



# Energy Act 2004

## 2004 CHAPTER 20

VALID FROM 24/08/2004

### PART 3

#### ENERGY REGULATION

#### CHAPTER 1

#### ELECTRICITY TRADING AND TRANSMISSION

#### **133 “New trading and transmission arrangements”**

- (1) References in this Chapter to the new trading and transmission arrangements are to new arrangements relating to the trading and transmission of electricity in Great Britain designed—
  - (a) to promote the creation of a single competitive wholesale electricity trading market, and
  - (b) to introduce a single set of arrangements for access to and use of any transmission system in Great Britain.
- (2) Expressions used in subsection (1) have the same meaning as in Part 1 of the 1989 Act (electricity supply), as amended by section 135.

#### **134 Power to modify licence conditions**

- (1) If the Secretary of State considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements (whether wholly or partly), he may modify—
  - (a) the conditions of a particular licence under section 6 of the 1989 Act (licences authorising supply etc.), or

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- (b) the standard conditions of licences of any of the types of licence mentioned in subsection (1) of that section (generation, transmission, distribution or supply licences).
- (2) The power under subsection (1) includes—
  - (a) power to make modifications relating to the operation of distribution systems, and
  - (b) power to make incidental, consequential or transitional modifications.
- (3) Before making modifications under this section, the Secretary of State shall consult the holder of any licence being modified and such other persons as he considers appropriate.
- (4) Subsection (3) may be satisfied by consultation before, as well as by consultation after, the commencement of this section.
- (5) The Secretary of State shall publish any modifications under subsection (1) in such manner as he considers appropriate.
- (6) Any modification under subsection (1)(a) of part of a standard condition of a licence shall 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 1989 Act.
- (7) Where the Secretary of State modifies the standard conditions of licences of any type under subsection (1)(b), GEMA shall—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modifications in such manner as it considers appropriate.
- (8) The power under subsection (1) may not be exercised after the end of the period of eighteen months beginning with the day on which that subsection comes into force.
- (9) In subsection (2)(a), the reference to distribution systems is to be construed in accordance with section 4(4) of the 1989 Act.

### **135 Alteration of transmission activities requiring licence**

- (1) Section 4 of the 1989 Act (prohibition on unlicensed activities in connection with supply of electricity) is amended as follows.
- (2) In subsection (1) (which lists the activities prohibited), for paragraph (b) substitute—
  - “(b) participates in the transmission of electricity for that purpose;”.
- (3) After subsection (3) insert—
  - “(3A) In subsection (1)(b) above, the reference to a person who participates in the transmission of electricity is to a person who—
    - (a) co-ordinates, and directs, the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, or
    - (b) makes available for use for the purposes of such a transmission system anything which forms part of it.

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(3B) For the purposes of subsection (3A)(b), a person shall not be regarded as making something available just because he consents to its being made available by another.”

(4) In subsection (4) (definitions for the purposes of Part 1), for the definition of “transmit” substitute—

““transmission”, in relation to electricity, means transmission by means of a transmission system;

“transmission system” means a system which—

(a) consists (wholly or mainly) of high voltage lines and electrical plant, and

(b) is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another.”

VALID FROM 01/09/2004

### 136 Transmission licences

(1) In section 6 of the 1989 Act (licences authorising supply etc.), in subsection (1) (kinds of licence which may be granted), for paragraph (b) substitute—

“(b) a licence authorising a person to participate in the transmission of electricity for that purpose (“a transmission licence”);”.

(2) After subsection (6) of that section insert—

“(6A) A transmission licence may authorise the holder to participate in the transmission of electricity in any area, or only in an area specified in the licence.

(6B) The Authority may, with the consent of the holder of a transmission licence, modify terms included in the licence in pursuance of subsection (6A) above.”

(3) In section 7 (licence conditions: general), after subsection (2) insert—

“(2A) Without prejudice to the generality of paragraph (a) of subsection (1), conditions included in a transmission licence by virtue of that paragraph may—

(a) require the licence holder not to carry on an activity which he would otherwise be authorised by the licence to carry on, or

(b) restrict where he may carry on an activity which he is authorised by the licence to carry on.”

### 137 New standard conditions for transmission licences

(1) If the Secretary of State considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements, he may determine new standard conditions in relation to transmission licences.

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- (2) The Secretary of State shall publish any conditions determined under subsection (1) in such manner as he considers appropriate.
- (3) Conditions published in accordance with subsection (2) shall be standard conditions for the purposes of transmission licences, subject to any modifications of the standard conditions for the purposes of licences of that type made—
- (a) under Part 1 of the 1989 Act, or
  - (b) under this Act,
- after the determination under subsection (1).
- (4) The standard conditions for the purposes of transmission licences may contain provision—
- (a) for any standard condition included in a transmission licence not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in, or determined under, the standard conditions;
  - (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined;
  - (c) for any standard condition included in such a licence which is suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined.
- (5) In section 8A of the 1989 Act (standard conditions of licences), in subsection (1) (incorporation in future licences of conditions which are standard conditions by virtue of section 33(1) of the Utilities Act 2000 (c. 27)), for the words from “section 6(1)” to “supply licences)” substitute “ section 6(1)(a), (c) or (d) (that is to say, generation licences, distribution licences or supply licences) ”.
- (6) In that section, after subsection (1) insert—
- “(1A) Subject to subsection (2), each condition which by virtue of section 137(3) of the Energy Act 2004 is a standard condition for the purposes of transmission licences shall be incorporated by reference in each transmission licence granted on or after the day on which section 137(6) of that Act comes into force.”
- (7) The power under subsection (1) may not be exercised—
- (a) after the end of the period of eighteen months beginning with the day on which that subsection comes into force, or
  - (b) on or after the day on which subsections (5) and (6) come into force.

### **138 Conversion of existing transmission licences**

Schedule 17 (which makes provision for a licensing scheme in relation to existing transmission licences) has effect.

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PROSPECTIVE

### **139 Grant of transmission licences**

- (1) If the Secretary of State considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements, he may by direction—
  - (a) require GEMA to grant a transmission licence to such person, and on such terms and subject to such conditions, as the direction may provide;
  - (b) require GEMA to refuse an application for a transmission licence.
- (2) The Secretary of State shall consult GEMA before issuing a direction under subsection (1).
- (3) Subsection (2) may be satisfied by consultation before, as well as by consultation after, the commencement of this section.
- (4) The powers under subsection (1) may not be exercised after the end of the period of eighteen months beginning with the day on which that subsection comes into force.
- (5) The power under subsection (1)(a) may only be exercised on one occasion and then only to require the grant of a single licence.
- (6) The power under subsection (1)(b) may not be exercised once the power under subsection (1)(a) has been exercised.

### **140 Duties to provide information etc. to Secretary of State**

- (1) If GEMA receives an application for a transmission licence at a time when the power under section 139(1)(b) is exercisable, it shall as soon as practicable send a copy of the application to the Secretary of State.
- (2) GEMA shall provide the Secretary of State with all such information as he may require for the purposes of or in connection with the carrying-out of any of his functions under this Chapter.
- (3) Each holder of a licence under section 6 of the 1989 Act shall provide the Secretary of State with all such information and other assistance as he may require for the purposes of or in connection with the carrying-out of any of his functions under this Chapter.
- (4) Section 105(1) of the Utilities Act 2000 (c. 27) (general restrictions on disclosure of information) does not apply to a disclosure made in pursuance of this section.

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### **141 Property arrangements schemes**

Schedule 18 (which makes provision about property arrangements schemes) has effect.

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## 142 Interpretation of Chapter 1 of Part 3

In this Chapter—

“transmission licence” means a licence under section 6(1)(b) of the 1989 Act;

and references to the new trading and transmission arrangements are to be construed in accordance with section 133.

VALID FROM 01/09/2004

## 143 Amendments consequential on Chapter 1 of Part 3

(1) Schedule 19 (which makes amendments consequential on the provisions of this Chapter) has effect.

(2) Where the effect of—

(a) a modification under section 134, or

(b) a scheme under Schedule 17,

is to reduce in any respect the area in which the holder of a transmission licence may carry on activities, Schedule 4 to the 1989 Act shall have effect in relation to him as if any reference to the activities which he is authorised by his licence to carry on included a reference to the activities which he was previously so authorised to carry on.

## 144 Transition

The Secretary of State may by order make in connection with the coming into force of any provision of this Chapter such transitional provision or saving as he considers necessary or expedient.

VALID FROM 01/12/2004

## CHAPTER 2

### INTERCONNECTORS FOR ELECTRICITY AND GAS

#### *Electricity interconnectors*

## 145 Operators of electricity interconnectors to be licensed

(1) The 1989 Act is amended as follows.

(2) In subsection (1) of section 4 (licensable activities), at the end of paragraph (c) insert “or

(d) participates in the operation of an electricity interconnector,”.

(3) Before subsection (4) of that section insert—

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“(3C) A reference in this Part to participating in the operation of an electricity interconnector is a reference to—

- (a) co-ordinating and directing the flow of electricity into or through an electricity interconnector; or
- (b) making such an interconnector available for use for the conveyance of electricity;

and a person is not to be regarded as participating in the transmission of electricity by reason only of activities constituting participation in the operation of an electricity interconnector.

(3D) For the purposes of subsection (3C)(b), a person shall not be regarded as making something available just because he consents to its being made available by another.

(3E) In this Part “electricity interconnector” means so much of an electric line or other electrical plant as—

- (a) is situated at a place within the jurisdiction of Great Britain; and
- (b) subsists wholly or primarily for the purposes of the conveyance of electricity (whether in both directions or in only one) between Great Britain and a place within the jurisdiction of another country or territory.

(3F) For the purposes of this section—

- (a) a place is within the jurisdiction of Great Britain if it is in Great Britain, in the territorial sea adjacent to Great Britain or in an area designated under section 1(7) of the Continental Shelf Act 1964; and
- (b) a place is within the jurisdiction of another country or territory if it is in that country or territory or in waters in relation to which authorities of that country or territory exercise jurisdiction.”

(4) In section 5(1) (power of the Secretary of State to grant exemptions from licensing), for “or (c)” substitute “, (c) or (d)”.

(5) In section 6 (power to grant licences), after subsection (1)(d) insert “or

- (e) a licence authorising a person to participate in the operation of an electricity interconnector (“an interconnector licence”).”

(6) After subsection (2) of that section insert—

“(2A) The same person may not be the holder of an interconnector licence and the holder of a licence falling within any of paragraphs (a) to (d) of subsection (1).”

(7) Before subsection (7) of that section insert—

“(6C) An interconnector licence authorising participation in the operation of an electricity interconnector—

- (a) must specify the interconnector or interconnectors in relation to which participation is authorised; and
- (b) may limit the forms of participation in the operation of an interconnector which are authorised by the licence.”

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#### **146 Standard conditions for electricity interconnectors**

- (1) The Secretary of State must, before the commencement of subsection (6), determine standard conditions for electricity interconnector licences.
- (2) Those standard conditions may contain provision—
  - (a) for a standard condition included in an electricity interconnector licence not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in or determined under the standard conditions;
  - (b) for the effect of a standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
  - (c) for a standard condition included in such a licence the effect of which is for the time being suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined.
- (3) The Secretary of State must publish the standard conditions determined by him under this section.
- (4) The publication must be in such manner as the Secretary of State considers appropriate.
- (5) The standard conditions determined by the Secretary of State have effect subject to any modifications made under Part 1 of the 1989 Act or under this Act.
- (6) Before subsection (2) of section 8A of the 1989 Act (standard conditions) insert—
 

“(1B) Subject to subsection (2), each condition which by virtue of section 146 of the Energy Act 2004 is a standard condition for the purposes of interconnector licences shall be incorporated, by reference, in each interconnector licence granted on or after the commencement of subsection (6) of that section.”
- (7) In this section “electricity interconnector licence” means an interconnector licence under section 6(1)(e) of the 1989 Act.

#### **147 Consequential amendments of the 1989 Act**

- (1) The 1989 Act is amended as follows.
- (2) In section 3A—
  - (a) in subsection (1) (principal objective of GEMA in relation to electricity), at the end insert “ or the provision or use of electricity interconnectors ”; and
  - (b) in subsection (5)(a) (duty as to carrying out of functions), after “electricity”, where first occurring, insert “ or to participate in the operation of electricity interconnectors ”.
- (3) In section 29 (regulations)—
  - (a) in subsection (1)(b), after “electricity”, where first occurring, insert “ from the use of electricity interconnectors, ”;
  - (b) in subsection (2)(b), after “electricity” insert “ or in the use of electricity interconnectors ”;
  - (c) in subsection (2)(c), after “electricity” insert “ or to participate in the operation of an electricity interconnector ”.



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- (4) In section 30(2)(a) (duty of inspector to inspect apparatus belonging to licence holders), after “electricity” insert “ or to participate in the operation of electricity interconnectors ”.
- (5) In section 43 (concurrent functions of GEMA and the OFT under the Enterprise Act 2002), in each of subsections (2A) and (3), after “electricity” insert “ or the use of electricity interconnectors ”.
- (6) In section 58(2) (information protected by directions), after “electricity” insert “ or to participate in the operation of electricity interconnectors ”.
- (7) In section 64(1) (interpretation), after the definitions of “electricity distributor” and “electricity supplier” insert—  
““electricity interconnector” has the meaning given by section 4(3E);”.
- (8) In section 98(1) (statistical information)—
  - (a) after “electricity”, where first occurring, insert “ or the use of electricity interconnectors ”; and
  - (b) at the end insert “ or to participate in the operation of electricity interconnectors ”.

#### **148 Grant of electricity interconnector licences to existing operators**

- (1) This section applies where a person is participating in the operation of an electricity interconnector at the time when the power of GEMA to grant electricity interconnector licences comes into force.
- (2) The Secretary of State shall have power to grant such a licence to that person under section 6 of the 1989 Act.
- (3) Sections 6A(5), 7 and 8A of the 1989 Act (notice of licence and licence conditions) shall have effect in relation to the grant of licences by the Secretary of State by virtue of this section as if—
  - (a) references in those sections to GEMA included references to the Secretary of State; and
  - (b) in section 8A, the words “the Secretary of State and” in subsection (4)(b) and subsection (5) were omitted.
- (4) Before granting a licence to a person by virtue of this section, the Secretary of State must consult—
  - (a) that person;
  - (b) GEMA; and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) Subsection (4) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (6) In this section—

“electricity interconnector licence” means an interconnector licence under section 6(1)(e) of the 1989 Act; and

“participating in the operation of an electricity interconnector” has the same meaning as in Part 1 of the 1989 Act.

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### *Gas interconnectors*

#### **149 Operators of gas interconnectors to be licensed**

- (1) The Gas Act 1986 (c. 44) is amended as follows.
- (2) In subsection (1) of section 5 (prohibition on unlicensed activities)—
  - (a) in paragraph (a), at the beginning insert “ otherwise than by means of a gas interconnector ”; and
  - (b) after that paragraph insert—
    - “(aa) participates in the operation of a gas interconnector;”.
- (3) After subsection (5) of that section insert—
  - “(6) A reference in this Part to participating in the operation of a gas interconnector is a reference to—
    - (a) co-ordinating and directing the conveyance of gas into or through a gas interconnector; or
    - (b) making such an interconnector available for use for the conveyance of gas.
  - (7) For the purposes of subsection (6)(b) a person shall not be regarded as making something available just because he consents to its being made available by another.
  - (8) In this Part “gas interconnector” means so much of any pipeline system as—
    - (a) is situated at a place within the jurisdiction of Great Britain; and
    - (b) subsists wholly or primarily for the purposes of the conveyance of gas (whether in both directions or in only one) between Great Britain and another country or territory.
  - (9) For the purposes of this section a place is within the jurisdiction of Great Britain if it is in Great Britain, in the territorial sea adjacent to Great Britain or in an area designated under section 1(7) of the Continental Shelf Act 1964.
  - (10) In this section “pipe-line system” includes the pipes and any associated apparatus comprised in that system.”
- (4) In section 6A(1) (power of the Secretary of State to grant exemptions from licensing), after “paragraph (a)” insert “, (aa) ”.
- (5) In section 7(3) (no licence may be issued to holder of licence under section 7A), after “under section” insert “ 7ZA or ”.
- (6) After section 7 insert—

#### **“7ZA Licences for operation of gas interconnectors**

- (1) Subject to subsection (2), the Authority may grant a licence authorising any person to participate in the operation of a gas interconnector.
- (2) A licence shall not be granted under this section to a person who is the holder of a licence under section 7 or 7A.

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- (3) A licence under this section—
- (a) must specify the interconnector or interconnectors in relation to which participation is authorised; and
  - (b) may limit the forms of participation in the operation of an interconnector which are authorised by the licence.”
- (7) In section 7A(3) (no licence may be issued to holder of licence under section 7), after “section 7” insert “ or 7ZA ”.
- (8) In—
- (a) the definitions of “licence” in sections 4AA(8) and 48(1), and
  - (b) section 36(1) and (2)(d),
- after “section 7” insert “ , 7ZA ”.
- (9) In section 24(1A)(a) (references to the Competition Commission for licence modifications), after sub-paragraph (i) insert—
- “(ia) licences under section 7ZA above.”
- (10) In section 41C(4) (addition of activities to prohibited activities), after paragraph (a) insert—
- “(aa) participation in the operation of a gas interconnector;”.
- (11) In section 48(1) (interpretation) after the definition of “gas fittings” insert—
- ““gas interconnector” has the meaning given by section 5(8);”.

### **150 Standard conditions for gas interconnectors**

- (1) The Secretary of State must, before the commencement of subsection (6) of this section, determine standard conditions for licences under section 7ZA of the Gas Act 1986 (c. 44).
- (2) Those standard conditions may contain provision—
- (a) for a standard condition included in a licence under section 7ZA of the Gas Act 1986 not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in or determined under the standard conditions;
  - (b) for the effect of a standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
  - (c) for a standard condition included in such a licence the effect of which is for the time being suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined.
- (3) The Secretary of State must publish the standard conditions determined by him under this section.
- (4) The publication must be in such manner as the Secretary of State considers appropriate.
- (5) The standard conditions determined by the Secretary of State have effect subject to any modifications made under Part 1 of the Gas Act 1986 (c. 44) or under this Act.
- (6) In subsection (1) of section 8 of that Act (standard conditions)—

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- (a) after “2000” insert “ or section 150 of the Energy Act 2004 ”; and
  - (b) after paragraph (a) insert—
    - “(aa) licences under section 7ZA above;”.
- (7) After subsection (6) of that section insert—
- “(6A) The Authority shall not make any modifications under subsection (3) above of a condition of a licence under section 7ZA unless it is of the opinion that the modifications are such that—
- (a) the licence holder would not be unduly disadvantaged in competing with one or more other holders of licences under that section; and
  - (b) no other holder of a licence under that section would be unduly disadvantaged in competing with the holder of the licence to be modified or with any one or more other holders of licences under that section.”
- (8) In sections 23(1)(b) and (2), 26(1A) and 27(1)(b) and (2) of that Act (which relate to the modification of standard conditions), after “licences under section 7 above” insert “, licences under section 7ZA above ”.
- (9) In sections 23(11) and 26(5) of that Act (which require the publication of modifications of standard conditions), after “section 7” insert “, 7ZA ”.
- (10) In section 26A(9) of that Act (which also relates to the modification of such conditions), after “section 7” insert “ or section 7ZA ”.

VALID FROM 14/08/2006

### 151 Disapplication of existing regimes

- (1) In each of sections 9(1A) and 9A(1A) of the Pipe-lines Act 1962 (c. 58) (pipe-lines to which provision for construction of additional pipe-lines do not apply), for “neither upstream petroleum pipe-lines nor gas pipe-lines” substitute “ not an upstream petroleum pipe-line, a gas pipe-line or a gas interconnector ”.
- (2) In section 10(1)(b)(ii) of that Act (pipe-lines excluded from provisions for securing use of pipelines), for “is not” substitute “ is neither comprised in a gas interconnector nor ”.
- (3) The following provisions of that Act shall cease to have effect—
  - (a) section 10B (cases to which section 10C applies);
  - (b) in section 10C(1) the words “to which this section applies (a “relevant gas pipe-line”)”; and
  - (c) in section 10C(2) to (11), the word “relevant” wherever occurring.
- (4) In section 66(1) of that Act (interpretation)—
  - (a) for the definition of “gas pipe-line” substitute—
 

““gas pipe-line” means a pipe-line used to convey gas to premises, or to a pipe-line system operated by a gas transporter (within the meaning of Part 1 of the Gas Act 1986), which—

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- (a) is a pipe-line in respect of which an exemption has been granted by or under that Act from the requirement for a gas transporter’s licence; and
  - (b) is not comprised in an upstream petroleum pipe-line;”
  - (b) after the definition of “gas” insert—
    - ““gas interconnector” has the same meaning as in Part 1 of the Gas Act 1986;”
  - (c) in the definition of “owner”, for “10B” substitute “ 10C ”.
- (5) In the Petroleum Act 1998 (c. 17)—
- (a) in section 17(1A) (exceptions to application of provisions for acquisition of rights to use pipelines), for the words from “and” onwards substitute “ or to a gas interconnector (within the meaning of Part 1 of the Gas Act 1986). ”; and
  - (b) sections 17A and 17B (special rules for interconnectors) shall cease to have effect.

## **152 Grant of gas interconnector licences to existing operators**

- (1) This section applies where a person is participating in the operation of a gas interconnector at the time when the power of GEMA to grant licences under section 7ZA of the Gas Act 1986 (c. 44) comes into force.
- (2) The Secretary of State shall have power to grant a licence to that person under section 7ZA of the Gas Act 1986.
- (3) Sections 7B and 8 of the Gas Act 1986 (general provisions relating to licences and licence conditions) shall have effect in relation to the grant of licences by the Secretary of State by virtue of this section as if—
  - (a) references in those sections to GEMA included references to the Secretary of State;
  - (b) sections 7B(1), (2) and (2A) were omitted; and
  - (c) in section 8, the words “the Secretary of State, to” in subsection (5)(b) and subsection (6) were omitted.
- (4) Before granting a licence to a person by virtue of this section, the Secretary of State must consult—
  - (a) that person;
  - (b) GEMA; and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) Subsection (4) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (6) In this section “participating in the operation of a gas interconnector” has the same meaning as in Part 1 of the Gas Act 1986.

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VALID FROM 14/08/2006

### 153 Extraterritorial application of Gas Act 1986

After section 64 of the Gas Act 1986 (c. 44) insert—

#### “64A Extraterritorial operation of Act

- (1) Where by virtue of this Act an act or omission taking place outside Great Britain constitutes an offence, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain.
- (2) Provision made by or under this Act in relation to places outside Great Britain—
  - (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
  - (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of a part of the United Kingdom.”

VALID FROM 05/10/2004

## CHAPTER 3

### SPECIAL ADMINISTRATION REGIME FOR ENERGY LICENSEES

#### *Energy administration orders*

### 154 Energy administration orders

- (1) In this Chapter “energy administration order” means an order which—
  - (a) is made by the court in relation to a protected energy company; and
  - (b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the court.
- (2) The person appointed in relation to a company for the purposes of an energy administration order is referred to in this Chapter as the energy administrator of the company.
- (3) The energy administrator of a company must manage its affairs, business and property, and exercise and perform all his powers and duties as such, so as to achieve the objective set out in section 155.
- (4) In relation to an energy administration order applying to a non-GB company, references in this section to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain.

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(5) In this Chapter—

“protected energy company” means a company which is the holder of a relevant licence; and

“relevant licence” means—

- (a) a licence granted under section 6(1)(b) or (c) of the 1989 Act (transmission and distribution licences for electricity); or
- (b) a licence granted under section 7 of the Gas Act 1986 (licensing of gas transporters).

### **155 Objective of an energy administration**

(1) The objective of an energy administration is to secure—

- (a) that the company’s system is and continues to be maintained and developed as an efficient and economical system; and
- (b) that it becomes unnecessary, by one or both of the following means, for the energy administration order to remain in force for that purpose.

(2) Those means are—

- (a) the rescue as a going concern of the company subject to the energy administration order; and
- (b) transfers falling within subsection (3).

(3) A transfer falls within this subsection if it is a transfer as a going concern—

- (a) to another company, or
  - (b) as respects different parts of the undertaking of the company subject to the energy administration order, to two or more different companies,
- of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the energy administration.

(4) The means by which transfers falling within subsection (3) may be effected include, in particular—

- (a) a transfer of the undertaking of the company subject to the energy administration order, or of a part of its undertaking, to a wholly-owned subsidiary of that company; and
- (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).

(5) The objective of an energy administration may be achieved by transfers falling within subsection (3) to the extent only that—

- (a) the rescue as a going concern of the company subject to the energy administration order is not reasonably practicable or is not reasonably practicable without such transfers;
- (b) the rescue of that company as a going concern will not achieve that objective or will not do so without such transfers;
- (c) such transfers would produce a result for the company’s creditors as a whole that is better than the result that would be produced without them; or
- (d) such transfers would, without prejudicing the interests of those creditors as a whole, produce a result for the company’s members as a whole that is better than the result that would be produced without them.

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- (6) In this section “the company’s system”, in relation to an energy administration, means—
- (a) the system of electricity distribution or of electricity transmission, or
  - (b) the pipe-line system for the conveyance of gas,
- which the company subject to the energy administration order has been maintaining as the holder of a relevant licence.
- (7) In this section “efficient and economical”, in relation to a system for electricity distribution or electricity transmission, includes co-ordinated.

### **156 Applications for energy administration orders**

- (1) An application for an energy administration order in relation to a company may be made only—
- (a) by the Secretary of State; or
  - (b) with the consent of the Secretary of State, by GEMA.
- (2) The applicant for an energy administration order in relation to a company must give notice of the application to—
- (a) every person who has appointed an administrative receiver of the company;
  - (b) every person who is or may be entitled to appoint an administrative receiver of the company;
  - (c) every person who is or may be entitled to make an appointment in relation to the company under paragraph 14 of Schedule B1 to the 1986 Act (appointment of administrators by holders of floating charges); and
  - (d) such other persons as may be prescribed by energy administration rules.
- (3) The notice must be given as soon as reasonably practicable after the making of the application.
- (4) In this section “administrative receiver” means—
- (a) an administrative receiver within the meaning given by section 251 of the 1986 Act for the purposes of Parts 1 to 7 of that Act; or
  - (b) a person whose functions in relation to a non-GB company—
    - (i) are equivalent to those of an administrative receiver; and
    - (ii) relate only to the affairs and business of the company so far as carried on in Great Britain and to its property in Great Britain.

### **157 Powers of court**

- (1) On hearing an application for an energy administration order, the court has the following powers—
- (a) it may make the order;
  - (b) it may dismiss the application;
  - (c) it may adjourn the hearing conditionally or unconditionally;
  - (d) it may make an interim order;
  - (e) it may treat the application as a winding-up petition and make any order the court could make under section 125 of the 1986 Act (power of court on hearing winding-up petition);
  - (f) it may make any other order which the court thinks appropriate.



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- (2) The court may make an energy administration order in relation to a company only if it is satisfied—
  - (a) that the company is unable to pay its debts;
  - (b) that it is likely to be unable to pay its debts; or
  - (c) that, on a petition by the Secretary of State under section 124A of the 1986 Act (petition for winding up on grounds of public interest), it would be just and equitable (disregarding the objective of the energy administration) to wind up the company in the public interest.
- (3) The court must not make an energy administration order in relation to a company on the ground set out in subsection (2)(c) unless the Secretary of State has certified to the court that the case is one in which he considers (disregarding the objective of the energy administration) that it would be appropriate for him to petition under section 124A of the 1986 Act.
- (4) The court has no power to make an energy administration order in relation to a company which—
  - (a) is in administration under Schedule B1 to the 1986 Act; or
  - (b) has gone into liquidation (within the meaning of section 247(2) of that Act).
- (5) An energy administration order comes into force—
  - (a) at the time appointed by the court; or
  - (b) if no time is so appointed, when the order is made.
- (6) An interim order under subsection (1)(d) may, in particular—
  - (a) restrict the exercise of a power of the company or of its directors; or
  - (b) make provision conferring a discretion on a person qualified to act as an insolvency practitioner in relation to the company.
- (7) Where the company in relation to which an application is made is a non-GB company, the reference in subsection (6)(a) to restricting the exercise of a power of the company or of its directors is a reference only to restricting the exercise of such a power—
  - (a) within Great Britain; or
  - (b) in relation to the company's affairs or business so far as carried on in Great Britain, or to its property in Great Britain.
- (8) For the purposes of this section a company is unable to pay its debts if—
  - (a) it is a company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or
  - (b) it is an unregistered company which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding-up of unregistered companies), or which would be so deemed if it were an unregistered company for the purposes of those sections.

## **158 Energy administrators**

- (1) The energy administrator of a company—
  - (a) is an officer of the court; and
  - (b) in exercising and performing his powers and duties in relation to the company, is the company's agent.

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- (2) The management by the energy administrator of a company of any affairs, business or property of the company must be carried out for the purpose of achieving the objective of the energy administration as quickly and as efficiently as is reasonably practicable.
- (3) The energy administrator of a company must exercise and perform his powers and duties in the manner which, so far as it is consistent with the objective of the energy administration to do so, best protects—
  - (a) the interests of the creditors of the company as a whole; and
  - (b) subject to those interests, the interests of the members of the company as a whole.
- (4) A person is not to be the energy administrator of a company unless he is a person qualified to act as an insolvency practitioner in relation to the company.
- (5) Where the court makes an appointment in a case in which two or more persons will be the energy administrator of a company after the appointment, the appointment must set out—
  - (a) which (if any) of the powers and duties of an energy administrator are to be exercisable or performed only by those persons acting jointly;
  - (b) the circumstances (if any) in which powers and duties of an energy administrator are to be exercisable, or may be performed, by one of the persons appointed to be the energy administrator, or by particular appointees, acting alone; and
  - (c) the circumstances (if any) in which things done in relation to one of the persons appointed to be the energy administrator, or in relation to particular appointees, are to be treated as done in relation to all of them.

#### **159 Conduct of administration, transfer schemes etc.**

- (1) Schedule 20 (which applies the provisions of Schedule B1 to the 1986 Act about ordinary administration orders and certain other enactments to energy administration orders) has effect.
- (2) Schedule 21 (which makes provision for transfer schemes to achieve the objective of an energy administration) has effect.
- (3) The power to make rules conferred by section 411 of the 1986 Act (company insolvency rules) shall apply for the purpose of giving effect to this Chapter as it applies for the purpose of giving effect to Parts 1 to 7 of that Act and, accordingly, as if references in that section to those Parts included references to this Chapter.

#### *Restrictions on other insolvency procedures*

#### **160 Restrictions on winding-up orders**

- (1) This section applies where a petition for the winding-up of a protected energy company is presented by a person other than the Secretary of State.
- (2) The court is not to exercise its powers on a winding-up petition unless—
  - (a) notice of the petition has been served both on the Secretary of State and on GEMA; and

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- (b) a period of at least fourteen days has elapsed since the service of the last of those notices to be served.
- (3) If an application for an energy administration order in relation to the company is made to the court in accordance with section 156(1) before a winding-up order is made on the petition, the court may exercise its powers under section 157, instead of exercising its powers on a winding-up petition.
- (4) References in this section to the court's powers on a winding-up petition are references to—
  - (a) its powers under section 125 of the 1986 Act (other than its power of adjournment); and
  - (b) its powers under section 135 of that Act.

#### **161 Restrictions on voluntary winding up**

- (1) A protected energy company has no power to pass a resolution for voluntary winding up without the permission of the court.
- (2) Such permission may be granted only on an application made by the company.
- (3) The court is not to grant permission on such an application unless—
  - (a) notice of the application has been served both on the Secretary of State and on GEMA; and
  - (b) a period of at least fourteen days has elapsed since the service of the last of those notices to be served.
- (4) If an application for an energy administration order in relation to the company is made to the court in accordance with section 156(1) after an application for permission under this section has been made and before it is granted, the court may exercise its powers under section 157, instead of granting permission.
- (5) In this section “a resolution for voluntary winding up” has the same meaning as in the 1986 Act.

#### **162 Restrictions on making of ordinary administration orders**

- (1) This section applies where an ordinary administration application is made in relation to a protected energy company by a person other than the Secretary of State.
- (2) The court must dismiss the application if—
  - (a) an energy administration order is in force in relation to the company; or
  - (b) an energy administration order has been made in relation to the company but is not yet in force.
- (3) Where subsection (2) does not apply, the court, on hearing the application, must not exercise its powers under paragraph 13 of Schedule B1 to the 1986 Act (other than its power of adjournment) unless—
  - (a) notice of the application has been served both on the Secretary of State and on GEMA;
  - (b) a period of at least fourteen days has elapsed since the service of the last of those notices to be served; and

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(c) there is no application for an energy administration order that is outstanding.

(4) Paragraph 44 of Schedule B1 to the 1986 Act (interim moratorium) does not prevent, or require the permission of the court for, the making of an application for an energy administration order.

(5) Upon the making of an energy administration order in relation to a protected energy company, the court must dismiss any ordinary administration application made in relation to that company which is outstanding.

(6) In this section “ordinary administration application” means an application in accordance with paragraph 12 of Schedule B1 to the 1986 Act.

### **163 Restrictions on administrator appointments by creditors etc.**

(1) No step is to be taken by any person to make an appointment in relation to a company under paragraph 14 or 22 of Schedule B1 to the 1986 Act (powers of holder of floating charge and of the company itself and of its directors to appoint administrators) if—

- (a) an energy administration order is in force in relation to the company;
- (b) an energy administration order has been made in relation to the company but is not yet in force; or
- (c) an application for such an order is outstanding.

(2) In the case of a protected energy company to which subsection (1) does not apply, an appointment in relation to that company under paragraph 14 or 22 of Schedule B1 to the 1986 Act takes effect only if each of the conditions mentioned in subsection (3) is met.

(3) Those conditions are—

- (a) that a copy of every document in relation to the appointment that is filed or lodged with the court in accordance with paragraph 18 or 29 of Schedule B1 to the 1986 Act (documents to be filed or lodged for appointment of administrator) has been served both on the Secretary of State and on GEMA;
- (b) that a period of fourteen days has elapsed since the service of the last of those copies to be served;
- (c) that there is no outstanding application to the court for an energy administration order in relation to the company in question; and
- (d) that the making of an application for such an order has not resulted in the making of an energy administration order which is in force or is still to come into force.

(4) Paragraph 44 of Schedule B1 to the 1986 Act (interim moratorium) does not prevent, or require the permission of the court for, the making of an application for an energy administration order at any time before the appointment takes effect.

### **164 Restrictions on enforcement of security**

(1) No step to enforce a security over property of a protected energy company is to be taken by any person, unless—

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- (a) notice of his intention to do so has been served both on the Secretary of State and on GEMA; and
  - (b) a period of at least fourteen days has elapsed since the service of the last of those notices to be served.
- (2) In the case of a protected energy company which is a non-GB company, the reference in subsection (1) to the property of the company is a reference only to its property in Great Britain.

#### *Financial support for companies in administration*

### **165 Grants and loans**

- (1) This section applies where an energy administration order has been made in relation to a company.
- (2) The Secretary of State may make grants or loans to the company of such amounts as it appears to him appropriate to pay or lend for achieving the objective of the energy administration.
- (3) A grant or loan under this section may be made in whatever manner, and on whatever terms, the Secretary of State considers appropriate.
- (4) The terms on which a grant may be made under this section include, in particular, terms requiring the whole or a part of the grant to be repaid to the Secretary of State if there is a contravention of the other terms on which the grant is made.
- (5) The terms on which a loan may be made under this section include, in particular, terms requiring—
  - (a) the loan to be repaid at such times and by such methods, and
  - (b) interest to be paid on the loan at such rates and at such times, as the Secretary of State may from time to time direct.
- (6) The consent of the Treasury is required—
  - (a) for the making of a grant or loan under this section; and
  - (b) for the giving by the Secretary of State of a direction under subsection (5).
- (7) The Secretary of State must pay sums received by him by virtue of this section into the Consolidated Fund.

### **166 Indemnities**

- (1) This section applies where an energy administration order has been made in relation to a company.
- (2) The Secretary of State may agree to indemnify persons in respect of one or both of the following—
  - (a) liabilities incurred in connection with the exercise and performance by the energy administrator of his powers and duties; and
  - (b) loss or damage sustained in that connection.
- (3) The agreement may be made in whatever manner, and on whatever terms, the Secretary of State considers appropriate.

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- (4) If sums are paid by the Secretary of State in consequence of an indemnity agreed to under this section, the company must pay him—
  - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
  - (b) interest, at such rates as he may direct, on amounts outstanding under this subsection.
- (5) Payments to the Secretary of State under subsection (4) must be made at such times and in such manner as he may determine.
- (6) Subsection (4) does not apply in the case of a sum paid by the Secretary of State for indemnifying a person in respect of a liability to the company in relation to which the energy administration order was made.
- (7) The consent of the Treasury is required—
  - (a) for the doing of anything by the Secretary of State under subsection (2);
  - (b) for the giving by him of any direction under subsection (4); and
  - (c) for the making of a determination under subsection (5).
- (8) The power of the Secretary of State to agree to indemnify persons—
  - (a) is confined to a power to agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as relevant persons; but
  - (b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.
- (9) A person is a relevant person for the purposes of this section if he is—
  - (a) the energy administrator;
  - (b) an employee of the energy administrator;
  - (c) a member or employee of a firm of which the energy administrator is a member;
  - (d) a member or employee of a firm of which the energy administrator is an employee;
  - (e) a member of a firm of which the energy administrator was an employee or member at a time when the order was in force;
  - (f) a body corporate which is the employer of the energy administrator;
  - (g) an officer, employee or member of such a body corporate.
- (10) For the purposes of subsection (9)—
  - (a) the references to the energy administrator are to be construed, where two or more persons are appointed to act as the energy administrator, as references to any one or more of them; and
  - (b) the references to a firm of which a person was a member or employee at a particular time include references to a firm which holds itself out to be the successor of a firm of which he was a member or employee at that time.
- (11) The Secretary of State must pay sums received by him by virtue of subsection (4) into the Consolidated Fund.

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## **167 Guarantees where energy administration order is made**

- (1) This section applies where an energy administration order has been made in relation to a company.
- (2) The Secretary of State may guarantee—
  - (a) the repayment of any sum borrowed by the company while the energy administration order is in force;
  - (b) the payment of interest on such a sum; and
  - (c) the discharge of any other financial obligation of the company in connection with the borrowing of such a sum.
- (3) The Secretary of State may give a guarantee under this section in such manner, and on such terms, as he thinks fit.
- (4) As soon as practicable after giving a guarantee under this section, the Secretary of State must lay a statement of the guarantee before Parliament.
- (5) If sums are paid out by the Secretary of State under a guarantee given under this section, the company must pay him—
  - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
  - (b) interest, at such rates as he may direct, on amounts outstanding under this subsection.
- (6) Payments to the Secretary of State under subsection (5) must be made at such times, and in such manner, as he may from time to time direct.
- (7) Where a sum has been paid out by the Secretary of State under a guarantee given under this section, he must lay a statement relating to that sum before Parliament—
  - (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
  - (b) as soon as practicable after the end of each subsequent relevant financial year.
- (8) In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for the purposes of subsection (7) unless—
  - (a) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under subsection (5); and
  - (b) the company in question is not at any time during that year subject to liability to pay interest on amounts that became due under that subsection in respect of that sum.
- (9) The consent of the Treasury is required—
  - (a) for the giving of a guarantee under this section; and
  - (b) for the giving by the Secretary of State of a direction under subsection (5) or (6).
- (10) The Secretary of State must pay sums received by him by virtue of subsection (5) into the Consolidated Fund.

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### *Licence modifications relating to energy administration*

#### **168 Modifications of particular or standard conditions**

- (1) Where the Secretary of State considers it appropriate to do so in connection with the provision made by this Chapter, he may make—
  - (a) modifications of the conditions of a gas or electricity licence held by a particular person;
  - (b) modifications of the standard conditions of such licences of any type.
- (2) The power to make modifications under this section includes power to make incidental, consequential or transitional modifications.
- (3) 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 he considers appropriate.
- (4) Subsection (3) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (5) The Secretary of State must publish every modification made by him under this section.
- (6) The publication must be in such manner as the Secretary of State considers appropriate.
- (7) A modification under subsection (1)(a) 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 1989 Act or Part 1 of the Gas Act 1986 (c. 44).
- (8) Where the Secretary of State makes modifications under subsection (1)(b) of the standard conditions of licences of any type, GEMA must—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.
- (9) The Secretary of State's powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.
- (10) In section 81(2) of the Utilities Act 2000 (c. 27) (standard conditions of licences under Part 1 of the Gas Act), for “such modifications of the conditions made under Part I of the 1986 Act” substitute “ any modifications made under Part 1 of the 1986 Act or under the Energy Act 2004 ”.
- (11) In this section “gas or electricity licence” means a licence for the purposes of section 5 of the Gas Act 1986 (c. 44) or section 4 of the 1989 Act (prohibition on unlicensed activities).

#### **169 Licence conditions to secure funding of energy administration**

- (1) The modifications that may be made under section 168 include, in particular, modifications imposing conditions requiring the holder of the licence—



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- (a) so to modify the charges imposed by him for anything done by him in the carrying on of the licensed activities as to raise such amounts as may be determined by or under the conditions; and
  - (b) to pay the amounts so raised to such persons as may be so determined for the purpose of—
    - (i) their applying those amounts in making good any shortfall in the property available for meeting the expenses of an energy administration; or
    - (ii) enabling those persons to secure that those amounts are so applied.
- (2) Those modifications may include modifications imposing on the licence holder an obligation to apply amounts paid to him in pursuance of conditions falling within subsection (1)(a) or (b) in making good any such shortfall.
- (3) For the purposes of this section—
- (a) there is a shortfall in the property available for meeting the costs of an energy administration if, in a case where a company is or has been subject to an energy administration order, the property available (apart from conditions falling within subsection (1) or (2)) for meeting relevant debts is insufficient for meeting them; and
  - (b) amounts are applied in making good that shortfall if they are paid in or towards discharging so much of a relevant debt as cannot be met out of the property otherwise available for meeting relevant debts.
- (4) In this section “relevant debt”, in relation to a case in which a company is or has been subject to an energy administration order, means an obligation—
- (a) to make payments in respect of the expenses or remuneration of any person as the energy administrator of that company;
  - (b) to make a payment in discharge of a debt or liability of that company arising out of a contract entered into at a time when the order was in force by the person who at that time was the energy administrator of that company;
  - (c) to repay the whole or a part of a grant made to that company under section 165;
  - (d) to repay a loan made to the company under that section, or to pay interest on such a loan;
  - (e) to make a payment under section 166(4); or
  - (f) to make a payment under section 167(5).

*Supplemental provision of Chapter 3 of Part 3*

**170 Modification of Chapter 3 of Part 3 under Enterprise Act 2002**

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 (c. 40) mentioned in subsection (2) includes power to make such consequential modifications of this Chapter as he considers appropriate in connection with any other provision made under that section.
- (2) Those sections are—
  - (a) sections 248 and 277 (amendments consequential on that Act); and
  - (b) section 254 (power to apply insolvency law to foreign companies).

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## 171 Interpretation of Chapter 3 of Part 3

(1) In this Chapter—

“the 1986 Act” means the Insolvency Act 1986 (c. 45);

“business”, “member”, “property” and “security” have the same meanings as in the 1986 Act;

“company” means—

- (a) a company formed and registered under the Companies Act 1985 (c. 6);
- (b) an existing company; or
- (c) an unregistered company;

“court”—

- (a) in relation to a company other than a Northern Irish joint stock company, means the court having jurisdiction to wind up the company; and
- (b) in relation to a Northern Irish joint stock company, means the court that would have jurisdiction to wind it up if it were an unregistered company within the meaning of Part 5 of the 1986 Act;

“energy administration order” has the meaning given by section 154(1);

“energy administration rules” means rules made under section 411 of the 1986 Act by virtue of section 159(3) of this Act;

“energy administrator” has the meaning given by section 154(2) and is to be construed in accordance with subsection (2) of this section;

“non-GB company” means an unregistered company incorporated outside Great Britain;

“objective of the energy administration” is to be construed in accordance with section 155;

“protected energy company” has the meaning given by section 154(5);

“relevant licence” has the meaning given by section 154(5);

“unregistered company” means—

- (a) an unregistered company within the meaning of Part 5 of the 1986 Act; or
- (b) a Northern Irish joint stock company.

(2) In this Chapter references to the energy administrator of a company—

- (a) include references to a person appointed under paragraph 91 or 103 of Schedule B1 to the 1986 Act, as applied by Part 1 of Schedule 20 to this Act, to be the energy administrator of that company; and
- (b) where two or more persons are appointed to be the energy administrator of that company, are to be construed in accordance with the provision made under section 158(5).

(3) References in this Chapter to a person qualified to act as an insolvency practitioner in relation to a company are to be construed in accordance with Part 13 of the 1986 Act (insolvency practitioners and their qualifications); but as if references in that Part to a company included references to a Northern Irish joint stock company.

(4) For the purposes of this Chapter an application made to the court is outstanding if it—

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- (a) has not yet been granted or dismissed; and
  - (b) has not been withdrawn.
- (5) For the purposes of subsection (4) an application is not to be taken as having been dismissed if an appeal against the dismissal of the application, or a subsequent appeal, is pending.
- (6) An appeal shall be treated as pending for the purposes of subsection (5) if—
- (a) such an appeal has been brought and has been neither determined nor withdrawn;
  - (b) an application for permission to appeal has been made but has not been determined or withdrawn; or
  - (c) no such appeal has been brought and the period for bringing an appeal is still running.
- (7) References in this Chapter to Schedule B1 to the 1986 Act, or to a provision of that Schedule (except the references in subsection (2) of this section), are references to that Schedule or that provision without the modifications made by Part 1 of Schedule 20 to this Act.
- (8) In this section—
- “existing company” has the same meaning as in the Companies Act 1985 (c. 6) (see section 735(1) of that Act);
  - “Northern Irish joint stock company” means a company registered in Northern Ireland under the Joint Stock Companies Acts (as defined in section 735(3) of the Companies Act 1985).

VALID FROM 05/10/2004

## CHAPTER 4

### FURTHER PROVISIONS ABOUT REGULATION

#### *Security of supply*

#### **172 Annual report on security of energy supplies**

- (1) The Secretary of State must, in 2005 and in every subsequent calendar year—
- (a) publish a report dealing, as regards both the short term and the long term, with the availability of electricity and gas for meeting the reasonable demands of consumers in Great Britain; and
  - (b) lay that report before Parliament.
- (2) The report must include, in particular, overall assessments, as regards both the short term and the long term, of each of the following—
- (a) generating capacity in Great Britain and its offshore waters so far as it will be utilised for generating electricity for introduction into transmission systems in Great Britain;

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- (b) the availability of capacity in those systems and in distribution systems in Great Britain for transmitting and distributing electricity for supply to consumers in Great Britain;
  - (c) the availability of capacity in infrastructure in Great Britain for use in connection with the introduction of gas into licensed pipe-line systems in Great Britain; and
  - (d) the availability of capacity in those systems for conveying gas to consumers in Great Britain.
- (3) The report must be prepared jointly by the Secretary of State and GEMA.
- (4) In this section—
- “consumers” includes both existing and future consumers;
  - “distributing”, “distribution system”, “transmission system” and “transmitting” have the same meanings as in Part 1 of the 1989 Act;
  - “gas” and “gas transporter” have the same meanings as in Part 1 of the Gas Act 1986 (c. 44);
  - “infrastructure” includes pipe-line systems, terminals and other facilities but does not include licensed pipe-line systems;
  - “licensed pipe-line system” means a pipe-line system that is operated by a gas transporter for the conveyance of gas to any premises or another pipe-line system as authorised by his licence under section 7 of that Act;
  - “offshore waters” means, in relation to Great Britain—
    - (a) so much of the territorial sea of the United Kingdom as is adjacent to Great Britain; and
    - (b) waters in a Renewable Energy Zone (within the meaning of Chapter 2 of Part 2 of this Act).

#### *Appeals from GEMA decisions*

### **173 Appeals to the Competition Commission**

- (1) An appeal shall lie to the Competition Commission from a decision by GEMA to which this section applies.
- (2) This section applies to a decision by GEMA if—
- (a) it is a decision relating to a document by reference to which provision is made by a condition of a gas or electricity licence;
  - (b) that document is designated for the purposes of this section by an order made by the Secretary of State;
  - (c) the decision consists in the giving or refusal of a consent by virtue of which the document has effect, or would have had effect, for the purposes of the licence with modifications or as reissued; and
  - (d) the decision is not of a description of decisions for the time being excluded from the right of appeal under this section by an order made by the Secretary of State.
- (3) An appeal against a decision may be brought under this section only by—
- (a) a person whose interests are materially affected by it; or
  - (b) a body or association whose functions are or include representing persons in respect of interests of theirs that are so affected.

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- (4) The permission of the Competition Commission is required for the bringing of an appeal under this section.
- (5) The Competition Commission may refuse permission only on one of the following grounds—
  - (a) that the appeal is brought for reasons that are trivial or vexatious;
  - (b) that the appeal has no reasonable prospect of success.
- (6) Before making an order under this section, the Secretary of State must consult—
  - (a) GEMA; and
  - (b) such other persons as he considers appropriate.
- (7) An order excluding decisions from the right of appeal under this section may provide—
  - (a) for the exclusion to apply only in such cases as may be determined in accordance with the order; and
  - (b) for a determination in accordance with the order to be made by such persons, in accordance with such procedures, and by reference to such matters and the opinions of such persons (including GEMA), as may be provided for in the order.
- (8) An order made by the Secretary of State under this section is subject to the negative resolution procedure.
- (9) In this section—
  - “consent” includes an approval or direction;
  - “gas or electricity licence” means a licence for the purposes of section 5 of the Gas Act 1986 (c. 44) or section 4 of the 1989 Act (prohibition on unlicensed activities).

#### **174 Procedure on appeals**

- (1) The functions of the Competition Commission with respect to appeals under section 173 of this Act are not to be regarded as comprised in its general functions for the purposes of Part 2 of Schedule 7 to the Competition Act 1998 (c. 41) (manner in which general functions are to be carried out).
- (2) Instead, Schedule 22 (procedure on appeals) has effect.

#### **175 Determination of appeals**

- (1) This section applies to every appeal brought under section 173 of this Act.
- (2) In determining the appeal the Competition Commission must have regard, to the same extent as is required of GEMA, to the matters to which GEMA must have regard—
  - (a) in the carrying out of its principal objectives under section 4AA of the Gas Act 1986 (c. 44) and section 3A of the 1989 Act (principal objectives and general duties);
  - (b) in the performance of its duties under those sections; and

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- (c) in the performance of its duties under sections 4AB and 4A of that Act of 1986 and sections 3B and 3C of the 1989 Act (environmental and health and safety considerations).
- (3) In determining the appeal the Competition Commission—
- (a) may have regard to any matter to which GEMA was not able to have regard in the case of the decision appealed against; but
  - (b) must not, in the exercise of that power, have regard to any matter to which GEMA would not have been entitled to have regard in that case had it had the opportunity of doing so.
- (4) The Competition Commission may allow the appeal only if it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
- (a) that GEMA failed properly to have regard to the matters mentioned in subsection (2);
  - (b) that GEMA failed properly to have regard to the purposes for which the relevant condition has effect;
  - (c) that GEMA failed to give the appropriate weight to one or more of those matters or purposes;
  - (d) that the decision was based, wholly or partly, on an error of fact;
  - (e) that the decision was wrong in law.
- (5) Where the Competition Commission does not allow the appeal, it must confirm the decision appealed against.
- (6) Where it allows the appeal, it must do one or more of the following—
- (a) quash the decision appealed against;
  - (b) remit the matter to GEMA for reconsideration and determination in accordance with the directions given by the Competition Commission;
  - (c) where it quashes the refusal of a consent, give directions to GEMA, and to such other persons as it considers appropriate, for securing that the relevant condition has effect as if the consent had been given.
- (7) A person shall not be directed under subsection (6) to do anything that he would not have power to do apart from the direction.
- (8) A person to whom a direction is given under subsection (6) must comply with it; and such a direction given to a person other than GEMA shall be enforceable as if it were an order of the High Court or (in Scotland) of the Court of Session.
- (9) The decision of the Competition Commission on the appeal—
- (a) must be contained in an order made by the Commission;
  - (b) must set out the reasons for the decision;
  - (c) takes effect at the time specified in the order or determined in accordance with provision set out in that order;
  - (d) must be notified by the Commission to the persons who (within the meaning of Schedule 22) were parties to the appeal; and
  - (e) must be published by the Commission in such manner as it considers appropriate for bringing it to the attention of other persons likely to be affected by it.
- (10) The Competition Commission may exclude from what it publishes under subsection (9)(e) any information which it is satisfied is—

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- (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;
- (b) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interests.

(11) In this section—

“consent” includes an approval or direction; and  
“the relevant condition”, in relation to a decision, means the licence condition the provisions of which have effect by reference to the document to which the decision relates.

## **176 Specialist members of Competition Commission**

The Competition Commission’s functions with respect to appeals under section 173 of this Act shall be treated as included in—

- (a) the functions for the purposes of which members of the Competition Commission are appointed under subsection (1) of section 104 of the Utilities Act 2000 (c. 27) (specialist members); and
- (b) the functions for the purposes of which the members appointed under that subsection before the commencement of this section were appointed.

VALID FROM 01/11/2005

### *Funding of appeals and references*

## **177 Modifications of standard conditions for funding appeals and references**

(1) Where the Secretary of State considers it appropriate to do so—

- (a) in connection with the provision made by sections 173 to 175 and Schedule 22, or
- (b) in relation to references to the Competition Commission under section 24 of the Gas Act 1986 (c. 44) or section 12 of the 1989 Act (modification references),

he may make licence modifications falling within subsection (2).

(2) Those licence modifications are—

- (a) modifications of so much of the standard conditions of gas or electricity licences of any type as relates to licence charges; and
- (b) such incidental, consequential or transitional modifications in connection with modifications falling within paragraph (a) as he thinks fit.

(3) Where the standard conditions of gas or electricity licences contain provision authorising the imposition of licence charges in respect of costs incurred by the Competition Commission in connection with a reference mentioned in subsection (1)(b)—

- (a) the Competition Commission shall have power, on such a reference, to give directions to GEMA about the manner in which the Competition

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- Commission’s costs in connection with that reference are to be recovered by means of such charges; and
- (b) GEMA must comply with any such directions.
- (4) Before making a modification under this section that applies to licences of any type, the Secretary of State must consult—
- (a) the holders of the licences; and
- (b) such other persons as he considers appropriate.
- (5) Subsection (4) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (6) The Secretary of State must publish every modification made by him under this section.
- (7) The publication must be in such manner as the Secretary of State considers appropriate.
- (8) Where the Secretary of State makes modifications under this section of the standard conditions of licences of any type, GEMA must—
- (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
- (b) publish the modifications in such manner as it considers appropriate.
- (9) The Secretary of State’s powers under this section are exercisable only during the three months beginning with the commencement of this section.
- (10) In this section—
- “gas or electricity licence” has the same meaning as in section 173; and
- “licence charges” means payments which—
- (a) under the conditions of a gas or electricity licence, are required to be paid on the grant or during the currency of the licence by the licence holder; and
- (b) are payments of amounts determined by or under the licence.

*Best practice*

**178 Duty to have regard to best regulatory practice**

In each of section 4AA of the Gas Act 1986 (c. 44) and section 3A of the 1989 Act (principal objective and general duties), after subsection (5) insert—

- “(5A) In carrying out their respective functions under this Part in accordance with the preceding provisions of this section the Secretary of State and the Authority must each have regard to—
- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
- (b) any other principles appearing to him or, as the case may be, it to represent the best regulatory practice.”



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VALID FROM 01/04/2006

### *Meaning of electricity supply and high voltage lines*

#### **179 Meaning of electricity supply**

- (1) For the definition of “supply” in section 4(4) of the 1989 Act, substitute—
- ““supply”, in relation to electricity, means its supply to premises in cases where—
- (a) it is conveyed to the premises wholly or partly by means of a distribution system, or
  - (b) (without being so conveyed) it is supplied to the premises from a substation to which it has been conveyed by means of a transmission system,
- but does not include its supply to premises occupied by a licence holder for the purpose of carrying on activities which he is authorised by his licence to carry on;”.
- (2) In each of the provisions specified in subsection (3) (which all refer to electricity conveyed by distribution systems), after “distribution systems” insert “ or transmission systems ”.
- (3) Those provisions are—
- (a) section 3A(1), (5)(a) and (7) of the 1989 Act (principal objectives and general duties applying to electricity regulation);
  - (b) section 46A(1) of that Act (investigations by the Consumer Council);
  - (c) section 48(1) of that Act (publication of information and advice);
  - (d) section 4AA(4)(a) of the Gas Act 1986 (principal objectives and general duties applying to gas regulation); and
  - (e) section 17(1) of the Utilities Act 2000 (c. 27) (functions of the Consumer Council).
- (4) An order under section 198 for bringing into force provisions of this section may contain any such transitional provision in connection with bringing those provisions into force as the Secretary of State thinks appropriate.
- (5) The transitional provision that may be included in an order under subsection (4) includes provision which has effect by reference to determinations made in accordance with that provision by a person specified in the order.

VALID FROM 29/07/2010

#### **180 Meaning of “high voltage line”**

- (1) In subsection (1) of section 64 of the 1989 Act (interpretation of Part 1), for the definitions of “high voltage line” and “low voltage line” substitute—
- ““high voltage line” means an electric line which—

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- (a) if it is in Scotland or is a relevant offshore line (as defined in subsection (1A)), is of a nominal voltage of 132 kilovolts or more; and
  - (b) in any other case, is of a nominal voltage of more than 132 kilovolts,
- and “low voltage line” shall be construed accordingly;”.

(2) After that subsection insert—

“(1A) An electric line is a relevant offshore line for the purposes of the definition in subsection (1) of “high voltage line” if—

- (a) it is in an area of the territorial sea adjacent to the United Kingdom or an area designated under section 1(7) of the Continental Shelf Act 1964; and
- (b) it is used—
  - (i) to convey electricity to a place in Scotland; or
  - (ii) to convey, to any other place, electricity generated by a generating station that is situated in an area mentioned in paragraph (a).”

### *Metering*

#### **181 Prepayment meters**

(1) In Schedule 2B to the Gas Act 1986 (c. 44) (which sets out the gas code), for paragraph 6A substitute—

“6A (1) A pre-payment meter installed by an authorised supplier through which a consumer takes his supply of gas shall not be used to recover a sum unless—

- (a) the sum is owed to an authorised supplier in respect of the supply of gas to the premises on which the meter is installed or in respect of the provision of the meter; or
- (b) the recovery of the sum in that manner is permitted by both—
  - (i) regulations made by the Authority; and
  - (ii) an agreement falling within sub-paragraph (2) below between the consumer and the person to whom the sum is owed.

(2) An agreement falls within this sub-paragraph if—

- (a) the person to whom the sum is owed is a person who is authorised by regulations made by the Authority to enter into agreements falling within this sub-paragraph;
- (b) the agreement permits that person to use the meter in question to recover such sums as may be specified in or determined under the agreement; and
- (c) the agreement complies with the requirements specified for the purposes of this sub-paragraph by regulations made by the Authority.

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- (3) The sums that regulations under this paragraph may permit the recovery of through a pre-payment meter include—
    - (a) sums owed to a person other than an authorised supplier;
    - (b) sums owed in respect of premises other than the premises on which the meter is installed;
    - (c) sums owed in respect of matters other than the supply of gas.
  - (4) Before making regulations under this paragraph the Authority must consult—
    - (a) the Council;
    - (b) all authorised suppliers;
    - (c) such other persons as the Authority considers appropriate.
  - (5) The approval of the Secretary of State is required for the making of regulations under this paragraph.”
- (2) In paragraph 12 of Schedule 7 to the 1989 Act (use of pre-payment meters), for sub-paragraph (2) substitute—
- “(2) A pre-payment meter installed by an authorised supplier through which a customer of such a supplier takes his supply of electricity shall not be used to recover a sum unless—
- (a) the sum is owed to an authorised supplier in respect of the supply of electricity to the premises on which the meter is installed or in respect of the provision of the meter; or
  - (b) the recovery of the sum in that manner is permitted by both—
    - (i) regulations; and
    - (ii) an agreement falling within sub-paragraph (3) below between the customer and the person to whom the sum is owed.
- (3) An agreement falls within this sub-paragraph if—
- (a) the person to whom the sum is owed is a person who is authorised by regulations to enter into agreements falling within this sub-paragraph;
  - (b) the agreement permits that person to use the meter in question to recover such sums as may be specified in or determined under the agreement; and
  - (c) the agreement complies with the requirements specified for the purposes of this sub-paragraph by regulations.
- (4) The sums that regulations under this paragraph may permit the recovery of through a pre-payment meter include—
- (a) sums owed to a person other than an authorised supplier;
  - (b) sums owed in respect of premises other than the premises on which the meter is installed;
  - (c) sums owed in respect of matters other than the supply of electricity.
- (5) Before making regulations under this paragraph the Authority must consult—
- (a) the Council;

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- (b) all authorised suppliers;
- (c) such other persons as the Authority considers appropriate.”

VALID FROM 06/04/2007

*Inquiries under ss. 36 and 37 of the 1989 Act*

**182 Additional inspectors**

- (1) In Schedule 8 to the 1989 Act (procedure for consents under sections 36 and 37 relating to the installation of generating stations and electric lines), after paragraph 5 insert—

**“Additional inspectors**

- 5A (1) This paragraph applies in the case of—
- (a) a public inquiry in England and Wales by virtue of paragraph 2(2) or 3(2); or
  - (b) a public inquiry in England and Wales which is a combination under section 62 of this Act into one inquiry—
    - (i) of two or more such inquiries; or
    - (ii) of one or more such inquiries and one or more other inquiries.
- (2) At any time after appointing a person to hold the inquiry (“the lead inspector”), the Secretary of State may direct him—
- (a) to consider such matters relating to the conduct of the inquiry as are specified in the direction; and
  - (b) to make recommendations to the Secretary of State about those matters.
- (3) After considering the recommendations of the lead inspector, the Secretary of State may—
- (a) appoint for the purposes of the inquiry such number of additional inspectors as he thinks appropriate; and
  - (b) direct that each additional inspector must consider such of the matters to which the inquiry relates as are allocated to him by the lead inspector.
- (4) An additional inspector must—
- (a) comply with every direction as to procedural matters given to him by the lead inspector; and
  - (b) report to the lead inspector on every matter allocated to him.
- (5) It is to be for the lead inspector to report to the Secretary of State on the consideration of both—
- (a) the matters which he considered himself; and
  - (b) the matters the consideration of which was allocated to additional inspectors.

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(6) The power of the Secretary of State to give directions to the lead inspector may be exercised on one or more different occasions after the appointment of the lead inspector.

(7) Accordingly—

- (a) the recommendations that may be made by the lead inspector following such a direction include, in particular, a recommendation for varying the number of additional inspectors; and
- (b) the power of the Secretary of State to appoint an additional inspector includes power to revoke such an appointment.

(8) A direction by any person under this paragraph may be varied or revoked by a subsequent direction by that person.”

(2) This section does not extend to Scotland.

#### *Confidential information*

### **183 Exclusion of confidential information from registers**

(1) In section 36 of the Gas Act 1986 (c. 44) (register to be kept by GEMA), after subsection (2) insert—

“(2A) The Authority may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as it considers it appropriate to exclude for the purpose of maintaining the confidentiality of—

- (a) matters relating to the affairs of an individual the publication of which would or might, in its opinion, seriously and prejudicially affect the interests of that individual; and
- (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Authority’s opinion, seriously and prejudicially affect the interests of that body.”

(2) In subsection (2) of that section, after “Subject to” insert “ subsection (2A) and to ”.

(3) For section 49(3) of 1989 Act (matters needing to be excluded so far as practicable from register to be kept by GEMA) substitute—

“(3) The Authority may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as it considers it appropriate to exclude for the purpose of maintaining the confidentiality of—

- (a) matters relating to the affairs of an individual the publication of which would or might, in its opinion, seriously and prejudicially affect the interests of that individual; and
- (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Authority’s opinion, seriously and prejudicially affect the interests of that body.”

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*Areas with high distribution or transmission costs*

**184 Assistance for areas with high distribution costs**

- (1) If it appears to the Secretary of State—
  - (a) that the costs of distributing electricity within a particular area of Great Britain are significantly higher (when calculated on a per customer basis) than in other areas of Great Britain, and
  - (b) that within that area there are at least 100,000 premises that are connected to the same distribution system,
 he may make an order under this section.
- (2) An order under this section is one that establishes a scheme which—
  - (a) requires authorised transmitters to make a payment each year to relevant distributors distributing electricity in that area of Great Britain of such amount as may be determined in accordance with provision contained in the scheme;
  - (b) requires the charges imposed by the authorised transmitters on authorised suppliers to be adjusted in accordance with the scheme for the purpose of enabling the transmitters to make that payment; and
  - (c) requires relevant distributors in receipt of a payment under the order to secure, in accordance with the order, that the benefit of the payment is passed to the authorised suppliers supplying electricity in the area of Great Britain in question.
- (3) An order under this section establishing a scheme in relation to the distribution of electricity within a particular area must specify the area.
- (4) For the purpose of facilitating the implementation of a scheme for which an order under this section provides, such an order may make such modifications as the Secretary of State considers appropriate of the conditions of the licences of authorised suppliers, of authorised transmitters and of authorised distributors.
- (5) For the purpose of carrying out the functions conferred on him by or under this section the Secretary of State may require—
  - (a) an authorised supplier,
  - (b) an authorised distributor, or
  - (c) an authorised transmitter,
 to supply him, in a specified form and within a specified time, with information of a specified description.
- (6) No person may be required under this section to supply information he could not be compelled to give in evidence in civil proceedings in the High Court or the Court of Session.
- (7) Before making an order under this section, the Secretary of State must consult such persons as he considers appropriate.
- (8) Subsection (7) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (9) An order under this section is subject to the negative resolution procedure.

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- (10) Where a scheme established under this section in relation to the distribution of electricity within a particular area is in force, no scheme shall be established under this section in relation to the distribution of electricity outside that area.
- (11) Where a scheme is established under this section, it shall be the duty of the Secretary of State to carry out a review of that scheme—
  - (a) three years after its establishment; and
  - (b) thereafter at three yearly intervals.
- (12) Part 1 of the 1989 Act shall have effect as if every requirement or other duty imposed on a licence holder under this section were a relevant requirement within the meaning of that Part (see section 25(8) of that Act).
- (13) In this section—
  - “authorised distributor” and “authorised supplier” have the same meanings as in Part 1 of the 1989 Act;
  - “authorised transmitter” means a person authorised by a licence under section 6(1)(b) of that Act to participate in the transmission of electricity;
  - “distributing”, “distribution” and “distribution system” have the same meanings as in Part 1 of that Act;
  - “licence” means a licence for the purposes of section 4 of that Act;
  - “licence holder” has the same meaning as in Part 1 of that Act;
  - “premises” has the same meaning as in Part 1 of that Act;
  - “relevant distributor” means an authorised distributor who distributes electricity by means of a distribution system to which at least 100,000 premises are connected.

## **185 Adjustment of transmission charges**

- (1) The Secretary of State may make an order under this section if it appears to him—
  - (a) that a particular area of Great Britain is suitable as a location for the generation of electricity from renewable sources;
  - (b) that, as a result, that area represents an area of high potential for the development of the generation of electricity from such sources; and
  - (c) that that development is likely to be deterred, or otherwise hindered in a material respect, by the level of charges that would (apart from the order) be imposed by authorised transmitters on persons generating electricity in that area from renewable sources.
- (2) An order under this section is one that establishes a scheme which—
  - (a) limits the amounts of charges that authorised transmitters may impose on persons so generating electricity in that area to amounts determined in accordance with provision contained in the scheme; and
  - (b) requires the charges imposed by the authorised transmitters on authorised suppliers to be adjusted in accordance with the scheme for the purpose of making good shortfalls resulting from that limitation.
- (3) An order under this section establishing a scheme in relation to the generation of electricity from renewable sources in a particular area must specify the area.
- (4) For the purpose of facilitating the implementation of a scheme an order under this section may make such modifications as the Secretary of State considers

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appropriate of the conditions of the licences of authorised transmitters and of authorised suppliers.

- (5) For the purpose of carrying out the functions conferred on him by or under this section the Secretary of State may require—
- (a) an authorised supplier,
  - (b) an authorised distributor, or
  - (c) an authorised transmitter,
- to supply him, in a specified form and within a specified time, with information of a specified description.
- (6) No person may be required under subsection (5) to supply information he could not be compelled to give in evidence in civil proceedings in the High Court or the Court of Session.
- (7) Before making an order under this section the Secretary of State must—
- (a) publish a draft of any scheme proposed to be established by the order;
  - (b) publish an assessment of the costs likely to be incurred by different persons in consequence of the order; and
  - (c) consult authorised suppliers and such other persons likely to be affected by the order as he considers appropriate.
- (8) An assessment published under subsection (7)(b) must set out, in particular, the Secretary of State’s assessment of the likely effect of the order on charges for electricity in Great Britain.
- (9) Subsection (7) may be satisfied by publications and consultation taking place wholly or partly before the commencement of this section.
- (10) Where a scheme in relation to the generation of electricity from renewable sources within a particular area is in force, no scheme shall be established in relation to the generation of electricity from renewable sources outside that area.
- (11) A scheme shall not be applied in relation to a time more than ten years after the commencement of this section.
- (12) A scheme—
- (a) shall not be applied for a period of more than five years; but
  - (b) subject to subsection (11), may be renewed at any time by a further order under this section for a period of no more than five years from the coming into force of the further order.
- (13) Part 1 of the 1989 Act shall have effect as if every requirement or other duty imposed on a licence holder under this section were a relevant requirement within the meaning of that Part (see section 25(8) of that Act).
- (14) In this section—
- “authorised distributor” and “authorised supplier” have the same meanings as in Part 1 of the 1989 Act;
- “authorised transmitter” means a person authorised by a licence under section 6(1)(b) of that Act to participate in the transmission of electricity;
- “licence” means a licence for the purposes of section 4 of that Act;
- “licence holder” has the same meaning as in Part 1 of that Act;



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“renewable sources” means sources of energy in relation to which the following condition is satisfied, namely, that the production of evidence in respect of electricity generated from those sources is capable of satisfying a renewables obligation imposed by an order under section 32 of that Act (obligation in respect of electricity generated from renewable sources);

“scheme” means a scheme established by an order under this section.

- (15) The power to make an order containing provision authorised by this section is subject to the affirmative resolution procedure.

### **186 Restrictions on disclosure of information**

In section 105 of the Utilities Act 2000 (c. 27) (general restrictions on disclosure of information)—

- (a) in subsection (1)(a) for “or Part I of the 1989 Act” substitute “, Part 1 of the 1989 Act or section 184(5) or 185(5) of the Energy Act 2004 ”; and
- (b) in subsection (3)(a) after “1989 Act” insert “, section 184 or 185 of the Energy Act 2004 ”.

### *Payments into Scottish Consolidated Fund*

### **187 Payments of sums raised by fossil fuel levy**

- (1) If the Scottish Ministers so direct, the person prescribed under section 33(1)(b) of the 1989 Act (collection of fossil fuel levy) must pay an amount into the Scottish Consolidated Fund out of money that has been paid under section 33(5A) of that Act.
- (2) The Scottish Ministers shall, in making budget proposals to the Scottish Parliament, include provision that the required amount for the financial year to which the proposals relate be used for the purpose of promoting the use of energy from renewable sources.
- (3) In subsection (2)—
  - “budget proposals” means proposals made, in relation to each Bill for a Budget Act, for the use of resources;
  - “the required amount” means an amount of money equal to the total of the amounts paid into the Scottish Consolidated Fund under subsection (1) in the financial year in question; and
  - “renewable sources” means sources of energy other than fossil fuel or nuclear fuel.
- (4) In subsection (3), “fossil fuel” means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products (and “natural gas” and “petroleum products” have the same meanings as in the Energy Act 1976 (c. 76)).
- (5) The Scottish Ministers' duty under subsection (2) is without prejudice to any power or duty of theirs apart from this section to spend money for the purpose mentioned in that subsection.

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(6) In this section references to section 33 of the 1989 Act are references to that section as it has effect in Scotland.

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