



# Energy Act 2023

## 2023 CHAPTER 52

### PART 2

#### CARBON DIOXIDE CAPTURE, STORAGE ETC AND HYDROGEN PRODUCTION, TRANSPORT AND STORAGE

### CHAPTER 1

#### REVENUE SUPPORT CONTRACTS

#### *General*

#### **88 Shadow directors, etc**

- (1) The Secretary of State is not, by virtue of the exercise of a power conferred by or by virtue of this Chapter, to be regarded as—
  - (a) a person occupying the position of director in relation to a [Chapter 1](#) entity;
  - (b) a person in accordance with whose directions or instructions the directors of a [Chapter 1](#) entity are accustomed to act;
  - (c) a person in accordance with whose directions or instructions the members of a Chapter 1 entity which is a limited liability partnership are accustomed to act;
  - (d) exercising any function of management in a [Chapter 1](#) entity;
  - (e) a principal of a [Chapter 1](#) entity.
- (2) An allocation body is not, by virtue of the exercise of a power conferred by or by virtue of this Chapter, to be regarded as—
  - (a) a person occupying the position of director in relation to a revenue support counterparty;
  - (b) a person in accordance with whose directions or instructions the directors of a revenue support counterparty are accustomed to act;

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- (c) a person in accordance with whose directions or instructions the members of a revenue support counterparty which is a limited liability partnership are accustomed to act;
  - (d) exercising any function of management in a revenue support counterparty;
  - (e) a principal of a revenue support counterparty.
- (3) In this section “[Chapter 1](#) entity” means the following—
- (a) a revenue support counterparty;
  - (b) a hydrogen levy administrator;
  - (c) an allocation body.

#### Commencement Information

- I1** [S. 88](#) in force at Royal Assent for specified purposes, see [s. 334\(3\)\(a\)\(vi\)](#)
- I2** [S. 88](#) in force at 26.12.2023 in so far as not already in force, see [s. 334\(3\)\(b\)](#)

## 89 Modifications of licences etc for purposes related to levy obligations

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 7 of the Gas Act 1986 (licensing of gas transporters);
  - (b) the standard conditions incorporated in licences under section 7 of the Gas Act 1986 by virtue of section 8 of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 7 of the Gas Act 1986, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may modify—
- (a) a condition of a particular licence under Article 8(1)(a) of the Gas (Northern Ireland) Order 1996 ([S.I. 1996/275 \(N.I. 2\)](#)) (licences to convey gas);
  - (b) the standard conditions of licences under Article 8(1)(a) of that Order;
  - (c) a document maintained in accordance with the conditions of licences under Article 8(1)(a) of that Order, or an agreement that gives effect to a document so maintained.
- (3) The powers conferred by subsections (1) and (2) may be exercised only for the purpose of facilitating or supporting enforcement of, and administration in connection with, obligations under regulations within [section 70](#) (including facilitation and support by way of allowing or requiring the provision of services).
- (4) Provision included in a licence, or in a document or agreement relating to licences, by virtue of any power under subsection (1) or (2) may in particular include provision of a kind that may be included in revenue support regulations.
- (5) Provision included in a licence, or in a document or agreement relating to licences, by virtue of a power conferred by this section may do anything authorised for licences of that type by—
- (a) section 7B(5)(a), (6) or (7) of the Gas Act 1986, or
  - (b) Article 10(3)(a) to (d), (4), (5) or (6A) of the Gas (Northern Ireland) Order 1996 ([S.I. 1996/275 \(N.I. 2\)](#)).

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- (6) For the purposes of [subsection \(5\)\(b\)](#), the provisions referred to in that paragraph are to be read as if references to the Northern Ireland Authority for Utility Regulation included the Secretary of State.
- (7) If under [subsection \(1\)](#) the Secretary of State makes modifications of the standard conditions of a licence, the GEMA must—
- (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.
- (8) If under [subsection \(2\)](#) the Secretary of State makes modifications of the standard conditions of a licence, the Northern Ireland Authority for Utility Regulation must—
- (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.
- (9) Before making a modification under this section, the Secretary of State must consult—
- (a) the holder of any licence being modified, and
  - (b) such other persons as the Secretary of State considers it appropriate to consult.
- (10) [Subsection \(9\)](#) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

#### Commencement Information

**I3** [S. 89](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

## 90 Electricity system operator and gas system planner licences: modifications

- (1) The Secretary of State may, for the purpose of facilitating or ensuring the effective performance of functions specified in [subsection \(3\)](#), modify—
- (a) the conditions of a licence under [section 6\(1\)\(da\)](#) of the Electricity Act 1989 (electricity system operator licence);
  - (b) a document maintained in accordance with the conditions of such a licence, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may, for the purpose of facilitating or ensuring the effective performance of functions specified in [subsection \(3\)](#), modify—
- (a) the conditions of a licence under [section 7AA](#) of the Gas Act 1986 (gas system planner licence);
  - (b) a document maintained in accordance with the conditions of such a licence, or an agreement that gives effect to a document so maintained.
- (3) The functions referred to in [subsections \(1\)](#) and [\(2\)](#) are—
- (a) functions of hydrogen production allocation bodies, and
  - (b) other functions under this Chapter which are related to such functions.
- (4) Modifications under [subsections \(1\)](#) and [\(2\)](#) may only make provision in relation to times when the person holding the licence is a hydrogen production allocation body.

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- (5) The provision referred to in subsection (4) includes consequential or transitional provision in relation to times when it is no longer the case that the person holding the licence is a hydrogen production allocation body.
- (6) Provision included in a licence, or in a document or agreement relating to licences, by virtue of a power under this section may in particular—
  - (a) include provision of any kind that may be included in revenue support regulations or regulations under [section 73](#);
  - (b) do any of the things authorised for licences of that type by—
    - (i) section 7B(5)(a), (5ZA), (6) or (7) of the Gas Act 1986, or
    - (ii) section 7(3), (4), (5) or (6A) of the Electricity Act 1989.
- (7) Before making a modification under this section the Secretary of State must consult—
  - (a) the holder of any licence being modified;
  - (b) the GEMA;
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (8) Subsection (7) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

#### Commencement Information

**I4** [S. 90](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

## 91 [Sections 89 and 90: supplementary](#)

- (1) In this section “relevant power” means a power conferred by—
  - (a) subsection (1) or (2) of [section 89](#), or
  - (b) [section 90](#).
- (2) Before making modifications under a relevant power, the Secretary of State must lay a draft of the modifications before Parliament.
- (3) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (4) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (5) Subsection (3) does not prevent a new draft of proposed modifications being laid before Parliament.
- (6) In this section “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (7) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (8) A relevant power—

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- (a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
  - (b) may be exercised differently in different cases or circumstances;
  - (c) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (9) Provision included in a licence, or in a document or agreement relating to licences, by virtue of a relevant power—
- (a) may make different provision for different cases;
  - (b) need not relate to the activities authorised by the licence.
- (10) The Secretary of State must publish details of any modifications made under a relevant power as soon as reasonably practicable after they are made.
- (11) A modification made under a relevant power of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986 or the Gas (Northern Ireland) Order 1996.
- (12) The power conferred by a relevant power to “modify” (in relation to licence conditions or a document) includes a power to amend, add to or remove, and references to modifications are to be construed accordingly.
- (13) In section 81 of the Utilities Act 2000 (standard conditions of gas licences), in subsection (2), after “Energy Prices Act 2022” insert “or under [section 89](#) or sections [245](#) to [247](#) of the Energy Act 2023”.

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**Commencement Information**

**I5** [S. 91](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

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