
STATUTORY INSTRUMENTS

2010 No. 1888 (C. 97)

ENERGY

The Energy Act 2008 (Commencement No. 5) Order 2010

Made - - - - 22nd July 2010

The Secretary of State makes the following Order in exercise of the powers conferred by section 110(2) and (3) of the Energy Act 2008(1).

Citation and interpretation

1.—(1) This Order may be cited as the Energy Act 2008 (Commencement No. 5) Order 2010.

(2) In this Order—

“the Act” means the Energy Act 2008;

“electrical plant”, “electric line” and “generating station” have the meanings given by section 64(1) (interpretation etc of Part 1) of the Electricity Act 1989(2);

“offshore waters” means waters in or adjacent to Great Britain which are—

- (a) between the mean low water mark and the seaward limits of the territorial sea; and
- (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964(3); and

“tender exercise” means a competitive tender exercise undertaken in accordance with regulations made under section 6C (competitive tenders for offshore transmission licences) of the Electricity Act 1989(4).

Commencement

2.—(1) Section 44(3) (definition of ‘relevant offshore line’) of the Act comes into force on 29th July 2010—

- (a) in relation to assets which—
 - (i) have been the subject of a tender exercise;

(1) 2008 c.32.
(2) 1989 c.29. The definition of “electrical plant” was amended by section 108 of, and Schedule 6, Part 2, paragraphs 24, and 38(1), (3) to, the Utilities Act 2000 (c.27).
(3) 1964 c.29. Section 1(7) was amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c.23).
(4) Section 6C was inserted into the Electricity Act 1989 by section 92 of the Energy Act 2004 (c.20). Section 6D (supplemental provision to section 6C), section 6E (property schemes in respect of offshore transmission licences) were inserted into the Electricity Act by section 44(2) of, and Schedule 2 to, the Energy Act 2008 (c.32).

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- (ii) have been transferred to the person who was the successful bidder in relation to that tender exercise; and
- (iii) were not constructed or installed by that person;
- (b) in relation to any electric line and associated electrical plant which—
 - (i) is located partly in an area of offshore waters; and
 - (ii) is used in the conveyance of electricity generated only by a generating station located otherwise than in an area of offshore waters.
- (2) Sections 84 (power to amend licence conditions etc: transmission systems), 85 (procedure for modification) and 86 (supplemental) of the Act come into force on 29th July 2010.

22nd July 2010

Charles Hendry
Minister of State,
Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force on 29th July 2010 section 44(3) (definition of ‘relevant offshore line’) of the Energy Act 2008 (the Act), for the purposes specified in article 2(1). Section 44(3) of the Act inserts a new definition into section 64 (interpretation of Part 1) of the Electricity Act 1989 (c.29) of ‘a relevant offshore line’ for the purposes of the definition of ‘high voltage line’ in that section.

Sections 89 (activities offshore requiring 1989 Act licences) and 180(1) (meaning of ‘high voltage line’) of the Energy Act 2004 (c.20) are being commenced by the Energy Act 2004 (Commencement No. 10) Order 2010 for the same purposes as section 44(3) of the Act. Section 89 of the Energy Act 2004 inserts definitions in relation to ‘generate’, ‘relevant place’ and ‘system’ into section 4(4) (prohibitions on unlicensed supply etc) of the Electricity Act 1989 and applies the definition of ‘premises’ from section 4 of that Act to section 6 (licences authorising supply etc) of that Act. Section 180(1) of the Energy Act 2004 substitutes new definitions for ‘high voltage line’ and ‘low voltage line’ into section 64(1) (interpretation of Part 1) of the Electricity Act 1989.

Article 2(1)(a) of this Order commences section 44(3) of the Act in relation to certain assets. The assets are those that have been the subject of a tender exercise undertaken in accordance with the offshore tender regulations made under section 6C (competitive tenders for offshore transmission licences) of the Electricity Act 1989, where they have transferred to the successful bidder of that tender exercise and where that bidder did not construct or install them. The effect is that a system for the conveyance of electricity means a system, the whole or part of which is in Great Britain, the territorial sea adjacent to Great Britain or in a Renewable Energy Zone and which consists of such assets. Operation of these assets will require a licence to be granted authorising the participation in transmission of electricity under section 6(1)(b) (licences authorising supply etc) of that Act.

In addition, article 2(1)(b) of this Order commences section 44(3) of the Act in relation to electrical infrastructure located partly in an area of offshore waters that is used to convey electricity generated only otherwise than in an area of offshore waters. The effect is that the operation of such electrical infrastructure will require a licence authorising the participation in transmission (or distribution as the case may be) of electricity under section 6(1)(b) or (c) of the Electricity Act 1989.

This Order also brings into force on 29th July 2010 sections 84 (power to amend Electricity Act 1989 licence conditions etc: transmission systems), 85 (procedure for modification) and 86 (supplemental) of the Act. Section 84 of the Act provides the power for the Secretary of State to amend standard (Electricity Act 1989) licence conditions, conditions of a particular licence, a document maintained in accordance with the conditions of such a licence, or an agreement that gives effect to a document so maintained, for the purpose of facilitating access to, or the efficient use of, a transmission system in Great Britain or offshore waters. Sections 85 and 86 of the Act make supplemental provision for the use of the powers contained in section 84 of the Act.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Energy Act 2008 have been, or are being, brought into force by commencement orders made before the date of this Order—

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| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.I. No.</i> |
|------------------------------|-----------------------------|--------------------|
| Section 1 | 6th April 2009 | 2009/45 (C. 4) |
| Sections 2 to 16 (partially) | 13th November 2009 | 2009/2809 (C. 123) |
| Sections 17 to 35 | 6th April 2009 | 2009/45 (C. 4) |
| Section 36 (partially) | 6th April 2009 | 2009/45 (C. 4) |
| | 13th November 2009 | 2009/2809 (C. 123) |
| Section 37 (remainder) | 1st April 2009 | 2009/45 (C. 4) |
| Section 38 (partially) | 26th January 2009 | 2009/45 (C. 4) |
| Section 38 (remainder) | 7th March 2009 | 2009/559 (C. 38) |
| Sections 39 to 43 | 26th January 2009 | 2009/45 (C. 4) |
| Section 44 (partially) | 20th May 2009 | 2009/1270 (C. 68) |
| Sections 45 to 68 | 6th April 2009 | 2009/45 (C. 4) |
| Sections 69 to 71 | 6th April 2009 | 2009/45 (C. 4) |
| Sections 72 to 74 | 26th January 2009 | 2009/45 (C. 4) |
| Section 75 | 26th January 2009 | 2009/45 (C. 4) |
| Sections 76 to 77 | 26th January 2009 | 2009/45 (C. 4) |
| Sections 78 to 82 | 6th April 2009 | 2009/45 (C. 4) |
| Section 83 | 26th January 2009 | 2009/45 (C. 4) |
| Section 87 | 26th January 2009 | 2009/45 (C. 4) |
| Sections 92 to 93 | 1st April 2009 | 2009/45 (C. 4) |
| Section 94 | 26th January 2009 | 2009/45 (C. 4) |
| Sections 95 to 96 | 1st April 2009 | 2009/45 (C. 4) |
| Sections 97 to 98 | 26th January 2009 | 2009/45 (C. 4) |
| Sections 100 to 101 | 26th January 2009 | 2009/45 (C. 4) |
| Section 103 | 26th January 2009 | 2009/45 (C. 4) |
| Section 104 (remainder) | 26th January 2009 | 2009/45 (C. 4) |
| Section 105 (remainder) | 26th January 2009 | 2009/45 (C. 4) |
| Section 107 (remainder) | 26th January 2009 | 2009/45 (C. 4) |
| | 1st April 2009 | |
| | 6th April 2009 | |
| Section 108 (partially) | 26th January 2009 | 2009/45 (C. 4) |
| | 1st April 2009 | |
| | 6th April 2009 | |

| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.I. No.</i> |
|--|-----------------------------|--------------------|
| Section 109 | 26th January 2009 | 2009/45 (C. 4) |
| Schedule 1, paragraphs 1 to 3, 6, 7 (except for paragraph 7(d), and for paragraph 7(h) so far as it relates to paragraph (a) of the definition of “gas”), 8, 12 and 13 | 6th April 2009 | 2009/45 (C. 4) |
| Schedule 1 (remainder) | 13th November 2009 | 2009/2809 (C. 123) |
| Schedule 3 | 26th January 2009 | 2009/45 (C. 4) |
| Schedule 5, paragraphs 2, 4, 6, 9 to 14, 15(a) and 15(b), 16 and 21 | 26th January 2009 | 2009/45 (C. 4) |
| Schedule 5, paragraphs 3, 15(c), 19 and 20 | 1st April 2009 | 2009/45 (C. 4) |
| Schedule 5, paragraphs 1, 7, 8, 17 and 18 (remainder) | 6th April 2009 | 2009/45 (C. 4) |
| Schedule 6 (partially) | 26th January 2009 | 2009/45 (C. 4) |
| | 1st April 2009 | |
| | 6th April 2009 | |