time were either for an exemption for spur pipelines connected to existing infrastructure (which should be covered under an existing licence) or for small volumes associated with research. Provided that these the only cases that are exempt from holding a licence, then we would see that there is limited need for dispute resolution for exempted users. If the basis for exemptions has changed, then this position may need to be revised.

**11. Do you have views on the approach to access rights at the planning/consenting stage as provided for in the Access to Infrastructure Regulations? Please give reasons for your answer.**

Amending access rights at the planning / consenting stage need to be treated very cautiously.

There comes a point in every project where a decision must be taken, and the project moves forward to construction, and completion.

Introducing the ability to change the design basis of a project, potentially at any time up to final planning approval, risks CCUS projects effectively being unable to complete the planning/ consent stage and never reaching beneficial operation.

There needs to be safeguards in place to ensure that projects can move forward in a timely fashion and not be subject to endless review. This can include senior level approval of any changes, which are only to be used in extreme cases.

**12. Do you have views on the appropriate authority to determine third-party access disputes for CO2 transport and storage networks at the planning/consenting stage? Please give reasons for your answer.**

As we state in our response to Q11, amending access rights at the planning / consenting stage need to be treated very cautiously.

Given the need for projects to move forward, we would suggest that any changes are only made where absolutely necessary, and with senior level approval. This could include Secretary of State approval where the impact of the change is material enough to delay the projects concerned.

### **13. Do you have any other views on access rights and obligations in the pre-construction stage?**

Fuels Industry UK has no further views at this time.

### **14. What expectations do you think prospective users will have regarding access to future networks, particularly in areas where they are not located near a cluster?**

There should be as consistent an approach to acquiring access rights as far as possible, in order to ensure a level playing field across the UK.

This includes access to NPT solutions for areas which are not located near a cluster. The government should consider the need for a strategic approach, potentially creating hubs, where CO<sub>2</sub> can be aggregated from rail and road tanker solutions, before being shipped to the final storage reservoirs. This would minimise costs for participants looking to store CO<sub>2</sub> and minimise market distortions between UK regions. There is a potential role for large CO<sub>2</sub> sources such as refineries to act as aggregators in this scenario, subject to the development of appropriate support to enable final investment decisions to be made.

### **15. What expectations do you think prospective users will have regarding the flexibility of connecting to or accessing more than one transportation and storage option?**

Under a market-based approach, users can expect to have access and flexibility to connect and access more than one transportation and storage option.

In order for a market-based approach to work, there needs to be a commercial case for users to sequester CO<sub>2</sub>. This needs a sufficiently high UK ETS price, coupled with appropriate carbon leakage protection. If the UK ETS price is not high enough to overcome sequestration costs, then the CO<sub>2</sub> will not be sequestered. If the carbon leakage projection is not in place, then the higher CO<sub>2</sub> costs will lead to industrial closures and decarbonisation through deindustrialisation.

This market-based approach can include NPT options, recognising that there will be additional transport costs for operators to reach sequestration sites. This can be factored into commercial negotiations, in the same way as it currently done for other sectors such as the fuel supply sector.

If a market-based approach can be established, then the market should be fully capable of evolving and adapting in order to meet the needs of the users. This includes direct discussions with operating companies. This is the way in which the market operates with other commodities, such as fuel supplies. In this scenario there should be minimal need for government intervention, other than to manage societal risks such as those relating to health, safety and the environment.

**16. When do you anticipate that more than one transportation and storage option would become commercially viable? What arrangements would need to be in place to facilitate this?**

As we note in our response to Q15, commercial viability is dependent on there being a commercial case for users to sequester CO<sub>2</sub>. This needs a sufficiently high UK ETS price, coupled with appropriate carbon leakage protection. If the UK ETS price is not high enough to overcome sequestration costs, then the CO<sub>2</sub> will not be sequestered. If the carbon leakage projection is not in place, then the higher CO<sub>2</sub> costs will lead to industrial closures and decarbonisation through deindustrialisation.

This market-based approach can include NPT options, recognising that there will be additional transport costs for operators to reach sequestration sites. This can be factored into commercial negotiations, in the same way as it currently done for other sectors such as the fuel supply sector.

If a market-based approach can be established, then the market should be fully capable of evolving and adapting in order to meet the needs of the users. This includes direct discussions with operating companies. This is the way in which the market operates with other commodities, such as fuel supplies. In this scenario there should be minimal need for government intervention, other than to manage societal risks such as those relating to health, safety and the environment.

We cannot comment on the timeline for this, other than to suggest that the government needs to establish the right conditions for a market-based approach to function. To date, it has not yet done so, leading to the need for a government led approach.

**17. Do you have any other views on access rights and obligations in relation to the evolution of transport and storage networks?**

Fuels Industry UK has no further views on access rights and obligations at this time.

**18. In considering the ability of 'hybrid' CCU/CCS users to secure access to CO<sub>2</sub> infrastructure, what challenges, if any, do you foresee for these projects in switching between carbon storage and carbon usage pathways? How might these challenges be addressed?**

Fuels Industry UK has no response to this question.

## **19. Do you have views on third-party access rights and obligations on UK CO<sub>2</sub> transport and storage operators in an international context?**

As we discuss in our response to the 2024 consultation on NPT and cross border CO<sub>2</sub> networks, we would urge the government to consider the strategic nature and value of the CCUS infrastructure in the context of international competition.

There should not be a reliance on a purely market driven approach, if UK CCS capacity is constrained. A failure to take this into account risks non-UK producers offering higher prices for CCS storage than UK producers, effectively squeezing out UK emitters from UK infrastructure. It is entirely possible that future carbon markets (such as the EU ETS price relative to the UK ETS price subject to any linkage agreements) could give rise to these market conditions. Equally similar market conditions could arise for UK CO<sub>2</sub> exports, which may be priced out of non-UK infrastructure.

The squeezing out of UK emitters by non-UK ones would be a sub-optimal outcome for the UK economy and a poor use of national resources. UK refineries should not be made uncompetitive and squeezed out of a UK carbon storage market because other governments are putting a higher price or subsidy on carbon capture so non-UK CO<sub>2</sub> displaces UK CO<sub>2</sub> from UK carbon storage locations. However, we recognise that as the market develops, capacity limitations will send a signal for further T&S capacity increases in the industry, encouraging further investment and capacity debottlenecking as required. These strategic and competition risks need to be considered while the CCS schemes develop both within and without the UK.