



# Electricity Act 1989

## 1989 CHAPTER 29

An Act to provide for the appointment and functions of a Director General of Electricity Supply and of consumers' committees for the electricity supply industry; to make new provision with respect to the supply of electricity through electric lines and the generation and transmission of electricity for such supply; to abolish the Electricity Consumers' Council and the Consultative Councils established under the Electricity Act 1947; to provide for the vesting of the property, rights and liabilities of the Electricity Boards and the Electricity Council in companies nominated by the Secretary of State and the subsequent dissolution of those Boards and that Council; to provide for the giving of financial assistance in connection with the storage and reprocessing of nuclear fuel, the treatment, storage and disposal of radioactive waste and the decommissioning of nuclear installations; to amend the Rights of Entry (Gas and Electricity Boards) Act 1954 and the Local Government (Scotland) Act 1973; and for connected purposes. [27th July 1989]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1** Act: references to the Director General of Electricity Supply ("the Director") shall be read as references to the Gas and Electricity Markets Authority ("the Authority") (20.12.2000) by virtue of [Utilities Act 2000 \(c. 27\), s. 3\(2\)](#); [S.I. 2000/3343, art. 2](#), [Sch.](#)
- C2** Act: references to a public gas transporter or to the holder of a licence under section 7 of the 1986 Act shall have effect as if they were references to a gas transporter (1.10.2001) by virtue of [Utilities Act 2000 \(c. 27\), s. 76\(7\)](#); [S.I. 2001/3266, art. 2](#), [Sch.](#) (with arts. 3-20)

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## PART I

### ELECTRICITY SUPPLY

#### Modifications etc. (not altering text)

- C3** Pt. I (ss. 1-64): definition of "electric line" applied (E.W.) (14.7.1992) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59\)](#), ss. 63(1), [Sch. 4 para. 7\(4\)](#); S.I. 1992/1686, [art. 3](#), Sch.
- C4** Pt. I (ss. 1-64): definition of "electric line" applied (S.) (14.7.1992) by [New Roads and Street Works Act 1991 \(c. 22, SIF 108\)](#), ss. 122(1), [Sch. 6 para. 7\(4\)](#); S.I. 1992/1671, [art. 2](#), Sch.
- C5** Pt. I (ss. 1-64) amended (E.W.) (27.10.2000) by S.I. 2000/2727, [art. 10](#)  
Pt. I (ss. 1-64) amended (7.11.2000) by [2000 c. 27, s. 105\(1\)\(a\)](#); S.I. 2000/2974, [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-12](#))

#### *Introductory*

### 1 The Director General of Electricity Supply.

- (1) The Secretary of State shall appoint an officer to be known as the Director General of Electricity Supply (in this Act referred to as "the Director") for the purpose of carrying out the functions assigned or transferred to him by this Act.
- (2) An appointment of a person to hold office as the Director shall be for a term not exceeding five years; but previous appointment to that office shall not affect eligibility for re-appointment.
- (3) The Secretary of State may remove any person from office as the Director on the ground of incapacity or misbehaviour.
- (4) Subject to subsections (2) and (3) above, the Director shall hold and vacate office as such in accordance with the terms of his appointment.
- (5) The provisions of Schedule 1 to this Act shall have effect with respect to the Director.

### 2 Consumers' committees.

- (1) The Director shall establish committees, to be known as consumers' committees, for the purposes of this Part.
- (2) Each consumers' committee shall be appointed for an area consisting of—
  - (a) the authorised area of a public electricity supplier; or
  - (b) if the Secretary of State so determines, the authorised areas of two or more such suppliers;
 and any reference in this Part to the allocation of a public electricity supplier to a consumers' committee shall be construed accordingly.
- (3) Each consumers' committee shall consist of—
  - (a) a chairman appointed by the Director after consultation with the Secretary of State; and
  - (b) such other members, not being less than ten or more than twenty, as the Director after consultation with the chairman may from time to time appoint.

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- (4) An appointment of a person to hold office as the chairman of a consumers' committee shall be for a term not exceeding four years.
- (5) Subject to subsection (4) above, the chairman and other members of a consumers' committee shall hold and vacate office in accordance with the terms of the instruments appointing them and shall, on ceasing to hold office, be eligible for re-appointment.
- (6) The provisions of Schedule 2 to this Act shall have effect with respect to each of the consumers' committees.
- (7) In this Part "public electricity supplier" and "authorised area", in relation to such a supplier, have the meanings given by section 6(9) below.

**Modifications etc. (not altering text)**

- C6 S. 2(2)(b)(3)(a): transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

### 3 General duties of Secretary of State and Director.

- (1) The Secretary of State and the Director shall each have a duty to exercise the functions assigned or transferred to him by this Part in the manner which he considers is best calculated—
  - (a) to secure that all reasonable demands for electricity are satisfied;
  - (b) to secure that licence holders are able to finance the carrying on of the activities which they are authorised by their licences to carry on; and
  - (c) subject to <sup>[F1]</sup>subsections (2) and (2A)] below, to promote competition in the generation and supply of electricity.

- (2) The Secretary of State and the Director shall each have a duty to exercise the functions assigned or transferred to him by this Part in the manner which he considers is best calculated to secure—
  - (a) that the prices charged to tariff customers by public electricity suppliers for electricity supplied in pursuance of section 16(1) below to premises in any area of Scotland specified in an order made by the Secretary of State are in accordance with tariffs which do not distinguish (whether directly or indirectly) between different parts of that area; and
  - (b) that public electricity suppliers are not thereby disadvantaged in competing with persons authorised by a licence or exemption to supply electricity to such premises.

<sup>[F2]</sup>(2A) If an order under section 32(1) below requires a public electricity supplier to make, or produce evidence showing that he has made, arrangements or additional arrangements which will secure the result mentioned in subsection (2B) below, the order, so far as relating to any such requirement, may be made for the purpose of, or for purposes which include, promoting the supply to any premises of—

- (a) heat produced in association with electricity, or
- (b) steam produced from, or air or water heated by, such heat.

(2B) The result referred to in subsection (2A) above is that, for a period specified in the order, there will be available to the public electricity supplier—

- (a) from combined heat and power stations; or

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- (b) from combined heat and power stations of any particular description, an aggregate amount of generating capacity which is not less than that specified in relation to him in the order.
- (2C) In subsection (2B) above, “combined heat and power station” has the meaning given by section 32(8) below.]
- (3) Subject to subsections (1) [<sup>F3</sup>, (2) and (2A)] above, the Secretary of State and the Director shall each have a duty to exercise the functions assigned or transferred to him by this Part in the manner which he considers is best calculated—
- (a) to protect the interests of consumers of electricity supplied by persons authorised by licences to supply electricity in respect of—
    - (i) the prices charged and the other terms of supply;
    - (ii) the continuity of supply; and
    - (iii) the quality of the electricity supply services provided;
  - (b) to promote efficiency and economy on the part of persons authorised by licences to supply or transmit electricity and the efficient use of electricity supplied to consumers;
  - (c) to promote research into, and the development and use of, new techniques by or on behalf of persons authorised by a licence to generate, transmit or supply electricity;
  - (d) to protect the public from dangers arising from the generation, transmission or supply of electricity; and
  - (e) to secure the establishment and maintenance of machinery for promoting the health and safety of persons employed in the generation, transmission or supply of electricity;
- and a duty to take into account, in exercising those functions, the effect on the physical environment of activities connected with the generation, transmission or supply of electricity.
- (4) In performing his duty under subsection (3)(a)(i) above, the Secretary of State or the Director shall take into account, in particular, the protection of the interests of consumers of electricity in rural areas.
- (5) In performing his duty under subsection (3)(a)(iii) above, the Secretary of State or the Director shall take into account, in particular, the interests of those who are disabled or of pensionable age.
- (6) In this section references to the functions assigned to the Secretary of State by this Part do not include references to functions under section 36 or 37 below and references to the functions so assigned to the Director do not include references to functions relating to the determination of disputes.
- (7) In this Part, unless the context otherwise requires—
- “exemption” means an exemption under section 5 below;
- “licence” means a licence under section 6 below and “licence holder” shall be construed accordingly.

#### Textual Amendments

- F1** Words in s. 3(1)(c) substituted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 38(2)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3(a)**

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- F2** S. 3(2A)-(2C) inserted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 38(3)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3(a)**
- F3** Words in s. 3(3) substituted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 38(4)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3(a)**

VALID FROM 20/12/2000

**[<sup>F4</sup>3A The principal objective and general duties of the Secretary of State and the Authority.**

- (1) The principal objective of the Secretary of State and the Gas and Electricity Markets Authority (in this Act referred to as “the Authority”) in carrying out their respective functions under this Part is to protect the interests of consumers in relation to electricity conveyed by distribution systems, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity.
- (2) The Secretary of State and the Authority shall carry out those functions in the manner which he or it considers is best calculated to further the principal objective, having regard to—
  - (a) the need to secure that all reasonable demands for electricity are met; and
  - (b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under this Part or the Utilities Act 2000.
- (3) In performing that duty, the Secretary of State or the Authority shall have regard to the interests of—
  - (a) individuals who are disabled or chronically sick;
  - (b) individuals of pensionable age;
  - (c) individuals with low incomes; and
  - (d) individuals residing in rural areas;but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.
- (4) The Secretary of State and the Authority may, in carrying out any function under this Part, have regard to—
  - (a) the interests of consumers in relation to gas conveyed through pipes (within the meaning of the <sup>M1</sup>Gas Act 1986); and
  - (b) any interests of consumers in relation to—
    - (i) telecommunication services and telecommunication apparatus (within the meaning of the <sup>M2</sup>Telecommunications Act 1984); or
    - (ii) water services or sewerage services (within the meaning of the <sup>M3</sup>Water Industry Act 1991),which are affected by the carrying out of that function.
- (5) Subject to subsection (2), the Secretary of State and the Authority shall carry out their respective functions under this Part in the manner which he or it considers is best calculated—

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- (a) to promote efficiency and economy on the part of persons authorised by licences or exemptions to transmit, distribute or supply electricity and the efficient use of electricity conveyed by distribution systems;
  - (b) to protect the public from dangers arising from the generation, transmission, distribution or supply of electricity; and
  - (c) to secure a diverse and viable long-term energy supply,
- and shall, in carrying out those functions, have regard to the effect on the environment of activities connected with the generation, transmission, distribution or supply of electricity.
- (6) In this section “consumers” includes both existing and future consumers.
- (7) In this section and sections 3B and 3C, references to functions of the Secretary of State or the Authority under this Part include a reference to functions under the Utilities Act 2000 which relate to electricity conveyed by distribution systems.
- (8) In this Part, unless the context otherwise requires—  
“exemption” means an exemption granted under section 5;  
“licence” means a licence under section 6 and “licence holder” shall be construed accordingly.

#### Textual Amendments

- F4** S. 3A substituted for s. 3 (20.12.2000) by 2000 c. 27, s. 13; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

#### Marginal Citations

- M1** 1986 c. 44.  
**M2** 1984 c. 12.  
**M3** 1991 c. 56.

VALID FROM 20/12/2000

#### [<sup>F5</sup> **3B** Guidance on social and environmental matters.]

- (1) The Secretary of State shall from time to time issue guidance about the making by the Authority of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.
- (2) The Authority shall, in carrying out its functions under this Part, have regard to any guidance issued under this section.
- (3) Before issuing guidance under this section the Secretary of State shall consult—
- (a) the Authority;
  - (b) the Gas and Electricity Consumer Council (in this Act referred to as “the Council”);
  - (c) licence holders; and
  - (d) such other persons as the Secretary of State considers it appropriate to consult in relation to the guidance.

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- (4) A draft of any guidance proposed to be issued under this section shall be laid before each House of Parliament.
- (5) Guidance shall not be issued under this section until after the period of forty days beginning with—
  - (a) the day on which the draft is laid before each House of Parliament; or
  - (b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days.
- (6) If, before the end of that period, either House resolves that the guidance should not be issued, the Secretary of State must not issue it.
- (7) In reckoning any period of forty days for the purposes of subsection (5) or (6), no account shall be taken of any time during which—
  - (a) Parliament is dissolved or prorogued; or
  - (b) both Houses are adjourned for more than four days.
- (8) The Secretary of State shall arrange for any guidance issued under this section to be published in such manner as he considers appropriate.]

#### Textual Amendments

- F4** S. 3A substituted for s. 3 (20.12.2000) by 2000 c. 27, s. 13; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F5** S. 3B inserted (20.12.2000) by 2000 c. 27, s. 14; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

VALID FROM 20/12/2000

#### [<sup>F6</sup>3C **Health and safety.**]

- (1) The Secretary of State and the Authority shall consult the Health and Safety Commission about all electricity safety issues which may be relevant to the carrying out of any of their respective functions under this Part.
- (2) The Secretary of State may require the Authority also to consult him about electricity safety issues of particular descriptions.
- (3) The Secretary of State and the Authority shall, in carrying out their respective functions under this Part, take into account any advice given by the Health and Safety Commission about any electricity safety issue (whether or not in response to consultation under subsection (1)).
- (4) The Authority shall, in carrying out its functions under this Part, take into account any advice given by the Secretary of State about any electricity safety issue (whether or not in response to consultation under subsection (2)).
- (5) For the purposes of this section an electricity safety issue is anything concerning the generation, transmission, distribution or supply of electricity which may affect the health and safety of—
  - (a) members of the public; or

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(b) persons employed in connection with any of those activities.]

#### Textual Amendments

- F4** S. 3A substituted for s. 3 (20.12.2000) by 2000 c. 27, s. 13; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F6** S. 3C inserted (20.12.2000) by 2000 c. 27, s. 15; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

VALID FROM 20/12/2000

#### [<sup>F7</sup>3D] [F7 Exceptions from sections 3A to 3C.]

- (1) Section 3A does not apply in relation to the issuing by the Secretary of State of guidance under section 3B.
- (2) Sections 3A to 3C do not apply in relation to functions of the Secretary of State under section 36 or 37.
- (3) Sections 3A to 3C do not apply in relation to anything done by the Authority—
  - (a) in the exercise of functions relating to the determination of disputes;
  - (b) in the exercise of functions under section 43(3).
- (4) The Authority may nevertheless, when exercising any function under section 43(3), have regard to any matter in respect of which a duty is imposed by sections 3A to 3C (“a general matter”), if it is a matter to which the Director General of Fair Trading could have regard when exercising that function (but that is not to be taken as implying that, in relation to functions mentioned in subsection (2), regard may not be had to any general matter).
- (5) The duties imposed by sections 3A to 3C do not affect the obligation of the Authority or the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment, by virtue of any Community obligation or otherwise).]]

#### Textual Amendments

- F4** S. 3A substituted for s. 3 (20.12.2000) by 2000 c. 27, s. 13; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F7** S. 3D inserted (20.12.2000) by 2000 c. 27, s. 16; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

#### Modifications etc. (not altering text)

- C7** S. 3D(4) excluded (20.12.2000) by S.I. 2000/3343, art. 10(1)(b) (subject to transitional provisions in arts. 3-15)



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### *Licensing of supply etc.*

#### **4 Prohibition on unlicensed supply etc.**

- (1) A person who—
  - (a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
  - (b) transmits electricity for that purpose; or
  - (c) supplies electricity to any premises,shall be guilty of an offence unless he is authorised to do so by a licence or exemption.
- (2) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (3) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State or the Director.
- (4) In this Part, unless the context otherwise requires—

“supply”, in relation to electricity, means supply through electric lines otherwise than to premises occupied by a licence holder for the purpose of carrying on the activities which he is authorised by his licence to carry on;

“transmit”, in relation to electricity, means transmit by means of a transmission system, that is to say, a system which consists (wholly or mainly) of high voltage lines and electrical plant and is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another.

#### **Modifications etc. (not altering text)**

**C8** S. 4(1)(a)(c) excluded by S.I. 1990/193, art. 3(1)

#### **5 Exemptions from section 4.**

- (1) The Secretary of State may, after consultation with the Director, by order grant exemption from paragraph (a) or (c) of section 4(1) above, but subject to compliance with such conditions (if any) as may be specified in the order.
- (2) An exemption may be granted either—
  - (a) to persons of a particular class; or
  - (b) to a particular person;and an exemption granted to persons of a particular class shall be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of that class.
- (3) An exemption, unless previously revoked in accordance with any term contained in the exemption, shall continue in force for such period as may be specified in or determined by or under the exemption.
- (4) The requirement to consult imposed by subsection (1) above shall not apply to the granting of any exemptions which, having regard to the provisions of section 4 above, need to be granted before the commencement of that section.

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#### Modifications etc. (not altering text)

- C9** S. 5(1): functions shall be exercisable only after consultation with the Scottish Minister (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 4, Sch. 3 (with art. 7)

## 6 Licences authorising supply etc.

- (1) The Secretary of State after consultation with the Director, or the Director with the consent of, or in accordance with a general authority given by, the Secretary of State, may grant a licence authorising any person—
  - (a) to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
  - (b) to transmit electricity for that purpose in that person's authorised area; or
  - (c) to supply electricity to any premises in that person's authorised area.
- (2) The Secretary of State after consultation with the Director, or the Director with the consent of, or in accordance with a general authority given by, the Secretary of State, may—
  - (a) grant a licence authorising any person to supply electricity to any premises specified or of a description specified in the licence; or
  - (b) extend such a licence by adding to the premises or descriptions of premises specified in the licence.
- (3) An application for a licence or extension shall be made in the prescribed manner and shall be accompanied by such fee (if any) as may be prescribed; and within 14 days after the making of such an application, the applicant shall publish a copy of the application in the prescribed manner.
- (4) Before granting a licence under subsection (1)(b) or (c) above, the Secretary of State or the Director shall give notice—
  - (a) stating that he proposes to grant the licence;
  - (b) stating the reasons why he proposes to grant the licence; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (5) A notice under subsection (4) above shall be given by publishing the notice in such manner as the Secretary of State or the Director considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence.
- (6) A licence shall be in writing and, unless previously revoked in accordance with any term contained in the licence, shall continue in force for such period as may be specified in or determined by or under the licence.
- (7) As soon as practicable after granting a licence, the Secretary of State shall send a copy of the licence to the Director and—
  - (a) in the case of a licence under paragraph (b) of subsection (1) above, to any licence holder under that paragraph whose authorised area previously included the whole or any part of the area designated in the licence;

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- (b) in the case of a licence under paragraph (c) of that subsection, to any public electricity supplier whose authorised area previously included the whole or any part of the area designated in the licence;
  - (c) in the case of a licence or extension under subsection (2) above, to any public electricity supplier whose authorised area includes any premises specified or described in the licence or extension.
- (8) As soon as practicable after granting any licence or extension falling within paragraph (a), (b) or (c) of subsection (7) above, the Director shall send a copy of the licence or extension to any such person as is mentioned in that paragraph.
- (9) In this Part—
- “authorised area”, in relation to a person authorised by a licence under paragraph (b) or (c) of subsection (1) above to transmit or supply electricity, means so much of the area designated as such in the licence as is not for the time being designated in a subsequent licence under that paragraph;
- “public electricity supplier” means any person who is authorised by a licence under subsection (1)(c) above to supply electricity except where he is acting otherwise than for purposes connected with the supply of electricity to premises in his authorised area.
- (10) Neither the requirement to consult imposed by subsection (1) or (2) above nor subsections (3) and (4) above shall apply to the granting of any licences which, having regard to the provisions of section 4 above, need to be granted before the commencement of that section.
- (11) Any sums received by the Secretary of State or the Director under this section shall be paid into the Consolidated Fund.

**Modifications etc. (not altering text)**

**C10** S. 6(1)(2): functions shall be exercisable only after consultation with the Scottish Minister (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 4, Sch. 3 (with art. 7)

VALID FROM 16/05/2001

**[<sup>F8</sup>6A Procedure for licence applications.**

- (1) This section applies to any application—
  - (a) for a licence; or
  - (b) for the extension or restriction of a licence under section 6(4) or (6).
- (2) The application shall be made in such form and manner, and shall contain, or be accompanied by, such information and documents and such fee (if any), as may be prescribed.
- (3) Within the prescribed period after the making of the application the applicant shall publish a notice of the application in the prescribed manner.
- (4) Where the Authority proposes to refuse the application, it shall give to the applicant a notice—
  - (a) stating that it proposes to refuse the application;

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- (b) stating the reasons why it proposes to refuse the application; and
  - (c) specifying the time within which representations with respect to the proposed refusal may be made,
- and shall consider any representations which are duly made and not withdrawn.
- (5) Where the Authority grants the licence, extension or restriction applied for, it shall as soon as practicable thereafter send a notice of the grant to any person who holds a licence and whose interests may, in the opinion of the Authority, be affected by the grant.
- (6) In this section “prescribed” means prescribed in regulations made by the Authority.
- (7) Any sums received by the Authority under this section shall be paid into the Consolidated Fund.]

#### Textual Amendments

- F8** Ss. 6, 6A, 6B substituted for s. 6 (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 30; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 16/05/2001

#### [<sup>F9</sup>6B Applications for transmission licences.

- (1) This section applies to applications for a transmission licence (in addition to the requirements of section 6A).
- (2) The applicant shall give notice of the application to any person who holds a transmission licence and whose authorised area includes the whole or any part of the area to which the application relates.
- (3) Before granting the transmission licence applied for, the Authority shall give notice—
- (a) stating that it proposes to grant the licence;
  - (b) stating the reasons why it proposes to grant the licence; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) shall be given by publication in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (5) The Authority shall send a copy of a notice under subsection (3) to—
- (a) the applicant;
  - (b) the Secretary of State; and

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- (c) any person who holds a transmission licence and whose authorised area includes the whole or any part of the area to which the application relates.]

#### Textual Amendments

- F9** Ss. 6, 6A, 6B substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) for s. 6 by 2000 c. 27, s. 30; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 7 Conditions of licences: general.

- (1) A licence may include—
- (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the grantor to be requisite or expedient having regard to the duties imposed by section 3 above; and
  - (b) conditions requiring the rendering to the grantor of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.
- (2) Without prejudice to the generality of paragraph (a) of subsection (1) above, conditions included in a licence by virtue of that paragraph—
- (a) may require the licence holder to enter into agreements with other persons for the use of any electric lines and electrical plant of his (wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions; and
  - (b) may include provision for determining the terms on which such agreements are to be entered into.
- (3) Conditions included in a licence by virtue of subsection (1)(a) above may require the licence holder—
- (a) to comply with any direction given by the Director as to such matters as are specified in the licence or are of a description so specified;
  - (b) except in so far as the Director consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;
  - (c) to refer for determination by the Director such questions arising under the licence as are specified in the licence or are of a description so specified; and
  - (d) to refer for approval by the Director such things falling to be done under the licence, and such contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified.
- (4) Conditions included in a licence by virtue of subsection (1)(a) above may—
- (a) instead of specifying or describing any contracts or agreements to which they apply, refer to contracts or agreements designated (whether before or after the imposition of the conditions) by the Secretary of State or the Director; and
  - (b) instead of containing any provisions which fall to be made, refer to provisions set out in documents so designated and direct that those provisions shall have such effect as may be specified in the conditions.

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- (5) Conditions included in a licence may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.
- (6) Any provision included by virtue of subsection (5) above in a licence shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.
- (7) Any sums received by the Secretary of State or the Director in consequence of the provisions of any condition of a licence shall be paid into the Consolidated Fund.

VALID FROM 01/10/2001

#### **[<sup>F10</sup>7A Transfer of licences.**

- (1) A licence—
  - (a) is capable of being transferred by the licence holder, with the consent of the Authority, in accordance with this section but subject to any term as to transfer contained in the licence;
  - (b) may include conditions which must be complied with before the licence can be transferred.
- (2) A transfer may relate to the whole or any part of the licence.
- (3) The reference in subsection (2) to part of a licence is a reference to a part of the activities authorised by the licence (whether described by reference to activities being carried on by the licence holder or to activities which he is authorised by the licence to carry on).
- (4) Such consent may be given subject to compliance with such modification or other conditions as the Authority considers appropriate.
- (5) In the case of a partial transfer, conditions imposed under subsection (4) may make as respects so much of the licence as is proposed to be retained by the transferor provision different from that made as respects so much of the licence as is proposed to be transferred.
- (6) In deciding whether to give its consent to a proposed transfer, the Authority shall apply the same criteria as it would apply if the Authority were deciding whether—
  - (a) in the case of a general transfer, to grant a corresponding licence to the transferee; or
  - (b) in the case of a partial transfer—
    - (i) to grant to the transferee a licence corresponding to so much of the licence as is proposed to be transferred; and
    - (ii) to grant to the transferor a licence corresponding to so much of the licence as is proposed to be retained.
- (7) The Authority shall give the Secretary of State not less than 28 days' notice of any proposal to impose a modification condition.
- (8) If, before the expiry of the time specified in a notice under subsection (7), the Secretary of State directs the Authority not to impose the condition, the Authority shall comply with the direction.

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- (9) Before giving consent to the transfer of a licence, the Authority shall give notice—
- (a) stating that it proposes to grant consent to the transfer;
  - (b) stating the reasons why it proposes to give consent; and
  - (c) specifying the time from the date of publication of the notice (not being less than two months) within which representations or objections with respect to the transfer may be made,
- and shall consider any representations or objections that are duly made and not withdrawn.
- (10) A notice under subsection (9) shall be given by publishing the notice in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the transfer.
- (11) A purported transfer of a licence shall be void—
- (a) if the licence is not capable of transfer or the Authority has not given its consent;
  - (b) if the purported transfer is in breach of a condition of the licence; or
  - (c) if there has, before the purported transfer, been a contravention of a condition subject to compliance with which the Authority's consent is given.
- (12) In this section—
- “transfer” includes any form of transfer or assignment or, in Scotland, assignation;
- “modification condition” means a condition requiring or otherwise providing for the making of modifications to the conditions of a licence.

#### Textual Amendments

**F10** S. 7A inserted (1.10.2001) by 2000 c. 27, s. 41; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 01/10/2001

#### **[<sup>F11</sup> 7B Uniform prices etc. in certain areas of Scotland.]**

- (1) The Secretary of State may, by an order made under this section, require the holder of—
- (a) a transmission licence; or
  - (b) a distribution licence,
- to apply in respect of the use of the transmission or, as the case may be, distribution system, or any part of the system, in a specified area charges which do not distinguish (whether directly or indirectly) between users in different parts of the area.
- (2) The Secretary of State may, by such an order, require the holder of a supply licence—
- (a) to charge prices; or
  - (b) to offer conditions of contract,

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in respect of a comparable supply of electricity in a specified area which do not distinguish (whether directly or indirectly) between consumers in different parts of the area.

- (3) The Secretary of State shall not specify in such an order any particular or maximum charge or price or any particular condition of contract.
- (4) Such an order may make different provision for different cases or descriptions of case.
- (5) For the purposes of this section—
  - (a) a specified area is an area of Scotland specified in such an order; and
  - (b) supplies of electricity are comparable if they are—
    - (i) at the same or similar voltages; and
    - (ii) are in accordance with the same or similar demand characteristics.]

#### Textual Amendments

- F10** S. 7A inserted (1.10.2001) by 2000 c. 27, s. 41; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F11** S. 7B inserted (1.10.2001) by 2000 c. 27, s. 72; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 8 Conditions for funding certain companies engaged in nuclear generation in Scotland.]

- (1) Without prejudice to section 7(1)(a) above, it may be a condition of a licence granted to a company (“the licence holder”) that it shall from time to time provide any company to which subsection (2) below applies, comes to apply or has at any time applied with such funds as may be determined by or under the condition in respect of such of that company’s liabilities as may be so determined.
- (2) This subsection applies to any company engaging in the operation of a nuclear generating station in Scotland while—
  - (a) deemed for the purposes of the <sup>M4</sup>Companies Act 1985 to be a subsidiary of the licence holder; or
  - (b) a related company of the licence holder (as defined in paragraph 92 of Schedule 4 to that Act).
- (3) Subsection (3) of section 7 above applies in respect of a condition included in a licence by virtue of this section as it applies in respect of a condition so included by virtue of subsection (1)(a) of that section.

#### Textual Amendments

- F10** S. 7A inserted (1.10.2001) by 2000 c. 27, s. 41; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

- M4** 1985 c. 6.



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VALID FROM 01/10/2001

**[<sup>F12</sup>8A Standard conditions of licences.**

- (1) Subject to subsection (2), each condition which by virtue of section 33(1) of the Utilities Act 2000 is a standard condition for the purposes of any of the types of licence mentioned in section 6(1) (that is to say, generation licences, transmission licences, distribution licences or supply licences) shall be incorporated by reference in each licence of that type granted after the commencement of this section.
- (2) Subject to the following provisions of this section, the Authority may, in granting a licence of any type, modify any of the standard conditions for licences of that type in its application to the licence to such extent as it considers requisite to meet the circumstances of the particular case.
- (3) Before making any modifications under subsection (2), the Authority shall give notice—
  - (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) shall be given—
  - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by sending a copy of the notice to the Secretary of State and the Council.
- (5) If, within the time specified in the notice under subsection (3), the Secretary of State directs the Authority not to make any modification, the Authority shall comply with the direction.
- (6) The Authority shall not under subsection (2) make any modifications of a condition of a licence of any type unless it is of the opinion that the modifications are such that—
  - (a) the licence holder would not be unduly disadvantaged in competing with other holders of licences of that type; and
  - (b) no other holder of a licence of the same type would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).
- (7) The modification under subsection (2) of part of a condition of a licence shall not prevent any other part of the condition which is not so modified being regarded as a standard condition for the purposes of this Part.
- (8) In this section “modify” includes fail to incorporate and “modification” shall be construed accordingly.]

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### Textual Amendments

**F12** S. 8A inserted (1.10.2001) by 2000 c. 27, s. 33(3); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 9 General duties of licence holders.

- (1) It shall be the duty of a public electricity supplier to develop and maintain an efficient, co-ordinated and economical system of electricity supply.
- (2) It shall be the duty of the holder of a licence authorising him to transmit electricity—
  - (a) to develop and maintain an efficient, co-ordinated and economical system of electricity transmission; and
  - (b) subject to subsection (3) below, to facilitate competition in the supply and generation of electricity.
- (3) Subsection (2)(b) above shall apply in Scotland in relation to a person who is also the holder of a licence authorising him to supply or generate electricity as if the duty to facilitate competition in the supply or, as the case may be, the generation of electricity were a duty to make his transmission system available to his competitors on terms which neither prevent nor restrict such competition.
- (4) For the purposes of subsection (3) above a person's competitors are any other persons authorised (whether by a licence or exemption) to supply or, as the case may be, generate electricity.

## 10 Powers etc. of licence holders.

- (1) Subject to subsection (2) below, Schedule 3 to this Act (which provides for the compulsory acquisition of land) and Schedule 4 to this Act (which confers other powers and makes other provision) shall have effect—
  - (a) in relation to a public electricity supplier or a person authorised by a licence to transmit electricity; and
  - (b) to the extent that his licence so provides, in relation to any other licence holder; and references in those Schedules to a licence holder shall be construed accordingly.
- (2) Where any provision of either of the Schedules mentioned in subsection (1) above is applied to a licence holder by his licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it.
- (3) A licence under section 6(1)(a) above may provide that Schedule 4 to this Act shall have effect in relation to the licence holder as if—
  - (a) any reference to any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on included a reference to any purpose connected with the supply to any premises of heat produced in association with electricity and steam produced from and air and water heated by such heat; and
  - (b) any reference to electric lines or electrical plant included a reference to pipes and associated works used or intended to be used for conveying heat so produced, and steam produced from and air and water heated by such heat;

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and in this subsection “associated works”, in relation to pipes, means any of the following connected with the pipes, namely, any valve, filter, stopcock, pump, meter, inspection chamber and manhole and such other works as may be prescribed.

- (4) A licence under paragraph (b) or (c) of section 6(1) above may provide that, where any part of the licence holder’s authorised area is designated in a subsequent licence under that paragraph, Schedule 4 to this Act shall have effect in relation to the licence holder 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.
- (5) The provisions of Schedule 5 to this Act (which provide for the acquisition of water rights for hydro-electric stations in Scotland) shall have effect.

### *Modification of licences*

## **11 Modification by agreement.**

- (1) Subject to the following provisions of this section, the Director may modify the conditions of a licence if the holder of the licence consents to the modifications.
- (2) Before making modifications under this section, the Director shall give notice—
  - (a) stating that he proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why he proposes to make the modifications; and
  - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (3) A notice under subsection (2) above shall be given—
  - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on the holder of the licence.
- (4) The Director shall also send a copy of a notice under subsection (2) above to the Secretary of State; and if, within the period specified in the notice, the Secretary of State directs the Director not to make any modifications, the Director shall comply with the direction.

VALID FROM 16/05/2001

### **[<sup>F13</sup>11A Modification of standard conditions of licences.**

- (1) Subject to the following provisions of this section, the Authority may modify the standard conditions of licences of any type mentioned in section 6(1).
- (2) Where at any time the Authority modifies the standard conditions of licences of any type under this section the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of any licence of that type.

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- (3) Before making any modifications under this section, the Authority shall give notice—
- (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made;
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by sending a copy of the notice to each relevant licence holder, to the Secretary of State and to the Council.
- (5) If, within the time specified in the notice under subsection (3), the Secretary of State directs the Authority not to make any modification, the Authority shall comply with the direction.
- (6) The Authority may not under this section make any modifications of the standard conditions of licences of any type unless—
- (a) no notice of objection to those modifications is given to the Authority within the time specified in the notice under subsection (3) by any relevant licence holder;
  - (b) if one or more relevant licence holders give notice of objection to the Authority within that time—
    - (i) the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection is less than such percentage as may be prescribed; and
    - (ii) the percentage given by subsection (7) is less than such percentage as may be prescribed; or
  - (c) subsection (8) applies to the case.
- (7) The percentage given by this subsection is the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection, weighted according to their market share in such manner as may be prescribed.
- (8) This subsection applies where the Authority is satisfied that—
- (a) the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
  - (b) the modifications would remove or reduce the burden without removing any necessary protection; and
  - (c) the modifications are such that no holder of a licence of the type in question would be unduly disadvantaged in competing with other holders of such licences.
- (9) Where the Authority modifies the standard conditions of licences of any type—

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- (a) the Authority shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) the Authority shall publish the modifications in such manner as it considers appropriate.
- (10) In this section—
- “prescribed” means prescribed in an order made by the Secretary of State; and
  - “relevant licence holder”, in relation to proposed modifications of standard conditions of licences of any type, means the holder of a licence of that type—
    - (a) which is to be modified under the proposals by the inclusion of any new standard condition; or
    - (b) which includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect (by virtue of anything done under section 33(2) of the Utilities Act 2000) at the time specified in the notice under subsection (3).
- (11) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.]

#### Textual Amendments

**F13** S. 11A inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 35; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 12 Modification references to Monopolies Commission.

- (1) The Director may make to the Monopolies and Mergers Commission (in this Part referred to as “the Monopolies Commission”) a reference which is so framed as to require the Commission to investigate and report on the questions—
  - (a) whether any matters which—
    - (i) relate to the generation, transmission or supply of electricity in pursuance of a licence; and
    - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
  - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the licence.
- (2) The Director may, at any time, by notice given to the Monopolies Commission vary a reference under this section by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.
- (3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Monopolies Commission in carrying out the investigation on the reference—

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- (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
  - (b) any modifications of the conditions of the licence by which, in his opinion, those effects could be remedied or prevented.
- (4) As soon as practicable after making a reference under this section or a variation of such a reference, the Director—
- (a) shall serve a copy of the reference or variation on the holder of the licence; and
  - (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- (5) The Director shall also send a copy of a reference under this section, or a variation of such a reference, to the Secretary of State; and if, before the end of the period of 28 days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the Monopolies Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.
- (6) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this section, to give to the Commission—
- (a) any information in his possession which relates to matters falling within the scope of the investigation and—
    - (i) is requested by the Commission for that purpose; or
    - (ii) is information which, in his opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;
- and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.
- (7) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Monopolies Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by section 3 above.
- (8) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the 1973 Act, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 of the 1980 Act (modifications of provisions about performance of such functions) shall apply in relation to references under this section as if—
- (a) the functions of the Commission in relation to those references were functions under the 1973 Act;
  - (b) the expression “merger reference” included a reference under this section;
  - (c) in the said section 70, references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;
  - (d) in paragraph 11 of the said Schedule 3, the reference to section 71 of the 1973 Act were a reference to subsection (2) above; and
  - (e) paragraph 16(2) of that Schedule were omitted;

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and in this Part “the 1973 Act” means the <sup>M5</sup>Fair Trading Act 1973 and “the 1980 Act” means the <sup>M6</sup>Competition Act 1980.

- (9) For the purposes of references under this section the Secretary of State shall appoint not less than eight additional members of the Monopolies Commission; and if any functions of the Commission in relation to any such reference are performed by a group—
- (a) the chairman of the Commission shall select one, two or three of those additional members to be members of the group; and
  - (b) the number of regular members to be selected by him under paragraph 10 of Schedule 3 to the 1973 Act shall be reduced accordingly.

#### Marginal Citations

**M5** 1973 c. 41.

**M6** 1980 c. 21.

VALID FROM 20/06/2003

#### [<sup>F14</sup>12A References under section 12: time limits

- (1) Every reference under section 12 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 12 above shall not have effect (and no action shall be taken in relation to it under section 14 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall, in the case of an extension made by it under subsection (3) above—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.]

#### Textual Amendments

**F14** Ss. 12A, 12B inserted (prosp.) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, Sch. 25 {para. 20(4)}

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VALID FROM 20/06/2003

### **[<sup>F15</sup>12B References under section 12: powers of investigation**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 12 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

#### **Textual Amendments**

**F15** Ss. 12A, 12B inserted (prosp.) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, Sch. 25 {para. 20(4)}

### **13 Reports on modification references.**

- (1) In making a report on a reference under section 12 above, the Monopolies Commission—



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- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions;
  - (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
  - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the licence, shall specify in the report modifications by which those effects could be remedied or prevented.
- (2) Where, on a reference under section 12 above, the Monopolies Commission conclude that the holder of the licence is a party to an agreement to which the <sup>M7</sup>Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (b) of subsection (1) above shall have effect subject to the provisions of this subsection.
- (3) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under section 12 above as it applies to reports of the Commission under that Act.
- (4) A report of the Monopolies Commission on a reference under section 12 above shall be made to the Director.
- (5) Subject to subsection (6) below, the Director—
  - (a) shall, on receiving such a report, send a copy of it to the holder of the licence to which the report relates and to the Secretary of State; and
  - (b) shall, not less than 14 days after that copy is received by the Secretary of State, publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in paragraph (b) of subsection (5) above, direct the Director to exclude that matter from every copy of the report to be published by virtue of that paragraph.

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**Marginal Citations**

M7 1976 c. 34.

## 14 Modification following report.

- (1) Where a report of the Monopolies Commission on a reference under section 12 above—
  - (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;

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- (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
- (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of the licence; and
- (d) specifies modifications by which those effects could be remedied or prevented,

the Director shall, subject to the following provisions of this section, make such modifications of the conditions of that licence as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

- (2) Before making modifications under this section, the Director shall have regard to the modifications specified in the report.
- (3) Before making modifications under this section, the Director shall give notice—
  - (a) stating that he proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why he proposes to make the modifications; and
  - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
  - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on the holder of the licence.

VALID FROM 01/10/2001

#### **[<sup>F16</sup>14A Competition Commission's power to veto modifications following report.**

- (1) The Competition Commission (in this section referred to as “the Commission”) may, within the period of four weeks after the date on which it is given a notice under section 14(5), direct the Authority—
  - (a) not to make the modifications set out in that notice; or
  - (b) not to make such of the modifications as may be specified in the direction;
 and the Authority shall comply with any such direction.
- (2) The Secretary of State may, within the period of four weeks after the date on which the Commission is given a notice under section 14(5) and on the application of the Commission, direct that the period for giving a direction under subsection (1) (and, accordingly, the period mentioned in section 14(7)) shall be extended by 14 days.
- (3) The power to give a direction under subsection (1) may only be exercised in respect of such of the modifications set out in the notice under section 14(5)(a) as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.

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- (4) If the Commission gives a direction under subsection (1), the Commission—
  - (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
  - (b) shall itself make such modifications of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—
    - (i) if the direction was given under subsection (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
    - (ii) if the direction was given under subsection (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 14(7)(b).
- (5) In exercising its function under subsection (4)(b) the Commission shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a licence.
- (6) Before making modifications under subsection (4)(b) the Commission shall give notice—
  - (a) stating that it proposes to make the modifications and setting them out;
  - (b) stating the reason why it proposes to make them;
  - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under subsection (4)(a) or (6) shall be given—
  - (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy on the Authority and the holder of the licence in question or, as the case may be, the relevant licence holders.
- (8) After making modifications under this section the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.
- (9) Where, in consequence of a reference under section 12(1A), the Commission modifies under subsection (4)(b) the standard conditions of licences of any type, the Authority may make such incidental and consequential modifications as it considers necessary or expedient of any conditions of licences of that type granted before that time.
- (10) Where the Commission modifies the standard conditions of licences of any type as mentioned in subsection (9), the Authority—
  - (a) shall make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) shall publish the modifications made for those purposes in such manner as it considers appropriate.

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- (11) The modification under this section of part of a standard condition of a particular licence in consequence of a reference under section 12(1) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (12) The provisions mentioned in subsection (13) are to apply in relation to the exercise by the Commission of its functions under this section as if—
- (a) in section 82(1) and (2) of the <sup>M8</sup>Fair Trading Act 1973 references to a report of the Commission under that Act were references to a notice under subsection (4)(a), (6) or (8) of this section;
  - (b) in section 85 of that Act references to an investigation on a reference made to the Commission were references to an investigation by the Commission for the purposes of the exercise of its functions under this section.
- (13) The provisions are—
- (a) section 82(1) and (2) of the <sup>M9</sup>Fair Trading Act 1973 (general provisions as to reports under that Act);
  - (b) section 85 of that Act (attendance of witnesses and production of documents);
  - (c) section 24 of the <sup>M10</sup>Competition Act 1980 (modification of provisions about the Competition Commission's general functions); and
  - (d) Part II of Schedule 7 to the <sup>M11</sup>Competition Act 1998 (the Competition Commission's general functions).
- (14) This section does not apply to the modification of a licence following a report of the Commission made before the commencement of section 39 of the Utilities Act 2000.]

#### Textual Amendments

- F16** S. 14A inserted (1.10.2001) by 2000 c. 27, ss. 39, 104(1)(b)(2) (with s. 104(6)); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

- M8** 1973 c. 41.  
**M9** 1973 c. 41.  
**M10** 1980 c. 21.  
**M11** 1998 c. 41.

## 15 Modification by order under other enactments.

- (1) Where in the circumstances mentioned in subsection (2) below the Secretary of State by order exercises any of the powers specified in—
- (a) Parts I and II of Schedule 8 to the 1973 Act; or
  - (b) section 10(2)(a) of the 1980 Act,
- the order may also provide for the modification of the conditions of a licence to such extent as may appear to him to be requisite or expedient for the purpose of giving effect to or of taking account of any provision made by the order.
- (2) Subsection (1) above shall have effect where—

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- (a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on monopoly reference) and the monopoly situation exists in relation to the generation, transmission or supply of electricity;
  - (b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and the two or more enterprises which ceased to be distinct enterprises were both engaged in the generation, transmission or supply of electricity; or
  - (c) the circumstances are as mentioned in section 10(1) of the 1980 Act (order on report on competition reference) and the anti-competitive practice relates to the generation, transmission or supply of electricity.
- (3) In this section expressions which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

VALID FROM 28/07/2000

**[<sup>F17</sup>15A Licence modifications relating to new electricity trading arrangements.**

- (1) The Secretary of State may, in accordance with this section, modify—
  - (a) the conditions of a particular licence; or
  - (b) the standard conditions of licences of any type mentioned in section 6(1), where he considers it necessary or expedient to do so for the purpose of implementing, or facilitating the operation of, new arrangements relating to the trading of electricity.
- (2) The power to modify licence conditions under paragraph (a) or (b) of subsection (1) includes power—
  - (a) to make modifications relating to the operation of transmission systems and distribution systems; and
  - (b) to make incidental or 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) Any consultation undertaken by the Secretary of State before the commencement of this section shall be as effective, for the purposes of subsection (3), as if undertaken after that commencement.
- (5) Any modification of part of a standard condition of a licence under subsection (1)(a) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (6) Where the standard conditions of licences of any type are modified under subsection (1)(b), the Secretary of State shall make (as nearly as may be) the same modifications of the standard conditions for the purposes of their incorporation in licences of that type granted after that time.
- (7) The Secretary of State shall publish any modifications under this section in such manner as he considers appropriate.

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(8) The power of the Secretary of State under this section may not be exercised after the end of the period of two years beginning with the passing of the Utilities Act 2000.]

#### Textual Amendments

F17 S. 15A inserted (28.7.2000) by 2000 c. 27, s. 68(1)(2)

### *Supply by public electricity suppliers*

#### 16 Duty to supply on request.

- (1) Subject to the following provisions of this Part and any regulations made under those provisions, a public electricity supplier shall, upon being required to do so by the owner or occupier of any premises—
  - (a) give a supply of electricity to those premises; and
  - (b) so far as may be necessary for that purpose, provide electric lines or electrical plant or both.
- (2) Where any person requires a supply of electricity in pursuance of subsection (1) above, he shall give to the public electricity supplier a notice specifying—
  - (a) the premises in respect of which the supply is required;
  - (b) the day on which the supply is required to commence;
  - (c) the maximum power which may be required at any time; and
  - (d) the minimum period for which the supply is required to be given.
- (3) Where a public electricity supplier receives from any person a notice under subsection (2) above requiring him to give a supply of electricity to any premises and—
  - (a) he has not previously given a supply of electricity to those premises; or
  - (b) the giving of the supply requires the provision of electric lines or electrical plant or both; or
  - (c) other circumstances exist which make it necessary or expedient for him to do so,
 the supplier shall, as soon as practicable after receiving that notice, give to that person a notice under subsection (4) below.
- (4) A notice under this subsection shall—
  - (a) state the extent to which the proposals specified in the other person's notice under subsection (2) above are acceptable to the supplier and specify any counter proposals made by the supplier;
  - (b) state whether the prices to be charged by the supplier will be determined by a tariff under section 18(1) below, or a special agreement under section 22(1) below, and specify the tariff or the proposed terms of the agreement;
  - (c) specify any payment which that person will be required to make under subsection (1) of section 19 below, or under regulations made under subsection (2) of that section;
  - (d) specify any security which that person will be required to give under section 20 below;

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- (e) specify any other terms which that person will be required to accept under section 21 below; and
  - (f) state the effect of section 23 below.
- (5) In this section and sections 17 to 23 below—
- (a) any reference to giving a supply of electricity includes a reference to continuing to give such a supply;
  - (b) any reference to requiring a supply of electricity includes a reference to requiring such a supply to continue to be given; and
  - (c) any reference to the provision of an electric line or an item of electrical plant is a reference to the provision of such a line or item either by the installation of a new one or by the modification of an existing one.

VALID FROM 01/10/2001

**[<sup>F18</sup>16A Procedure for requiring a connection.**

- (1) Where a person requires a connection to be made by an electricity distributor in pursuance of section 16(1), he shall give the distributor a notice requiring him to offer terms for making the connection.
- (2) That notice must specify—
  - (a) the premises or distribution system to which a connection to the distributor's system is required;
  - (b) the date on or by which the connection is to be made; and
  - (c) the maximum power at which electricity may be required to be conveyed through the connection.
- (3) The person requiring a connection shall also give the distributor such other information in relation to the required connection as the distributor may reasonably request.
- (4) A request under subsection (3) shall be made as soon as practicable after the notice under subsection (1) is given (if not made before that time).
- (5) As soon as practicable after receiving the notice under subsection (1) and any information requested under subsection (3) the distributor shall give to the person requiring the connection a notice—
  - (a) stating the extent (if any) to which his proposals are acceptable to the distributor and specifying any counter proposals made by him;
  - (b) specifying any payment which that person will be required to make under section 19(1) or regulations under section 19(2);
  - (c) specifying any security which that person will be required to give under section 20; and
  - (d) stating any other terms which that person will be required to accept under section 21.
- (6) A notice under subsection (5) shall also contain a statement of the effect of section 23.]

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### Textual Amendments

**F18** Ss. 16, 16A, 17 and cross-heading substituted for ss. 16, 17 (1.10.2001) by 2000 c. 27, s. 44; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 17 Exceptions from duty to supply.

- (1) Nothing in section 16(1) above shall be taken as requiring a public electricity supplier to give a supply of electricity to any premises if—
  - (a) such a supply is being given to the premises by a private electricity supplier; and
  - (b) that supply is given (wholly or partly) through the public electricity supplier's electric lines and electrical plant;

and in this Part “private electricity supplier” means a person, other than a public electricity supplier, who is authorised by a licence or exemption to supply electricity.
- (2) Nothing in section 16(1) above shall be taken as requiring a public electricity supplier to give a supply of electricity to any premises if and to the extent that—
  - (a) he is prevented from doing so by circumstances not within his control; or
  - (b) circumstances exist by reason of which his doing so would or might involve his being in breach of regulations under section 29 below, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or
  - (c) it is not reasonable in all the circumstances for him to be required to do so.
- (3) Paragraph (c) of subsection (2) above shall not apply in relation to a supply of electricity which is being given to any premises unless the public electricity supplier gives to the occupier, or to the owner if the premises are not occupied, not less than seven working days' notice of his intention to discontinue the supply in pursuance of that paragraph.

## 18 Power to recover charges.

- (1) Subject to the following provisions of this section, the prices to be charged by a public electricity supplier for the supply of electricity by him in pursuance of section 16(1) above shall be in accordance with such tariffs (which, subject to any condition included in his licence, may relate to the supply of electricity in different areas, cases and circumstances) as may be fixed from time to time by him.
- (2) A tariff fixed by a public electricity supplier under subsection (1) above —
  - (a) shall be so framed as to show the methods by which and the principles on which the charges are to be made as well as the prices which are to be charged; and
  - (b) shall be published in such manner as in the opinion of the supplier will secure adequate publicity for it.
- (3) A tariff fixed by a public electricity supplier under subsection (1) above may include—
  - (a) a standing charge in addition to the charge for the actual electricity supplied;
  - (b) a charge in respect of the availability of a supply of electricity; and
  - (c) a rent or other charge in respect of any electricity meter or electrical plant provided by the supplier;



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and such a charge as is mentioned in paragraph (b) above may vary according to the extent to which the supply is taken up.

- (4) In fixing tariffs under subsection (1) above, a public electricity supplier shall not show undue preference to any person or class of persons, and shall not exercise any undue discrimination against any person or class of persons.

## **19 Power to recover expenditure.**

- (1) Where any electric line or electrical plant is provided by a public electricity supplier in pursuance of section 16(1) above, the supplier may require any expenses reasonably incurred in providing it to be defrayed by the person requiring the supply of electricity to such extent as is reasonable in all the circumstances.
- (2) The Secretary of State may, after consultation with the Director, make provision by regulations for entitling a public electricity supplier to require a person requiring a supply of electricity in pursuance of section 16(1) above to pay to the supplier, in respect of any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply, such amount as may be reasonable in all the circumstances if—
- (a) the supply is required within the prescribed period after the provision of the line or plant; and
  - (b) a person for the purpose of supplying whom the line or plant was provided (“the initial contributor”) has made a payment to the supplier in respect of those expenses.
- (3) Regulations under subsection (2) above may require a public electricity supplier who, in pursuance of this section or the regulations, has recovered any amount in respect of expenses reasonably incurred in providing any electric line or electrical plant—
- (a) to exercise his rights under the regulations in respect of those expenses; and
  - (b) to apply any payments received by him in the exercise of those rights in making such payments as may be appropriate towards reimbursing the initial contributor and any persons previously required to make payments under the regulations.
- (4) Any reference in this section to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in maintaining it, in so far as they will not be recoverable by the supplier as part of the charges made by him for the supply.

## **20 Power to require security.**

- (1) Subject to the following provisions of this section, a public electricity supplier may require any person who requires a supply of electricity in pursuance of subsection (1) of section 16 above to give him reasonable security for the payment to him of all money which may become due to him—
- (a) in respect of the supply; or
  - (b) where any electric line or electrical plant falls to be provided in pursuance of that subsection, in respect of the provision of the line or plant;
- and if that person fails to give such security, the supplier may if he thinks fit refuse to give the supply, or to provide the line or plant, for so long as the failure continues.

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- (2) Where any person has not given such security as is mentioned in subsection (1) above, or the security given by any person has become invalid or insufficient—
- (a) the public electricity supplier may by notice require that person, within seven days after the service of the notice, to give him reasonable security for the payment of all money which may become due to him in respect of the supply; and
  - (b) if that person fails to give such security, the supplier may if he thinks fit discontinue the supply for so long as the failure continues;
- and any notice under paragraph (a) above shall state the effect of section 23 below.
- (3) Where any money is deposited with a public electricity supplier by way of security in pursuance of this section, the supplier shall pay interest, at such rate as may from time to time be fixed by the supplier with the approval of the Director, on every sum of 50p so deposited for every three months during which it remains in the hands of the supplier.
- (4) A public electricity supplier shall not be entitled to require security in pursuance of subsection (1)(a) above if—
- (a) the person requiring the supply is prepared to take the supply through a pre-payment meter; and
  - (b) it is reasonably practicable in all the circumstances (including in particular the risk of loss or damage) for the supplier to provide such a meter.

## **21 Additional terms of supply.**

A public electricity supplier may require any person who requires a supply of electricity in pursuance of section 16(1) above to accept in respect of the supply—

- (a) any restrictions which must be imposed for the purpose of enabling the supplier to comply with regulations under section 29 below; and
- (b) any terms restricting any liability of the supplier for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept.

## **22 Special agreements with respect to supply.**

- (1) Notwithstanding anything in sections 16 to 21 above, a person who requires a supply of electricity in pursuance of section 16(1) above—
- (a) may enter into a special agreement with the public electricity supplier for the supply on such terms as may be specified in the agreement; and
  - (b) shall enter into such an agreement in any case where—
    - (i) the maximum power to be made available at any time exceeds 10 megawatts; or
    - (ii) it is otherwise reasonable in all the circumstances for such an agreement to be entered into.
- (2) The Secretary of State may by order provide that subsection (1) above shall have effect as if for the wattage mentioned in paragraph (b) there were substituted such other wattage as may be specified in the order; but before making such an order, he shall consult with public electricity suppliers and with persons or bodies appearing to him to be representative of persons likely to be affected.

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- (3) So long as any such agreement as is mentioned in subsection (1) above is effective, the rights and liabilities of the parties to the agreement shall be those arising under the agreement and not those provided for by sections 16 to 21 above; but nothing in this subsection shall prejudice the giving of a notice under section 16(2) above specifying as the day on which the supply is required to commence the day on which such an agreement ceases to be effective.
- (4) In this Part “tariff customer” means a person who requires a supply of electricity in pursuance of section 16(1) above and is supplied by the public electricity supplier otherwise than on the terms specified in such an agreement as is mentioned in subsection (1) above.

### 23 Determination of disputes.

- (1) Any dispute arising under sections 16 to 22 above between a public electricity supplier and a person requiring a supply of electricity—
  - (a) may be referred to the Director by either party; and
  - (b) on such a reference, shall be determined by order made either by the Director or, if he thinks fit, by an arbitrator, or in Scotland arbiter, appointed by him;and the practice and procedure to be followed in connection with any such determination shall be such as the Director may consider appropriate.

[<sup>F19</sup>(1A) Any person making an order under subsection (1) above shall include in the order his reasons for reaching his decision with respect to the dispute.]

- (2) Where any dispute arising under sections 16 to 22 above between a public electricity supplier and a person requiring a supply of electricity <sup>F20</sup> . . . to be given falls to be determined under this section, the Director may give directions as to the circumstances in which, and the terms on which, the supplier is <sup>F20</sup> . . . to give the supply pending the determination of the dispute.
- (3) Where any dispute arising under section 20(1) above falls to be determined under this section, the Director may give directions as to the security (if any) to be given pending the determination of the dispute.
- (4) Directions under subsection (2) or (3) above may apply either in cases of particular descriptions or in particular cases.
- (5) An order under this section—
  - (a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order) as that person considers appropriate; and
  - (b) shall be final and—
    - (i) in England and Wales, shall be enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of the county court;
    - (ii) in Scotland, shall be enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (6) In including in an order under this section any such provision as to costs or expenses as is mentioned in subsection (5) above, the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

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#### Textual Amendments

- F19** S. 23(1A) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para.11](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt.I.
- F20** Words in s. 23(2) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), ss. 25(1), 56(7), [Sch.2](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.

#### Modifications etc. (not altering text)

- C11** S. 23(2) extended (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 25(1); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.

## 24 The public electricity supply code.

The provisions of Schedule 6 to this Act (which relate to the supply of electricity by public electricity suppliers) shall have effect.

### *Enforcement of preceding provisions*

## 25 Orders for securing compliance.

- (1) Subject to subsections (2) and (5) and section 26 below, where the Director is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, he shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.
- (2) Subject to subsection (5) below, where it appears to the Director—
  - (a) that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement; and
  - (b) that it is requisite that a provisional order be made,
 he shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with that condition or requirement.
- (3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional order be made, the Director shall have regard, in particular—
  - (a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made; and
  - (b) to the fact that the effect of the provisions of this section and section 27 below is to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition or requirement.
- (4) Subject to subsection (5) and section 26 below, the Director shall confirm a provisional order, with or without modifications, if—
  - (a) he is satisfied that the licence holder to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement; and
  - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.

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- (5) The Director shall not make a final order or make or confirm a provisional order in relation to a licence holder if he is satisfied—
- (a) that the duties imposed on him by section 3 above preclude the making or, as the case may be, the confirmation of the order;
  - (b) that the licence holder has agreed to take and is taking all such steps as it appears to the Director for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
  - (c) that the contraventions were, or the apprehended contraventions are, of a trivial nature.
- (6) Where the Director is satisfied as mentioned in subsection (5) above, he shall—
- (a) serve notice that he is so satisfied on the licence holder; and
  - (b) publish the notice in such manner as he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (7) A final or provisional order—
- (a) shall require the licence holder to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
  - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
  - (c) may be revoked at any time by the Director.
- (8) In this Part—
- “final order” means an order under this section other than a provisional order;
- “provisional order” means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order;
- “relevant condition”, in relation to a licence holder, means any condition of his licence;
- “relevant requirement”, in relation to a licence holder, means any duty or other requirement imposed on him by or under section 9 or sections 16 to 23 above [F21 or section 40(3), 41(3), 42A or 42B below].

#### Textual Amendments

**F21** Words in s. 25(8) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para.12](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt.I

## 26 Procedural requirements.

- (1) Before he makes a final order or confirms a provisional order, the Director shall give notice—
- (a) stating that he proposes to make or confirm the order and setting out its effect;
  - (b) setting out—

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- (i) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
    - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and
    - (iii) the other facts which, in his opinion, justify the making or confirmation of the order; and
  - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (2) A notice under subsection (1) above shall be given—
- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the licence holder to whom the order relates.
- (3) The Director shall not make a final order with modifications, or confirm a provisional order with modifications, except—
- (a) with the consent to the modifications of the licence holder to whom the order relates; or
  - (b) after complying with the requirements of subsection (4) below.
- (4) The requirements mentioned in subsection (3) above are that the Director shall—
- (a) serve on the licence holder to whom the order relates such notice as appears to him requisite of his proposal to make or confirm the order with modifications;
  - (b) in that notice specify the period (not being less than 28 days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
  - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making a final order or making or confirming a provisional order, the Director shall—
- (a) serve a copy of the order on the licence holder to whom the order relates; and
  - (b) publish the order in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (6) Before revoking a final order or a provisional order which has been confirmed, the Director shall give notice—
- (a) stating that he proposes to revoke the order and setting out its effect; and
  - (b) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under subsection (6) above, the Director decides not to revoke the order to which the notice relates, he shall give notice of his decision.

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- (8) A notice under subsection (6) or (7) above shall be given—
- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (b) by serving a copy of the notice on the licence holder to whom the order relates.

## 27 Validity and effect of orders.

- (1) If the licence holder to whom a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—
- (a) that its making or confirmation was not within the powers of section 25 above; or
  - (b) that any of the requirements of section 26 above have not been complied with in relation to it,
- he may, within 42 days from the date of service on him of a copy of the order, make an application to the court under this section.
- (2) On any such application the court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the licence holder have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.
- (3) Except as provided by this section, the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.
- (4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order.
- (5) Where a duty is owed by virtue of subsection (4) above to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.
- (6) In any proceedings brought against a licence holder in pursuance of subsection (5) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.
- (7) Without prejudice to any right which any person may have by virtue of subsection (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the Director for an injunction or for interdict or for any other appropriate relief.
- (8) In this section and section 28 below “the court” means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

VALID FROM 20/12/2000

### <sup>F22</sup>27A Penalties.

- (1) Where the Authority is satisfied that a licence holder—
- (a) has contravened or is contravening any relevant condition or requirement; or

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- (b) has failed or is failing to achieve any standard of performance prescribed under section 39 or 39A,  
the Authority may, subject to section 27C, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.
- (2) The Authority shall not impose a penalty on a licence holder under subsection (1) where it is satisfied that the most appropriate way of proceeding is under the <sup>M12</sup>Competition Act 1998.
- (3) Before imposing a penalty on a licence holder under subsection (1) the Authority shall give notice—
- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
  - (b) setting out the relevant condition or requirement or the standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and
  - (d) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) Before varying any proposal stated in a notice under subsection (3)(a) the Authority shall give notice—
- (a) setting out the proposed variation and the reasons for it; and
  - (b) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after imposing a penalty, the Authority shall give notice—
- (a) stating that it has imposed a penalty on the licence holder and its amount;
  - (b) setting out the relevant condition or requirement or the standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of the penalty and its amount; and
  - (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty is required to be paid.
- (6) The licence holder may, within 21 days of the date of service on him of a notice under subsection (5), make an application to the Authority for it to specify different dates by which different portions of the penalty are to be paid.
- (7) Any notice required to be given under this section shall be given—



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- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;
  - (b) by serving a copy of the notice on the licence holder; and
  - (c) by serving a copy of the notice on the Council.
- (8) No penalty imposed by the Authority under this section may exceed 10 per cent. of the turnover of the licence holder (determined in accordance with provisions specified in an order made by the Secretary of State).
- (9) An order under subsection (8) shall not be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (10) Any sums received by the Authority by way of penalty under this section shall be paid into the Consolidated Fund.
- (11) The power of the Authority under subsection (1) is not exercisable in respect of any contravention or failure before the commencement of section 59 of the Utilities Act 2000.]

#### Textual Amendments

- F22** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by [2000 c. 27, s. 59\(1\)](#); [S.I. 2000/3343, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-15](#)) (as amended by [S.I. 2001/1780, art. 2](#)); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### Marginal Citations

- M12** [1998 c. 41](#).

VALID FROM 20/12/2000

#### [<sup>F23</sup>27B Statement of policy with respect to penalties.

- (1) The Authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure the Authority shall have regard to its statement of policy most recently published at the time when the contravention or failure occurred.
- (3) The Authority may revise its statement of policy and where it does so shall publish the revised statement.
- (4) Publication under this section shall be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The Authority shall undertake such consultation as it considers appropriate when preparing or revising its statement of policy.]

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### Textual Amendments

**F23** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 59(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 20/12/2000

### [<sup>F24</sup>27C Time limits on the imposition of financial penalties.

- (1) Where no final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure later than the end of the period of 12 months from the time of the contravention or failure, unless before the end of that period—
  - (a) the notice under section 27A(3) relating to the penalty is served on the licence holder under section 27A(7), or
  - (b) a notice relating to the contravention or failure is served on the licence holder under section 28(2).
- (2) Where a final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under section 27A(3) was served on the licence holder under section 27A(7)—
  - (a) within three months from the confirmation of the provisional order or the making of the final order, or
  - (b) where the provisional order is not confirmed, within six months from the making of the provisional order.]

### Textual Amendments

**F24** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 59(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 20/12/2000

### [<sup>F25</sup>27D Interest and payment of instalments.

- (1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the <sup>M13</sup>Judgments Act 1838.
- (2) If an application is made under subsection (6) of section 27A in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the Authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the

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Authority under that subsection, the Authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.]

#### Textual Amendments

**F25** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 59(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

**M13** 1838 c. 110.

VALID FROM 20/12/2000

#### [<sup>F26</sup>27E Appeals.

- (1) If the licence holder on whom a penalty is imposed is aggrieved by—
  - (a) the imposition of the penalty;
  - (b) the amount of the penalty; or
  - (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,the licence holder may make an application to the court under this section.
- (2) An application under subsection (1) must be made—
  - (a) within 42 days from the date of service on the licence holder of a notice under section 27A(5), or
  - (b) where the application relates to a decision of the Authority on an application by the licence holder under section 27A(6), within 42 days from the date the licence holder is notified of the decision.
- (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within subsection (4), the court—
  - (a) may quash the penalty;
  - (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or
  - (c) in the case of an application under subsection (1)(c), may substitute for the date or dates imposed by the Authority an alternative date or dates.
- (4) The grounds falling within this subsection are—
  - (a) that the imposition of the penalty was not within the power of the Authority under section 27A;
  - (b) that any of the requirements of subsections (3) to (5) or (7) of section 27A have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance; or
  - (c) that it was unreasonable of the Authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.

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- (5) If an application is made under this section in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.
- (8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.
- (9) In this section “the court” means—
  - (a) in relation to England and Wales, the High Court; and
  - (b) in relation to Scotland, the Court of Session.]

#### Textual Amendments

**F26** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 59(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 20/12/2000

#### [<sup>F27</sup>27F Recovery of penalties.

Where a penalty imposed under section 27A(1), or any portion of it, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under section 27E during the period within which such an application can be made, or
- (b) an application has been made under that section and determined,

the Authority may recover from the licence holder, as a civil debt due to it, any of the penalty and any interest which has not been paid.]

#### Textual Amendments

**F27** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 59(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 28 Power to require information etc.

- (1) Where it appears to the Director that a licence holder may be contravening, or may have contravened, any relevant condition or requirement, the Director may, for any purpose connected with such of his functions under section 25 above [<sup>F28</sup>or 42B below]

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as are exercisable in relation to that matter, serve a notice under subsection (2) below on any person.

- (2) A notice under this subsection is a notice signed by the Director and—
  - (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Director or to any person appointed by the Director for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
  - (b) requiring that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Director such information as may be specified or described in the notice.
- (3) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.
- (4) A person who without reasonable excuse fails to do anything required of him by notice under subsection (2) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (2) above to produce shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (6) If a person makes default in complying with a notice under subsection (2) above, the court may, on the application of the Director, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

#### Textual Amendments

**F28** Words in s. 28(1) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para.13](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt.I.

### *Provisions with respect to supply generally*

## **29 Regulations relating to supply and safety.**

- (1) The Secretary of State may make such regulations as he thinks fit for the purpose of—
  - (a) securing that supplies of electricity are regular and efficient;
  - (b) protecting the public from dangers arising from the generation, transmission or supply of electricity, from the use of electricity supplied or from the installation, maintenance or use of any electric line or electrical plant; and
  - (c) without prejudice to the generality of paragraph (b) above, eliminating or reducing the risks of personal injury, or damage to property or interference with its use, arising as mentioned in that paragraph.

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- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may—
- (a) prohibit the supply or transmission of electricity except by means of a system approved by the Secretary of State;
  - (b) make provision requiring notice in the prescribed form to be given to the Secretary of State, in such cases as may be specified in the regulations, of accidents and of failures of supplies or transmissions of electricity;
  - (c) make provision as to the keeping, by persons authorised by a licence or exemption to supply or transmit electricity, of maps, plans and sections and as to their production (on payment, if so required, of a reasonable fee) for inspection or copying;
  - (d) make provision for relieving persons authorised by a licence to supply electricity from any obligation to supply in such cases as may be prescribed;
  - (e) make provision requiring compliance with notices given by the Secretary of State specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer, for the purpose of—
    - (i) preventing or ending a breach of regulations under this section; or
    - (ii) eliminating or reducing a risk of personal injury or damage to property or interference with its use;
  - (f) provide for particular requirements of the regulations to be deemed to be complied with in the case of any electric line or electrical plant complying with specified standards or requirements;
  - (g) provide for the granting of exemptions from any requirement of the regulations for such periods as may be determined by or under the regulations.
- (3) Regulations under this section may provide that any person—
- (a) who contravenes any specified provision of the regulations; or
  - (b) who does so in specified circumstances,
- shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; but nothing in this subsection shall affect any liability of any such person to pay compensation in respect of any damage or injury which may have been caused by the contravention.
- (4) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State or the Director of Public Prosecutions.

### **30 Electrical inspectors.**

- (1) The Secretary of State may appoint competent and impartial persons to be electrical inspectors under this Part.
- (2) The duties of an electrical inspector under this Part shall be as follows—
  - (a) to inspect and test, periodically and in special cases, electric lines and electrical plant belonging to persons authorised by a licence or exemption to generate, transmit or supply electricity;
  - (b) to examine, periodically and in special cases, the generation, transmission or supply of electricity by such persons;

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- (c) to inspect and test, if and when required by any consumer, any such lines and plant on the consumer's premises, for the purpose of determining whether any requirement imposed by or under this Part in respect of the lines or plant or the supply of electricity through or by them has been complied with; and
  - (d) such other duties as may be imposed by regulations under this section or as the Secretary of State may determine.
- (3) The Secretary of State may by regulations—
- (a) prescribe the manner in which and the times at which any duties are to be performed by electrical inspectors;
  - (b) require persons authorised by a licence or exemption to generate, transmit or supply electricity—
    - (i) to furnish electrical inspectors with records or other information; and
    - (ii) to allow such inspectors access to premises and the use of electrical plant and other facilities;
  - (c) make provision for relieving persons authorised by a licence to supply electricity from any obligation to supply in such cases as may be prescribed; and
  - (d) prescribe the amount of the fees which are to be payable to such inspectors.
- (4) Any fees received by electrical inspectors shall be paid to the Secretary of State; and any sums received by him under this subsection shall be paid into the Consolidated Fund.

### **31 Use etc. of meters.**

The provisions of Schedule 7 to this Act (which relate to the use, certification, testing and maintenance of electricity meters) shall have effect.

#### *Protection of public interest*

### **32 Electricity from non-fossil fuel sources.**

- (1) The Secretary of State may, after consultation with the Director and with the suppliers concerned, by order require each public electricity supplier in England and Wales or each such supplier in Scotland, before a day specified in the order, to make (in so far as he has not already done so) and produce evidence to the Director showing that he has made—
- (a) such arrangements; or
  - (b) where a previous order under this subsection has had effect in relation to him, such additional arrangements,
- as will secure the result mentioned in subsection (2) below.
- (2) The result referred to in subsection (1) above is that, for a period specified in the order, there will be available to the public electricity supplier—
- (a) from non-fossil fuel generating stations; or
  - (b) if the order so provides, from non-fossil fuel generating stations of any particular description,

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an aggregate amount of generating capacity which is not less than that specified in relation to him in the order; and an order under subsection (1) above may make different provision for different suppliers.

[<sup>F29</sup>(2A) For the purposes of this section—

- (a) combined heat and power stations generally; and
- (b) combined heat and power stations of any particular description,

are to be taken as being particular descriptions of non-fossil fuel generating stations.

(2B) A particular description of combined heat and power stations may be described by reference to, or by reference to matters which include—

- (a) the heat or, as the case may be, the steam or heated air or water to be supplied from the station to any premises;
- (b) any premises to which any such heat, steam or heated air or water is to be supplied (including, without prejudice to the generality of the foregoing, the use to which any such premises are put);
- (c) the means or method by which any such heat, steam or heated air or water is to be supplied to any premises (including, without prejudice to the generality of the foregoing, any system or network of supply or distribution); or
- (d) the arrangements (including financial or contractual arrangements) under which any such heat, steam or heated air or water is to be supplied to any premises.

(2C) Subsections (2A) and (2B) above are without prejudice to—

- (a) the generality of subsection (2)(b) above, or
- (b) section 111(2) below;

and subsection (2B) above is without prejudice to the generality of subsection (2A) (b) above.]

(3) A public electricity supplier who—

- (a) fails to comply with an order under subsection (1) above; or
- (b) having complied with such an order, by any act or omission of his prevents the arrangements made by him from securing the result mentioned in subsection (2) above,

shall be liable on conviction on indictment to a fine.

(4) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.

(5) Subject to subsection (6) below, if throughout any period a public electricity supplier—

- (a) is entitled under a contract to purchase, at any wattage specified in the contract, electricity generated by a particular non-fossil fuel generating station; or
- (b) himself operates a non-fossil fuel generating station and, of the station's capacity, any wattage does not fall to be regarded, by virtue of paragraph (a) above, as available to any other person,

a generating capacity of that wattage shall be regarded for the purposes of this section as available to that supplier from that station for that period.

(6) The amount of a non-fossil fuel generating station's capacity which may be regarded as available for the purposes of this section shall not exceed that station's declared net capacity; and where different parts of such a station's capacity fall to be regarded as



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available to different persons, any excess over that station's declared net capacity shall be apportioned between those persons in such manner as the Director may determine.

(7) If the Secretary of State is satisfied that any such arrangements as are mentioned in subsection (1) above have been made before the day specified in the first order under that subsection, he may certify that those arrangements—

- (a) have been made by such one or more public electricity suppliers as are specified in the certificate; and
- (b) are such as will secure such a result as is so specified;

and a certificate under this subsection shall be conclusive evidence of the matters stated in it.

(8) In this section—

“coal products” means any substances produced directly or indirectly from coal;

[“<sup>F30</sup>combined heat and power station” means a non-fossil fuel generating station which is (or may be) operated for purposes including the supply to any premises of—

- (a) heat produced in association with electricity, or
- (b) steam produced from, or air or water heated by, such heat;]

“declared net capacity”, in relation to a non-fossil fuel generating station, means the highest generation of electricity (at the main alternator terminals) which can be maintained indefinitely without causing damage to the plant less—

- (a) so much of that capacity as is consumed by the plant; and
- (b) in the case of a station which is capable of being fuelled by a fossil fuel, so much of that capacity as the Director may determine;

“fossil fuel” means coal, coal products, lignite, natural gas, crude liquid petroleum or petroleum products;

“natural gas” and “petroleum products” have the same meanings as in the <sup>M14</sup>Energy Act 1976;

“non-fossil fuel generating station” means a generating station which is (or may be) fuelled or driven otherwise than by a fossil fuel;

and for the purposes of this section a public electricity supplier shall be regarded as such a supplier in England and Wales or such a supplier in Scotland, according as his authorised area falls wholly or mainly in England and Wales or wholly or mainly in Scotland.

(9) The Secretary of State may by regulations provide—

- (a) that subsections (5) to (8) above shall have effect in relation to any non-fossil fuel generating station which is driven by water, wind or solar power with such modifications as may be prescribed; and
- (b) that electricity generated outside the United Kingdom shall be treated for the purposes of subsection (5)(a) above as generated by a non-fossil fuel generating station in such circumstances and to such extent as may be prescribed.

(10) In relation to any time before the commencement of section 4 above, any requirement imposed by subsection (1) above to consult with public electricity suppliers in England and Wales or public electricity suppliers in Scotland shall be construed as

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a requirement to consult with the Area Boards or, as the case may be, the Scottish Boards.

#### Textual Amendments

- F29** S. 32(2A)-(2C) inserted (21.9.1995) by 1995 c. 25, s. 115, **Sch. 22 para. 39(2)** (with s. 7(6), 115, 117); S.I. 1995/1983, **art. 3(a)**
- F30** Definition of “combined heat and power station” in s. 32(8) inserted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 39(2)** (with s. 7(6), 115, 117); S.I. 1995/1983, **art. 3(a)**

#### Modifications etc. (not altering text)

- C12** S. 32: power to modify conferred (29.9.2000) by 2000 c. 27, s. 67(1)(a); S.I. 2000/2412, art. 2, **Sch. 2000/2412, art. 2, Sch. 2000/2412, art. 2, Sch. 2000/2412, art. 2, Sch.**
- C13** S. 32(1)(9): transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)
- C14** S. 32(5)–(8) modified by S.I. 1990/264, **art. 2**
- C15** S. 32(5)(a) amended by S.I. 1990/265, **arts. 3, 4(3), 5(2)(3)(b)**

#### Marginal Citations

- M14** 1976 c. 76.

VALID FROM 01/10/2001

#### [<sup>F31</sup>32A Orders under section 32: supplementary.

- (1) An order under section 32 may make provision generally in relation to the renewables obligation imposed by the order, and may in particular specify—
- (a) different obligations for successive periods of time;
  - (b) that only electricity generated using specified descriptions of renewable source is to count towards discharging the obligation (or that such electricity is to count only up to a specified amount);
  - (c) that only electricity generated by specified descriptions of generating station is to count towards discharging the obligation (or that such electricity is to count only up to a specified amount);
  - (d) that a specified minimum amount of electricity generated as mentioned in paragraph (b) or (c) is to be counted towards the discharge of the renewables obligation;
  - (e) how the amount of electricity supplied by an electricity supplier (whether generally or to particular customers or descriptions of customer) is to be determined;
  - (f) how the proportion referred to in section 32(6) or in the definition of “renewable sources” in section 32(8) is to be determined;
  - (g) the consequences for the discharge of the renewables obligation if a generating station of the type mentioned in section 32(6) uses more than a specified proportion of fossil fuel during a specified period (which may include the consequence that none of the electricity generated by that generating station during that period is to count towards discharging the obligation);

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- (h) that specified information, or information of a specified nature, is to be given to the Authority (in addition to the evidence referred to in section 32(3)), and the form in which it is to be given.
- (2) An order may, in relation to any specified period (“the current period”)—
- (a) provide that evidence of electricity supplied in a later period may, when available, be counted towards discharging the renewables obligation for the current period;
  - (b) provide that evidence of electricity supplied in the current period may, in a later period, be counted towards discharging the renewables obligation for that period;
  - (c) specify how much later the later period referred to in paragraph (a) or (b) may be;
  - (d) specify a maximum proportion of the renewables obligation for any period which may be discharged as mentioned in paragraph (a) or (b);
  - (e) specify a maximum proportion of electricity supplied in any period evidence of which may be counted towards discharging the renewables obligation for a different period.
- (3) An order may make—
- (a) different provision for different cases or circumstances; and
  - (b) different provision in relation to different suppliers,
- if the Secretary of State is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers.
- (4) An order may provide for the Authority to require an electricity supplier to provide it with information, or with information of a particular kind, which is in its opinion relevant to the question whether the supplier is discharging, or has discharged, the renewables obligation.
- (5) That information must be given to the Authority in whatever form it requires.
- (6) No person shall be required by virtue of this section to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.
- (7) An order may make further provision as to the functions of the Authority in relation to the obligation imposed by the order.

#### Textual Amendments

**F31** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

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[<sup>F32</sup> **32B**] [<sup>F32</sup> **Green certificates.**]

- (1) An order under section 32 may provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate to the operator of a generating station or to an electricity supplier.
- (2) A certificate is to certify—
  - (a) that the generating station or, in the case of a certificate issued to an electricity supplier, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate; and
  - (b) that it has been supplied to customers in Great Britain (or the part of Great Britain stated in the certificate).
- (3) If an electricity supplier produces a certificate to the Authority, it is to count for the purposes of section 32(3) as sufficient evidence of the facts certified.]

**Textual Amendments**

- F31** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F32** S. 32B inserted (1.10.2001) by 2000 c. 27, s. 64; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**Modifications etc. (not altering text)**

- C16** S. 32B: transfer of functions (1.11.2001) by S.I. 2001/3504, arts. 1(2)(a), 2, Sch. (with art. 4) (as amended (15.12.2006) by S.I. 2006/3258, arts. 1(2), 3(4) (with art. 5))

VALID FROM 01/10/2001

[<sup>F33</sup> **32C**] [<sup>F33</sup> **Payment as alternative to complying with order under section 32.**]

- (1) An order under section 32 may provide that instead of producing evidence under section 32(3), an electricity supplier may discharge (in whole or in part) its renewables obligation (or its obligation in relation to a particular period) by making a payment to the Authority.
- (2) The order may make provision—
  - (a) as to the sum which for the purposes of subsection (1) is to correspond to the supply of a given amount of electricity;
  - (b) for different such sums in relation to different periods;
  - (c) for different such sums in relation to electricity generated in different ways specified in the order (such as those referred to in section 32A(1)(b) and (c)); and
  - (d) for any such sum to be adjusted from time to time for inflation by a method specified in the order (which may refer to a specified scale or index or to other specified data of any description, including such a scale or index or

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such data in a form not current when the order was made, but in a subsequent form attributable to revision or any other cause and taking effect afterwards).

- (3) The Authority must pay the amounts received to electricity suppliers in accordance with a system of allocation specified in the order.
- (4) The system of allocation specified in the order may provide for payments to specified categories of electricity supplier only.]

#### Textual Amendments

- F31** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F33** S. 32C inserted (1.10.2001) by 2000 c. 27, s. 65; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

- C17** S. 32C: transfer of functions (1.11.2001) by S.I. 2001/3504, arts. 1(2)(a), 2, Sch. (with art. 4)

### 33 Fossil fuel levy.

- (1) Where the Secretary of State has made one or more orders under section 32 above in relation to public electricity suppliers in England and Wales, or public electricity suppliers in Scotland, he may by regulations provide—
  - (a) for the imposition on such suppliers, and on persons authorised by a licence under section 6(2) above to supply electricity within the authorised area of such a supplier, of a levy in respect of each qualifying month;
  - (b) for the collection of payments in respect of that levy by a prescribed person; and
  - (c) for the making by that person to such suppliers, out of the payments so collected, of payments in respect of each qualifying month.
- (2) The amount of any payment which is required by regulations under this section to be made by any person in respect of the levy shall be calculated, by such method as may be specified by the regulations, by reference to the aggregate amount charged by that person for leviable electricity supplied by him during the qualifying month.
- (3) The amount of any payment required to be made to a public electricity supplier by regulations under this section shall be the aggregate of the amounts given by subsections (4) and (5) below.
- (4) The amount given by this subsection is a one-twelfth part of any advance payments which, in pursuance of qualifying arrangements, fall to be made by the public electricity supplier during the relevant year; and in this subsection “the relevant year” means whichever one of the following periods the qualifying month falls within, namely—
  - (a) the period of twelve months beginning on the day appointed by the first order under section 32 above which has effect in relation to the supplier; and
  - (b) each successive period of twelve months.
- (5) The amount given by this subsection is the difference between—

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- (a) the total cost to the supplier of purchasing or generating any electricity supplied by him during the qualifying month which was generated in pursuance of qualifying arrangements; and
  - (b) what would have been the total cost to him of purchasing or generating that electricity if it had been generated by a fossil fuel generating station,
- calculated (in each case) by such method as may be specified by regulations under this section and including any advance or deferred payments other than, in the case of the cost mentioned in paragraph (a) above, payments taken into account under subsection (4) above.
- (6) Regulations under this section may—
- (a) impose requirements (whether as to the furnishing of records or other information or the affording of facilities for the examination and testing of meters or otherwise) on persons authorised by a licence to supply, transmit or generate electricity;
  - (b) make provision as to the times at which payments falling to be made in pursuance of the regulations (whether payments by way of levy or payments to public electricity suppliers) are to be so made; and
  - (c) require the amount of any overpayment or underpayment which is made by or to any person (whether it arises because an estimate turns out to be wrong or otherwise) to be set off against or added to any subsequent liability or entitlement of that person.
- (7) The Secretary of State shall exercise the powers conferred by this section in the manner which he considers is best calculated to secure that the sums realised by the levy are sufficient (after payment of the administrative expenses of the prescribed person) to pay to each public electricity supplier in respect of each qualifying month the payment required to be made to him by the regulations.
- [<sup>F34</sup>(7A) In this section, references to qualifying arrangements, in relation to a public electricity supplier, are to any arrangements in relation to which each of the following is the case—
- (a) the supplier has produced evidence of the making of them to the Director in pursuance of an order under section 32 above;
  - (b) they were made jointly with one or more other public electricity suppliers or are arrangements for isolated supply; and
  - (c) they satisfy such other requirements as may be prescribed.
- (7B) For the purposes of subsection (7A)(b) above, arrangements are for isolated supply if the electricity generated in pursuance of them is supplied only over a system of electric lines and electrical plant which—
- (a) is operated by a public electricity supplier,
  - (b) is located on an island, and
  - (c) is not connected directly or indirectly to any system operated by another public electricity supplier.]

(8) In this section—

“advance payment” means any payment made or expense incurred in relation to a particular generating station before electricity is first generated by that station, and any reference to the making of advance payments shall be construed accordingly;

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“deferred payment” means any payment made or expense incurred in relation to a particular generating station after electricity ceases to be generated by that station;

“fossil fuel generating station” means a generating station fuelled by a fossil fuel;

[<sup>F35</sup>“leviable electricity” means electricity which—

- (a) is generated by a fossil fuel generating station;
- (b) is generated by a generating station fuelled by nuclear fuel; or
- (c) is generated in pursuance of qualifying arrangements by a generating station fuelled or driven otherwise than by a fossil fuel or nuclear fuel;]

<sup>F36</sup> . . .

“qualifying month” in relation to a public electricity supplier or a person authorised by a licence under section 6(2) above to supply electricity within the authorised area of such a supplier, means a month beginning on or after the day appointed by the first order under section 32 above which has effect in relation to that supplier;

and other expressions which are used in section 32 above have the same meanings as in that section.

[<sup>F37</sup>(9) The Secretary of State may by regulations amend this section so as to—

- (a) omit the word “leviable” in subsection (2) above; and
- (b) omit the definition of “leviable electricity” in subsection (8) above]

#### Textual Amendments

**F34** S. 33(7A)(7B) inserted (22.4.1997) by S.I. 1997/1185, art. 2(1)

**F35** Definition of “leviable electricity” substituted for definitions of “leviable electricity”

and “non-fossil fuel generating station” in s. 33(8) (1.4.1998) by 1998 c. 5, s. 1(2); S.I. 1998/930, art. 2

**F36** Definition of “qualifying arrangements” in s. 33(8) repealed (22.4.1997) by S.I. 1997/1185, art. 2(2)

**F37** S. 33(9) inserted (1.4.1998) by 1998 c. 5, s. 1(3); S.I. 1998/930, art. 2

#### Modifications etc. (not altering text)

**C18** S. 33: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

**C19** S. 33 continued (with modifications) (27.10.2000 with effect on 21.11.2000) by S.I. 2000/2727, art. 11

**C20** S. 33: power to continue (with modifications) conferred (29.9.2000) by 2000 c. 27, s. 67(3); S.I. 2000/2412, art. 2 (with art. 3(2))

### 34 Fuel stocks etc. at generating stations.

- (1) This section applies to any generating station which—
  - (a) is of a capacity not less than 50 megawatts; and
  - (b) is fuelled otherwise than by waste or manufactured gases;and in this subsection “waste” has the same meaning as in the <sup>M15</sup>Control of Pollution Act 1974.
- (2) The Secretary of State may by order provide that subsection (1) above shall have effect as if for the capacity mentioned in paragraph (a) there were substituted such other capacity (not exceeding 100 megawatts) as may be specified in the order.

**Status:** Point in time view as at 01/10/1998. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Electricity Act 1989. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (3) In respect of any generating station to which this section applies, the Secretary of State may give a direction requiring the person who operates it—
- (a) to make such arrangements with respect to stocks of fuel and other materials held at or near that generating station for the purposes of its operation as will—
    - (i) enable those stocks to be brought within a specified time to, and thereafter maintained at, a specified level; and
    - (ii) ensure that they do not fall below that level, except as may be permitted by the terms of the direction or by a direction under subsection (4) below;
  - (b) to create such stocks and make such arrangements with respect to them;
- and the amount of any stocks may be specified by reference to the period for which it would enable the generating station to be maintained in operation.
- (4) In respect of any generating station to which this section applies, the Secretary of State may give a direction—
- (a) authorising or requiring the person who operates it to make such use as may be specified of any stocks held at or near that generating station; and
  - (b) requiring that person to operate, or not to operate, that generating station for specified periods, at specified levels of capacity or using specified fuels.
- (5) In subsections (3) and (4) above “specified” means specified by or under the Secretary of State’s direction; and a direction may—
- (a) specify the cases and circumstances in which any stocks are to be treated as held at or near any generating station;
  - (b) specify the extent to which the direction may be treated as complied with where, under arrangements made or approved by the Secretary of State, access can be had to stocks held for the use of a number of consumers;
  - (c) specify the manner in which any period mentioned in subsection (3) or (4) above is to be determined;
  - (d) require anything falling to be specified under the direction to be specified by such persons and by reference to such matters as may be specified.
- (6) A direction under subsection (3) or (4) above which confers on any person the function of specifying anything falling to be specified under the direction may require that person to exercise that function in such manner as may be specified by the direction.

#### Textual Amendments

**F31** S. 32A inserted (1.10.2001) by [2000 c. 27, s. 63](#); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### Modifications etc. (not altering text)

**C21** S. 34: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750, arts. 1, 2, Sch. 1](#) (with [art. 7](#))

**C22** By [S.I. 1990/1066, art. 2](#) it is provided that s. 34(1) shall have effect as if for the capacity of 50 megawatts mentioned in para. (a), there were substituted the capacity of 10 megawatts

#### Marginal Citations

**M15** [1974 c. 40.](#)



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### 35 Provisions supplementary to section 34.

- (1) The Secretary of State may give a direction requiring any person authorised by a licence to transmit electricity to give to the Secretary of State, after consultation with specified persons, any information or advice which the Secretary of State may reasonably require for purposes connected with the exercise of his functions under section 34 above.
- (2) The Secretary of State may give a direction requiring any person authorised by a licence to transmit electricity to operate his transmission system, at any time when a direction under section 34(4) above is in force, either in a specified manner or with a view to achieving specified objectives.
- (3) In subsections (1) and (2) above “specified” means specified by or under the Secretary of State’s direction; and a person authorised by a licence to transmit electricity shall give effect to any direction given to him under subsection (2) above notwithstanding any other duty imposed on him by or under this Part.
- (4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under section 34 above or this section unless he is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.
- (5) A person who, without reasonable excuse, contravenes or fails to comply with a direction of the Secretary of State under section 34 above or this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (6) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.
- (7) Paragraphs 1 to 4, 7 and 8 of Schedule 2 to the <sup>M16</sup>Energy Act 1976 (administration of Act and other matters) shall have effect as if—
  - (a) section 34 above were contained in that Act;
  - (b) the powers of paragraph 1 were exercisable for any purpose connected with securing compliance with a direction under that section;
  - (c) information obtained by virtue of that paragraph could lawfully be disclosed to any person by whom anything falls to be specified under such a direction; and
  - (d) the powers conferred by sub-paragraph (1)(c) of that paragraph included power to direct that information and forecasts be furnished to any such person.

#### Textual Amendments

**F31** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

**C23** S. 35: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

#### Marginal Citations

**M16** 1976 c. 76.

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### 36 Consent required for construction etc. of generating stations.

- (1) Subject to subsections (2) and (4) below, a generating station shall not be constructed, extended or operated except in accordance with a consent granted by the Secretary of State.
- (2) Subsection (1) above shall not apply to a generating station whose capacity—
  - (a) does not exceed the permitted capacity, that is to say, 50 megawatts; and
  - (b) in the case of a generating station which is to be constructed or extended, will not exceed the permitted capacity when it is constructed or extended;
 and an order under this subsection may make different provision for generating stations of different classes or descriptions.
- (3) The Secretary of State may by order provide that subsection (2) above shall have effect as if for the permitted capacity mentioned in paragraph (a) there were substituted such other capacity as may be specified in the order.
- (4) The Secretary of State may by order direct that subsection (1) above shall not apply to generating stations of a particular class or description, either generally or for such purposes as may be specified in the order.
- (5) A consent under this section—
  - (a) may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Secretary of State to be appropriate; and
  - (b) shall continue in force for such period as may be specified in or determined by or under the consent.
- (6) Any person who without reasonable excuse contravenes the provisions of this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.
- (8) The provisions of Schedule 8 to this Act (which relate to consents under this section and section 37 below) shall have effect.
- (9) In this Part “extension”, in relation to a generating station, includes the use by the person operating the station of any land (wherever situated) for a purpose directly related to the generation of electricity by that station and “extend” shall be construed accordingly.

#### Textual Amendments

**F31** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

**C24** S. 36 restricted by S.I. 1990/442, art. 3(1)(a)

**C25** S. 36 modified (S.) (27.5.1997) by 1997 c. 8, ss. 57(2), 278(2) (with ss. 64, 219)

S. 36 modified (S.) (27.5.1997) by 1997 c. 10, ss. 10(2), 31, 40(2) (with ss. 9(3), 10(5), 38(6))

**C26** S. 36: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, art. 2, Sch. 1 (with art. 7)

**C27** S. 36(2) modified (S.) by S.I. 1990/392, art. 2

**C28** S. 36(2) modified (E.W.) (1.12.2001) by S.I. 2001/3642, art. 2

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**C29** S. 36(2) modified (S.) (26.9.2002) by [The Electricity Act 1989 \(Requirement of Consent for Offshore Generating Stations\) \(Scotland\) Order 2002 \(S.S.I. 2002/407\)](#), [art. 3](#)

### 37 Consent required for overhead lines.

- (1) Subject to subsection (2) below, an electric line shall not be installed or kept installed above ground except in accordance with a consent granted by the Secretary of State.
- (2) Subsection (1) above shall not apply—
  - (a) in relation to an electric line which has a nominal voltage not exceeding 20 kilovolts and is used or intended to be used for supplying a single consumer;
  - (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or
  - (c) in such other cases as may be prescribed.
- (3) A consent under this section—
  - (a) may include such conditions (including conditions as to the ownership and operation of the line) as appear to the Secretary of State to be appropriate;
  - (b) may be varied or revoked by the Secretary of State at any time after the end of such period as may be specified in the consent; and
  - (c) subject to paragraph (b) above, shall continue in force for such period as may be specified in or determined by or under the consent.
- (4) Any person who without reasonable excuse contravenes the provisions of this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.

#### Textual Amendments

**F31** S. 32A inserted (1.10.2001) by [2000 c. 27, s. 63](#); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### Modifications etc. (not altering text)

**C30** S. 37 restricted by [S.I. 1990/442, art. 3\(1\)\(b\)](#)

**C31** S. 37 excluded (16.3.1992) by [Midland Metro Act 1992 \(c. vii\), s. 10\(3\)](#)

**C32** S. 37 modified (S.) (27.5.1997) by [1997 c. 8, ss. 57\(2\), 278\(2\)](#) (with [ss. 64, 219](#))

**C33** S. 37: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750, art. 2, Sch. 1](#) (with [art. 7](#))

**C34** S. 37(1) excluded (1.1.1993) by [S.I. 1992/3074, reg.3](#)

**C35** S. 37(1) excluded (18.12.1996) by [1996 c. 61, s. 50\(1\)](#)

### 38 Preservation of amenity and fisheries.

The provisions of Schedule 9 to this Act (which relate to the preservation of amenity and fisheries) shall have effect.]

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### Textual Amendments

**F31** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

### *Consumer protection: standards of performance*

## **39 Electricity supply: performance in individual cases.**

#

(1) The Director may—

- (a) with the consent of the Secretary of State; <sup>F38</sup> . . .
- (b) after consultation with public electricity suppliers and with persons or bodies appearing to the Director to be representative of persons likely to be affected, <sup>F39</sup>, and

(c) after arranging for such research as the Director considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and considering the results,]

make regulations prescribing such standards of performance in connection with the provision by such suppliers of electricity supply services to tariff customers as, in his opinion, ought to be achieved in individual cases.

(2) Regulations under this section may—

- (a) prescribe circumstances in which public electricity suppliers are to inform persons of their rights under this section;
- (b) prescribe such standards of Performance in relation to any duty arising under paragraph (a) above as, in the Director's opinion, ought to be achieved in all cases; and
- (c) prescribe circumstances in which public electricity suppliers are to be exempted from any requirements of the regulations or this section,

and may make different provision for different public electricity suppliers.

(3) If a public electricity supplier fails to meet a prescribed standard, he shall make to any person who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.

(4) The making of compensation under this section in respect of any failure by a public electricity supplier to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.

(5) Any dispute arising under this section or regulations made under it—

- (a) may be referred to the Director by either party; and
- (b) on such a reference, shall be determined by order made either by the Director or, if he thinks fit, by the consumers' committee to which the supplier is allocated or any sub-committee of that committee;

and the practice and procedure to be followed in connection with any such determination shall be such as may be prescribed.

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[<sup>F40</sup>(5A) Any person making an order under subsection (5) above shall include in the order his reasons for reaching his decision with respect to the dispute.]

- (6) An order under subsection (5) above shall be final and shall be enforceable#
- (a) in England and Wales, as if it were a judgment of the county court;
  - (b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (7) In this section “prescribed” means prescribed by regulations under this section.

#### Textual Amendments

- F38** Word in s. 39(1) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(7), [Sch.2](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt.I.
- F39** S. 39(1)(c) and word “and” preceding it inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 20(1); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt.I.
- F40** S. 39(5A) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para.14](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt.I.

#### Modifications etc. (not altering text)

- C36** S. 39(1)(a): transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750](#), arts. 1, 2, [Sch. 1](#) (with art. 7)

VALID FROM 16/05/2001

[<sup>F41</sup>**39A Standards of performance in individual cases: electricity distributors.**

- (1) The Authority may with the consent of the Secretary of State make regulations prescribing such standards of performance in connection with the activities of electricity distributors, so far as affecting customers or potential customers of electricity suppliers, as in the Authority’s opinion ought to be achieved in individual cases.
- (2) If an electricity distributor fails to meet a prescribed standard, he shall make to any person who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.
- (3) The regulations may—
- (a) prescribe circumstances in which electricity distributors are to inform customers or potential customers of electricity suppliers of their rights under this section;
  - (b) prescribe such standards of performance in relation to any duty arising under paragraph (a) as, in the Authority’s opinion, ought to be achieved in all cases;
  - (c) make provision as to the manner in which compensation under this section is to be made;
  - (d) prescribe circumstances in which electricity distributors are to be exempted from any requirements of the regulations or this section; and
  - (e) if the Authority is of the opinion that the differences are such that no electricity distributor would be unduly disadvantaged in competing with

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other electricity distributors, make different provision with respect to different electricity distributors.

- (4) Provision made under subsection (3)(c) may—
- (a) require or permit compensation to be made on behalf of electricity distributors by electricity suppliers to customers or potential customers; and
  - (b) require electricity suppliers to provide services to electricity distributors in connection with the making of compensation under this section.
- (5) The making of compensation under this section in respect of any failure to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.
- (6) In this section “prescribed” means prescribed by regulations under this section.]

#### Textual Amendments

**F41** Ss. 39A, 39B inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 54(2); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 16/05/2001

#### [<sup>F42</sup>39B Standards of performance in individual cases: disputes.

- (1) Any dispute arising under section 39 or 39A or regulations made under either of those sections—
  - (a) may be referred to the Authority by either party or, with the agreement of either party, by the Council; and
  - (b) on such a reference, shall be determined by order made by the Authority or, if it thinks fit, by such person (other than the Council) as may be prescribed.
- (2) A person making an order under subsection (1) shall include in the order his reasons for reaching his decision with respect to the dispute.
- (3) The practice and procedure to be followed in connection with any such determination shall be such as may be prescribed.
- (4) An order under subsection (1) shall be final and shall be enforceable—
  - (a) in England and Wales, as if it were a judgment of a county court; and
  - (b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (5) In this section “prescribed” means prescribed by regulations made by the Authority with the consent of the Secretary of State.]

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### Textual Amendments

- F42** Ss. 39A, 39B inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 54(2); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 40 Electricity supply: overall performance.

- (1) The Director may, <sup>F43</sup> . . . from time to time—
- (a) determine such standards of overall performance in connection with the provision of electricity supply services as, in his opinion, ought to be achieved by such suppliers; and
  - (b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.

[<sup>F44</sup>(1A) The Director may only make a determination under subsection (1)(a) above after—

- (a) consultation with public electricity suppliers and with persons or bodies appearing to him to be representative of persons likely to be affected; and
- (b) arranging for such research as the Director considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and considering the results.]

- (2) Different standards may be determined under this section for different public electricity suppliers.

[<sup>F45</sup>(3) It shall be the duty of every public electricity supplier to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under this section.]

### Textual Amendments

- F43** Words in s. 40(1) repealed (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), ss. 20(2), 56(7), Sch.2; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt.I.
- F44** S. 40(1A) inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 20(2); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt.I
- F45** S. 40(3) added (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 24; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I

VALID FROM 16/05/2001

## [<sup>F46</sup>40A Overall standards of performance: electricity distributors.

- (1) The Authority may from time to time—
- (a) determine such standards of overall performance in connection with the activities of electricity distributors as, in its opinion, ought to be achieved by them; and
  - (b) arrange for the publication, in such form and in such manner as it considers appropriate, of the standards so determined.

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- (2) Different standards may be determined for different electricity distributors if the Authority is of the opinion that the differences are such that no electricity distributor would be unduly disadvantaged in competing with other electricity distributors.
- (3) It shall be the duty of every electricity distributor to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under this section.

#### Textual Amendments

**F46** S. 40A inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 55; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 16/05/2001

#### [<sup>F47</sup> 40B] **Procedures for prescribing or determining standards of performance.**

- (1) Before prescribing standards of performance in regulations under section 39 or 39A, or determining standards of performance under section 40 or 40A, the Authority shall—
  - (a) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results;
  - (b) publish a notice of its proposals in accordance with subsections (2) and (3) and consider any representations which are duly made in respect of those proposals; and
  - (c) consult the Council and other persons or bodies mentioned in subsection (4).
- (2) The notice required by subsection (1)(b) is a notice—
  - (a) stating that the Authority proposes to prescribe or determine standards of performance and setting out the standards of performance proposed;
  - (b) stating the reasons why it proposes to prescribe or determine those standards of performance; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made.
- (3) A notice required by subsection (1)(b) shall be published in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of those likely to be affected by the proposals.
- (4) The persons or bodies to be consulted by the Authority under subsection (1)(c) are—
  - (a) electricity suppliers (in the case of standards of performance under section 39 or 40) or electricity distributors and electricity suppliers (in the case of standards of performance under section 39A or 40A); and
  - (b) persons or bodies appearing to the Authority to be representative of persons likely to be affected by the regulations or determination.



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- (5) The Authority shall make arrangements for securing that notices under subsection (1) (b), regulations under section 39 or 39A and determinations under section 40 or 40A are made available to the public by whatever means it considers appropriate.]]

#### Textual Amendments

- F46** S. 40A inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 55; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F47** S. 40B inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 56; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 41 Promotion of efficient use of electricity.

- (1) The Director may, after consultation with public electricity suppliers and with persons or bodies appearing to him to be representative of persons likely to be affected, from time to time—
- determine such standards of performance in connection with the promotion of the efficient use of electricity by consumers as, in his opinion, ought to be achieved by such suppliers; and
  - arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.
- (2) Different standards may be determined under this section for different public electricity suppliers.
- [<sup>F48</sup>(3) Each public electricity supplier shall, in such form and manner and with such frequency as the Director may direct, take steps to inform his customers of—
- the standards determined under this section which are applicable to that supplier; and
  - that supplier's level of performance as respects those standards.]

#### Textual Amendments

- F48** S. 41(3) added (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), Sch. 1 para. 15; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt.I

## 42 Information with respect to levels of performance.

- (1) The Director shall from time to time collect information with respect to—
- the compensation made by public electricity suppliers under section 39 above;
  - the levels of overall performance achieved by such suppliers in connection with the provision of electricity supply services; and
  - the levels of performance achieved by such suppliers in connection with the promotion of the efficient use of electricity by consumers.

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- (2) On or before such date in each year as may be specified in a direction given by the Director, each public electricity supplier shall furnish to the Director the following information, namely—
  - (a) as respects each standard prescribed by regulations under section 39 above, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
  - (b) as respects each standard determined under section 40 or 41 above, such information with respect to the level of performance achieved by the supplier as may be so specified.
- (3) A public electricity supplier who without reasonable excuse fails to do anything required of him by subsection (2) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) The Director shall at least once in every year arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or furnished to him under this section as it may appear to him expedient to give to customers or potential customers of public electricity suppliers.
- (5) In arranging for the publication of any such information the Director shall have regard to the need for excluding, so far as that is practicable—
  - (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.

**[<sup>F49</sup>42A Information to be given to customers about overall performance.**

- (1) Each public electricity supplier shall, in such form and manner and with such frequency as the Director may direct, take steps to inform his customers of—
  - (a) the standards of overall performance determined under section 40 above which are applicable to that supplier; and
  - (b) that supplier's level of performance as respects each of those standards.
- (2) In giving any such direction, the Director shall not specify a frequency of less than once in every period of twelve months.]

**Textual Amendments**

**F49** S. 42A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 21](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I

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VALID FROM 07/11/2000

**[<sup>F50</sup>42A] Publication of statistical information about standards of performance.**

- (1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate relating to—
  - (a) the levels of performance achieved by electricity suppliers and electricity distributors in respect of—
    - (i) standards of performance prescribed or determined under sections 39, 39A, 40 and 40A; and
    - (ii) energy efficiency obligations imposed by order under section 41A; and
  - (b) complaints made by consumers about any matter relating to the activities of such suppliers or distributors and the handling of such complaints.
- (2) In subsection (1)(b) “complaints” includes complaints made directly to electricity suppliers and electricity distributors (or anyone carrying on activities on their behalf) and complaints to the Authority or the Council.]

**Textual Amendments**

- F50** S. 42AA inserted (7.11.2000 for specified purposes and otherwise 1.10.2001) by [2000 c. 27, s. 20\(6\)](#); [S.I. 2000/2974, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-12](#)); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

**[<sup>F51</sup>42B] Procedures for dealing with complaints.**

- (1) Each public electricity supplier shall establish a procedure for dealing with complaints made by his customers or potential customers in connection with the provision of electricity supply services.
- (2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—
  - (a) the supplier has consulted the consumers’ committee to which he has been allocated; and
  - (b) the proposed procedure or modification has been approved by the Director.
- (3) The supplier shall—
  - (a) publicise the procedure in such manner as may be approved by the Director; and
  - (b) send a description of the procedure, free of charge, to any person who asks for one.
- (4) The Director may give a direction to any public electricity supplier requiring the supplier to review his procedure or the manner in which it operates.
- (5) A direction under subsection (4) above—
  - (a) may specify the manner in which the review is to be conducted; and
  - (b) shall require a written report of the review to be made to the Director.

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- (6) Where the Director receives a report under subsection (5)(b) above, he may, after consulting the supplier, direct him to make such modifications of—
- (a) the procedure; or
  - (b) the manner in which the procedure operates,
- as may be specified in the direction.
- (7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.]

#### Textual Amendments

**F51** S. 42B inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 22](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I

VALID FROM 01/10/2001

#### **[<sup>F52</sup>42C Remuneration and service standards.**

- (1) This section applies to any company which is authorised by a licence to carry on activities subject to price regulation.
- (2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—
  - (a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3); and
  - (b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.
- (3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors of the company to levels of performance as respects service standards in connection with activities subject to price regulation.
- (4) A description under subsection (2)(b) must include in particular—
  - (a) a statement of when the arrangements were made;
  - (b) a description of the service standards in question;
  - (c) an explanation of the means by which the levels of performance as respects those service standards are assessed; and
  - (d) an explanation of how the remuneration was calculated.
- (5) The statement required by subsection (2) must also state—
  - (a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3); or
  - (b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,

and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.
- (6) A description under subsection (5) must—
  - (a) include in particular the matters listed in subsection (4)(a), (b) and (c); and

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- (b) where the arrangements described are different from any arrangements described under subsection (2)(b), state the likely effect of those differences on the remuneration of each director of the company.
- (7) The statement required by subsection (2) must be made to the Authority in such manner as may be required by the Authority.
- (8) The statement required by subsection (2)—
- (a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and
  - (b) may be published by the Authority in such manner as it may consider appropriate.
- (9) The duty of a company under this section applies in respect of any person who has at any time been a director of the company.
- (10) In this section—
- “activities subject to price regulation”, in relation to any company, are activities for which—
- (a) a maximum price which may be charged by the company, or a method for calculating such a maximum price; or
  - (b) a maximum revenue which may be received by the company, or a method for calculating such a maximum revenue,
- is determined by or under the licence granted under this Part;
- “company” means a company within the meaning of the <sup>M17</sup>Companies Act 1985 which is limited by shares;
- “remuneration” in relation to a director of a company—
- (a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and
  - (b) includes remuneration in respect of any of his services while a director of the company;
- “service standards” in relation to any company, means standards relating to the quality of service received by customers or potential customers of the company, including any such standards which are—
- (a) set by or under any conditions included in a licence granted under this Part;
  - (b) prescribed by the Authority in regulations made under section 39 or 39A;
  - (c) determined by the Authority under section 40 or 40A; or
  - (d) set or agreed to by the company.]

#### Textual Amendments

**F52** S. 42C inserted (1.10.2001) by 2000 c. 27, s. 61; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

**M17** 1985 c. 6.

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*Consumer protection: miscellaneous*

**43 Functions with respect to competition.**

- (1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the 1973 Act so far as relating to courses of conduct which are or may be detrimental to the interests of consumers of electricity, whether those interests are economic or interests in respect of health, safety or other matters; and references in that Part to that Director shall be construed accordingly.
- (2) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading)—
  - (a) the functions of that Director under sections 44 and 45 of the 1973 Act; and
  - (b) the functions of that Director under sections 50, 52, 53, 86 and 88 of that Act, so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with the generation, transmission or supply of electricity; and references in Part IV and sections 86, 88 and 133 of that Act to that Director shall be construed accordingly.
- (3) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading) the functions of that Director under sections 2 to 10 and 16 of the 1980 Act so far as relating to courses of conduct which have or are intended to have or are likely to have the effect of restricting, distorting, or preventing competition in connection with the generation, transmission or supply of electricity; and references in those sections and in section 19 of that Act to that Director shall be construed accordingly.
- (4) Before either Director first exercises in relation to any matter functions [<sup>F53</sup>mentioned in] any of the following provisions, namely—
  - (a) paragraph (a) of subsection (2) above;
  - (b) paragraph (b) of that subsection; and
  - (c) subsection (3) above, [<sup>F54</sup>and
  - (d) paragraph 4 of Schedule 2 to the Deregulation and Contracting Out Act 1994.]

he shall consult the other Director; and neither Director shall exercise in relation to any matter functions [<sup>F53</sup>mentioned in] any of those provisions if functions [<sup>F53</sup>mentioned in] that provision have been exercised in relation to that matter by the other Director.
- (5) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) or (3) above, to give to the Commission—
  - (a) any information which is in his possession and which relates to matters falling within the scope of the investigation and—
    - (i) is requested by the Commission for that purpose; or
    - (ii) is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require and which it is within his power to give, in relation to any such matters,

and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

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- (6) If any question arises [<sup>F55</sup>in any particular case as to the jurisdiction of the Director under any of the provisions mentioned in]subsection (2) or (3) above [<sup>F56</sup>or paragraph 4 of Schedule 2 to the Deregulation and Contracting Out Act 1994]. . . , that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—
- (a) Part IV or section 86 or 88 of the 1973 Act; or
  - (b) sections 2 to 10 of the 1980 Act,
- by or in relation to the Director on the ground that it should have been done by or in relation to the Director General of Fair Trading.
- (7) Expressions used in this section which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

#### Textual Amendments

- F53** Words in s. 43(4) substituted (3.1.1995) by 1994 c. 40, ss. 12(7), 82(2)(a)(b), **Sch. 4 para. 2(b)**
- F54** S. 43(4)(d) and word “and” in s. 43(4)(c) inserted (3.1.1995) by 1994 c. 40, ss. 7(2), 82(2)(a)(b), **Sch. 2 para. 6(1)**
- F55** Words in s. 43(6) substituted (3.1.1995) by 1994 c. 40, ss. 12(7), 82(2)(a)(b), **Sch. 4 para. 3(b)**
- F56** Words in s. 43(6) inserted (3.1.1995) by 1994 c. 40, ss. 7(2), 82(2)(a)(b), **Sch. 2 para. 7(1)**

#### Modifications etc. (not altering text)

- C37** S. 43(2) applied (3.1.1995) by 1994 c. 40, ss. 7(2), 82(2)(a)(b), **Sch. 2 para. 4(2)**

VALID FROM 01/10/2001

#### [<sup>F57</sup>43A Adjustment of charges to help disadvantaged groups of customers.

- (1) If the Secretary of State considers that members of any group (a “disadvantaged group”) of customers of authorised suppliers are treated less favourably than other customers of theirs as respects charges for electricity, he may make an order containing a scheme for the adjustment of charges for electricity with a view to eliminating or reducing the less favourable treatment.
- (2) The scheme may include—
- (a) provision for the adjustment of charges by authorised distributors or authorised transmitters (as well as by suppliers);
  - (b) in relation to charges payable to suppliers, provision for the adjustment of charges payable by customers who are not members of the disadvantaged group (as well as by persons who are).
- (3) The scheme shall—
- (a) describe the disadvantaged group;
  - (b) specify the persons whose charges are covered by the scheme; and
  - (c) set out the basis of the adjustment of the charges.
- (4) If the scheme does not relate to the whole of Great Britain, it shall specify the area or areas to which it relates.
- (5) The scheme may—

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- (a) require authorised suppliers, authorised distributors or authorised transmitters to supply information of any specified description, in any specified form, to any other such persons; and
  - (b) provide for the modification of the conditions of licences, for the purpose of facilitating the implementation of the scheme.
- (6) An order shall not be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.]

#### Textual Amendments

**F57** Ss. 43A, 43B inserted (1.10.2001) by 2000 c. 27, s. 69; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

VALID FROM 01/10/2001

#### <sup>F58</sup> 43B Orders: supplementary.

- (1) Before making an order under section 43A, the Secretary of State shall give notice—
- (a) stating that he proposes to make an order and setting out its effect;
  - (b) stating the reasons why he proposes to make the order; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed order may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (2) The notice shall be given—
- (a) by serving a copy of it on the persons whose charges are covered by the proposed order; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing the proposed order to the attention of other persons likely to be affected by it.
- (3) An order under section 43A shall continue in force for such period not exceeding three years as is specified in the order; but that does not prevent the making of another order to come into force at the end of that period.
- (4) The Secretary of State may by order require authorised suppliers, authorised distributors or authorised transmitters to supply information of any specified description, in any specified form, to any other such persons for the purpose of enabling the making of an order under section 43A.
- (5) The Authority—
- (a) shall monitor the effect of orders under section 43A and report its findings to the Secretary of State whenever he directs it to do so; and
  - (b) may require authorised suppliers, authorised distributors or authorised transmitters to supply to the Authority, in any specified form, such information as it requires for carrying out that duty.



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- (6) In section 43A references to customers do not include customers of a description excluded by an order made by the Secretary of State.
- (7) In this section and section 43A “authorised transmitter” means a person authorised by a licence or exemption to transmit electricity.]

#### Textual Amendments

**F58** Ss. 43A, 43B inserted (1.10.2001) by 2000 c. 27, s. 69; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### 44 Fixing of maximum charges for reselling electricity.

- (1) This section applies to electricity supplied to a consumer’s premises by an authorised electricity supplier, that is to say, a person who is authorised by a licence or exemption to supply electricity.
- (2) The Director may from time to time fix maximum prices at which electricity to which this section applies may be resold, and shall publish any prices so fixed in such manner as in his opinion will secure adequate publicity for them.
- (3) Different prices may be fixed under this section in different classes of cases, which may be defined by reference to areas, tariffs applicable to electricity supplied by the authorised electricity suppliers or any other relevant circumstances.
- (4) If any person resells electricity to which this section applies at a price exceeding the maximum price fixed under this section and applicable thereto, the amount of the excess shall be recoverable by the person to whom the electricity was resold.

#### *Investigation of complaints*

#### 45 Investigation of enforcement matters.

- (1) Subject to subsection (2) below, it shall be the duty of the Director to investigate any matter which appears to him to be an enforcement matter and which—
  - (a) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter; or
  - (b) is referred to him by a consumers’ committee under subsection (3) below.
- (2) The Director may, if he thinks fit, require a consumers’ committee to investigate and report to him on any matter falling within subsection (1) above which relates to a person authorised by a licence to supply electricity in the committee’s area.
- (3) It shall be the duty of each consumers’ committee to refer to the Director any matter which—
  - (a) appears to the committee to be an enforcement matter; and
  - (b) is the subject of a representation (other than one appearing to the committee to be frivolous) made to the committee by or on behalf of a person appearing to the committee to have an interest in that matter.

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- (4) In this section and section 46 below “enforcement matter” means any matter in respect of which any functions of the Director under section 25 above are or may be exercisable.

#### **46 Investigation of certain other matters.**

- (1) It shall be the duty of each consumers’ committee to investigate any matter which appears to the committee to be a relevant matter and which—
- (a) is the subject of a representation (other than one appearing to the committee to be frivolous) made to the committee by or on behalf of a person appearing to the committee to have an interest in that matter; or
  - (b) is referred to the committee by the Director under subsection (2) below.
- (2) Subject to subsection (3) below, it shall be the duty of the Director to refer to a consumers’ committee any matter which—
- (a) appears to the Director to be a relevant matter; and
  - (b) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter.
- (3) Nothing in subsection (2) above shall require the Director to refer to a consumers’ committee any matter in respect of which he is already considering exercising functions under this Part.
- (4) Where on an investigation under subsection (1) above any matter appears to a consumers’ committee to be a matter in respect of which it would be appropriate for the Director to exercise any functions under this Part, the committee shall refer that matter to the Director with a view to his exercising those functions with respect to that matter.
- (5) In this section “relevant matter”, in relation to a consumers’ committee, means any matter (other than an enforcement matter)—
- (a) in respect of which any functions of the Director under this Part are or may be exercisable; and
  - (b) which relates to a public electricity supplier allocated to the committee or to any other person authorised by a licence to supply electricity in that committee’s area.

VALID FROM 07/11/2000

#### **[<sup>F59</sup>46A Power of Council to investigate other matters.**

- (1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers in relation to electricity conveyed by distribution systems.
- (2) Where the Council has investigated a matter under this section it may make a report on that matter to the Authority, the Secretary of State, the Director General of Fair Trading or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.
- (3) Subject to subsection (4), the Council may—

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- (a) send a report on any matter investigated under this section to any person who appears to the Council to have an interest in that matter; and
  - (b) publish any such report in such manner as the Council thinks appropriate.
- (4) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate)—
- (a) shall not be included in a report which is to be sent to any person under subsection (3)(a), unless one or more of paragraphs (a) to (c) of subsection (5) applies; and
  - (b) shall be excluded from any such report which is to be published under subsection (3)(b), unless one or more of paragraphs (a) to (c) of subsection (6) applies.
- (5) Information relating to a particular individual or body may be included in a report to be sent under subsection (3)(a) if—
- (a) that individual or body has consented to the disclosure;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (6) Information relating to a particular individual or body may be included in a report to be published under subsection (3)(b) if—
- (a) that individual or body has consented to the publication;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (7) Before deciding to include in such a report any information relating to a particular individual or body in pursuance of subsection (5)(c) or (6)(c), the Council shall—
- (a) consult that individual or body; and
  - (b) have regard to any opinion expressed by the Authority as to the application of subsection (5)(c) or (6)(c) to the information or as to the desirability or otherwise of its inclusion in the report;
- and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.]

#### Textual Amendments

**F59** S. 46A inserted (7.11.2000) by 2000 c. 27, s. 23(2); S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12)

#### *Other functions of Director*

#### **47 General functions.**

- (1) It shall be the duty of the Director, so far as it appears to him practicable from time to time to do so—

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- (a) to keep under review the carrying on both in Great Britain and elsewhere of activities to which this subsection applies; and
- (b) to collect information with respect to those activities, and the persons by whom they are carried on, with a view to facilitating the exercise of his functions under this Part;

and this subsection applies to any activities connected with the generation, transmission and supply of electricity, including in particular activities connected with the supply to any premises of heat produced in association with electricity and steam produced from and air and water heated by such heat.

- (2) The Secretary of State may give general directions indicating—
  - (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under subsection (1)(a) or (b) above; and
  - (b) considerations to which, in cases where it appears to the Director that any of his functions under this Part are exercisable, he should have particular regard in determining whether to exercise those functions.
- (3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or the Director General of Fair Trading to do so, to give information, advice and assistance to the Secretary of State or that Director with respect to any matter in respect of which any function of the Director under this Part is exercisable.
- (4) It shall be the duty of the Director to make such arrangements as he considers appropriate—
  - (a) for the provision of information by him to consumers' committees; or
  - (b) for facilitating the provision of information by consumers' committees to other such committees.

#### **48 Publication of information and advice.**

- (1) The Director may arrange for the publication, in such form and in such manner as he considers appropriate, of such information and advice as it may appear to him expedient to give to customers or potential customers of persons authorised by a licence to supply electricity.
- (2) In arranging for the publication of any such information or advice the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 42(5)(a) and (b) above.
- (3) The Director General of Fair Trading shall consult the Director before publishing under section 124 of the 1973 Act any information or advice which may be published by the Director under this section.

#### **49 Keeping of register.**

- (1) The Director shall, at such premises and in such form as he may determine, maintain a register for the purposes of this Part.
- (2) Subject to subsection (3) and to any direction given under subsection (4) below, the Director shall cause to be entered in the register the provisions of—
  - (a) every licence and every exemption granted to a particular person;

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- (b) every modification or revocation of a licence;
  - (c) every direction or consent given or determination made under a licence; and
  - (d) every final or provisional order, every revocation of such an order and every notice under section 25(6) above.
- (3) In entering any provision in the register, the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 42(5)(a) and (b) above.
- (4) If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest or the commercial interests of any person, he may direct the Director not to enter that provision in the register.
- (5) The contents of the register shall be available for inspection by the public during such hours and subject to the payment of such fee as may be specified in an order made by the Secretary of State.
- (6) Any person may, on the payment of such fee as may be specified in an order so made, require the Director to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the Director to be a true copy or extract.
- (7) Any sums received by the Director under this section shall be paid into the Consolidated Fund.

VALID FROM 01/10/2001

**[<sup>F60</sup>49A Reasons for decisions.**

- (1) This section applies to the following decisions of the Authority or the Secretary of State, namely—
- (a) the revocation of a licence;
  - (b) the modification of the conditions of a licence;
  - (c) the giving of any directions or consent in pursuance of a condition included in a licence by virtue of section 7(3)(a) or (b);
  - (d) the determination of a question referred in pursuance of a condition included in a licence by virtue of section 7(3)(c);
  - (e) the determination of a dispute referred under section 23(1);
  - (f) the making of a final order, the making or confirmation of a provisional order or the revocation of a final order or of a provisional order which has been confirmed.
- (2) As soon as reasonably practicable after making such a decision the Authority or the Secretary of State shall publish a notice stating the reasons for the decision in such manner as it or he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.
- (3) The Authority shall send a copy of a notice published in respect of a decision mentioned in paragraph (a), (b), (c), (d) or (f) of subsection (1) to the licence holder to whose licence, or to whom, the decision relates.
- (4) In preparing a notice under subsection (2) the Authority or the Secretary of State shall have regard to the need for excluding, so far as that is practicable, any matter

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which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where it or he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

- (5) This section does not apply to a decision resulting in any provision which the Secretary of State has under section 49(4) directed the Authority not to enter in the register required to be kept under that section.]

#### Textual Amendments

**F60** S. 49A inserted (1.10.2001) by 2000 c. 27, s. 42; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 50 Annual and other reports.

- (1) The Director shall, as soon as practicable after the end of the year 1989 and of each subsequent calendar year—
- (a) make to the Secretary of State a report on—
    - (i) his activities during that year; and
    - (ii) the Monopolies Commission's activities during that year so far as relating to references made by him; and
  - (b) send a copy of that report to the chairman and members of each of the consumers' committees.
- (2) Every such report shall—
- (a) include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director's functions;
  - (b) set out any final or provisional orders made by the Director during that year;
  - (c) set out any general directions given to the Director during that year under section 47(2) above;
  - (d) include a general survey of the activities during that year of the consumers' committees and a summary of any reports made to him by those committees under section 52 below; and
  - (e) include a general survey of the activities during the year of the National Consumers' Consultative Committee.
- (3) The Secretary of State shall lay a copy of every report made by the Director under subsection (1) above before each House of Parliament and shall arrange for copies of every such report to be published in such manner as he considers appropriate.
- (4) The Director shall also make to the Secretary of State—
- (a) such reports with respect to the matters mentioned in subsection (2)(a) above as the Secretary of State may from time to time require; and
  - (b) such other reports with respect to those matters as may appear to him to be expedient;

and the Director shall, if the Secretary of State so directs, arrange for copies of any report made under this subsection to be published in such manner as is specified in the direction.

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- (5) In making or preparing any report under this section the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 42(5)(a) and (b) above.
- (6) Section 125(1) of the 1973 Act (annual and other reports) shall not apply to activities of the Monopolies Commission on which the Director is required to report by this section.

#### *Provisions with respect to committees*

### **51 General duty of consumers' committees to advise Director etc.**

It shall be the duty of each consumers' committee—

- (a) to make representations to and consult with each public electricity supplier allocated to the committee about all such matters as appear to the committee to affect the interests of customers or potential customers of that supplier;
- (b) to keep under review matters affecting the interests of consumers of electricity supplied to premises in the committee's area; and
- (c) to advise the Director on any matter relating to the supply of electricity in that area on which they consider they should offer advice or which is referred to them by the Director.

### **52 Periodical and other reports of consumers' committees.**

- (1) Each consumers' committee—
  - (a) shall make a report to the Director on any such matter as he may require; and
  - (b) may make a report to the Director concerning any matter which appears to the committee to affect the interests of customers or potential customers of a public electricity supplier allocated to the committee.
- (2) Each consumers' committee shall at least once in every year, and whenever directed to do so by the Director, make a report to him on their activities; and every such report shall include a statement of the matters on which, during the period to which it relates, the committee have advised the Director under section 51 above.
- (3) The Director may arrange for a report made to him under this section to be published in such manner as he considers appropriate.
- (4) In publishing any report under this section the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 42(5)(a) and (b) above.

### **53 The National Consumers' Consultative Committee.**

- (1) There shall be a committee, to be known as the National Consumers' Consultative Committee, of which the Director shall be chairman and the ordinary members shall be the persons who for the time being hold office as chairmen of consumers' committees.
- (2) The Committee shall meet at least four times a year and shall be under a duty—
  - (a) to keep under review matters affecting the interests of consumers of electricity generally; and

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- (b) to facilitate the exchange of information relating to such matters between the Director, the ordinary members and their respective consumers' committees.

*Provisions with respect to Consumers' etc. Councils*

**54 Abolition of Consumers' etc. Councils.**

The following Councils, namely—

- (a) the Electricity Consumers' Council;  
(b) the Consultative Councils established under section 7 of the <sup>M18</sup>Electricity Act 1947 for the areas of Area Boards; and  
(c) the Consultative Councils established under section 7A of that Act for the districts of Scottish Boards,

shall cease to exist.

**Marginal Citations**

**M18** 1947 c. 54.

**55 Compensation for chairmen and officers of abolished Councils.**

- (1) The Secretary of State may pay to the persons who immediately before the commencement of section 54 above are the chairmen of the Councils ceasing to exist by virtue of that section such sums by way of compensation for loss of office, or loss or diminution of pension rights, as the Secretary of State may with the approval of the Treasury determine.
- (2) The Secretary of State may also pay to persons who immediately before the commencement of section 54 above are officers of the Councils ceasing to exist by virtue of that section such sums by way of compensation for loss of employment, or loss or diminution of remuneration or pension rights, as the Secretary of State may with the approval of the Treasury determine.
- (3) Any sums required by the Secretary of State for making payments under this section shall be paid out of money provided by Parliament.

**56 Continuity of employment of officers of abolished Councils.**

- (1) This section applies to any person who—
- (a) immediately before the date on which section 54 above comes into force is an officer of one of the Councils ceasing to exist by virtue of that section (in this section referred to as his “former employer”); and
- (b) within four weeks after that date, is employed by one of the successor companies or the Director (in this section referred to as his “new employer”) in pursuance of an offer made before that date;
- and in this subsection “successor company” has the same meaning as in Part II.

<sup>F61</sup>(2) .....



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- (3) [<sup>F62</sup>Chapter I of Part XIV of the Employment Rights Act 1996] (computation of period of employment) shall have effect in relation to a person to whom this section applies as if it included the following provisions, that is to say—
- (a) the period of his employment with his former employer shall count as a period of employment with his new employer; and
  - (b) the change of employer shall not break the continuity of the period of employment.
- (4) Where this section applies to a person, the period of his employment with his former employer shall count as a period of employment with his new employer for the purposes of any provision of his contract of employment with his new employer which depends on his length of service with that employer.

#### Textual Amendments

**F61** S. 56(2) repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

**F62** Words in s. 56(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 43(2)** (with ss. 191-195, 202)

VALID FROM 01/10/2001

#### <sup>F63</sup> Alteration of activities requiring licence

#### Textual Amendments

**F63** Ss. 56A-56F and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 43; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

#### <sup>F64</sup>56A Power to alter activities requiring licence.

- (1) The Secretary of State may by order provide—
- (a) that specified activities are to become licensable activities; or
  - (b) that specified activities are to cease to be licensable activities.
- (2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 4(1).
- (3) An order under this section may make consequential, transitional, incidental or supplementary provision including—
- (a) amendments (or repeals) in any provision of this Act or any other enactment; and
  - (b) provision modifying any standard conditions of licences or (in the case of an order under subsection (1)(a)) provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities.

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- (4) An order under this section may only provide for activities to become licensable activities if they are activities connected with the generation, transmission, distribution or supply of electricity.
- (5) An order under this section providing for activities to become licensable activities may only be made on the application of the Authority made in accordance with section 56B.
- (6) An order under this section providing for activities to cease to be licensable activities may be made either—
  - (a) on the application of the Authority made in accordance with section 56E; or
  - (b) following consultation by the Secretary of State in accordance with section 56F.
- (7) An order under this section may provide that it is to remain in force only for a period specified in the order.
- (8) An order shall not be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

#### Textual Amendments

**F64** Ss. 56A-56F and cross-heading inserted (1.10.2001) by [2000 c. 27, s. 43](#); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### <sup>F65</sup>**56B Application by Authority for order including new activities.**

- (1) If the Authority proposes to make an application for an order providing for activities to become licensable activities, it shall give notice—
  - (a) stating that it proposes to make an application for an order providing for the activities to become licensable activities;
  - (b) setting out the conditions which it would expect such an order to determine to be standard conditions for the purposes of licences authorising the undertaking of the activities and any other conditions which it would expect to be included in such licences; and
  - (c) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (2) The notice shall be given by serving a copy on the Council and by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of—
  - (a) persons appearing to it to be carrying on, or be intending to carry on, the activities; and
  - (b) any other persons appearing to it to be likely to be affected by an order providing for the activities to become licensable activities.

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- (3) If an objection has been duly made (and not withdrawn) by a person who is carrying on or intends to carry on the activities, the Authority shall make a reference to the Competition Commission under section 56C before making the application.
- (4) In any other case where the Authority considers it appropriate to make a reference to the Commission under section 56C before making the application, the Authority may make such a reference.
- (5) If a reference is made to the Commission, the application shall not be made unless the Commission has reported on the reference that the fact that the activities to which the application relates are not licensable activities operates, or may be expected to operate, against the public interest.
- (6) The application shall set out—
  - (a) the activities which the Authority considers should become licensable activities; and
  - (b) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities in question and any other conditions which it would expect to be included in such licences.

#### Textual Amendments

**F65** Ss. 56A-56F and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 43; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### <sup>F66</sup>56C References to Competition Commission.

- (1) A reference to the Competition Commission under this section shall require the Commission to investigate and report on whether the fact that the activities specified in the reference are not licensable activities operates, or may be expected to operate, against the public interest.
- (2) The Authority may, at any time, by notice given to the Commission vary the reference by adding to the activities specified in the reference or by excluding from the reference some of the activities so specified; and on receipt of such notice the Commission shall give effect to the variation.
- (3) The Authority shall specify in the reference, or a variation of the reference, for the purpose of assisting the Commission in carrying out the investigation on the reference—
  - (a) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities specified in the reference and any other conditions which it would expect to be included in such licences; and
  - (b) any effects adverse to the public interest which, in its opinion, the fact that the activities so specified are not licensable activities has or may be expected to have.
- (4) As soon as practicable after making the reference, or a variation of the reference, the Authority shall serve a copy of it on the Council and publish particulars of it in such manner as the Authority considers appropriate for bringing it to the attention of—

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- (a) persons appearing to the Authority to be carrying on, or be intending to carry on, the activities specified in it; and
  - (b) any other persons appearing to the Authority to be likely to be affected by it.
- (5) The Authority shall, for the purpose of assisting the Commission in carrying out the investigation on the reference, give to the Commission—
- (a) any information which is in its possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in its opinion it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within its power to give, in relation to any such matters,
- and the Commission shall take account of the information for the purpose of carrying out the investigation.
- (6) In determining for the purposes of this section whether the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, the Commission shall have regard to—
- (a) the matters referred to in section 3A;
  - (b) any social or environmental policies set out or referred to in guidance issued under section 3B; and
  - (c) any advice given by the Health and Safety Commission or the Secretary of State under section 3C (advice about health and safety in relation to electricity).
- (7) The provisions mentioned in subsection (8) are to apply in relation to references under this section as if—
- (a) the functions of the Commission in relation to those references were functions under the <sup>M19</sup>Fair Trading Act 1973;
  - (b) the expression “merger reference” included a reference under this section;
  - (c) in section 70 of the <sup>M20</sup>Fair Trading Act 1973—
    - (i) references to the Secretary of State were references to the Authority; and
    - (ii) the reference to three months were a reference to six months.
- (8) The provisions are—
- (a) sections 70 (time limit for report on merger), 85 (attendance of witnesses and production of documents) and 93B (false or misleading information) of the <sup>M21</sup>Fair Trading Act 1973;
  - (b) Part II of Schedule 7 to the <sup>M22</sup>Competition Act 1998 (performance of the Commission’s general functions); and
  - (c) section 24 of the <sup>M23</sup>Competition Act 1980 (modification of provisions about performance of such functions).

#### Textual Amendments

**F66** Ss. 56A-56F and cross-heading inserted (1.10.2001) by [2000 c. 27, s. 43](#); [S.I. 2001/3266, art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

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#### Modifications etc. (not altering text)

**C38** S. 56C amended (16.5.2001) by 2000 c. 27, s. 104(1)(b)(2) (with s. 104(6)); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10)

#### Marginal Citations

**M19** 1973 c. 41.

**M20** 1973 c. 41.

**M21** 1973 c. 41.

**M22** 1998 c. 41.

**M23** 1980 c. 21.

VALID FROM 20/06/2003

#### <sup>F63</sup> **References under section 56C: time limits**

<sup>F67</sup> **56CA**

- (1) Every reference under section 56C above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 56C above shall not have effect (in particular for the purposes of section 56B(5) above) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall publish an extension under subsection (3) above in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

#### Textual Amendments

**F67** Ss. 56CA, 56CB inserted (prosp.) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 {para. 20(12)}

VALID FROM 20/06/2003

#### **56CB** References under section 56C: application of Enterprise Act 2002

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of

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references under section 56C above as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 56C above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4) above, have effect in relation to those sections as applied by virtue of those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.]]

#### Textual Amendments

**F67** Ss. 56CA, 56CB inserted (prosp.) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 {para. 20(12)}

#### <sup>F68</sup>56D Reports on references.

- (1) In making a report on a reference under section 56C, the Competition Commission shall include in the report definite conclusions on whether the fact that the activities specified in the reference (or the reference as varied) are not licensable activities operates, or may be expected to operate, against the public interest.

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- (2) The Commission shall also include in the report such an account of its reasons for those conclusions as in its opinion is expedient for facilitating proper understanding of the questions raised by the reference and of its conclusions.
- (3) Where the Commission concludes that the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, it shall specify in the report—
  - (a) the effects adverse to the public interest which that fact has or may be expected to have; and
  - (b) any modifications to the conditions specified in the reference in accordance with section 56C(3)(a) which they consider appropriate.
- (4) Section 82 of the <sup>M24</sup>Fair Trading Act 1973 (general provisions as to reports) shall apply in relation to reports of the Commission on references under section 56C as it applies to reports of the Commission under that Act.
- (5) A report of the Commission on a reference under section 56C shall be made to the Authority.
- (6) On receiving the report, the Authority shall send a copy of it to the Secretary of State.
- (7) Subject to subsection (8), the Authority shall, not less than 14 days after the copy is received by the Secretary of State, send another copy to the Council and publish that other copy in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (8) If it appears to the Secretary of State that the publication of any matter in the report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in subsection (7), direct the Authority to exclude that matter from the copy of the report to be sent to the Council and published under that subsection.

#### Textual Amendments

**F68** Ss. 56A-56F and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 43; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

**M24** 1973 c. 41.

#### <sup>F69</sup>**56E Application by Authority for order excluding activities.**

- (1) Before making an application for an order providing for activities to cease to be licensable activities, the Authority shall give notice—
  - (a) stating that it proposes to make an application for an order providing for the activities to cease to be licensable activities; and
  - (b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,and shall consider any representations or objections which are duly made and not withdrawn.

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- (2) The notice shall be given—
- (a) by serving a copy on the Secretary of State and the Council; and
  - (b) by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons appearing to the Authority to be likely to be affected by such an order.
- (3) An application under this section shall set out—
- (a) the activities which the Authority considers should cease to be licensable activities; and
  - (b) the Authority's reasons for proposing that the order be made.

#### Textual Amendments

**F69** Ss. 56A-56F and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 43; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### <sup>F70</sup>**56F Consultation by Secretary of State about order excluding activities.**

- (1) If the Secretary of State proposes to make an order providing for activities to cease to be licensable activities (otherwise than on an application by the Authority under section 56E), he shall give notice—
- (a) stating that he proposes to make an order providing for the activities to cease to be licensable activities; and
  - (b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,
- and shall consider any representations or objections duly made (and not withdrawn).
- (2) The notice shall be given—
- (a) by serving a copy on the Authority and the Council; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons appearing to him to be likely to be affected by such an order.]

#### Textual Amendments

**F70** Ss. 56A-56F and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 43; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)



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### Miscellaneous

VALID FROM 20/12/2000

#### **[<sup>F71</sup>56G Service by Authority of certain notices on Council.**

Where the Authority is required by any provision of this Part to publish a notice or any other document, the Authority shall send a copy of the document to the Council.

#### **Textual Amendments**

**F71** S. 56G inserted (20.12.2000) by 2000 c. 27, s. 18(6); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

#### **57 General restrictions on disclosure of information.**

- (1) Subject to the following provisions of this section, no information with respect to any particular business which—
- (a) has been obtained under or by virtue of any of the provisions of this Part; and
  - (b) relates to the affairs of any individual or to any particular business,
- shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.
- (2) Subsection (1) above does not apply to any disclosure of information which is made—
- (a) for the purpose of facilitating the carrying out by the Secretary of State, the Director or the Monopolies Commission of any of his or, as the case may be, their functions under this Part;
  - [<sup>F72</sup>(aa) for the purpose of enabling a licence holder to comply with a condition of his licence under or by virtue of which he is required to disclose the information to another licence holder;.]
  - (b) for the purpose of facilitating the carrying out by—
    - (i) any Minister of the Crown;
    - (ii) the Director General of Fair Trading;
    - (iii) the Monopolies Commission;
    - (iv) the Comptroller and Auditor General;
    - (v) the Director General of Telecommunications;
    - (vi) the Director General of Gas Supply;
    - (vii) the Director General of Water Supply;
    - [<sup>F73</sup>(viii) the Rail Regulator;]
    - [<sup>F74</sup>(viii) the Director General of Electricity Supply for Northern Ireland;]
    - (viii) the Civil Aviation Authority;
    - (ix) the Insolvency Practitioners Tribunal; <sup>F75</sup>. . .
    - [<sup>F76</sup>(ix) the Coal Authority; or]
    - (x) a local weights and measures authority in Great Britain,of any of his or, as the case may be, their functions under any of the enactments or instruments specified in subsection (3) below;

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- (c) for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by the <sup>M25</sup>Financial Services Act 1986 or by the enactments relating to companies, insurance companies or insolvency or for the purpose of enabling or assisting any inspector appointed by him under the enactments relating to companies to carry out his functions;
  - (d) for the purpose of enabling or assisting an official receiver to carry out his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of section 391 of the <sup>M26</sup>Insolvency Act 1986 to carry out its functions as such;
  - (e) for the purpose of facilitating the carrying out by the Health and Safety Executive of any of their functions under any enactment;
  - (f) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
  - (g) for the purposes of any civil proceedings brought under or by virtue of this Part or any of the enactments or instruments specified in subsection (3) below; or
  - (h) in pursuance of a Community obligation.
- (3) The enactments and instruments referred to in subsection (2) above are—
- (a) the <sup>M27</sup>Trade Descriptions Act 1968;
  - (b) the 1973 Act;
  - (c) the <sup>M28</sup>Consumer Credit Act 1974;
  - (d) the <sup>M29</sup>Restrictive Trade Practices Act 1976;
  - (e) the <sup>M30</sup>Resale Prices Act 1976;
  - (f) the <sup>M31</sup>Estate Agents Act 1979;
  - (g) the 1980 Act;
  - (h) the <sup>M32</sup>National Audit Act 1983;
  - (i) the <sup>M33</sup>Telecommunications Act 1984;
  - (j) the <sup>M34</sup>Airports Act 1986;
  - (k) the <sup>M35</sup>Gas Act 1986;
  - (l) the Insolvency Act 1986;
  - (m) the <sup>M36</sup>Consumer Protection Act 1987;
  - (n) the <sup>M37</sup>Water Act 1989 [<sup>F77</sup>the Water Industry Act 1991 or any of the other consolidation Acts (within the meaning of section 206 of that Act of 1991)];
  - [<sup>F78</sup>(nn) the Railways Act 1993]
  - [[ the Coal Industry Act 1994;
  - <sup>F79F80</sup>(no)]]
  - [<sup>F81</sup>(np) the Electricity (Northern Ireland) Order 1992 <sup>F82</sup>]
  - (o) any subordinate legislation made for the purpose of securing compliance with the Directive of the Council of the European Communities dated 10th September 1984 (No.84/450/EEC) on the approximation of the laws, regulations and administrative provisions of the member States concerning misleading advertising.
- (4) The Secretary of State may by order provide that subsections (2) and (3) above shall have effect subject to such modifications as are specified in the order.
- (5) Nothing in subsection (1) above shall be construed—
- (a) as limiting the matters which may be published under section 42 or 48 above or may be included in, or made public as part of, a report of the Director, the

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- Monopolies Commission or a consumers' committee under any provision of this Part; or
- (b) as applying to any information which has been so published or has been made public as part of such a report.
- (6) Any person who discloses any information in contravention of this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### Textual Amendments

- F72** S. 57(2)(aa) inserted (1.12.1996) by S.I. 1996/2716, **art. 2**
- F73** S. 57(2)(b)(viiia) inserted (6. 1. 1994) by 1993 c. 43, ss. 150(1)(o), 152, **Sch. 12 para. 28(1)**; S.I. 1993/3237, **art. 2(2)**
- F74** S. 57(2)(b)(viiib) inserted (1.10.1995) by S.I. 1995/2356, **art. 2(1)**
- F75** Word in s. 57(2)(b)(ix) repealed (31.10.1994) by 1994 c. 21, s. 67(8), **Sch. 11 Pt. III** (with s. 40(7)); S.I. 1994/2552, **art. 2, Sch. 1**
- F76** S. 57(2)(b)(ixa) inserted (31.10.1994) by 1994 c. 21, s. 67(1), **Sch. 9 para. 38(1)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F77** Words in s. 57(3)(n) inserted (E.W.) (01.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(1), 4(2), **Sch. 1 para. 51(1)**.
- F78** S. 57(3)(nn) added (6. 1. 1994) by 1993 c. 43, ss. 150(1)(o), 152, **Sch. 12, para. 28(2)**; S.I. 1993/3237, **art. 2(2)**
- F79** S. 57(3)(nnn) renumbered as (no) (1.10.1995) by S.I. 1995/2356, **art. 2(2)(a)**
- F80** S. 57(3)(nnn) inserted (31.10.1994) by 1994 c. 21, s. 67(1), **Sch. 9 para. 38(1)(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F81** S. 57(3)(np) inserted (1.10.1995) by S.I. 1995/2356, **art. 2(2)(b)**
- F82** S.I. 1992/231 (N.I. 1); the only relevant amending instrument is S.I. 1992/1720 (N.I. 13).

#### Marginal Citations

- M25** 1986 c. 60.
- M26** 1986 c. 45.
- M27** 1968 c. 29.
- M28** 1974 c. 39.
- M29** 1976 c. 34.
- M30** 1976 c. 53.
- M31** 1979 c. 38.
- M32** 1983 c. 44.
- M33** 1984 c. 12.
- M34** 1986 c. 31.
- M35** 1986 c. 44.
- M36** 1987 c. 43.
- M37** 1989 c. 15.

## 58 Directions restricting the use of certain information.

- (1) The Secretary of State may give to any person who is authorised by a licence to transmit electricity (“the authorised person”) such directions as appear to the Secretary of State to be requisite or expedient for the purpose of securing that, in any case where subsection (2) below applies, neither the person by whom the information mentioned

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in that subsection is acquired nor any other person obtains any unfair commercial advantage from his possession of the information.

- (2) This subsection applies where, in the course of any dealings with an outside person who is, or is an associate of, a person authorised by a licence or exemption to generate, transmit or supply electricity, the authorised person or any associate of his is furnished with or otherwise acquires any information which relates to the affairs of that outside person or any associate of his.
- (3) As soon as practicable after giving any directions under subsection (1) above, the Secretary of State shall publish a copy of the directions in such manner as he considers appropriate for the purpose of bringing the directions to the attention of persons likely to be affected by a contravention of them.
- (4) The obligation to comply with any directions under subsection (1) above is a duty owed to any person who may be affected by a contravention of them.
- (5) Where a duty is owed by virtue of subsection (4) above to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.
- (6) In any proceedings brought against any person in pursuance of subsection (5) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the directions.
- (7) Without prejudice to any right which any person may have by virtue of subsection (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of any directions under this section, compliance with any such directions shall be enforceable by civil proceedings by the Secretary of State for an injunction or interdict or for any other appropriate relief.
- (8) In this section—
  - “dealings” includes dealings entered into otherwise than for purposes connected with the transmission of electricity;
  - “outside person”, in relation to any person, means any person who is not an associate of his;
 and for the purposes of this section a person is an associate of another if he and that other are connected with each other within the meaning of section 839 of the <sup>M38</sup>Income and Corporation Taxes Act 1988.]

#### Textual Amendments

**F71** S. 56G inserted (20.12.2000) by 2000 c. 27, s. 18(6); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

#### Modifications etc. (not altering text)

**C39** S. 58: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

#### Marginal Citations

**M38** 1988 c. 1.

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## 59 Making of false statements etc.

- (1) If any person, in giving any information or making any application under or for the purposes of any provision of this Part, or of any regulations made under this Part, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (2) Any person who seeks to obtain entry to any premises by falsely pretending to be—
  - (a) an employee of a public electricity supplier;
  - (b) an electrical inspector; or
  - (c) a meter examiner,shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) No proceedings shall be instituted in England and Wales in respect of an offence under subsection (1) above except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

### *Supplemental*

## 60 Powers to make regulations.

- (1) Regulations made under any provision of this Part may provide for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision—
  - (a) as to the mode of proof of any matter;
  - (b) as to parties and their representation;
  - (c) for the right to appear before and be heard by the Secretary of State, the Director and other authorities; and
  - (d) as to awarding costs or expenses of proceedings for the determination of such questions, including the amount of the costs or expenses and the enforcement of the awards.
- (2) Regulations made under any provision of this Part which prescribe a period within which things are to be done may provide for extending the period so prescribed.
- (3) Regulations made under any provision of this Part may—
  - (a) provide for anything falling to be determined under the regulations to be determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be prescribed by the regulations;
  - (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (c) make such supplemental, consequential and transitional provision as the Secretary of State or, as the case may be, the Director considers appropriate.

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#### Modifications etc. (not altering text)

- C40** S. 60 applied (29.9.2000 for specified purposes and otherwise 7.11.2000) by 2000 c. 27, s. 27(6); S.I. 2000/2412, art. 2, Sch.; S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12)
- C41** S. 60: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

## 61 Concurrent proceedings.

(1) Subsection (2) below applies where a licence holder makes an application to the Secretary of State for his consent under section 36 above for the construction or extension of a generating station and, for a purpose connected with the proposed construction or extension of that station, makes either or both of the following, namely—

- (a) a compulsory purchase order; and
- (b) an application to the Secretary of State for authorisation under paragraph 1 of Schedule 5 to this Act (water rights for hydro-electric generating stations in Scotland).

(2) The proceedings which—

- (a) in the case of a compulsory purchase order, are required by Part II of the <sup>M39</sup>Acquisition of Land Act 1981 or Schedule 1 to the <sup>M40</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to be taken for the purpose of confirming that order;
- (b) in the case of an application under paragraph 1 of Schedule 5 to this Act, are required by paragraphs 7 to 12 of that Schedule to be taken in relation to that application,

may be taken concurrently (so far as practicable) with the proceedings required by Schedule 8 to this Act to be taken in relation to the application for consent under section 36 above.

(3) Subsection (4) below applies where a licence holder makes an application to the Secretary of State for his consent under section 37 above for the installation of an electric line above ground and, for a purpose connected with the proposed installation of that line, makes one or more of the following, namely—

- (a) a compulsory purchase order;
- (b) an application to the Secretary of State under paragraph 6 of Schedule 4 to this Act for a necessary wayleave; and
- (c) a reference to the Secretary of State under paragraph 9 (felling and lopping of trees) of that Schedule.

(4) The proceedings which—

- (a) in the case of a compulsory purchase order, are required by Part II of the Acquisition of Land Act 1981 or Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to be taken for the purpose of confirming that order;
- (b) in the case of an application under paragraph 6 of Schedule 4 to this Act, are required by that paragraph to be taken in relation to that application;
- (c) in the case of a reference under paragraph 9 of that Schedule, are required by that paragraph to be taken in relation to that reference,

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may be taken concurrently (so far as practicable) with the proceedings required by Schedule 8 to this Act to be taken in relation to the application for consent under section 37 above.

- (5) Where, for a purpose connected with the proposed installation of an electric line, a licence holder makes—
- (a) an application to the Secretary of State under paragraph 6 of Schedule 4 to this Act for the necessary wayleave; and
  - (b) a reference to the Secretary of State under paragraph 9 of that Schedule, the proceedings required by the said paragraph 9 to be taken in relation to the reference under that paragraph may be taken concurrently (so far as practicable) with the proceedings required by the said paragraph 6 to be taken in relation to the application under that paragraph.

**Modifications etc. (not altering text)**

C42 S. 61: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

**Marginal Citations**

M39 1981 c. 67.

M40 1947 c. 42.

## 62 Public inquiries.

- (1) The Secretary of State may cause an enquiry to be held in any case where he considers it advisable to do so in connection with any matter arising under this Part other than a matter in respect of which any functions of the Director under section 25 above are or may be exercisable.
- (2) The provisions of subsections (2) to (5) of section 250 of the<sup>M41</sup> Local Government Act 1972 or subsections (2) to (8) of section 210 of the<sup>M42</sup> Local Government (Scotland) Act 1973 (which relate to the giving of evidence at, and defraying the cost of, local enquiries) shall apply in relation to any inquiry held under this Part as they apply in relation to a local inquiry which a Minister causes to be held under subsection (1) of that section.
- (3) Where—
- (a) an enquiry is to be held under this Part in connection with any matter; and
  - (b) in the case of some other matter required or authorised (whether by this Part or by any other enactment) to be the subject of an enquiry (“the other enquiry”), it appears to the relevant Minister or Ministers that the matters are so far cognate that they should be considered together,
- the relevant Minister or Ministers may direct that the two inquiries be held concurrently or combined as one inquiry.
- (4) In subsection (3) above “the relevant Minister or Ministers” means the Secretary of State or, where causing the other inquiry to be held is a function of some other Minister of the Crown, the Secretary of State and that other Minister acting jointly.

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#### Marginal Citations

M41 1972 c. 70.

M42 1973 c. 65.

### 63 Application to Crown land.

- (1) No power (whether a power of compulsory acquisition or other compulsory power, a power to carry out works or a power of entry) which is conferred by or under this Part shall, except with the consent of the appropriate authority, be exercisable in relation to any land in which there is a Crown or Duchy interest, that is to say, an interest—
  - (a) belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall; or
  - (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department.
- (2) A consent given for the purposes of subsection (1) above may be given on such financial and other conditions as the appropriate authority giving the consent may consider appropriate.
- (3) Subject to subsection (1) above, the provisions of this Part shall have effect in relation to land in which there is a Crown or Duchy interest as they have effect in relation to land in which there is no such interest.
- (4) In this section “the appropriate authority”—
  - (a) in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
  - (b) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of the land;
  - (c) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of that Duchy;
  - (d) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of that Duchy, appoints;
  - (e) in relation to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

### 64 Interpretation etc. of Part I.

- (1) In this Part, unless the context otherwise requires—
  - “the 1973 Act” means the <sup>M43</sup> Fair Trading Act 1973;
  - “the 1980 Act” means the <sup>M44</sup> Competition Act 1980;
  - “authorised area” has the meaning given by section 6(9) above;
  - “electrical plant” means any plant equipment, apparatus or appliance used for, or for purposes connected with the generation, transmission or supply of electricity, other than—
    - (a) an electric line;



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(b) a meter used for ascertaining the quantity of electricity supplied to any premises; or

(c) an electrical appliance under the control of a consumer;

“electric line” means any line which is used for carrying electricity for any purpose and includes, unless the context otherwise requires—

(a) any support of any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;

(b) any apparatus connected to any such line for the purpose of carrying electricity; and

(c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

“exemption” means an exemption under section 5 above;

“extension”, in relation to a generating station, has the meaning given by section 36(8) above and “extend” shall be construed accordingly;

“final order” and “provisional order” have the meanings given by section 25(8) above;

“generating station”, in relation to a generating station wholly or mainly driven by water, includes all structures and works for holding or channelling water for a purpose directly related to the generation of electricity by that station;

“high voltage line” means—

(a) in relation to England and Wales, an electric line of a nominal voltage exceeding 132 kilovolts;

(b) in relation to Scotland, an electric line of a nominal voltage not less than 132 kilovolts,

and “low voltage line” shall be construed accordingly;

“information” includes accounts, estimates and returns;

“licence” means a licence under section 6 above and “licence holder” shall be construed accordingly;

“line” means any wire, cable, tube, pipe or any other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity;

“the Monopolies Commission” means the Monopolies and Mergers Commission;

“notice” means notice in writing;

“premises” includes any land, building or structure;

“prescribed”, except in sections 39 and 60 above and Schedule 7 to this Act, means prescribed by regulations made by the Secretary of State;

“private electricity supplier” has the meaning given by section 17(1) above;

“public electricity supplier” has the meaning given by section 6(9) above;

“relevant condition” and “relevant requirement” have the meanings given by section 25(8) above;

“supply”, in relation to electricity, has the meaning given by section 4(4) above, and cognate expressions shall be construed accordingly;

“tariff customer” has the meaning given by section 22(4) above;

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“transmit”, in relation to electricity, has the meaning given by section 4(4) above, and cognate expressions shall be construed accordingly;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the <sup>M45</sup> Banking and Financial Dealings Act 1971.

- (2) The provision of section 3 of the <sup>M46</sup> Administration of Justice (Scotland) Act 1972 (power of arbiter to state case to Court of Session) shall not apply in relation to any determination under this Part made by an arbiter.

**Modifications etc. (not altering text)**

**C43** S. 64: definitions applied by [Heathrow Express Railway Act 1991 \(c. vii\), s. 37\(1\)\(a\)](#)

**Marginal Citations**

**M43** 1973 c. 41.  
**M44** 1980 c. 21.  
**M45** 1971 c. 80.  
**M46** 1972 c. 59

## PART II

### REORGANISATION OF THE INDUSTRY

**Modifications etc. (not altering text)**

**C44** Pt. II (ss. 65-95) extended (15.12.2001) by [S.I. 2001/4011, art. 12\(1\)\(a\)](#)

#### *Transfers to successor companies*

#### **65 Transfer of property etc. of Area Boards.**

- (1) On such day as the Secretary of State may by order appoint for the purposes of this subsection and subsection (5) of section 66 below (in this Part referred to, in relation to any transfer effected by either subsection, as “the transfer date”), all property, rights and liabilities to which each Area Board is entitled or subject immediately before that date shall become by virtue of this subsection property, rights and liabilities of a company which, in relation to that Board, is nominated for the purposes of this subsection by the Secretary of State.
- (2) Subject to subsection (3) below, the Secretary of State may, after consulting the Area Board concerned, by order nominate for the purposes of subsection (1) above any company formed and registered under the <sup>M47</sup> Companies Act 1985.
- (3) On the transfer date each company so nominated must be a company limited by shares which is wholly owned by the Crown.
- (4) The Secretary of State shall not exercise any power conferred on him by this section or sections 66 to 69 below except with the consent of the Treasury.

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- (5) In this Part “supply company” means a company nominated for the purposes of subsection (1) above.

#### Marginal Citations

M47 1985 c. 6.

## 66 Transfer of property etc. of Generating Board and Electricity Council.

- (1) Before such date as the Secretary of State may direct, the Generating Board shall make a scheme for the division of all its property, rights and liabilities between three or more companies nominated by the Secretary of State for the purposes of this subsection; and of the companies so nominated—
- two shall be designated as generating companies; and
  - one shall be designated as the transmission company.
- (2) Before such date as the Secretary of State may direct, the Electricity Council shall make a scheme—
- for the transfer to a company nominated for the purposes of this subsection by the Secretary of State; or
  - for the division between two or more companies so nominated, of all its property, rights and liabilities (other than excepted rights and liabilities).
- (3) Subject to subsection (4) below, the Secretary of State may, after consulting the transferor, by order nominate for the purposes of subsection (1) or (2) above any company formed and registered under the <sup>M48</sup>Companies Act 1985.
- (4) On the transfer date each company so nominated must be—
- a company limited by shares which is wholly owned by the Crown; or
  - in the case of company nominated for the purposes of subsection (2) above, a company limited by guarantee of which no person other than the Treasury or the Secretary of State, or a nominee of the Treasury or the Secretary of State, is a member.
- (5) Subject to provisions of section 70 below, on the transfer date—
- all property, rights and liabilities to which immediately before that date the Generating Board was entitled or subject; and
  - all property, rights and liabilities to which immediately before that date the Electricity Council was entitled or subject (other than excepted rights and liabilities),
- shall become by virtue of this subsection property, rights and liabilities of the company to which they are allocated by the scheme under subsection (1) or, as the case may be, subsection (2) above.
- (6) In this section “excepted rights and liabilities” means—
- any rights and liabilities with respect to corporation tax (including rights to receive any sums by way of repayment supplement and liabilities to pay any sums by way of interest or penalty);
  - any rights and liabilities arising under an agreement which relates to any such rights and liabilities as are mentioned in paragraph (a) above and is specified

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- or is of a description specified by the scheme made under subsection (2) above; and
- (c) any rights and liabilities transferred by section 91 below.

#### Marginal Citations

M48 1985 c. 6.

### 67 Transfer of property etc. of Scottish Boards.

- (1) Before such date as the Secretary of State may direct, each of the Scottish Boards shall, in consultation with the other, make a scheme for the transfer of all their property, rights and liabilities (other than excepted rights and liabilities) to one or more of three or more companies nominated by the Secretary of State for the purposes of this subsection; and of the companies so nominated—
  - (a) two shall be designated as the Scottish electricity companies; and
  - (b) one shall be designated as the Scottish nuclear company.
- (2) Subject to subsection (3) below, the Secretary of State may, after consultation with the Scottish Boards, by order nominate for the purposes of subsection (1) above any company formed and registered in Scotland under the Companies Act 1985.
- (3) On such day as the Secretary of State may by order appoint for the purposes of subsection (4) below (in this Part referred to, in relation to any transfer effected by that subsection, as “the transfer date”) each company so nominated must be a company limited by shares which is wholly owned by the Crown.
- (4) Subject to the provisions of section 70 below, on the transfer date all property, rights and liabilities (other than excepted rights and liabilities) to which immediately before that date the Scottish Boards were entitled or subject shall become by virtue of this subsection property, rights and liabilities of the company to which they are allocated by a scheme under subsection (1) above.
- (5) In this section “excepted rights and liabilities” means any rights and liabilities transferred by section 91 below.

### 68 Transfer schemes under sections 66 and 67.

- (1) This section applies to any scheme under subsection (1) or (2) of section 66 or subsection (1) of section 67 above (in this Part referred to as a “transfer scheme”); and in this section and section 69 below “the relevant subsection”, in relation to such a scheme, means that subsection.
- (2) A transfer scheme may—
  - (a) define the property, rights and liabilities to be allocated to a particular company nominated for the purposes of the relevant subsection—
    - (i) by specifying or describing the property, rights and liabilities in question;
    - (ii) by referring to all the property, rights and liabilities comprised in a specified part of the transferor’s undertaking; or
    - (iii) partly in the one way and partly in the other;

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- (b) provide that any rights or liabilities specified or described in the scheme shall be enforceable either by or against either or any, or by or against both or all, of two or more companies nominated for the purposes of the relevant subsection;
  - (c) impose on any company nominated for the purposes of the relevant subsection an obligation to enter into such written agreements with, or execute such other instruments in favour of, any other company so nominated as may be specified in the scheme; and
  - (d) make such supplemental, incidental and consequential provision as the transferor considers appropriate (including provision specifying the order in which any transfers or transactions are to be regarded as taking effect).
- (3) An obligation imposed by a provision included in a transfer scheme by virtue of subsection (2)(c) above shall be enforceable by civil proceedings by the other company for an injunction or for interdict or for any other appropriate relief.
- (4) A transaction of any description which is effected in pursuance of such a provision as is mentioned in subsection (3) above—
- (a) shall have effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register; but
  - (b) subject to that, shall be binding on all other persons, notwithstanding that it would, apart from this subsection, have required the consent or concurrence of any other person.
- (5) Where a lease of any land is granted in pursuance of such a provision as is mentioned in subsection (3) above, any right of pre-emption or other like right affecting that land—
- (a) shall not become exercisable by reason of the grant of the lease; but
  - (b) shall have effect as if the lessee were the same person in law as the lessor.

## **69 Functions of Secretary of State in relation to transfer schemes.**

- (1) A transfer scheme shall not take effect unless it is approved by the Secretary of State; and the Secretary of State may modify such a scheme before approving it.
- (2) If, in relation to a transfer scheme—
- (a) the transferor fails, before the date specified in the Secretary of State's direction under the relevant subsection, to submit the scheme for the approval of the Secretary of State; or
  - (b) the Secretary of State decides not to approve the scheme that has been submitted to him by the transferor (either with or without modifications),
- the Secretary of State may himself make the scheme.
- (3) It shall be the duty of the transferor to 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 exercise, in relation to a transfer scheme, of any power conferred on him by subsection (1) or (2) above.
- (4) The Secretary of State shall not exercise any power conferred on him by subsection (1) or (2) above except after consultation with the transferor and—
- (a) in the case of a scheme under section 66(1) above, the Area Boards; and
  - (b) in the case of a scheme under section 67(1) above, the other Scottish Board.

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## 70 Supplementary provisions as to transfers under sections 66 and 67.

The provisions of Schedule 10 to this Act shall apply, to the extent there mentioned, to any transfer which is effected by subsection (5) of section 66 or subsection (4) of section 67 above; and those subsections shall have effect subject to the provisions of that Schedule.

### *Ownership of successor companies*

## 71 Initial Government holding in the companies.

- (1) As a consequence of the vesting in a company nominated for the purposes of section 65(1), 66(1) or (2) or 67(1) above (in this Part referred to as a “successor company”) of any property, rights and liabilities, the company shall issue such securities of the company as the Secretary of State may from time to time direct—
  - (a) to the Treasury or the Secretary of State; or
  - (b) to any person entitled to require the issue of the securities following their initial allotment to the Treasury or the Secretary of State.
- (2) The Secretary of State shall not give a direction under subsection (1) above in relation to a successor company at a time when the company has ceased to be wholly owned by the Crown.
- (3) Securities required to be issued in pursuance of this section shall be issued or allotted at such time or times and on such terms as the Secretary of State may direct.
- (4) Shares in a company which are issued in pursuance of this section—
  - (a) shall be of such nominal value as the Secretary of State may direct; and
  - (b) shall be issued as fully paid and treated for the purposes of the <sup>M49</sup>Companies Act 1985 as if they had been paid up by virtue of the payment to the company of their nominal value in cash.
- (5) The Secretary of State shall not exercise any power conferred on him by this section, or dispose of any securities issued or of any rights to securities initially allotted to him in pursuance of this section, without the consent of the Treasury.
- (6) Any dividends or other sums received by the Treasury or the Secretary of State in right of or on the disposal of any securities or rights acquired by virtue of this section shall be paid into the Consolidated Fund.

### **Marginal Citations**

M49 1985 c. 6.

## 72 Government investment in securities of the companies.

- (1) The Treasury or, with the consent of the Treasury, the Secretary of State may at any time acquire—
  - (a) securities of a successor company; or
  - (b) rights to subscribe for any such securities.

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- (2) The Secretary of State shall not dispose of any securities or rights acquired under this section without the consent of the Treasury.
- (3) Any expenses incurred by the Treasury or the Secretary of State in consequence of the provisions of this section shall be paid out of money provided by Parliament.
- (4) Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities or rights acquired under this section shall be paid into the Consolidated Fund.

### **73 Exercise of functions through nominees.**

- (1) The Treasury or, with the consent of the Treasury, the Secretary of State may, for the purposes of section 71 or 72 above or section 80 below, appoint any person to act as the nominee, or one of the nominees, of the Treasury or the Secretary of State; and—
  - (a) securities of a successor company may be issued under section 71 above or section 80 below to any nominee of the Treasury or the Secretary of State appointed for the purposes of that section or to any person entitled to require the issue of the securities following their initial allotment to any such nominee; and
  - (b) any such nominee appointed for the purposes of section 72 above may acquire securities or rights under that section,  
in accordance with directions given from time to time by the Treasury or, with the consent of the Treasury, by the Secretary of State.
- (2) Any person holding any securities or rights as a nominee of the Treasury or the Secretary of State by virtue of subsection (1) above shall hold and deal with them (or any of them) on such terms and in such manner as the Treasury or, with the consent of the Treasury, the Secretary of State may direct.

### **74 Target investment limit for Government shareholding.**

- (1) As soon as he considers expedient and, in any case, not later than six months after any operating company ceases to be wholly owned by the Crown, the Secretary of State shall by order fix a target investment limit in relation to the shares for the time being held in that company by virtue of any provision of this Part by the Treasury and their nominees and by the Secretary of State and his nominees (in this section referred to as “the Government shareholding”).
- (2) The target investment limit for the Government shareholding in an operating company shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the company (in this section referred to as “the ordinary voting rights”).
- (3) The first target investment limit fixed under this section for the Government shareholding in a particular company shall not exceed, by more than 0.5 per cent. of the ordinary voting rights, the proportion of those rights which is in fact carried by the Government shareholding in that company at the time when the order fixing the limit is made.
- (4) The Secretary of State may from time to time by order fix a new target investment limit for the Government shareholding in an operating company in place of the one previously in force under this section; but—

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- (a) any new limit must be lower than the one it replaces; and
  - (b) an order under this section may only be revoked by an order fixing a new limit.
- (5) It shall be the duty of the Treasury and of the Secretary of State so to exercise—
- (a) their powers under section 72 above and any power to dispose of any shares held by virtue of any provision of this Part; and
  - (b) their power to give directions to their respective nominees,
- as to secure in relation to each operating company that the Government shareholding in that company does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section in relation to that company.
- (6) Notwithstanding subsection (5) above but subject to subsection (7) below, the Treasury or the Secretary of State may take up, or direct any nominee of the Treasury or of the Secretary of State to take up, any rights which are for the time being available to them or him, or to the nominee, either—
- (a) as an existing holder of shares or other securities of an operating company; or
  - (b) by reason of the rescission of any contracts for the sale of such shares or securities.
- (7) If, as a result of anything done under subsection (6) above, the proportion of the ordinary voting rights carried by the Government shareholding in an operating company at any time exceeds the target investment limit for the time being in force under this section in relation to that company, it shall be the duty of the Treasury or, as the case may be, the Secretary of State to comply with subsection (5) above as soon after that time as is reasonably practicable.
- (8) For the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.
- (9) The Secretary of State shall not exercise any power conferred on him by this section except with the consent of the Treasury.
- (10) In this Part “operating company” means a supply company, the transmission company, a generating company, a Scottish electricity company or the Scottish nuclear company.

#### *Finances of successor companies*

### **75 Statutory reserves.**

- (1) If the Secretary of State with the approval of the Treasury so directs at any time before a successor company ceases to be wholly owned by the Crown, such sum as may be specified in the direction but not exceeding—
- (a) in the case of a supply company, the accumulated realised profits of the transferor;
  - (b) in the case of a Scottish electricity company, the aggregate of such proportion of the accumulated realised profits of the transferor as is determined by or under the transfer scheme and any accumulated realised profits arising (after compliance with any direction to the company under subsection (2) of section 80 below) by virtue of the extinguishment of liabilities of the company by an order under subsection (1) of that section;



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- (c) in any other case, such proportion of the accumulated realised profits of the transferor as is determined by or under the transfer scheme, shall be carried by the company to a reserve (in this section referred to as “the statutory reserve”).
- (2) A company having a statutory reserve shall not apply it except in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.
- (3) Notwithstanding subsection (2) above, the statutory reserve of a company shall not count as an undistributable reserve of the company for the purposes of section 264(3)(d) of the <sup>M50</sup>Companies Act 1985; but for the purpose of determining under that section whether a company with a statutory reserve may make a distribution at any time any amount for the time being standing to the credit of the reserve shall be treated for the purposes of section 264(3)(c) of that Act as if it were unrealised profits of the company.

#### Marginal Citations

M50 1985 c. 6.

## 76 Statutory accounts.

- (1) The following provisions of this section shall have effect for the purposes of any statutory accounts of a successor company, that is to say, any accounts prepared by such a company for the purpose of any provision of the Companies Act 1985 (including group accounts).
- (2) The vesting in the company effected by virtue of this Part shall be taken to have been effected immediately after the end of the last complete accounting year of the transferor to end before the transfer date and—
- (a) in the case of a supply company, to have been a vesting of all the property, rights and liabilities to which the transferor was entitled or subject immediately before the end of the year;
- (b) in any other case, to have been a vesting of such of the property, rights and liabilities to which the transferor was so entitled or subject as are determined by or under the transfer scheme.
- (3) The value of any asset and the amount of any liability which is taken by virtue of subsection (2) above to have been vested in the company shall be taken to have been—
- (a) in the case of a supply company, the value or amount assigned to the asset or liability for the purposes of the corresponding statement of accounts prepared by the transferor in respect of the last complete accounting year of the transferor to end before the transfer date;
- (b) in any other case, the value or amount so assigned or, if the asset or liability is part only of an asset or liability to which a value or amount is so assigned, so much of that value or amount as may be determined by or under the transfer scheme.
- (4) The amount to be included in respect of any item shall be determined as if—
- (a) in the case of a supply company, anything done by the transferor (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing

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- or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise);
- (b) in any other case, so much of anything so done as may be determined by or under the transfer scheme,
- had been done by the company.
- (5) Without prejudice to the generality of the preceding provisions, the amount to be included from time to time in any reserves of the company as representing the company's accumulated realised profits shall be determined as if—
- (a) in the case of a supply company, any profits realised and retained by the transferor;
- (b) in any other case, such proportion of any such profits as is determined by or under the transfer scheme,
- had been realised and retained by the company.
- (6) In this section “complete accounting year,” in relation to the transferor, means an accounting year of the transferor ending on 31st March.

## 77 Temporary restrictions on borrowings etc.

- (1) If articles of association of a successor company confer on the Secretary of State powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.
- (2) For the purposes of this section an alteration of the articles of association of a successor company shall be disregarded if the alteration—
- (a) has the effect of conferring or extending any such power as is mentioned in subsection (1) above; and
- (b) is made at a time when that company has ceased to be wholly owned by the Crown.
- (3) In this section—
- “group”, in relation to a company, means that company and all of its subsidiaries taken together;
- “subsidiary” [<sup>F83</sup>] has the meaning given by section 736 of the <sup>M51</sup>Companies Act 1985.

### Textual Amendments

**F83** Words substituted by [S.I. 1990/1395, reg. 2](#)

### Marginal Citations

**M51** [1985 c. 6.](#)

## 78 Government lending to the companies.

- (1) Subject to section 81 below, the Secretary of State may, with the approval of the Treasury, make loans of such amounts as he thinks fit to any successor company which is for the time being wholly owned by the Crown.

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- (2) Subject to section 80 below, any loans which the Secretary of State makes under this section shall be repaid to him at such times and by such methods, and interest thereon shall be paid to him at such rates and at such times, as he may, with the approval of the Treasury, from time to time direct.
- (3) The Treasury may issue out of the National Loans Fund to the Secretary of State such sums as are required by him for making loans under this section.
- (4) Any sums received under subsection (2) above by the Secretary of State shall be paid into the National Loans Fund.
- (5) It shall be the duty of the Secretary of State as respects each financial year—
  - (a) to prepare, in such form as the Treasury may direct, an account of sums issued to him in pursuance of subsection (3) above and of sums received by him under subsection (2) above and of the disposal by him of the sums so issued or received; and
  - (b) to send the account to the Comptroller and Auditor General not later than the end of the month of August in the following financial year;and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it and of his report before each House of Parliament.

## **79 Treasury guarantees for loans made to the companies.**

- (1) Subject to section 81 below, the Treasury may guarantee, in such manner and on such terms as they may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Secretary of State by any successor company which is for the time being wholly owned by the Crown.
- (2) Immediately after a guarantee is given under this section, the Treasury shall lay a statement of the guarantee before each House of Parliament; and immediately after any sum is issued for fulfilling a guarantee so given, the Treasury shall so lay a statement relating to that sum.
- (3) Any sums required by the Treasury for fulfilling a guarantee under this section shall be charged on and issued out of the Consolidated Fund.
- (4) If any sums are issued in fulfilment of a guarantee given under this section the company whose obligations are so fulfilled shall make to the Treasury, at such times and in such manner as the Treasury may from time to time direct—
  - (a) payments of such amounts as the Treasury may so direct in or towards repayment of the sums so issued; and
  - (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Treasury may so direct.
- (5) Any sums received under subsection (4) above by the Treasury shall be paid into the Consolidated Fund.

## **80 Conversion of certain loans etc. to the Scottish companies.**

- (1) The Secretary of State may by order extinguish all or any of the liabilities of a successor company in Scotland in respect of the principal of such relevant loans as may

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be specified in the order; and the assets of the National Loans Fund shall accordingly be reduced by amounts corresponding to any liabilities so extinguished.

- (2) Where the Secretary of State has made an order under subsection (1) above and he considers it appropriate to do so, he may from time to time give a direction under this subsection to the company whose liabilities are extinguished by the order, or to a company or companies wholly owning the company whose liabilities are so extinguished; and a company to which such a direction is given shall, as a consequence of the making of the order, issue such securities of the company as may be specified or described in the direction—
- (a) to the Treasury or the Secretary of State;
  - (b) to any person entitled to require the issue of the securities following their initial allotment to the Treasury or the Secretary of State; or
  - (c) if it is the company whose liabilities are extinguished by the order, to a company or companies wholly owning that company.
- (3) For the purposes of any statutory accounts of a company to whom securities are issued by virtue of subsection (2)(c) above, the value at the time of its issue of any such security shall be taken—
- (a) in the case of a share, to have been equal to its nominal value; and
  - (b) in the case of debenture, to have equal to the principal sum payable under the debenture,
- and such nominal value or principal sum shall be taken in those accounts to be accumulated realised profits.
- (4) In subsection (3) above “statutory accounts of a company” means any accounts prepared by the company for the purpose of any provision of the <sup>M52</sup>Companies Act 1985 (including group accounts).
- (5) The Secretary of State shall not—
- (a) make an order under subsection (1) above extinguishing the liability of any company; or
  - (b) give a direction under subsection (2) above for the issue of securities,
- except at a time when the company whose liability is extinguished by the order or, as the case may be, the company which is directed to issue securities is wholly owned by the Crown; and he shall not give a direction under paragraph (c) of the said subsection (2) except at a time when the company or companies to whom the securities are to be issued is, or are, so owned.
- (6) Except as may be agreed between the Secretary of State and a company which is directed to issue debentures in pursuance of this section—
- (a) the aggregate of the principal sums payable under the debentures to which the direction relates shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and
  - (b) the terms as to the payment of the principal sums payable on the debentures to which the direction relates, and as to the payment of interest thereon, shall be the same as the corresponding terms of the loans specified in the order.
- (7) For the purposes of subsection (6) above any express or implied terms of a loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.

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- (8) Subsections (3) to (6) of section 71 above shall apply for the purposes of this section as they apply for the purposes of that section.
- (9) In this section “relevent loan”, in relation to a successor company in Scotland, means—
- (a) any loan made, or deemed to have been made, by the Secretary of State or from the National Loans Fund the liability to repay which vests in that company by virtue of section 67(4) above;
  - (b) any loan made to that company by the Secretary of State under section 78 above; and
  - (c) any sums payable under debentures issued as a consequence of the making of an order under this section.
- (10) In this section and section 81 below “successor company in Scotland” means a company nominated for the purposes of section 67(1) above.

#### Marginal Citations

M52 1985 c. 6.

### 81 Financial limits on borrowing etc.

- (1) The aggregate of any amounts outstanding by way of principal in respect of—
- (a) loans made by the Secretary of State under section 78 above to successor companies in England and Wales; and
  - (b) sums issued under section 79 above in fulfilment of guarantees given in respect of loans made to such companies,
- shall not exceed £2,000 million.
- (2) The aggregate of any amounts outstanding by way of principal in respect of—
- (a) relevant loans within the meaning of section 80 above; and
  - (b) sums issued under section 79 above in fulfilment of guarantees given in respect of loans made to successor companies in Scotland,
- shall not exceed £3,000 million.
- (3) In this section “successor company in England and Wales” means a company nominated for the purposes of section 65(1) or 66(1) or (2) above.

#### *Provisions with respect to floatation*

### 82 Responsibility for composite listing particulars.

- (1) Where—
- (a) the same document contains listing particulars for securities of two or more successor Companies; and
  - (b) any person’s responsibility for any information included in the document is stated in the document to be confined to its inclusion as part of the listing particulars for securities of any one of those companies,

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that person shall not be treated as responsible for that information in so far as it is stated in the document to form part of the listing particulars for securities of any other of those companies.

(2) In this section—

“the 1986 Act” means the <sup>M53</sup>Financial Services Act 1986;

“listing particulars” means any listing particulars or supplementary listing particulars within the meaning of the 1986 Act;

“responsible” means responsible for the purposes of Part IV of the 1986 Act and “responsibility” shall be construed accordingly.

#### Marginal Citations

M53 1986 c. 60.

### 83 Application of Trustee Investments Act 1961 in relation to investment in operating companies.

(1) Subsection (2) below shall have effect for the purpose of applying paragraph 3(b) of Part IV of Schedule I to the <sup>M54</sup>Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of an operating company during the calendar year in which the transfer date falls (“the first investment year”) or during any year following that year.

(2) The company shall be deemed to have paid a dividend as mentioned in the said paragraph 3(b)—

(a) in every year preceding the first investment year which is included in the relevant five years; and

(b) in the first investment year, if that year is included in the relevant five years and that company does not in fact pay such a dividend in that year.

(3) In subsection (2) above “the relevant five years” means the five years immediately preceding the year in which the investment in question is made or proposed to be made.

#### Marginal Citations

M54 1961 c. 62.

#### *Provisions with respect to existing bodies*

### 84 Dissolution etc. of existing bodies.

(1) Any person who, immediately before the transfer date, holds office as chairman or other member of any of the existing bodies, that is to say, the Electricity Boards and the Electricity Council, shall cease to hold office on that date.

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- (2) Each existing body shall continue in existence after the transfer date until it is dissolved under subsection (4) below; and the period of any such body's continued existence is referred to in this Act as its transitional period.
- (3) During the transitional period of each existing body, the body—
  - (a) shall consist of a chairman appointed by the Secretary of State and such one or more other persons as may be so appointed; and
  - (b) shall prepare such statements of accounts as the Secretary of State may direct; and a direction under this subsection may require the auditing of any such statements of accounts by such persons as may be specified in the direction.
- (4) The Secretary of State may by order, after consulting the body concerned and its successor company or companies, dissolve any existing body on a day specified in the order, as soon as he is satisfied that nothing further remains to be done by that body (whether under Schedule 17 to this Act or otherwise).
- (5) An order under subsection (4) above may provide—
  - (a) for the preparation by such persons as may be specified in the order of a statement of accounts for the period from the end of that dealt with in the last statement of accounts prepared under subsection (3) above by the body concerned down to the dissolution of that body; and
  - (b) for the auditing of any such statement of accounts by such persons as may be so specified;and the Secretary of State may with the approval of the Treasury pay to any person on whom duties are imposed by such an order such remuneration, and such travelling and other allowances, as the Secretary of State with the approval of the Treasury may determine.
- (6) Any sums required by the Secretary of State for making payments under subsection (5) above shall be paid out of money provided by Parliament.

## **85 Compensation to members and employees of existing bodies.**

- (1) The Secretary of State may pay to persons who immediately before the transfer date are the chairmen and other members of the existing bodies such sums by way of compensation for loss of office, or loss or diminution of pension rights, as the Secretary of State may with the approval of the Treasury determine.
- (2) The Secretary of State may also pay to persons who immediately before the transfer date are employees of the existing bodies such sums by way of compensation for loss of employment, or loss or diminution of remuneration or pension rights, as the Secretary of State may with the approval of the Treasury determine.
- (3) Any sums required by the Secretary of State for making payments under this section shall be paid out of money provided by Parliament.

## **86 Discharge of certain advances and loans made to existing bodies.**

- (1) The following powers, namely—
  - (a) the power conferred on the Secretary of State by subsection (3) of section 2 of the <sup>M55</sup>Electricity and Gas Act 1963 to give directions as to the repayment of advances made by him under that section to the Electricity Council; and

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- (b) the power conferred on the Secretary of State by subsection (2) of section 24 of the <sup>M56</sup>Electricity (Scotland) Act 1979 to give directions as to the repayment of advances made by him under that section to a Scottish Board, shall include power to direct the Council or Board to discharge its liabilities in respect of any advance so made by a payment to him, on such date as is specified in the direction, of such amount as is so specified.
- (2) The Treasury may direct the Electricity Council or a Scottish Board to do anything specified in the direction which is requisite or expedient for the purpose of securing the discharge, or the transfer to the Treasury, of the Council's or Board's liabilities in respect of any foreign currency loan made to the Council or Board.
- (3) Where the liabilities of the Electricity Council or a Scottish Board in respect of any foreign currency loan made to the Council or Board are to be discharged (whether in pursuance of a direction under subsection (2) above or otherwise), the Treasury may direct that the amount to be paid to the Treasury by the Council or Board for the foreign currency required for the purpose of securing the discharge shall be such amount as is specified in the direction.
- (4) Where the liabilities of the Electricity Council or a Scottish Board in respect of any foreign currency loan made to the Council or Board are to be transferred to the Treasury (whether in pursuance of a direction under subsection (2) above or otherwise), the Treasury may direct the Council or Board to pay to the Treasury, on the date of the transfer, such amount as is specified in the direction.
- (5) The amount specified in a direction under subsection (1), (3) or (4) above shall be the aggregate of the present values (calculated in such manner and by reference to such rate of interest as the Secretary of State with the approval of the Treasury or, as the case may be, the Treasury may determine) of—
- (a) in the case of a direction under subsection (1), the payments which, if the Council's or Board's liabilities in respect of the advance were not discharged before the final date, would fall to be made to the Secretary of State in respect of the advance;
  - (b) in the case of a direction under subsection (3) or (4), the payments which, if the Council's or Board's liabilities in respect of the loan were not discharged or transferred before the final date, would fall to be made to the Treasury under the relevant exchange cover agreement.
- (6) The Secretary of State may direct the Electricity Council to exercise its powers under section 21 of the <sup>M57</sup>Electricity Act 1957 in relation to any amount which falls to be paid by the Council in pursuance of a direction under subsection (1), (3) or (4) above in such manner as is specified in the direction under this subsection; and such a direction may in particular require contributions to be made by all or any of the Electricity Boards in England and Wales in such amounts as are specified in the direction.
- (7) Any sums received by the Secretary of State in pursuance of a direction under subsection (1) above or by the Treasury in pursuance of a direction under subsection (4) above shall be paid into the National Loans Fund; and any sums received by the Treasury in pursuance of a direction under subsection (3) above shall be paid into the Exchange Equalisation Account.
- (8) In this section—
- “the final date”, in relation to an advance or loan, means the date on which the final payment in respect of the advance or loan falls to be made;



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“foreign currency” means a currency other than sterling;

“foreign currency loan” means a loan made wholly or mainly in a foreign currency;

“the relevant exchange cover agreement”, in relation to a foreign currency loan, means the agreement made under section 1 of the <sup>M58</sup>Exchange Equalisation Account Act 1979 with respect to the payments falling to be made in respect of that loan.

#### Marginal Citations

M55 1963 c. 59.

M56 1979 c. 11.

M57 1957 c. 48.

M58 1979 c. 30.

### 87 Expenditure and receipts of Electricity Council.

- (1) The Electricity Council may, from time to time during its transitional period, require any of the successor companies in England and Wales to contribute such sums as the Council, with the consent of the Secretary of State, may determine towards meeting—
  - (a) any liabilities of the Council with respect to corporation tax (including liabilities to pay any sums by way of interest or penalty); and
  - (b) any expenses incurred by the Council in connection with the determination of any such liabilities.
- (2) The following, namely—
  - (a) any sums received by the Electricity Council during its transitional period by way of refunds of corporation tax (including any sums so received by way of repayment supplement); and
  - (b) any sums received by the Council by way of contributions under subsection (1) above which are not required for meeting such liabilities and expenses as are mentioned in that subsection,may be divided, in such proportions as the Council considers appropriate, between such of the successor companies in England and Wales as the Council thinks fit.

### 88 Grants towards expenditure during transitional period.

- (1) The Secretary of State may, with the approval of the Treasury, make grants to any existing body of such amounts as he thinks fit towards such expenditure incurred by that body during its transitional period as is not met—
  - (a) under Schedule 17 to this Act by its appropriate successor company; or
  - (b) in the case of the Electricity Council, by contributions required to be made under section 87 above.
- (2) Grants under this section may be made subject to such conditions as the Secretary of State with the approval of the Treasury may determine.
- (3) Any sums required by the Secretary of State for making grants under this section shall be paid out of money provided by Parliament.
- (4) In this Part “the appropriate successor company” means—

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- (a) in relation to an Area Board, its successor company;
  - (b) in relation to any other Electricity Board or the Electricity Council, such of its successor companies as may be designated by or under its transfer scheme;
- and a transfer scheme may provide for different designations for different provisions or for different purposes.

### *Miscellaneous*

## **89 Payments for the use of tax losses.**

- (1) For the purpose of securing that each Area Board is in broadly the same financial position on the transfer date as, on the assumptions mentioned in subsection (2) below, it would be in on that date, the Secretary of State may by order direct each Area Board to pay to the Generating Board such sums as, in relation to that Area Board, are specified in or determined by or under the order.
- (2) The said assumptions are—
  - (a) that section 511(2) of the <sup>M59</sup>Income and Corporation Taxes Act 1988 (trades carried on by Area Boards and Generating Board treated as parts of trade of Electricity Council) and the corresponding earlier enactments had not been enacted;
  - (b) that at all material times corporation tax had been charged at the rate of 35 per cent.; and
  - (c) that any corporation tax which, on the assumptions mentioned in paragraphs (a) and (b) above, would be payable by an Area Board would be so payable before the transfer date.

### **Marginal Citations**

**M59** 1988 c. 1.

## **90 Taxation provisions.**

Schedule 11 to this Act (which makes provision about taxation in relation to or in connection with the other provisions of this Part) shall have effect.

## **91 Electricity Stock.**

- (1) On the transfer date all the rights and liabilities —
  - (a) to which the Electricity Council was entitled or subject immediately before that date under the terms of issue of British Electricity Stock; or
  - (b) to which the North of Scotland Hydro-Electric Board was entitled or subject immediately before that date under the terms of issue of North of Scotland Electricity Stock,
 shall become by virtue of this section rights and liabilities of the Treasury.
- (2) Before the transfer date there shall be paid to the Bank of England—
  - (a) by the Electricity Council, out of the central guarantee fund maintained under section 19 of the <sup>M60</sup>Electricity Act 1957, a sum equal to the amounts accruing

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in respect of unclaimed interest or redemption money on British Electricity Stock before that date; and

- (b) by the North of Scotland Hydro-Electric Board, a sum equal to the amounts accruing in respect of unclaimed interest or redemption money on North of Scotland Electricity Stock before that date,

but excluding (in either case) any amounts represented by money in the hands of the Bank of England.

- (3) The Bank of England shall deal with—

- (a) money paid to them under subsection (2) above; and  
(b) money already in their hands which represents such unclaimed interest or redemption money as is mentioned in that subsection,

as money entrusted to them for payment to holders of the Stock concerned and section 5 of the <sup>M61</sup>Miscellaneous Financial Provisions Act 1955 (which relates to unclaimed dividends etc. on Government Stock) shall apply accordingly.

- (4) In this section—

“British Electricity Stock” means any stock created and issued under section 16(1) of the <sup>M62</sup>Electricity Act 1957 or under section 40 of the <sup>M63</sup>Electricity Act 1947;

“North of Scotland Electricity Stock” means any stock created and issued under section 13 of the <sup>M64</sup>Hydro-Electric Development (Scotland) Act 1943.

#### Marginal Citations

**M60** 1957 c. 48.

**M61** 1955 c. 6.

**M62** 1957 c. 48.

**M63** 1947 c. 54.

**M64** 1943 c. 32.

## 92 Abolition of central guarantee fund.

- (1) Immediately before the transfer date—

- (a) the central guarantee fund established under section 19 of the Electricity Act 1957 shall cease to exist; and  
(b) the sums standing to the credit of that fund shall be divided between the Generating Board and the Area Boards in the appropriate proportions.

- (2) In subsection (1) above “the appropriate proportions” means such proportions—

- (a) as may be agreed between the Generating Board and the Area Boards not less than four weeks before the transfer date; or  
(b) in default of such agreement, as the Secretary of State may determine.

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### *Supplemental*

#### **93 Parliamentary disqualification.**

In the <sup>M65</sup>House of Commons Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices) there shall be inserted (at the appropriate place) the following entry—

“Director of a successor company (within the meaning of Part II of the Electricity Act 1989), being a director nominated or appointed by a Minister of the Crown or by a person acting on behalf of the Crown”

and the like insertion shall be made in Part III of Schedule 1 to the <sup>M66</sup>Northern Ireland Assembly Disqualification Act 1975.

#### **Marginal Citations**

**M65** 1975 c. 24.

**M66** 1975 c. 25.

#### **94 Construction of references to property, rights and liabilities.**

- (1) References in this Part to property, rights and liabilities of an Electricity Board or the Electricity Council are references to all such property, rights and liabilities, whether or not capable of being transferred or assigned by that body.
- (2) It is hereby declared for the avoidance of doubt that—
  - (a) any reference in this Part to property of an Electricity Board or the Electricity Council is a reference to property of that Board or Council, whether situated in the United Kingdom or elsewhere; and
  - (b) any such reference to rights and liabilities of an Electricity Board or the Electricity Council is a reference to rights to which that Board or Council is entitled, or (as the case may be) liabilities to which that body is subject, whether under the law of the United Kingdom or of any part of the United Kingdom or under the law of any country or territory outside the United Kingdom.

#### **95 Other interpretation of Part II.**

- (1) In this Part, unless the context otherwise requires—
  - “the appropriate successor company”, in relation to an existing body, has the meaning given by section 88(4) above;
  - “debentures” includes debenture stock;
  - “existing body” has the meaning given by section 84(1) above;
  - “generating company” means a company designated as such by the Secretary of State;
  - “operating company” has the meaning given by section 74(10) above;
  - “securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;
  - “shares” includes stock;

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“Scottish electricity company” means a company designated as such by the Secretary of State;

“Scottish nuclear company” means the company designated as such by the Secretary of State;

“successor company” has the meaning given by section 71(1) above;

“supply company” has the meaning given by section 65(5) above;

“the transfer date”—

(a) in relation to any transfer effected by subsection (1) of section 65 or subsection (5) of section 66 above, has the meaning given by the said subsection (1);

(b) in relation to any transfer effected by subsection (4) of section 67 above, has the meaning given by subsection (3) of that section;

“transferee” and “transferor”, in relation to any transfer of property, rights and liabilities effected or proposed to be effected under this Part, mean respectively the person to whom and the person from whom they are or are to be so transferred;

“transfer scheme” has the meaning given by section 69(1) above;

“transitional period”, in relation to an existing body, has the meaning given by section 84(2) above;

“transmission company” means the company designated as such by the Secretary of State.

(2) A company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when none of the issued shares in the company is held otherwise than—

(a) by, or by a nominee of, the Treasury or the Secretary of State; or

(b) by a company which is itself wholly owned by the Crown.

### PART III

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Miscellaneous*

#### 96 Directions for preserving security of electricity supplies etc.

(1) The Secretary of State may, after consultation with a person to whom this section applies, give to that person such directions of a general character as appear to the Secretary of State to be requisite or expedient for the purpose of—

(a) preserving the security of buildings or installations used for, or for purposes connected with, the generation, transmission or supply of electricity; or

(b) mitigating the effects of any civil emergency which may occur.

(2) If it appears to the Secretary of State to be requisite or expedient to do so for any such purpose as is mentioned in subsection (1) above, he may, after consultation with a person to whom this section applies, give to that person a direction requiring him (according to the circumstances of the case) to do, or not to do, a particular thing specified in the direction.

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- (3) A person to whom this section applies shall give effect to any direction given to him by the Secretary of State under this section notwithstanding any other duty imposed on him by or under this Act.
- (4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under this section unless he is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.
- (5) A person shall not disclose, or be required by virtue of any enactment or otherwise to disclose, anything done by virtue of this section if the Secretary of State has notified him that the Secretary of State is of the opinion that disclosure of that thing is against the interests of national security or the commercial interests of some other person.
- (6) This section applies to any licence holder and any person authorised by an exemption to generate or supply electricity.
- (7) In this section “civil emergency” means any natural disaster or other emergency which, in the opinion of the Secretary of State, is or may be likely to disrupt electricity supplies; and expressions used in Part I have the same meanings as in that Part.

#### **97 Financial assistance for discharge of nuclear liabilities.**

The provisions of Schedule 12 to this Act (which provide for the giving of financial assistance in connection with the storage and reprocessing of nuclear fuel, the treatment, storage and disposal of radioactive waste and the decommissioning of nuclear installations) shall have effect.

#### **98 Provision of statistical information.**

- (1) The Secretary of State may, if he considers it expedient for the purpose of obtaining statistical information relating to the generation, transmission or supply of electricity, serve a notice under this section on any licence holder or any person who is authorised by an exemption to generate or supply electricity.
- (2) A notice under this section may require the person on whom it is served to furnish, at a time and place specified in the notice, to the Secretary of State such statistical information about that person’s business as may be so specified.
- (3) Subject to subsections (4) and (5) below, no information with respect to any particular business which—
  - (a) has been obtained under this section; and
  - (b) relates to the affairs of any individual or to any particular business,
 shall, during the lifetime of that individual or so long as that business continues to be carried on, be published or otherwise disclosed without the consent of that individual or the person for the time being carrying on that business.
- (4) Subsection (3) above does not apply in relation to any disclosure which is made after consultation with the individual concerned, or the person for the time being carrying on the business concerned, and is of information relating to—
  - (a) the quantities of electricity generated by particular methods or by the use of particular fuels;
  - (b) the quantities of particular fuels used for the generation of electricity;

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- (c) the quantities of electricity transferred between Great Britain and countries or territories outside Great Britain, or between England and Wales on the one hand and Scotland on the other; or
  - (d) the quantities of electricity supplied in England, Scotland or Wales either generally or to persons of any particular class or description.
- (5) Subsection (3) above does not apply in relation to any disclosure which is made to the Minister in charge of any Government department or for the purposes of any proceedings under this section.
- (6) The Secretary of State may, after consultation with persons or bodies appearing to him to be representative of persons likely to be affected, by order amend subsection (4) above so as to add other descriptions of information which may be disclosed notwithstanding that it may relate to a particular person or business.
- (7) Any person who without reasonable excuse fails to furnish information in compliance with a requirement under this section shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (8) Any person who publishes or discloses any information in contravention of subsection (3) above or, in purported compliance with a requirement under this section, knowingly or recklessly furnishes any information which is false in any material particular shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (9) In this section “information” does not include estimates as to future matters but, subject to that, expressions which are used in Part I have the same meanings as in that Part.

## **99 Promotion of new techniques in national interest.**

- (1) The Secretary of State shall exercise the power conferred on him by section 5 of the <sup>M67</sup>Science and Technology Act 1965 (expenditure on research and development in science or technology) for the purpose of promoting such research into, and such development of, new techniques relating to the generation, transmission or supply of electricity as appears to him to be necessary in the national interest.
- (2) The Secretary of State may, if he considers it expedient for purposes connected with the performance of his duty under this section, serve notice under this subsection on any licence holder or any person who is authorised by an exemption to generate or supply electricity.
- (3) A notice under subsection (2) above may require the person on whom it is served to furnish, at a time and place specified in the notice, to the Secretary of State such information about that person’s business as may be so specified.
- (4) Subsections (3), (5) and (7) to (9) of section 98 above shall apply for the purposes of this section as they apply for the purposes of that section.

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### **Marginal Citations**

**M67** 1965 c. 4.

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### *Amendment of enactments*

#### **100 Competition and restrictive trade practices.**

- (1) Electricity shall be treated as goods for the purposes of the 1973 Act, the <sup>M68</sup>Restrictive Trade Practices Act 1976 (in this section referred to as “the 1976 Act”) and the 1980 Act.
- (2) The 1976 Act shall not apply, and shall be deemed never to have applied, in relation to any agreement relating to the generation, transmission or supply of electricity which—
  - (a) was determined before the commencement of this section; or
  - (b) is specified, or is of a description specified, in an order made by the Secretary of State (whether before or after the making of the agreement) and satisfies such conditions as may be so specified.
- (3) Before making an order under subsection (2) above, the Secretary of State shall consult the Director and the Director General of Fair Trading; and the conditions specified in such an order may include conditions which refer any matter to the Secretary of State for determination after such consultation as may be so specified.
- (4) The 1976 Act shall have effect in relation to any agreement which—
  - (a) relates to the generation, transmission or supply of electricity; and
  - (b) was made before the commencement of this section,
 as if the time within which particulars of the agreement, or any variation or determination of the agreement, are to be furnished under section 24 of and Schedule 2 to that Act were the time given by paragraph 5 of that Schedule or six months from that commencement, whichever is the later.
- (5) In this section “agreement” has the same meaning as in the 1976 Act and expressions which are used in Part I have the same meanings as in that Part.
- [<sup>F84</sup>(6) In the application of this section to Northern Ireland, for the reference in subsection (3) above to the Director there shall be substituted a reference to the Director General of Electricity Supply for Northern Ireland.]

#### **Textual Amendments**

**F84** S. 100(6) inserted (21.2.1992) by [S.I. 1992/232, art. 5](#); [S.R. 1992/63, art. 2\(2\)](#)

#### **Marginal Citations**

**M68** 1976 c. 34.

#### **101 Rights of entry.**

In section 2 of the <sup>M69</sup>Rights of Entry (Gas and Electricity Boards) Act 1954 (warrant to authorise entry), for subsection (4) there shall be substituted the following subsection—

- “(4) Every warrant granted under this section shall continue in force until—
- (a) the time when the purpose for which the entry is required is satisfied; or
  - (b) the end of the period of 28 days beginning with the day on which the warrant was granted,



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whichever is the earlier.”

**Marginal Citations**

**M69** 1954 c. 21.

**102 Production and supply of heat or electricity etc. by Scottish local authorities.**

The provisions of Schedule 13 (which inserts into the <sup>M70</sup>Local Government (Scotland) Act 1973 provisions analogous to sections 11 (production and supply of heat or electricity or both by local authorities in England and Wales) and 12 (provisions supplementary to the said section 11) of the <sup>M71</sup>Local Government (Miscellaneous Provisions) Act 1976) shall have effect.

**Marginal Citations**

**M70** 1973 c. 65.

**M71** 1976 c. 57.

**103 Stamp duty exemption for certain contracts.**

Electricity shall be treated as goods for the purposes of section 59 of the <sup>M72</sup>Stamp Act 1891 (certain contracts chargeable as conveyances on sale).

**Marginal Citations**

**M72** 1891 c. 39.

*Amendment etc. of pension schemes*

**104 Amendment etc. of Electricity Supply Pension Scheme.**

The provisions of Schedule 14 to this Act (which provide for amending the Electricity Supply Pension Scheme and for giving special protection to certain persons who have or may acquire rights under that scheme) shall have effect.

**105 Amendment etc. of Scottish Pension Schemes.**

The provisions of Schedule 15 to this Act (which provide for amending the Hydroboard Superannuation Fund and the South of Scotland Electricity Board's Superannuation Scheme and for giving special protection to certain persons who have or may acquire rights under those schemes) shall have effect.

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### *Supplemental*

#### **106 Regulations and orders.**

- (1) Any power under this Act to make regulations, and any power of the Secretary of State under this Act to make orders (other than the powers conferred by paragraph 9(6) of Schedule 4 and paragraph 2 of Schedule 5), shall be exercisable by statutory instrument.
- (2) Any statutory instrument containing—
  - (a) regulations under this Act made by the Secretary of State; or
  - (b) an order under this Act (other than an order appointing a day or nominating a company or an order under paragraph 4 of Schedule 12 to this Act),shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **107 Directions.**

- (1) It shall be the duty of any person to whom a direction is given under this Act to give effect to that direction.
- (2) Any power conferred by this Act to give a direction shall, unless the context otherwise requires, include power to vary or revoke the direction.
- (3) Any direction given under this Act shall be in writing.

#### **108 Offences by bodies corporate.**

- (1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### **109 Service of documents.**

- (1) Any document required or authorised by virtue of this Act to be served on any person may be served—
  - (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
  - (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary of that body; or
  - (c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having the control or management of the partnership business.
- (2) For the purposes of this section and section 7 of the <sup>M73</sup>Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper

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address of any person on whom a document is to be served shall be his last known address, except that—

- (a) in the case of service on a body corporate or its secretary, it shall be the address of the registered or principal office of the body;
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

- (3) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purposes of this section and for the purposes of the said section 7 in its application to this section.
- (4) If the name or address of any owner or occupier of land on whom by virtue of this Act any document is to be served cannot after reasonable inquiry be ascertained, the document may be served by—
  - (a) addressing it to him by the description of “owner” or “occupier” of the land (describing it); and
  - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) This section shall not apply to any document in relation to the service of which provision is made by rules of court.
- (6) In this section “secretary”, in relation to a local authority within the meaning of the <sup>M74</sup> Local Government Act 1972 or the <sup>M75</sup> Local Government (Scotland) Act 1973, means the proper officer within the meaning of that Act.

#### Marginal Citations

**M73** 1978 c. 30.

**M74** 1972 c. 70.

**M75** 1973 c. 65.

## 110 Financial provisions.

There shall be paid out of money provided by Parliament—

- (a) any administrative expenses incurred by the Secretary of State or the Treasury in consequence of the provisions of this Act; and
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

## 111 General interpretation.

- (1) In this Act, unless the context otherwise requires—

“Area Board” has the same meaning as in the <sup>M76</sup>Electricity Act 1947;

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“contravention”, in relation to any direction, condition, requirement, regulation or order, includes any failure to comply with it and cognate expressions shall be construed accordingly;

“the Director” means the Director General of Electricity Supply;

“Electricity Board” means an Area Board, the Generating Board or a Scottish Board;

“the Generating Board” means the Central Electricity Generating Board;

“modifications” includes additions, alterations and omissions and cognate expressions shall be construed accordingly;

“Scottish Board” means either the North of Scotland Hydro-Electric Board or the South of Scotland Electricity Board.

- (2) For the purposes of this Act any class or description may be framed by reference to any matters or circumstances whatever.

#### Marginal Citations

M76 1947 c. 54.

## 112 Amendments, transitional provisions, savings and repeals.

- (1) The enactments mentioned in Schedule 16 to this Act shall have effect subject to the amendments there specified (being minor amendments or amendments consequential on the preceding provisions of this Act).
- (2) The Secretary of State may by order make such consequential modifications of any provision contained in any Act (whether public general or local) passed, or in subordinate legislation made, before the relevant date as appear to him necessary or expedient—
- (a) in respect of any reference in that Act or subordinate legislation to any of the Electricity Boards or the Electricity Council;
  - (b) in respect of any reference (in whatever terms) in that Act or subordinate legislation to a person carrying on an electricity undertaking or to such an undertaking;
  - (c) in respect of any reference in that Act or subordinate legislation to any enactment repealed by this Act; or
  - (d) in the case of a provision contained in a local Act or subordinate legislation, in respect of any other inconsistency between that Act or subordinate legislation and this Act;

and in this subsection “the relevant date”, in relation to any modifications, means the date of the coming into force of the provisions of this Act on which they are consequential.

- (3) The transitional provisions and savings contained in Schedule 17 to this Act shall have effect; but those provisions are without prejudice to sections 16 and 17 of the <sup>M77</sup>Interpretation Act 1978 (effect of repeals).
- (4) The enactments mentioned in Schedule 18 to this Act (which include some that are spent or no longer of practical utility) are hereby repealed to the extent specified in the third column of that Schedule.

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#### Commencement Information

- II** [S. 112](#) wholly in force at 9.11.2001; [s. 112](#) not in force at Royal Assent see [s. 113\(2\)](#); [s. 112\(1\)-\(3\)](#) in force at 31.3.1990 and [s. 112\(4\)](#) in force for certain purposes at 31.3.1990 by [S.I. 1990/117](#), [art. 3](#); [s. 112\(4\)](#) in force for remaining purposes at 9.11.2001 by [S.I. 2001/3419](#), [art. 2](#)

#### Marginal Citations

- M77** [1978 c. 30](#).

### 113 Short title, commencement and extent.

- (1) This Act may be cited as the Electricity Act 1989.
- (2) This Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be so appointed for different provisions or for different purposes.
- (3) This Act, except this section and the following provisions, namely—
  - sections 65 to 70;
  - section 82;
  - sections 91 to 95;
  - section 100;
  - paragraph 8 of Schedule 1 and section 1(5) so far as relating to that paragraph;
  - paragraph 10 of Schedule 2 and section 2(6) so far as relating to that paragraph;
  - paragraph 11 of Schedule 16 and section 112(1) so far as relating to that paragraph; and
  - Schedule 18 and section 112(4) so far as relating to enactments which extend there (other than paragraph 3 of Schedule 5 to the <sup>M78</sup>Fair Trading Act 1973),does not extend to Northern Ireland.

#### Marginal Citations

- M78** [1973 c. 41](#).

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## SCHEDULES

### SCHEDULE 1

Section 1(5).

#### THE DIRECTOR GENERAL OF ELECTRICITY SUPPLY

##### *Remuneration, pensions etc.*

- 1 (1) There shall be paid to the Director such remuneration, and such travelling and other allowances, as the Secretary of State may determine.
- (2) In the case of any such holder of the office of the Director as may be determined by the Secretary of State, there shall be paid such pension, allowance or gratuity to or in respect of him, or such contributions or payments towards provision for such a pension, allowance or gratuity, as may be so determined.
- (3) If, when any person ceases to hold office as the Director, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, there may be paid to him a sum by way of compensation of such amount as may be determined by the Secretary of State.
- (4) The approval of the Treasury shall be required for the making of a determination under this paragraph.

##### **Modifications etc. (not altering text)**

**C45** [Sch. 1 para. 1](#): functions of the Treasury transferred to the Minister for the Civil Service (1.4.1995) by [S.I. 1995/269, art. 3](#), [Sch. para. 17](#)

##### *Staff*

- 2 The Director may, with the approval of the Treasury as to numbers and terms and conditions of service, appoint such staff as he may determine.

##### *Expenses of the Director and his staff*

- 3 There shall be paid out of money provided by Parliament—
  - (a) the remuneration of, and any travelling or other allowances payable under this Act to, the Director and any staff of the Director;
  - (b) any sums payable under this Act to or in respect of the Director; and
  - (c) any expenses duly incurred by the Director or by any of his staff in consequence of the provisions of this Act.

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### *Official seal*

- 4 The Director shall have an official seal for the authentication of documents required for the purposes of his functions.

### *Performance of functions*

- 5 (1) Anything authorised or required by or under this Act or any other enactment to be done by the Director, other than the making of a statutory instrument, may be done by any member of the staff of the Director who is authorised generally or specially in that behalf by the Director.
- (2) The <sup>M79</sup>Statutory Instruments Act 1946 shall apply to any power to make statutory instruments conferred on the Director by this Act as if the Director were a Minister of the Crown.

#### **Marginal Citations**

**M79** 1946 c. 36.

### *Documentary evidence*

- 6 The <sup>M80</sup>Documentary Evidence Act 1868 shall have effect as if the Director were included in the first column of the Schedule to that Act, as if the Director and any person authorised to act on behalf of the Director were mentioned in the second column of that Schedule, and as if the regulations referred to in that Act included any document issued by the Director or by any such person.

#### **Marginal Citations**

**M80** 1868 c. 37.

### *The Parliamentary Commissioner*

- 7 In the <sup>M81</sup>Parliamentary Commissioner Act 1967, in Schedule 2 (departments and authorities subject to investigation), there shall be inserted (at the appropriate place) the following entry—

“Office of the Director General of Electricity Supply.”

#### **Marginal Citations**

**M81** 1967 c. 13.

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*Parliamentary disqualification etc.*

8 In the <sup>M82</sup>House of Commons Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices), there shall be inserted (at the appropriate place) the following entry—

“Director General of Electricity Supply”;

and the like insertion shall be made in Part III of Schedule 1 to the <sup>M83</sup>Northern Ireland Assembly Disqualification Act 1975.

**Marginal Citations**

**M82** 1975 c. 24.

**M83** 1975 c. 25.

SCHEDULE 2

Section 2(6).

CONSUMERS’ COMMITTEES

*Preliminary*

1 In this Schedule any reference to the committee is a reference to each of the consumers’ committees.

*Remuneration, pensions etc. of chairman*

- 2
- (1) There shall be paid to the chairman of the committee such remuneration, and such travelling and other allowances, as the Director may determine.
  - (2) There shall be paid such pension, allowance or gratuity to or in respect of a person who has held or holds office as chairman of the committee, or such contributions or payments towards provision for such a pension, allowance or gratuity to or in respect of such a person, as the Director may determine.
  - (3) If, when any person ceases to hold office as such a chairman, the Director determines that there are special circumstances which make it right that that person should receive compensation, there may be paid to him a sum by way of compensation of such amount as the Director may determine.
  - (4) The approval of the Treasury shall be required for the making of a determination under this paragraph.



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### *Allowances for other members*

- 3            There shall be paid to members of the committee other than the chairman such travelling and other allowances as the Director with the approval of the Treasury may determine.

### *Administration etc.*

- 4            The Director may make arrangements for the committee to be provided with office accommodation and with such services as he considers appropriate to enable them to carry out their functions.

### *Proceedings*

- 5            The validity of any proceedings of the committee shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.
- 6            (1) Subject to sub-paragraphs (2) and (3) below, meetings of the committee shall be open to the public.
- (2) The public shall be excluded during any item of business where—
- (a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the committee by the Director would be disclosed in breach of the obligation of confidence; or
  - (b) the committee have resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded; or
  - (c) the item relates to a proposal to refer any matter to the Director in pursuance of section 45(3) or 46(1)(a) or (4) of this Act.
- (3) Except to the extent that the Director otherwise directs (whether generally or in relation to the particular case), the public shall be excluded during any item of business which relates to—
- (a) the determination of any dispute referred to the committee under section 39(5) of this Act; or
  - (b) the investigation by the committee of any matter in pursuance of section 45(2) or 46(1)(b) of this Act.
- (4) The committee shall give such notice—
- (a) of any meeting of the committee which is open to the public; and
  - (b) of the business to be taken at that meeting (other than items during which the public is to be excluded),
- as they consider appropriate for the purpose of bringing the meeting to the attention of interested members of the public.

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### *Sub-committees*

- 7 (1) The committee may, with the approval of the Director—
- (a) establish local and other sub-committees through which the committee may carry out such of their functions as they may determine;
  - (b) appoint such persons (including persons who are not members of the committee) to be members of any such sub-committee as they may determine; and
  - (c) regulate the procedure of any such sub-committee.
- (2) Persons appointed under sub-paragraph (1) who are not members of the committee may be reimbursed for their travelling expenses and such of their out-of-pocket expenses as do not relate to loss of remuneration.

### *Financial provisions*

- 8 (1) There shall be paid by the Director out of money provided by Parliament—
- (a) any sums payable to or in respect of any person under paragraph 2, 3 or 7 above; and
  - (b) any expenses incurred by the committee in accordance with any statement approved under sub-paragraph (3) below.
- (2) The committee shall prepare and send to the Director before the beginning of each financial year a statement of the expenses which they expect to incur in respect of that year for the purposes of, or in connection with, the carrying out of their functions.
- (3) The Director shall consider any statement sent to him under sub-paragraph (2) above and shall either approve the statement or approve it with such modifications as he considers appropriate.

### *Amendment of other Acts*

- 9 In section 14(1) of the <sup>M84</sup>Chronically Sick and Disabled Persons Act 1970, for the words “Electricity Consultative Councils, the Electricity Consumers’ Council” there shall be substituted the words “consumers’ committees appointed under section 2 of the Electricity Act 1989”.

#### **Marginal Citations**

**M84** 1970 c. 44.

- 10 In Part III of Schedule 1 to the <sup>M85</sup>House of Commons Disqualification Act 1975, there shall be inserted at the appropriate place—
- “Chairman of a consumers’ committee appointed under section 2 of the Electricity Act 1989”;

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and the like insertion shall be made in Part III of Schedule 1 to the <sup>M86</sup>Northern Ireland Assembly Disqualification Act 1975.

#### Marginal Citations

M85 1975 c. 24.

M86 1975 c. 25.

## SCHEDULE 3

Section 10(1).

### COMPULSORY ACQUISITION OF LAND ETC. BY LICENCE HOLDERS

#### PART I

##### POWERS OF ACQUISITION

#### Modifications etc. (not altering text)

C46 Sch. 3 Pt. 1: transfer of functions to the Scottish Minster (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1

- 1 (1) Subject to paragraph 2 below, the Secretary of State may authorise a licence holder to purchase compulsorily any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.
- (2) In this paragraph and paragraph 2 below “land” includes any right over land (other than, in Scotland, a right to abstract, divert and use water); and the power of the Secretary of State under this paragraph includes power to authorise the acquisition of rights over land by creating new rights as well as acquiring existing ones.
- 2 (1) No order shall be made under paragraph 1 above authorising the compulsory purchase of land belonging to another licence holder except with the consent of the Director.
- (2) The Director shall not give his consent under this paragraph if—
  - (a) the land is being used by the licence holder to whom it belongs for the purposes of an installation necessary for the carrying on of the activities which he is authorised by his licence to carry on; or
  - (b) it appears to the Director that the land will be so used and that the use will commence, or any necessary planning permission or consent under section 36 or 37 of this Act will be applied for, within the period of five years beginning with the date of the application for his consent.
- (3) The Secretary of State may by order provide that sub-paragraph (2) above shall have effect as if for the period mentioned in paragraph (b) there were substituted such other period as may be specified in the order.
- (4) A consent under this paragraph which is not acted on within the period of six months beginning with the day on which it is granted shall cease to have effect at the end of that period.

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(5) In this paragraph—

“the Planning Act” means [<sup>F85</sup>the Town and Country Planning Act 1990]or [<sup>F86</sup>the Town and Country Planning (Scotland) Act 1997];

“planning permission” means a planning permission granted under Part III of the Planning Act.

#### Textual Amendments

**F85** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 83(1)**

**F86** Words in Sch. 3 para. 2(5) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 44(1)**

3 (1) This paragraph applies to land which—

- (a) for the purposes of the <sup>M87</sup>Acquisition of Land Act 1981, is or forms part of a common, open space or a fuel or field garden allotment; or
- (b) for the purposes of the <sup>M88</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, is or forms part of a common or open space.

(2) Where for any purpose a licence holder has acquired, or proposes to acquire, any land to which this paragraph applies, or any right over any such land, and other land is required for the purpose of being given in exchange for the land or right in question, the Secretary of State may authorise the licence holder to purchase that other land compulsorily, or he may acquire it by agreement.

#### Marginal Citations

**M87** 1981 c. 67.

**M88** 1947 c. 42.

4 Where a licence holder has acquired any land by virtue of paragraph 1 above, he shall not dispose of that land or of any interest in or right over it except with the consent of the Director.

## PART II

### PROCEDURE, COMPENSATION ETC. (ENGLAND AND WALES)

#### *Application of Acquisition of Land Act 1981 generally*

5 (1) Subject to sub-paragraph (2) below, the <sup>M89</sup>Acquisition of Land Act 1981 shall apply to a compulsory purchase by a licence holder of land or rights in England and Wales; and Schedule 3 to that Act shall apply in the case of a compulsory acquisition by a licence holder of a right by the creation of a new right.

(2) Section 16 of, and paragraph 3 of Schedule 3 to, the said Act of 1981 (statutory undertakers' land excluded from compulsory purchase) shall not apply where the land or rights in question belong to another licence holder.

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#### Marginal Citations

M89 1981 c. 67.

#### *New rights: general adaptation of Compulsory Purchase Act 1965*

- 6 The <sup>M90</sup>Compulsory Purchase Act 1965 shall have effect with the modifications necessary to make it apply to a licence holder's compulsory acquisition of a right in England and Wales by the creation of a new right as it applies to the compulsory acquisition of land, so that, in appropriate contexts, references in that Act to land are to be read as referring, or as including references, to the right acquired or to be acquired, or to land over which the right is or is to be exercisable, according to the requirements of the particular context.

#### Marginal Citations

M90 1965 c. 56.

#### *New rights: specific adaptations of Act of 1965*

- 7 Without prejudice to the generality of paragraph 6 above, Part I of the Compulsory Purchase Act 1965 shall apply in relation to a licence holder's compulsory acquisition of a right in England and Wales by the creation of a new right with the modifications specified in paragraphs 8 to 13 below.
- 8 For section 7 of that Act (measure of compensation) there shall be substituted the following section—
- “7 In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”
- 9 For subsection (1) of section 8 of that Act (protection for vendor against severance of house, garden, etc.) there shall be substituted the following subsections—
- “(1) No person shall be required to grant any right over part only—
- (a) of any house, building or manufactory; or
  - (b) of a park or garden belonging to a house,
- if he is willing to sell the whole of the house, building, manufactory, park or garden, unless the Lands Tribunal determine that—
- (i) in the case of a house, building or manufactory, the part over which the right is proposed to be acquired can be made subject to that right without material detriment to the house, building or manufactory; or
  - (ii) in the case of a park or garden, the part over which the right is proposed to be acquired can be made subject to that right without seriously affecting the amenity or convenience of the house;

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and if the Lands Tribunal so determine, the Tribunal shall award compensation in respect of any loss due to the acquisition of the right, in addition to its value; and thereupon the party interested shall be required to grant to the acquiring authority that right over the part of the house, building, manufactory, park or garden.

(1A) In considering the extent of any material detriment to a house, building or manufactory, or any extent to which the amenity or convenience of a house is affected, the Lands Tribunal shall have regard not only to the right which is to be acquired over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase.”

10 The following provisions of that Act (being provisions stating the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land)—

section 9(4) (refusal by owners to convey);  
 Schedule 1, paragraph 10(3) (owners under incapacity);  
 Schedule 2, paragraph 2(3) (absent and untraced owners); and  
 Schedule 4, paragraphs 2(3) and 7(2) (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

11 Section 11 of that Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on sheriff’s warrant in the event of obstruction) shall be modified correspondingly.

12 Section 20 of that Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

13 Section 22 of that Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

*New rights: compensation*

14 The enactments in force in England and Wales with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a licence holder’s compulsory acquisition of a right by the creation of a new right as they apply to compensation on the compulsory purchase of land and interests in land.

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### PART III

#### PROCEDURE, COMPENSATION ETC. (SCOTLAND)

##### *Application of Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 generally*

- 15 (1) Subject to sub-paragraph (2) below, the <sup>M91</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to the compulsory purchase by a licence holder of land or rights in Scotland as if the licence holder were a local authority within the meaning of that Act, and as if this Act had been in force immediately before the commencement of that Act.
- (2) Paragraph 10 of the First Schedule to that Act (statutory undertakers' land excluded from compulsory purchase) shall not apply where the land or rights in question belong to another licence holder.

#### **Modifications etc. (not altering text)**

**C47** Sch. 3 Pt. III para. 15: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

#### **Marginal Citations**

**M91** 1947 c. 42.

##### *New rights: general application of Act of 1947 and incorporated enactments*

- 16 The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, and the enactments incorporated with this Act by virtue of paragraph 15 above and paragraph 1 of the Second Schedule to that Act shall have effect with the modifications necessary to make them apply to a licence holder's compulsory acquisition of a right in Scotland by the creation of a new right (other than a right to abstract, divert and use water) as they apply to the compulsory acquisition of land, so that, in appropriate contexts, references in those enactments and that Act to land are to be read as referring, or as including references, to the right acquired or to be acquired, or to land over which the right is or is to be exercisable, according to the requirements of the particular context.

#### **Modifications etc. (not altering text)**

**C48** Sch. 3 Pt. III para. 16: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

##### *New rights: specific adaptations of Act of 1947*

- 17 Without prejudice to the generality of paragraph 16 above, Part III of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (requirement of special parliamentary procedure, and other special provisions, in the case of acquisition of certain descriptions of land) shall apply in relation to a licence holder's compulsory acquisition of a right in Scotland by the creation of a new right with the modifications specified in paragraphs 18 to 23 below.

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**Modifications etc. (not altering text)**

**C49** Sch. 3 Pt. III para. 17: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

- 18 In paragraph 9 of that Schedule (compulsory purchase affecting land of the National Trust for Scotland) for references to the compulsory purchase of land there shall be substituted references to the compulsory acquisition of rights over land.
- 19 In paragraph 10 of that Schedule (land of statutory undertakers)—
- (a) for the words “land comprised in the order” there shall be substituted the words “land over which a right is to be acquired by virtue of the order”;
  - (b) for the words “purchase of” there shall be substituted the words “acquisition of a right over”;
  - (c) for the words “it can be purchased and not replaced” there shall be substituted the words “the right can be acquired”; and
  - (d) for sub-paragraph (ii) there shall be substituted the following sub-paragraph—
    - “(ii) that any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to, or available for acquisition by, them”.
- 20 In paragraph 11 of that Schedule (common or open space), for sub-paragraph (1) there shall be substituted the following sub-paragraph—
- “(1) In so far as a compulsory purchase order authorises the acquisition of a right over land forming part of a common or open space, it shall be subject to special parliamentary procedure unless the Secretary of State is satisfied—
- (a) that the land, when burdened with that right, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before;
  - (b) that there has been or will be given in exchange for the right additional land which will as respects the persons in whom there is vested the land over which the right is to be acquired, the persons, if any, entitled to rights of common or other rights over that land, and the public, be adequate to compensate them for the disadvantages which result from the acquisition of the right, and that the additional land has been or will be vested in the persons in whom there is vested the land over which the right is to be acquired, and subject to the like rights, trusts and incidents as attach to that land apart from the compulsory purchase order; or
  - (c) that the land affected by the right to be acquired does not exceed 250 square yards in extent, and that the giving of other land in exchange for the right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public,
- and certifies accordingly.”



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#### Modifications etc. (not altering text)

**C50** Sch. 3 Pt. III para. 20: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

- 21 In paragraph 12 of that Schedule, for the words “the purchase of” there shall be substituted the words “the acquisition of a right over”.
- 22 Paragraph 3(1) of the Second Schedule to the <sup>M92</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall be so modified as to secure that, as from the date on which the licence holder has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice).

#### Marginal Citations

**M92** 1947 c. 42.

- 23 For paragraph 4 of that Schedule (protection for owner against severance of property) there shall be substituted the following paragraphs—
- “4 No person shall be required to grant any right over part only—
- (a) of any house, building or manufactory; or
  - (b) of a park or garden belonging to a house,
- if he is willing to sell the whole of the house, building, manufactory, park or garden, unless the Lands Tribunal for Scotland determines that—
- (i) in the case of a house, building or manufactory, the part over which the right is proposed to be acquired can be made subject to that right without material detriment to the house, building or manufactory; or
  - (ii) in the case of a park or garden, the part over which the right is proposed to be acquired can be made subject to that right without seriously affecting the amenity or convenience of the house;
- and if it so determines, it shall award compensation in respect of any loss due to the acquisition of the right, in addition to its value; and thereupon the party interested shall be required to grant to the acquiring authority that right over the part of the house, building, manufactory, park or garden.
- 4A In considering, for the purposes of paragraph 4 above, the extent of any material detriment to a house, building or manufactory, or any extent to which the amenity or convenience of a house is affected, the Lands Tribunal for Scotland shall have regard not only to the right which is to be acquired over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase.”

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*New rights: specific adaptations of Lands Clauses Consolidation (Scotland) Act 1845*

- 24 Without prejudice to the generality of paragraph 16 above, the <sup>M93</sup>Lands Clauses Consolidation (Scotland) Act 1845 shall apply in relation to a licence holder's compulsory acquisition of a right in Scotland by the creation of a new right with the modifications specified in paragraphs 25 to 28 below.

**Marginal Citations**

**M93** 1845 c. 19.

- 25 For section 61 of that Act (estimation of compensation) there shall be substituted the following section—
- “**61** In estimating the purchase money or compensation to be paid by the licence holder under the special Act, in any of the cases aforesaid, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right, but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”
- 26 The following provisions of that Act (being provisions stating the effect of a notarial instrument or of a disposition executed in various circumstances where there is no conveyance by persons with interests in the land)—
- section 74 (failure by owner to convey);
  - section 76 (refusal to convey or show title or owner cannot be found);
  - section 98 (vesting of common land),
- shall be so modified as to secure that, as against persons with interests in the land over which the right is to be compulsorily acquired, such right is vested absolutely in the licence holder.
- 27 Sections 114 (compensation to be made to tenants for a year etc.) and 115 (compensation where greater interest than tenant for a year) of that Act shall apply with the modifications necessary to secure that persons with such interests as are mentioned in those sections are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.
- 28 Sections 117 (protection of promoter of undertaking where by inadvertence an interest in land has not been purchased etc.) and 118 (provisions supplementary to section 117) of that Act shall be so modified as to enable the licence holder, in circumstances corresponding to those referred to in those sections, to continue entitled to exercise the right acquired, subject to compliance with those sections as respects compensation.

*New rights: compensation*

- 29 The enactments in force in Scotland with respect to compensation for the compulsory purchase of land shall apply as respects compensation in the case of a licence holder's compulsory acquisition of a right by the creation of a new right (other than a right to abstract, divert and use water) as they apply to compensation on the compulsory purchase of land and interests in land.

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## SCHEDULE 4

Section 10(1).

### OTHER POWERS ETC. OF LICENCE HOLDERS

#### *Street works etc. in England and Wales*

- 1 (1) Subject to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—
- (a) the following kinds of works, that is to say, installing under, over, in, on, along or across any street and from time to time inspecting, maintaining, adjusting, repairing, altering, replacing or removing—
    - (i) any electric lines or electrical plant; and
    - (ii) any structures for housing or covering any such lines or plant; and
  - (b) any works requisite for or incidental to the purposes of any works falling within paragraph (a) above, including for those purposes—
    - (i) opening or breaking up any street or any sewers, drains or tunnels within or under any street;
    - (ii) tunnelling or boring under any street; and
    - (iii) removing or using all earth and materials in or under any street;
- but nothing in this sub-paragraph shall empower a licence holder to lay down or place any electric line or electrical plant into, through or against any building, or in any land not dedicated to the public use.
- (2) The power of a licence holder under sub-paragraph (1) to place on or over a street any structure for housing any line or plant shall be <sup>F87</sup>exercisable only with the consent of the street authority; but such consent shall not be unreasonably withheld].
- (3) Any question under sub-paragraph (2) above as to whether or not a consent is unreasonably withheld shall be determined by a single arbitrator to be appointed by the parties or, in default of agreement, by the Director.
- (4) Except in cases of emergency arising from faults in any electric lines or electrical plant, <sup>F88</sup>a street which is not a maintainable highway] shall not be opened or broken up by virtue of sub-paragraph (1) above except with the consent of <sup>F89</sup>the street authority] or the consent of the Secretary of State.
- (5) The Secretary of State shall not entertain an application for his consent under sub-paragraph (4) above unless the licence holder has served notice of the application on the person whose consent would otherwise be required.
- (6) A licence holder shall do as little damage as possible in the exercise of the powers conferred by sub-paragraph (1) above and shall make compensation for any damage done in the exercise of those powers.
- (7) A licence holder shall exercise the powers conferred by sub-paragraph (1) above in such manner as will secure that nothing which he installs or keeps installed under, over, in, on, along or across any street becomes a source of danger to the public.
- <sup>F90</sup>(8) Nothing in sub-paragraph (1) above shall affect the application to any operation of sections 34 to 36 of the Coast Protection Act 1949.]
- <sup>F91</sup>(9) In this paragraph “maintainable highway”, “street” and “street authority” have the same meaning as in Part III of the New Roads and Street Works Act 1991.]

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(10) This paragraph extends to England and Wales only.

#### Textual Amendments

- F87** Words in Sch. 4 para. 1(2) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(2)**; S.I. 1992/2984, art. 2(2), **Sch. 2**.
- F88** Words in Sch. 4 para. 1(4) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(3)(a)**; S.I. 1992/2984, art. 2(2), **Sch. 2**.
- F89** Words in Sch. 4 para. 1(4) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(3)(b)**; S.I. 1992/2984, art. 2(2), **Sch. 2**.
- F90** Sch. 4 para. 1(8) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(4)**; S.I. 1992/2984, art. 2(2), **Sch. 2**.
- F91** Sch. 4 para. 1(9) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(5)**; S.I. 1992/2984, art. 2(2), **Sch. 2**.

#### Road works etc. in Scotland

- 2 (1) Subject to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—
- (a) the following kinds of works, that is to say, installing under, over, in, on, along or across any road or bridge and from time to time inspecting, maintaining, adjusting, repairing, altering or removing—
    - (i) any electric lines or electrical plant; and
    - (ii) any structures for housing or covering any such lines or plant; and
  - (b) any works requisite for or incidental to the purposes of any works falling within paragraph (a) above, including for those purposes—
    - (i) opening or breaking up any road or bridge or any sewers, drains or tunnels within or under any road or bridge;
    - (ii) tunnelling or boring under any road; and
    - (iii) removing or using all earth and materials in or under any road;
 but nothing in this sub-paragraph shall empower a licence holder to lay down or place any electric line or electrical plant into, through or against any building, or in any land over which there is no public right of passage.
- (2) The power of a licence holder under sub-paragraph (1) above to place on or over a road or bridge any structure for housing any line or plant shall be <sup>F92</sup>exercisable only with the consent of the road works authority; but such consent shall not be unreasonably withheld].
- (3) Any question under sub-paragraph (2) above as to whether or not a consent is unreasonably withheld shall be determined by a single arbiter to be appointed by the parties or, in default of agreement, by the Director.
- (4) Except in cases of emergency arising from faults in any electric lines or electrical plant, <sup>F93</sup>a road which is not a public road] shall not be opened or broken up by virtue of sub-paragraph (1) above except with the consent of <sup>F94</sup>the road works authority] or the consent of the Secretary of State.

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- (5) The Secretary of State shall not entertain an application for his consent under sub-paragraph (4) above unless the licence holder has served notice of the application in the prescribed form on the person whose consent would otherwise be required.
- (6) A licence holder shall do as little damage as possible in the exercise of the powers conferred by sub-paragraph (1) above and shall make compensation for any damage done in the exercise of those powers.
- (7) A licence holder shall exercise the powers conferred by sub-paragraph (1) above in such manner as will secure that nothing which he installs or keeps installed under, over, in, on, along or across any road or bridge becomes a source of danger to the public.
- [<sup>F95</sup>(8) Nothing in sub-paragraph (1) above shall affect the application to any operation of sections 34 to 36 of the Coast Protection Act 1949.]
- [<sup>F96</sup>(9) In this paragraph “public road”, “road” and “road works authority” have the same meaning as in Part IV of the New Roads and Street Works Act 1991.]
- (10) This paragraph extends to Scotland only.

#### Textual Amendments

- F92** Words in Sch. 4 para. 2(2) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 124(2)**; S.I. 1992/2990, art. 2(2), **Sch.2**.
- F93** Words in Sch. 4 para. 2(4) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), Sch. 8 Pt. IV para. 124(3)(a); S.I. 1992/2990, art. 2(2), **Sch. 2**.
- F94** Words in Sch. 4 para. 2(4) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), Sch. 8 Pt. IV para. 124(3)(b); S.I. 1992/2990, art. 2(2), **Sch.2**.
- F95** Sch. 4 para 2(8) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 124(4)**; S.I. 1992/2990, art. 2(2), **Sch.2**.
- F96** Sch. 4 para 2(9) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 124(5)**; S.I. 1992/2990, art. 2(2), **Sch.2**.

#### *Alteration of works*

- 3 (1) A licence holder may execute works in pursuance of paragraph 1 or 2 above, notwithstanding that they involve a temporary or permanent alteration of any of the following, namely—
  - (a) any electric line or electrical plant under the control of another licence holder;
  - (b) any gas pipe [<sup>F97</sup>operated by a public gas transporter];
  - (c) any relevant pipe (within the meaning of [<sup>F98</sup>section 159 of the Water Resources Act 1991 or section 158 of the Water Industry Act 1991 which (whether or not it is in a street) is]) under the control of the National Rivers Authority, a water undertaker or a sewerage undertaker or, in Scotland, any water pipe under the control of a person supplying water in the exercise of statutory powers;
  - (d) any telecommunication apparatus used for the purposes of a telecommunication system which is operated by a person to whom the telecommunications code applies; or

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- (e) any system apparatus (within the meaning of Part II of the <sup>M94</sup>Road Traffic (Driver Licensing and Information Systems) Act 1989) of an operator of a driver information system who is licensed under Part II of that Act.
- (2) Where a licence holder is proposing to execute works in pursuance of paragraph 1 or 2 above which involve or are likely to involve any such alteration as is mentioned in sub-paragraph (1)(a), (b) or (c) above, the following provisions of this paragraph shall apply; and in those provisions “the relevant undertaker” means the other licence holder, the [<sup>F99</sup>public gas transporter] or the person supplying water in the exercise of statutory powers, as the case may be.
- (3) The licence holder shall, not less than one month before the works are commenced, give the relevant undertaker a notice specifying the nature of the licence holder’s works, the alteration or likely alteration involved and the time and place at which the works will be commenced.
- (4) Sub-paragraph (3) above shall not apply in relation to any emergency works of which the licence holder gives the relevant undertaker notice as soon as practicable after commencing the works.
- (5) Where a notice has been given under sub-paragraph (3) above by the licence holder to the relevant undertaker, the undertaker may within the period of seven days beginning with the giving of the notice give the licence holder a counter-notice which may state either—
- (a) that the undertaker intends himself to make any alteration made necessary or expedient by the licence holder’s proposed works; or
  - (b) that he requires the licence holder in making any such alteration to do so under the supervision and to the satisfaction of the undertaker.
- (6) Where a counter-notice given under sub-paragraph (5) above states that the relevant undertaker intends himself to make any alteration—
- (a) the undertaker shall (subject to sub-paragraph (8) below) have the right, instead of the licence holder, to execute any works for the purpose of making that alteration; and
  - (b) any expenses incurred by the undertaker in or in connection with the execution of those works and the amount of any loss or damage sustained by the undertaker in consequence of the alteration shall be recoverable by the undertaker from the licence holder in any court of competent jurisdiction.
- (7) Where a counter-notice given under sub-paragraph (5) above states that any alteration is to be made under the supervision and to the satisfaction of the relevant undertaker—
- (a) the licence holder shall not make the alteration except as required by the notice or under sub-paragraph (8) below; and
  - (b) any expenses incurred by the undertaker in or in connection with the provision of that supervision and the amount of any loss or damage sustained by the undertaker in consequence of the alteration shall be recoverable by the undertaker from the licence holder in any court of competent jurisdiction.
- (8) Where—
- (a) no counter-notice is given under sub-paragraph (5) above; or
  - (b) the relevant undertaker, having given a counter-notice falling within that sub-paragraph, fails to make any alteration made necessary or expedient by

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the licence holder’s proposed works within such period (being not less than 48 hours) as the licence holder may by notice specify or, as the case may be, unreasonably fails to provide the required supervision,

the licence holder may himself execute works for the purpose of making the alteration or, as the case may be, may execute such works without the supervision of the undertaker; but in either case the licence holder shall execute the works to the satisfaction of the undertaker.

(9) If the licence holder or any of his agents—

- (a) executes any works without the notice required by sub-paragraph (3) above having been given; or
- (b) unreasonably fails to comply with any reasonable requirement of the relevant undertaker under this paragraph,

he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

4 (1) Any of the following who is authorised by or under any enactment to execute works corresponding to those authorised by paragraph 1 or 2 above, namely—

- (a) any [<sup>F100</sup>public gas transporter];
- (b) the [<sup>F101</sup>Environment Agency], any water undertaker or any sewerage undertaker or, in Scotland, any person supplying water in the exercise of statutory powers;
- (c) any public telecommunications operator; and
- (d) any operator of a driver information system who is licensed under Part II of the <sup>M95</sup>Road Traffic (Driver Licensing and Information Systems) Act 1989,

(in this paragraph referred to as a “relevant undertaker”) may execute such works, notwithstanding that they involve a temporary or permanent alteration of any electric line or electrical plant under the control of a licence holder.

(2) Where a relevant undertaker is proposing to execute any such works as are mentioned in sub-paragraph (1) above which involve or are likely to involve any such alteration as is there mentioned, sub-paragraphs (3) to (9) of paragraph 3 above shall apply as if—

- (a) any reference to the licence holder were a reference to the relevant undertaker; and
- (b) any reference to the relevant undertaker were a reference to the licence holder.

#### Textual Amendments

**F100** Words in Sch. 4 para. 4(1)(a) substituted (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 17(2)**; S.I. 1996/218, **art. 2**

**F101** Words in Sch. 4 para. 4(1)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 40** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M95** 1989 c. 22.

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### *Protection from interference*

- 5 (1) Subject to sub-paragraph (2) below, a licence holder who installs or alters, or changes the mode of operation of, any electric line or electrical plant shall take all reasonable precautions for securing that the operation of that line or plant does not interfere with the operation of any telecommunication apparatus which—
- (a) is under the control of a person to whom the telecommunications code applies; and
  - (b) is not unusually sensitive to interference with its operation.
- (2) In the case of any telecommunication apparatus which is subsequently installed or altered or whose mode of operation is subsequently changed, the duty imposed by sub-paragraph (1) above shall not apply in relation to—
- (a) any momentary interference with its operation; or
  - (b) where it is installed in unreasonably close proximity to the electric line or electrical plant, any other interference with its operation.
- (3) Sub-paragraphs (1) and (2) above shall be read as also applying in the converse case of a person to whom the telecommunications code applies who installs or alters, or changes the mode of operation of, any telecommunication apparatus, and in such a case shall have effect as if—
- (a) any reference to the licence holder were a reference to that person;
  - (b) any reference to an electric line or electrical plant were a reference to such apparatus; and
  - (c) any reference to such apparatus under the control of a person to whom that code applies were a reference to such a line or such plant under the control of a licence holder.
- (4) Any difference arising under this paragraph between a licence holder and a person to whom the telecommunications code applies shall be referred to arbitration by an arbitrator or, in Scotland, arbiter appointed, in default of agreement between the parties, by the President of the Chartered Institute of Arbitrators.
- (5) In this paragraph “momentary interference” means any interference of momentary duration which is not a regular occurrence (whether caused by physical contact or otherwise).

### *Acquisition of wayleaves*

- 6 (1) This paragraph applies where—
- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to instal and keep installed an electric line on, under or over any land; and
  - (b) the owner or occupier of the land, having been given a notice requiring him to give the necessary wayleave within a period (not being less than 21 days) specified in the notice—
    - (i) has failed to give the wayleave before the end of that period; or
    - (ii) has given the wayleave subject to terms and conditions to which the licence holder objects;
 and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to instal and keep installed the electric line on, under or over the land and to have access to the land for the purpose of



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inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line.

- (2) This paragraph also applies where—
- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to keep an electric line installed on, under or over any land; and
  - (b) the owner or occupier of the land has given notice to the licence holder under paragraph 8(2) below requiring him to remove the electric line;
- and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to keep the electric line installed on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line.
- (3) Subject to sub-paragraphs (4) and (5) below, the Secretary of State may, on the application of the licence holder, himself grant the necessary wayleave subject to such terms and conditions as he thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.
- (4) The Secretary of State shall not entertain an application under sub-paragraph (3) above in any case where—
- (a) the land is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on; and
  - (b) the line is to be installed on or over the land.
- (5) Before granting the necessary wayleave, the Secretary of State shall afford—
- (a) the occupier of the land; and
  - (b) where the occupier is not also the owner of the land, the owner,
- an opportunity of being heard by a person appointed by the Secretary of State.
- (6) A necessary wayleave granted under this paragraph—
- (a) shall not be subject to the provisions of any enactment requiring the registration of interests in, charges over or other obligations affecting land; but
  - (b) shall bind any person who is at any time the owner or occupier of the land.
- (7) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for an electric line, he shall be deemed to have an interest in that land for the purposes of section 7 of the <sup>M96</sup>Mines (Working Facilities and Support) Act 1966.
- (8) In this paragraph “dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling or, in relation to Scotland, a private house, and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part.

**Modifications etc. (not altering text)**

C51 Sch. 4 para. 6: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

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#### Marginal Citations

M96 1966 c. 4.

#### *Provisions supplementary to paragraph 6*

- 7 (1) Where a wayleave is granted to a licence holder under paragraph 6 above—
- (a) the occupier of the land; and
  - (b) where the occupier is not also the owner of the land, the owner,
- may recover from the licence holder compensation in respect of the grant.
- (2) Where in the exercise of any right conferred by such a wayleave any damage is caused to land or to moveables, any person interested in the land or moveables may recover from the licence holder compensation in respect of that damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any land or moveables he may recover from the licence holder compensation in respect of that disturbance.
- (3) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.
- (4) Any question of disputed compensation under this paragraph shall be determined by the Tribunal; and sections 2 and 4 of the <sup>M97</sup>Land Compensation Act 1961 or sections 9 and 11 of the <sup>M98</sup>Land Compensation (Scotland) Act 1963 shall apply to any such determination.

#### Marginal Citations

M97 1961 c. 33.

M98 1963 c. 51.

#### *Temporary continuation of wayleaves*

- 8 (1) This paragraph applies where at any time such a wayleave as is mentioned in paragraph 6 above (whether granted under that paragraph or by agreement between the parties)—
- (a) is determined by the expiration of a period specified in the wayleave;
  - (b) is terminated by the owner or occupier of the land in accordance with a term contained in the wayleave; or
  - (c) by reason of a change in the ownership or occupation of the land after the granting of the wayleave, ceases to be binding on the owner or occupier of the land.
- (2) The owner or occupier of the land may—
- (a) in a case falling within paragraph (a) of sub-paragraph (1) above, at any time after or within three months before the end of the period specified in the wayleave;
  - (b) in a case falling within paragraph (b) of that sub-paragraph, at any time after the wayleave has been terminated by him; or

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- (c) in a case falling within paragraph (c) of that sub-paragraph, at any time after becoming the owner or occupier of the land by virtue of such a change in the ownership or occupation of the land as is mentioned in that paragraph, give to the licence holder a notice requiring him to remove the electric line from the land; but the licence holder shall not be obliged to comply with such a notice except in the circumstances and to the extent provided by the following provisions of this paragraph.
- (3) Where within the period of three months beginning with the date of the notice under sub-paragraph (2) above the licence holder makes neither—
- (a) an application for the grant of the necessary wayleave under paragraph 6 above; nor
  - (b) an order authorising the compulsory purchase of the land made by virtue of paragraph 1 of Schedule 3 to this Act,
- the licence holder shall comply with the notice at the end of that period.
- (4) Where—
- (a) within the period mentioned in sub-paragraph (3) above the licence holder makes an application for the grant of the necessary wayleave under paragraph 6 above; and
  - (b) that application is refused by the Secretary of State,
- the licence holder shall comply with the notice under sub-paragraph (2) above at the end of the period of one month beginning with the date of the Secretary of State's decision or such longer period as the Secretary of State may specify.
- (5) Where—
- (a) within the period mentioned in sub-paragraph (3) above the licence holder makes an order by virtue of paragraph 1 of Schedule 3 to this Act authorising the compulsory purchase of the land; and
  - (b) that order is not confirmed by the Secretary of State,
- the licence holder shall comply with the notice under sub-paragraph (2) above at the end of the period of one month beginning with the date of the Secretary of State's decision or such longer period as the Secretary of State may specify.

**Modifications etc. (not altering text)**

C52 Sch. 4 para. 8: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

*Felling and lopping of trees etc.*

- 9 (1) This paragraph applies where any tree is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by a licence holder as—
- (a) to obstruct or interfere with the installation, maintenance or working of the line or plant; or
  - (b) to constitute an unacceptable source of danger (whether to children or to other persons);
- and in this paragraph “the land” means the land on which the tree is growing.
- (2) The licence holder may give notice to the occupier of the land requiring him to fell or lop the tree or cut back its roots so as to prevent it from having the effect mentioned

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in sub-paragraph (1)(a) or (b) above, subject to the payment to him by the licence holder of the expenses reasonably incurred by him in complying with the notice.

- (3) Where the occupier is not also the owner of the land, a copy of any notice under sub-paragraph (2) above shall also be served on the owner.
- (4) If within 21 days from the giving of a notice under sub-paragraph (2) above—
- (a) the requirements of the notice are not complied with; and
  - (b) neither the owner nor occupier of the land gives a counter notice under sub-paragraph (5) below,
- the licence holder may cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b) above.
- (5) If, within 21 days from the giving of a notice under sub-paragraph (2) above, the owner or occupier of the land gives a counter notice to the licence holder objecting to the requirements of the notice, the matter shall, unless the counter notice is withdrawn, be referred to the Secretary of State.
- (6) On a reference under sub-paragraph (5) above, the Secretary of State, after giving the parties an opportunity of being heard by a person appointed by him, may make such order as he thinks just, and any such order—
- (a) may empower the licence holder (after giving such notice to any person by whom a counter notice was given of the commencement of the work as the order may direct) to cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1) (a) or (b) above; and
  - (b) may determine any question as to what expenses (if any) are to be paid.
- (7) Where the licence holder exercises any powers conferred under sub-paragraph (4) or (6) above, he shall—
- (a) cause trees to be felled or lopped or their roots to be cut back in accordance with good arboricultural practice and so as to do as little damage as possible to trees, fences, hedges and growing crops;
  - (b) cause felled trees, lopped boughs or root cuttings to be removed in accordance with the directions of the owner or occupier; and
  - (c) make good any damage done to the land.
- (8) In this paragraph “tree” includes any shrub and references to felling or lopping, felled trees or lopped boughs shall be construed accordingly.

**Modifications etc. (not altering text)**

**C53** Sch. 4 para. 9: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

*Entry on land for purposes of exploration*

- 10 (1) Subject to the following provisions of this paragraph and without prejudice to any other right of entry, a person authorised in writing by a licence holder may, at any reasonable time, enter upon and survey any land for the purpose of ascertaining whether the land would be suitable for use for any purpose connected with the carrying on of the activities which the licence holder is authorised by his licence to carry on.

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- (2) A person authorised to enter upon any land under this section shall not demand to do so as of right unless—
  - (a) 14 days notice of the intended entry has been given to the occupier; and
  - (b) if required to do so, he has produced evidence of his authority.
- (3) The powers conferred by this paragraph shall not be exercisable in relation to land which is covered by a building or will be so covered on the assumption that any planning permission which is in force is acted on.
- (4) The power to survey land conferred by this paragraph includes power to search and bore for the purpose of ascertaining the nature of the subsoil; but works may not be carried out on the land for this purpose unless—
  - (a) notice of the proposed works is included in the notice given under sub-paragraph (2) above; and
  - (b) where land is held by statutory undertakers who object to the works on the ground that the carrying out of the works would be seriously detrimental to the carrying on of their undertaking, the Secretary of State gives his consent.
- (5) Where any person exercises any powers conferred by this paragraph, the licence holder by whom he was authorised shall make good any damage done to the land.
- (6) In this paragraph “building” includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with a building.

**Modifications etc. (not altering text)**

**C54** Sch. 4 para. 10(4)(b): transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

*Provisions supplementary to paragraphs 9 and 10*

- 11 (1) Any person who intentionally obstructs a person acting in the exercise of any power conferred by or under paragraph 9 or 10 above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) Where in the exercise of any power conferred by or under paragraph 9 or 10 above any damage is caused to land or to moveables, any person interested in the land or moveables may recover compensation in respect of that damage from the licence holder on whose behalf the power is exercised; and where in consequence of the exercise of such a power a person is disturbed in his enjoyment of any land or moveables he may recover from that licence holder compensation in respect of that disturbance.
- (3) Any question of disputed compensation under sub-paragraph (2) above shall be referred to and determined by the Tribunal; and sections 2 and 4 of the <sup>M99</sup>Land Compensation Act 1961 or sections 9 and 11 of the <sup>M100</sup>Land Compensation (Scotland) Act 1963 shall apply to any such determination.

**Marginal Citations**

**M99** 1961 c. 33.

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M100 1963 c. 51.

### Interpretation

12 In this Schedule—

“moveables” means chattels in relation to England and Wales and corporeal moveables in relation to Scotland;

F102  
...

“the Planning Act” means [F103the Town and Country Planning Act 1990] or [F104the Town and Country Planning (Scotland) Act 1997];

“planning permission” means a planning permission granted under Part III of the Planning Act;

“[F105public gas transporter]” has the same meaning as in Part I of the M101Gas Act 1986;

“public telecommunications operator” has the same meanings as in the M102Telecommunications Act 1984;

F106  
...

“statutory undertakers” has the same meaning as in the Planning Act;

“telecommunication apparatus” and “telecommunication system” have the same meanings as in the Telecommunications Act 1984 and “the telecommunications code” means the code contained in Schedule 2 to that Act;

“the Tribunal” means the Lands Tribunal in relation to England and Wales and the Lands Tribunal for Scotland in relation to Scotland.

#### Textual Amendments

**F102** Sch. 4 para. 12 definition of “navigation authority” repealed (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168, Sch. 8 Pt. IV para. 125, [Sch. 9](#); (E.W.) S.I. 1992/2984, art. 2(2), [Sch. 2](#) and (S.) S.I. 1992/2990, art. 2(2), [Sch. 2](#).

**F103** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, [Sch. 2 para. 83\(1\)](#)

**F104** Words in Sch. 4 para. 12 substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 44\(2\)](#)

**F105** Words in Sch. 4 para. 12 substituted (1.3.1996) by 1995 c. 45, s. 16(1), [Sch. 4 para. 17\(3\)](#); S.I. 1996/218, [art. 2](#)

**F106** Sch. 4 para. 12 definition of “railway authority” repealed (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168, Sch. 8 Pt. IV para. 125, [Sch. 9](#); (E.W.) S.I. 1992/2984, art. 2(2), [Sch. 2](#) and (S.) S.I. 1992/2990, art. 2(2), [Sch. 2](#).

#### Marginal Citations

M101 1986 c. 44.

M102 1984 c. 12.

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## SCHEDULE 5

Section 10(5).

### WATER RIGHTS FOR HYDRO-ELECTRIC GENERATING STATIONS IN SCOTLAND

#### Modifications etc. (not altering text)

C55 Sch. 5: transfer of functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

- 1 In Scotland, a person who holds a licence under section 6(1)(a) of this Act may be authorised by the Secretary of State to abstract and divert from any watercourse or loch and to use such water as may be necessary for the purposes of constructing or extending a generation station wholly or mainly driven by water and of operating that generating station after such construction or extension ; but he shall do as little damage as possible in the exercise of the powers conferred by the authorisation and shall make compensation for any damage done in the exercise of those powers.
- 2 Authorisation under paragraph 1 above shall be by order and shall provide for the compulsory acquisition by the person of such rights, as regards the abstraction, diversion and use, as may be specified in the order ; and the order may contain such incidental , consequential and supplementary provisions as the Secretary of State thinks necessary or expedient.
- 3 Where the abstraction, diversion, and use will, in the opinion of the Secretary of State—
  - (a) substantially reduce the flow of water in any watercourse, he shall in the order prescribe the extent to which and the circumstances in which water may be taken ;
  - (b) substantially reduce the level of water in any loch, he shall in the order either—
    - (i) prescribe the extent to which and the circumstances in which water may be taken ; or
    - (ii) prescribe the quantity of compensation water to be provided by the person ;
  - (c) impound any watercourse, he shall in the order prescribe the quantity of compensation order to be provided by the person.
- 4 In this Schedule “compensation water” means a flow of water, on such conditions and by such means as the Secretary of State may specify in the order, for the benefit of riparian owners and other owners of land or salmon fishings affected by the compulsory acquisition.
- 5 In deciding whether to make the order or in prescribing the quantity of any compensation water to be provided under the order, the Secretary of State shall have regard to all the circumstances of the particular case, including—
  - (a) the interest of public health ;
  - (b) the character of the watercourse or loch, and the flow, or as the case may be the level, of water in it ;
  - (c) the extent to which the watercourse or loch is, or may in future be, used for industrial purposes or for the purposes of any public undertaking or for fisheries, water supply, agriculture, transport and navigation ; and
  - (d) the effect on land drainage or on any canal or inland navigation of any alteration in the flow of water in the watercourse or level of water in the loch,

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and shall secure, so far as practicable, the protection of the rights of riparian owners and of other owners of land or salmon fishings.

- 6 Any question of disputed compensation under paragraph 1 above shall be referred to and determined by the Lands Tribunal for Scotland ; and sections 9 and 11 of the <sup>M103</sup>Land Compensation (Scotland) Act 1963 shall apply to any such determination.

#### Marginal Citations

**M103** 1963 c. 51.

- 7 An applicant for authorisation under paragraph 1 above shall submit to the Secretary of State a draft of the order which he desires the Secretary of State to make and shall publish once at least in each of two successive weeks in one or more local newspapers circulating in the area affected by the proposed order a notice—
- (a) stating the general effect of the proposed order ;
  - (b) specifying a place, in or near the said area, where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of 28 days from the date of the first publication of the notice ; and
  - (c) stating that within the said period any person may by notice to the Secretary of State object to the application.
- 8 Not later than the date on which the said notice is first published, the applicant shall serve a copy thereof—
- (a) along with a copy of the draft order, on—
    - (i) the water authority ;
    - (ii) the regional and district councils or the islands council ; and
    - (iii) the water development board,
 for every area affected by the proposed order ;
  - (b) on the district salmon fishery board of any salmon fishery district from which water is taken, or into which water is to be discharged, under the rights acquired, on any navigation authority exercising functions in relation to any watercourse or loch from or into which water is to be so taken or discharged, on any public undertakers known by the applicant to be authorised by any enactment to take or use water from any such watercourse or loch and on the [<sup>F107</sup>Scottish Environment Protection Agency].

#### Extent Information

**E2** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

#### Textual Amendments

**F107** Words in Sch. 5 para. 8(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 41 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3



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- 8 Not later than the date on which the said notice is first published, the applicant shall serve a copy thereof—
- (a) along with a copy of the draft order, on—
    - (i) the water authority ; <sup>F175</sup>and]
    - (ii) the <sup>F176</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994] ; <sup>F177</sup> . . .
    - (iii) . . . . .
- for every area affected by the proposed order ;
- (b) on the district salmon fishery board of any salmon fishery district from which water is taken, or into which water is to be discharged, under the rights acquired, on any navigation authority exercising functions in relation to any watercourse or loch from or into which water is to be so taken or discharged, on any public undertakers known by the applicant to be authorised by any enactment to take or use water from any such watercourse or loch and on the <sup>F178</sup>Scottish Environment Protection Agency].

**Extent Information**

**E4** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

**Textual Amendments**

- F175** Word in Sch. 5 para. 8(a)(i) inserted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 160(2)(a); S.I. 1996/323, art. 4(1)(b)(c)
- F176** Words in Sch. 5 para. 8(a)(ii) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 160(2)(b); S.I. 1996/323, art. 4(1)(b)(c)
- F177** Sch. 5 para. 8(a)(iii) and the word “and” immediately preceding repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 160(2)(c), Sch. 14; S.I. 1996/323, art. 4(1)(b)(c)(d), Sch. 2
- F178** Words in Sch. 5 para. 8(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 41 (with s. 7(6), 115, 117); S.I. 1996/186, art. 3

- 9 The applicant shall also publish in the Edinburgh Gazette a notice stating that he is about to apply for authorisation under paragraph 1 above, naming the water authority <sup>F108</sup>and the water development board] affected by the proposed order, specifying a place where a copy of the draft order and of any relevant map or plan may be inspected, and giving the name and date of issue of a local newspaper in which the notice explaining the effect of the order applied for will be found.

**Textual Amendments**

**F108** Words in Sch. 5 para. 9 repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 160(3), Sch. 14; S.I. 1996/323, art. 4(1)(b)(c)(d), Sch. 2

- 10 The applicant shall, at the request of any person interested, furnish to him a copy of the draft order upon payment of a reasonable charge.
- 11 The Secretary of State may make an order in the terms of the draft submitted to him or in those terms as modified in such manner as he thinks fit ; but, where he proposes to make any modification and considers that persons other than the applicant to give

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- and publish additional notices in such manner as the Secretary of State thinks best adapted for informing all persons so affected of the modification proposed.
- 12 If before the expiration of the 28 days referred to in paragraph 7 above or of 25 days from the publication of the said notice in the Edinburgh Gazette, or before expiration of any period specified in notices give under the last foregoing paragraph, an objection is received by the Secretary of State from any authority or board or undertakers on whom a notice is required to be served under paragraph 8 above, or from any other person appearing to him to be affected by the application, or, as the case may be, by the proposed modification, and the objection is not withdrawn, the Secretary of State, before making any order on the application, shall cause a local inquiry to be held.
- 13 The expenses incurred by the Secretary of State in connection with the making, notification and confirmation of any order giving authorisation under paragraph 1 above shall be paid by the applicant ; and the Secretary of State may, in a case where there are two or more applicants, apportion such expenses between them.
- 14 In paragraphs 7 and 8 above the expression “area affected by the proposed order” means the limits of supply of any water authority [<sup>F109</sup>, or the area of any water development board], so affected.

#### Textual Amendments

**F109** Words in Sch. 5 para. 14 repealed (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 160(4), Sch. 14; S.I. 1996/323, art. 4(1)(b)(c)(d), Sch. 2

- 15 In paragraphs 1 to 8 above “watercourse” includes all rivers, streams and passages through which water flows.

## SCHEDULE 6

Section 24.

### THE PUBLIC ELECTRICITY SUPPLY CODE

VALID FROM 20/12/2000

#### <sup>F110</sup><sup>F111</sup><sup>F112</sup> Provisions as to powers of entry

#### Textual Amendments

- F110** Sch. 6 substituted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 51(2), Sch. 4; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-12)
- F111** Sch. 6 substituted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 51(2), Sch. 4; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-12)
- F112** Sch. 6 substituted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 51(2), Sch. 4; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-12)

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- <sup>F113</sup> 10 (1) The <sup>M104</sup>Rights of Entry (Gas and Electricity Boards) Act 1954 (entry under a justice's warrant) shall apply in relation to the powers of entry conferred by this Schedule.
- (2) Any reference in this Schedule to an officer or other person authorised by an electricity supplier or an electricity distributor includes a reference to a person who, in accordance with a written authority given by the supplier or distributor to an agent of the supplier or distributor, is authorised by the agent on behalf of the supplier or distributor.
- (3) Where in pursuance of any power of entry conferred by this Schedule, entry is made on any premises by a person authorised to do so—
- (a) that person shall ensure that the premises are left no less secure by reason of the entry; and
- (b) the supplier or distributor shall make good, or pay compensation for, any damage caused by that person (or by any other person accompanying him under sub-paragraph (5)) in entering the premises, in taking any action on the premises or in making them secure.
- (4) A person may only exercise a power of entry conferred by this Schedule on production of some duly authenticated document showing his authority.
- (5) Any person exercising a power of entry conferred by this Schedule may be accompanied by such other persons as may be necessary or expedient for the purpose for which the entry is made or for the purposes of sub-paragraph (3)(a) or (b) above.
- (6) A person who intentionally obstructs a person exercising powers of entry conferred by this Schedule shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Textual Amendments

**F113** Sch. 6 substituted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 51(2), **Sch. 4**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

#### Marginal Citations

**M104** 1954 c. 1.

VALID FROM 20/12/2000

<sup>F114</sup> *Electrical plant etc. not to be subject to distress*

#### Textual Amendments

**F114** Sch. 6 substituted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 51(2), **Sch. 4**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

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- F115** 11 (1) This paragraph applies to any electric line, electrical plant or electricity meter belonging to or provided by an electricity distributor or electricity supplier which is marked or impressed with a sufficient mark or brand indicating an electricity supplier or electricity distributor as the owner or provider thereof.
- (2) Anything to which this paragraph applies—
- (a) shall be deemed not to be landlord's fixtures, notwithstanding that they may be fixed or fastened to any part of any premises; and
  - (b) shall not in England and Wales be subject to distress or be liable to be taken in execution under process of any court or any proceedings in bankruptcy against the person in whose possession they may be.]]

#### Textual Amendments

**F115** Sch. 6 substituted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 51(2), **Sch. 4**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

#### *Recovery of electricity charges etc.*

- 1 (1) Subject to sub-paragraph (2) below, a public electricity supplier may recover from a tariff customer any charges due to him in respect of the supply of electricity, or in respect of the provision of any electricity meter, electric line or electrical plant.
- (2) A public electricity supplier who, for the purpose of meeting the needs of a disabled person—
  - (a) alters the position of any electricity meter which has been provided by him; or
  - (b) replaces such a meter with one which has been specially adapted,
 shall not make any charge for the alteration or replacement; and section 23 of this Act shall apply in relation to any dispute arising under this sub-paragraph as if it were a dispute arising under sections 16 to 22 of this Act.
- (3) If a tariff customer quits any premises at which electricity has been supplied to him by a public electricity supplier without giving notice thereof to the supplier so that it is received by the supplier at least two working days before he quits the premises, he shall be liable to pay the supplier all charges in respect of the supply of electricity to the premises accruing due up to whichever of the following first occurs, namely—
  - (a) the second working day after he gives such notice to the supplier;
  - (b) the next day on which the register of any meter falls to be ascertained; and
  - (c) the day from which any subsequent occupier of the premises requires the supplier to supply electricity to the premises.
- (4) Sub-paragraph (3) above, or a statement of the effect thereof, shall be endorsed upon every demand note for electricity charges payable to a public electricity supplier by a tariff customer.
- (5) If a tariff customer quits any premises at which electricity has been supplied to him by a public electricity supplier without paying all charges due from him in respect of

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- the supply, or the provision of any electricity meter, electric line or electrical plant for the purposes of the supply, the supplier—
- (a) may refuse to furnish him with a supply of electricity at any other premises until he pays the amount due; but
  - (b) shall not be entitled to require payment of that amount from the next occupier of the premises.
- (6) If a tariff customer has not, within the requisite period, paid all charges due from him to a public electricity supplier in respect of the supply of electricity to any premises, or the provision of any electricity meter, electric line or electrical plant for the purposes of that supply, the supplier, after the expiration of not less than two working days' notice of his intention, may—
- (a) cut off the supply to the premises, or to any other premises occupied by the customer, by such means as he thinks fit; and
  - (b) recover any expenses incurred in so doing from the customer.
- (7) In sub-paragraph (6) above “the requisite period” means—
- (a) in the case of premises which are used wholly or mainly for domestic purposes, the period of 20 working days after the making by the supplier of a demand in writing for payment of the charges due; and
  - (b) in the case of any other premises, the period of 15 working days after the making of such a demand.
- (8) The powers conferred by sub-paragraph (6) above shall also be exercisable at any time which, in relation to a tariff customer, is after—
- (a) the effective date for the purposes of section 233 of the <sup>M105</sup>Insolvency Act 1986 (supplies of gas, water, electricity etc. to insolvent companies); or
  - (b) the relevant day for the purposes of section 372 of that Act or section 70 of the <sup>M106</sup>Bankruptcy (Scotland) Act 1985 (supplies of gas, water, electricity etc. to insolvent individuals).
- (9) The powers conferred by sub-paragraph (6) above shall not be exercisable as respects any amount which is genuinely in dispute; but there shall be disregarded for this purpose any dispute arising under section 39 of this Act or regulations made under it.
- (10) In this paragraph a reference to the provision of any electric line or item of electrical plant is a reference to the provision of such a line or item by the installation of a new one or by the modification of an existing one.

#### Marginal Citations

M105 1986 c. 45.

M106 1985 c. 66.

#### *Restoration of supply by supplier*

- 2 (1) Where a public electricity supplier has cut off the supply of electricity to any premises in consequence of any default on the part of a tariff customer, the supplier shall be under an obligation to resume the supply of electricity before the end of the period of two working days beginning with the time when the requirements of sub-paragraph (2) below are satisfied.

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- (2) The requirements of this sub-paragraph are that the customer in default—
  - (a) has made good the default;
  - (b) has paid the reasonable expenses of disconnecting and re-connecting the supply; and
  - (c) has given such security as is mentioned in section 20(1) of this Act.
- (3) The obligation imposed by sub-paragraph (1) above shall be a duty owed to any person who may be affected by a failure to comply with the obligation.
- (4) Where a duty is owed by virtue of sub-paragraph (3) above to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.
- (5) In any proceedings brought against a public electricity supplier in pursuance of sub-paragraph (4) above, it shall be a defence for the supplier to prove that he took all reasonable steps and exercised all due diligence to avoid failing to comply with the obligation imposed by sub-paragraph (1) above.
- (6) Without prejudice to any right which any person may have by virtue of sub-paragraph (4) above to bring civil proceedings in respect of any failure to comply with the obligation imposed by sub-paragraph (1) above, compliance with that obligation shall be enforceable by civil proceedings by the Director for an injunction or for interdict or for any other appropriate relief.

*Restoration of supply without consent*

- 3 (1) Where a supply of electricity to any premises has been cut off by a public electricity supplier otherwise than in the exercise of a power conferred by regulations under section 29 of this Act, no person shall, without the consent of the supplier, restore the supply.
- (2) If any person acts in contravention of sub-paragraph (1) above, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and the supplier may again cut off the supply.

*Damage to electrical plant etc.*

- 4 (1) If any person intentionally or by culpable negligence damages or allows to be damaged—
  - (a) any electrical plant or electric line belonging to a public electricity supplier; or
  - (b) any electricity meter so belonging,
 he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) Where an offence has been committed under sub-paragraph (1)(a) above, the supplier may discontinue the supply of electricity to the person so offending until the matter has been remedied.

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- (3) Where an offence has been committed under sub-paragraph (1)(b) above, the supplier—
  - (a) may discontinue the supply of electricity to the person so offending until the matter has been remedied; and
  - (b) remove the meter as respects which the offence was committed.
- (4) Where a public electricity supplier removes a meter under sub-paragraph (3) above, he shall keep it safely until the Director authorises him to destroy or otherwise dispose of it.

#### *Entry during continuance of supply*

- 5 (1) Any officer authorised by a public electricity supplier may at all reasonable times, on the production of some duly authenticated document showing his authority, enter any premises to which a supply of electricity is being given by the public electricity supplier, or by a private electricity supplier (wholly or partly) through the public electricity supplier's electric lines and electrical plant, for any of the following purposes, namely—
  - (a) inspecting any electric line or electrical plant belonging to the supplier;
  - (b) ascertaining the register of any electricity meter and, in the case of a prepayment meter, removing any money or tokens belonging to the supplier;
  - (c) removing, inspecting or re-installing any electricity meter or installing any substitute meter.
- (2) Except where a supply of electricity is being given to the premises by a private electricity supplier (wholly or partly) through the public electricity supplier's electric lines and electrical plant, sub-paragraph (1)(a) and (b) above does not apply if—
  - (a) the consumer has applied in writing to the supplier for the supplier to cease to supply electricity to the premises; and
  - (b) the supplier has failed to do so within a reasonable time.
- (3) Sub-paragraph (1)(c) above does not apply in relation to the removal of a meter unless two working days' notice is given to the occupier, or the owner of the premises if they are unoccupied.

#### *Entry on discontinuance of supply*

- 6 (1) Where a public electricity supplier is authorised by sub-paragraph (3) of paragraph 4 above or sub-paragraph (3) of paragraph 11 of Schedule 7 to this Act—
  - (a) to discontinue the supply of electricity to any premises; and
  - (b) to remove the electricity meter as respects which the offence under that paragraph was committed,any officer authorised by the supplier may at all reasonable times, on production of some duly authenticated document showing his authority, enter the premises for the purpose of disconnecting the supply and removing the meter.
- (2) Where—
  - (a) a public electricity supplier is authorised by any other provision of this Act or of regulations made under it (including any such provision as applied by

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such an agreement as is mentioned in section 22(1) of this Act) to cut off or discontinue the supply of electricity to any premises;

- (b) a person occupying premises supplied with electricity by a public electricity supplier, or by a private electricity supplier (wholly or partly) through a public electricity supplier's electric lines and electrical plant, ceases to require such a supply;
- (c) a person entering into occupation of any premises previously supplied with electricity by a public electricity supplier, or by a private electricity supplier (wholly or partly) through a public electricity supplier's electric lines and electrical plant, does not require such a supply; or
- (d) a person entering into occupation of any premises previously supplied with electricity through a meter belonging to a public electricity supplier does not hire or borrow that meter,

any officer authorised by the supplier, after one working day's notice to the occupier, or to the owner of the premises if they are unoccupied, may at all reasonable times, on production of some duly authenticated document showing his authority, enter the premises for the purpose of disconnecting the supply or removing any electrical plant, electric line or electricity meter.

*Entry for replacing, repairing or altering lines or plant*

- 7 (1) Any officer authorised by a public electricity supplier, after five working days' notice to the occupier of any premises, or to the owner of any premises which are unoccupied, may at all reasonable times, on production of some duly authenticated document showing his authority, enter the premises for the purpose of—
- (a) placing a new electric line or new electrical plant in the place of or in addition to any existing line or plant which has already been lawfully placed; or
  - (b) repairing or altering any such existing line or plant.
- (2) In the case of emergency arising from faults in any electric line or electrical plant entry may be made under sub-paragraph (1) above without the notice required to be given by that sub-paragraph, but the notice shall then be given as soon as possible after the occurrence of the emergency.

*Provisions as to powers of entry*

- 8 (1) Where in pursuance of any powers of entry conferred by this Schedule, entry is made on any premises by an officer authorised by a public electricity supplier—
- (a) the officer shall ensure that the premises are left no less secure by reason of the entry; and
  - (b) the supplier shall make good, or pay compensation for, any damage caused by the officer, or by any person accompanying him in entering the premises, in taking any action therein authorised by this Schedule, or in making the premises secure.
- (2) Any officer exercising powers of entry conferred by this Schedule may be accompanied by such persons as may be necessary or expedient for the purpose for which the entry is made, or for the purposes of sub-paragraph (1) above.



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- (3) If any person intentionally obstructs any officer exercising powers of entry conferred by this Schedule, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) The <sup>M107</sup>Rights of Entry (Gas and Electricity Boards) Act 1954 (entry under a justice's warrant) shall apply in relation to any powers of entry conferred by this Schedule.

#### Marginal Citations

M107 1954 c. 21.

#### *Electrical plant etc. not to be subject to distress*

- 9 Any electrical plant, electric line or electricity meter owned by or let for hire or lent to a customer by a public electricity supplier and marked or impressed with a sufficient mark or brand indicating the supplier as the owner thereof—
  - (a) shall be deemed not to be landlord's fixtures, notwithstanding that they may be fixed or fastened to any part of the premises in which they may be situated; and
  - (b) shall not in England and Wales be subject to distress or be liable to be taken in execution under process of any court or any proceedings in bankruptcy against the person in whose possession they may be.

### SCHEDULE 7

Section 31.

#### USE ETC. OF ELECTRICITY METERS

#### Modifications etc. (not altering text)

C56 Sch. 7 modified (1.11.1995) by S.I. 1995/2607, reg. 3(1)

#### *Consumption to be ascertained by appropriate meter*

- 1 (1) Where a customer of an electricity supplier is to be charged for his supply wholly or partly by reference to the quantity of electricity supplied, the supply shall be given through, and the quantity of electricity shall be ascertained by, an appropriate meter.
  - [<sup>F116</sup>(2) If the electricity supplier agrees, the meter may be provided by the customer; but otherwise it shall be provided by the electricity supplier (whether by way of sale, hire or loan).
  - (2A) A public electricity supplier may refuse to allow one of his customers to provide a meter only if there are reasonable grounds for his refusal.]
- (3) The meter shall be installed on the customer's premises in a position determined by the electricity supplier, unless in all the circumstances it is more reasonable to place it outside those premises or in some other position.

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- (4) The electricity supplier may require the replacement of any meter provided and installed in accordance with sub-paragraphs (2) and (3) above where its replacement—
- (a) is necessary to secure compliance with this Schedule or any regulations made under it; or
  - (b) is otherwise reasonable in all the circumstances;
- and any replacement meter shall be provided and installed in accordance with those sub-paragraphs.
- (5) If the customer refuses or fails to take his supply through an appropriate meter provided and installed in accordance with sub-paragraphs (2) and (3) above, the supplier may refuse to give or may discontinue the supply.
- (6) For the purposes of this paragraph a meter is an appropriate meter for use in connection with any particular supply if it is of a pattern or construction which, having regard to the terms on which the supply is to be charged for, is particularly suitable for such use.
- (7) Section 23 of this Act shall apply in relation to any dispute arising under this paragraph between a public electricity supplier and a customer as if it were a dispute arising under sections 16 to 22 of this Act.
- (8) Pending the determination under section 23 of this Act of any dispute arising under this paragraph, the meter and its provision and installation shall be such as the Director may direct; and directions under this sub-paragraph may apply either in cases of particular descriptions or in particular cases.
- (9) Part I of this Act shall apply as if any duty or other requirement imposed on a public electricity supplier by directions under sub-paragraph (8) above were imposed by directions under section 23 of this Act.
- (10) In this Schedule “exempt supply” means a supply of electricity to any premises where—
- (a) the premises are not premises used wholly or mainly for domestic purposes; or
  - (b) the electricity supplier or the customer is a person authorised by an exemption to supply electricity to those premises.

#### **Textual Amendments**

**F116** Sch. 7 para. 1(2)(2A) substituted (1.7.1992) for para. 1(2) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para.16](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt.I

#### *Restrictions on use of meters*

- 2 (1) No meter shall be used for ascertaining the quantity of electricity supplied by an electricity supplier to a customer unless the meter—
- (a) is of an approved pattern or construction and is installed in an approved manner; and
  - (b) subject to sub-paragraph (2) below, is certified under paragraph 5 below;

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and in this Schedule “approved” means approved by or under regulations made under this paragraph.

- (2) Paragraph (b) of sub-paragraph (1) above shall not apply to a meter used in connection with an exempt supply if the electricity supplier and the customer have agreed in writing to dispense with the requirements of that paragraph.
- (3) Regulations under this paragraph may provide—
  - (a) for determining the fees to be paid for approvals given by or under the regulations;
  - (b) for revoking an approval so given to any particular pattern or construction of meter and requiring meters of that pattern or construction which have been installed to be replaced with meters of an approved pattern or construction within a prescribed period;
  - (c) for revoking an approval so given to any particular manner of installation and requiring meters which have been installed in that manner to be installed in an approved manner within such a period;

and may make different provision for meters of different descriptions or for meters used or intended to be used for different purposes.

- 3 (1) If an electricity supplier supplies electricity through a meter which is used for ascertaining the quantity of electricity supplied and—
  - (a) is not of an approved pattern or construction or is not installed in an approved manner; or
  - (b) in the case of a meter to which paragraph 2(1)(b) above applies, is not certified under paragraph 5 below,he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) Where the commission by any person of an offence under this paragraph is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this sub-paragraph whether or not proceedings are taken against the first-mentioned person.
- (3) In any proceedings in respect of an offence under this paragraph it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (4) No proceedings shall be instituted in England and Wales in respect of an offence under this paragraph except by or on behalf of the Director.

#### *Meter examiners*

- 4 (1) The Director shall appoint competent and impartial persons as meter examiners for the purposes of this Schedule.
- (2) There shall be paid out of money provided by Parliament to meter examiners such remuneration and such allowances as may be determined by the Director with the approval of the Treasury; and such pensions as may be so determined may be paid out of money provided by Parliament to or in respect of such examiners.

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- (3) All fees payable in respect of the examination of meters by meter examiners shall be paid to the Director; and any sums received by him under this sub-paragraph shall be paid into the Consolidated Fund.

#### *Certification of meters*

- 5 (1) Subject to sub-paragraph (2) below, a meter may be certified—
- (a) by a meter examiner appointed under paragraph 4 above; or
  - (b) by a person who is authorised to certify meters of that description by or under regulations made under this paragraph;
- and in this paragraph “examiner” means a meter examiner or a person so authorised.
- (2) No meter shall be certified unless the examiner is satisfied—
- (a) that the meter is of an approved pattern or construction; and
  - (b) that the meter conforms to such standards (including standards framed by reference to margins of error) as may be prescribed;
- and references in this Schedule to prescribed margins of error shall be construed accordingly.
- (3) An examiner may certify any meter submitted to him, notwithstanding that he has not himself examined or tested it, if—
- (a) the meter is submitted to him by a public electricity supplier or by a person authorised by the Director for the purposes of this sub-paragraph;
  - (b) the meter is accompanied by a report stating that the meter has been examined and tested by the person submitting it and containing such other information as may be prescribed;
  - (c) the examiner considers that the report indicates that the meter is entitled to be certified;
  - (d) the meter is one of a number submitted at the same time by the same person, and the examiner has himself examined and tested as many of those meters as he may consider sufficient to provide a reasonable test of all of them.
- (4) Regulations under this paragraph may make different provision for meters of different descriptions or for meters used or intended to be used for different purposes and may include provision—
- (a) for the termination of certification in the case of meters which no longer conform to the prescribed standards and in such other cases as may be prescribed;
  - (b) for determining the fees to be paid for examining, testing and certifying meters, and the persons by whom they are to be paid; and
  - (c) as to the procedure to be followed in examining, testing and certifying meters.
- (5) Regulations under this paragraph above may also include provision—
- (a) for determining the fee to be paid in respect of any authorisation under sub-paragraph (1) or (3) above;
  - (b) for imposing conditions on any such authorisation; and
  - (c) for withdrawing any such authorisation before the end of any period for which it is given if any of those conditions is not satisfied.

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### *Apparatus for testing etc. of meters*

- 6 (1) It shall be the duty of a person to whom this paragraph applies, that is to say, a public electricity supplier or a person authorised by the Director for the purposes of paragraph 5(3) above—
- (a) to provide and maintain such apparatus for the examination, testing and regulation of meters, and such apparatus for the sealing and unsealing of meters, as may be specified by a direction of the Director;
  - (b) to use apparatus so provided and maintained to carry out such examination, testing and regulation of meters, or to seal or unseal meters in such circumstances, as may be so specified; and
  - (c) to keep such records and make such reports of things done in pursuance of paragraph (b) above as may be so specified.
- (2) It shall also be the duty of a person to whom this paragraph applies to afford to meter examiners, acting in the exercise of their functions under this Schedule, all necessary facilities for the use of apparatus provided and maintained in pursuance of sub-paragraph (1) above.
- (3) If the Director considers that any person to whom this paragraph applies has made satisfactory arrangements whereby apparatus provided by some other person is available for the examination, testing or regulation of the first mentioned person's meters, the Director may direct that this paragraph shall not apply to that person to such extent as may be specified in the direction.
- (4) Any two or more persons to whom this paragraph applies may with the approval of the Director enter and carry into effect arrangements whereby apparatus provided by one or more of the parties is to be available to all or any of them for the purposes of fulfilling their obligations under this paragraph.
- (5) Any public electricity supplier who provides apparatus in pursuance of such arrangements as are mentioned in sub-paragraph (4) above shall be under the same obligation under this paragraph, in relation to the meters of any public electricity supplier for whose benefit the apparatus is so made available, as he is or would be under in relation to meters measuring electricity supplied by him.

### *Testing etc. of meters*

- 7 (1) It shall be the duty of a meter examiner, on being required to do so by any person and after giving notice to such persons as may be prescribed—
- (a) to examine and test any meter used or intended to be used for ascertaining the quantity of electricity supplied to any premises;
  - (b) to determine whether it is of an approved pattern or construction and, if it is installed for use, whether it is installed in an approved manner;
  - (c) to determine whether it is in proper order for ascertaining the quantity of electricity supplied within the prescribed margins of error and, if it has been in use and there is a dispute as to whether it registered correctly at any time, to determine if possible whether it registered within those margins at that time; and

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- (d) to make a written report of his conclusions as to the matters mentioned in paragraphs (b) and (c) above.
  - (2) If a meter examiner determines that a meter is, or was at any time, operating outside the prescribed margins of error, he shall if possible give an opinion as to—
    - (a) any period for which the meter has or may have been so operating; and
    - (b) the accuracy (if any) with which it was or may have been operating for any such period.
  - (3) Regulations under this paragraph may make provision for determining the fees to be paid for examining and testing meters, and the persons by whom and the circumstances in which they are to be paid.
  - (4) In relation to a meter used or intended to be used in connection with an exempt supply, this paragraph shall have effect as if any reference to the prescribed margins of error included a reference to any margins of error agreed between the electricity supplier and the customer (in this Schedule referred to as “agreed margins of error”).
- 8 (1) This paragraph applies where there is a genuine dispute as to the accuracy of a meter used for ascertaining the quantity of electricity supplied to any premises and notice of the dispute—
- (a) is given to the electricity supplier by the customer, or to the customer by the electricity supplier; or
  - (b) is given to the electricity supplier and to the customer by any other person interested.
- (2) Except with the approval of a meter examiner and, if he so requires, under his supervision, the meter shall not be removed or altered by the supplier or the customer until after the dispute is resolved by agreement or the meter is examined and tested under paragraph 7 above, whichever first occurs.
- (3) If the supplier or the customer removes or alters the meter in contravention of subparagraph (2) above, he shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

#### *Presumptions and evidence*

- 9 (1) This paragraph applies to meters used for ascertaining the quantity of electricity supplied to any premises.
- (2) The register of a meter to which this paragraph applies shall be admissible in any proceedings as evidence of the quantity of electricity supplied through it.
- (3) Where electricity has been supplied for any period through such a meter which is of an approved pattern or construction and is installed in an approved manner, the register of the meter shall be presumed to have been registering for that period—
- (a) within the prescribed margins of error; and
  - (b) in the case of a meter used in connection with an exempt supply, within any agreed margins of error,
- unless the contrary is proved.
- (4) Where a meter to which this paragraph applies has been operating for any period—
- (a) within the prescribed margins of error; and

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- (b) in the case of a meter used in connection with an exempt supply, within any agreed margins of error,  
the meter shall be conclusively presumed to have been correctly registering for that period the quantity of electricity supplied through it.
- (5) The report of a meter examiner on any question relating to such a meter shall be admissible in evidence in any proceedings in which that question is raised; and any conclusions in the report as to the accuracy of the meter when it was tested shall be presumed to be correct unless the contrary is proved.

#### *Meters to be kept in proper order*

- 10 (1) A customer of an electricity supplier shall at all times, at his own expense, keep any meter belonging to him in proper order for correctly registering the quantity of electricity supplied to him; and in default of his doing so the supplier may discontinue the supply of electricity through that meter.
- (2) An electricity supplier shall at all times, at his own expense, keep any meter let for hire or lent by him to any customer in proper order for correctly registering the quantity of electricity supplied and, in the case of pre-payment meters, for operating properly on receipt of the necessary payment.
- (3) An electricity supplier shall have power to remove, inspect and re-install any meter by which the quantity of electricity supplied by him to a customer is registered, and shall, while any such meter is removed, fix a substituted meter on the premises; and the cost of removing, inspecting and re-installing a meter and of fixing a substituted meter shall be defrayed by the supplier.
- (4) Sub-paragraphs (2) and (3) above are without prejudice to any remedy the supplier may have against the customer for failure to take proper care of the meter.

#### *Interference with meters*

- 11 (1) If any person intentionally or by culpable negligence—
- (a) alters the register of any meter used for measuring the quantity of electricity supplied to any premises by an electricity supplier; or
- (b) prevents any such meter from duly registering the quantity of electricity supplied,
- he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) Where any person is prosecuted for an offence under sub-paragraph (1) above, the possession by him of artificial means for causing an alteration of the register of the meter or, as the case may be, the prevention of the meter from duly registering shall, if the meter was in his custody or under his control, be prima facie evidence (or in Scotland sufficient evidence) that the alteration or prevention was intentionally caused by him.
- (3) Where an offence under sub-paragraph (1) above has been committed, the supplier may discontinue the supply of electricity to the premises until the matter has been remedied and remove the meter in respect of which the offence was committed.

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- (4) Where an electricity supplier removes a meter under sub-paragraph (3) above, he shall keep it safely until the Director authorises him to destroy or otherwise dispose of it.

*Special provision for pre-payment meters*

- 12 (1) A customer of an electricity supplier who takes his supply through a pre-payment meter shall be under a duty to take all reasonable precautions for the safekeeping of any money or tokens which are inserted into that meter.
- (2) A pre-payment meter shall not be used to recover any sum owing to an electricity supplier otherwise than in respect of the supply of electricity, the provision of an electric line or electrical plant or the provision of the meter.

*Interpretation*

- 13 In this Schedule—
- “agreed margins of error” has the meaning given by paragraph 7(4) above;
  - “approved” means approved by or under regulations made under paragraph 2 above;
  - “electricity supplier” means a person authorised by a licence or exemption to supply electricity;
  - “exempt supply” has the meaning given in paragraph 1(10) above;
  - “prescribed” means prescribed by regulations;
  - “prescribed margins of error” has the meaning given by paragraph 5(2) above;
  - “regulations” means regulations made by the Director with the consent of the Secretary of State.

SCHEDULE 8

Section 36(8).

CONSENTS UNDER SECTIONS 36 AND 37

**Modifications etc. (not altering text)**

C57 Sch. 8: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

*Applications for consent*

- 1 (1) An application for a consent under section 36 or 37 of this Act shall be in writing and shall describe by reference to a map the land to which the application relates, that is, the land—
- (a) on which the generating station is proposed to be constructed, extended or operated; or
  - (b) across which the electric line is proposed to be installed or kept installed.



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- (2) An application for a consent under section 37 of this Act shall also state—
  - (a) the length of the proposed line and its nominal voltage; and
  - (b) whether all necessary wayleaves have been agreed with owners and occupiers of land proposed to be crossed by the line,and shall be supplemented, if the Secretary of State so directs, by such additional information as may be specified in the direction.
- (3) The Secretary of State may by regulations make provision for determining the fees to be paid on applications for consent under section 36 or 37 of this Act, and the circumstances in which they are to be paid.
- (4) Any sums received by the Secretary of State under this paragraph shall be paid into the Consolidated Fund.

*Objections by relevant planning authority*

- 2 (1) Where an application is made to the Secretary of State for his consent under section 36 or 37 of this Act, notice of the application shall be served on the relevant planning authority.
- (2) Where the relevant planning authority notify the Secretary of State that they object to the application and their objection is not withdrawn, the Secretary of State—
  - (a) shall cause a public inquiry to be held; and
  - (b) before determining whether to give his consent, shall consider the objection and the report of the person who held the inquiry.
- (3) For the purposes of sub-paragraph (2) above the Secretary of State may make regulations limiting the time within which notification of objections may be made to the Secretary of State by relevant planning authorities, and providing that objections which are not notified within the time so limited may be disregarded for those purposes.
- (4) Sub-paragraph (2) above shall not apply where the Secretary of State proposes to accede to the application subject to such modifications or conditions as will give effect to the objection of the relevant planning authority.
- (5) The Secretary of State may make regulations providing that, in relation to applications for consent under section 37 of this Act for electric lines of a nominal voltage less than 132 kilovolts, the provisions of this paragraph shall have effect with such modifications as may be prescribed.
- (6) In this Schedule “relevant planning authority”—
  - (a) in relation to [<sup>F117</sup>land in England <sup>F118</sup>. . . which is not in a National Park for which a National Park authority is the local planning authority], means a local planning authority within the meaning of [<sup>F119</sup>the Town and Country Planning Act 1990,]except that in relation to a non-metropolitan county and an application for consent under section 37 of this Act it includes the county planning authority only—
    - <sup>F120</sup>(i) . . . . .
    - (ii) where the line will have a nominal voltage of not less than 132 kilovolts;

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- [<sup>F121</sup>(aa) in relation to land in England <sup>F122</sup> . . . which is in a National Park for which a National Park authority is the local planning authority, means that National Park authority; and]
- [<sup>F123</sup>(ab) in relation to Wales, means a local planning authority;.]
- (b) in relation to Scotland, means a general planning authority, or a district planning authority, within the meaning of Part IX of the <sup>M108</sup>Local Government (Scotland) Act 1973.

#### Textual Amendments

- F117** Words in Sch. 8 para. 2 (6)(a) substituted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 30(3)(a)(4)(5)** (with ss.7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**
- F118** Words in Sch. 8 para. 2(6)(a) repealed (1.4.1996) by 1994 c. 19, ss. 20(4), 66(8), Sch. 6 Pt. II para. 22, **Sch. 18** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**
- F119** Words substituted by **Planning (Consequential Provisions) Act 1990** (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 83(1)**
- F120** Sch. 8 para. 2(6)(a)(i) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, **art. 2, Sch.**
- F121** Sch. 8 para. 2(6)(aa) inserted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10**, para. 30(3)(b)(4)(5) (with ss. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**
- F122** Words in Sch. 8 para. 2(6)(aa) omitted (1.4.1996) by virtue of 1995 c. 25, s. 78, **Sch. 10 para. 30(3)(c)(4)(5)** (with s. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**; S.I. 1996/396, art. 4, **Sch. 2**
- F123** Sch. 8 para. 2(6)(aa) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 22** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2** and renumbered as Sch. 8 para. 2(6)(ab) (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 30(6)** (with ss. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**

#### Marginal Citations

**M108** 1973 c. 65.

#### *Objections by other persons*

- 3 (1) The Secretary of State may by regulations make provision for securing—
- (a) that notice of any application for consent under section 36 or 37 of this Act shall, in such circumstances as may be prescribed by the regulations, be published in such manner as may be so prescribed;
  - (b) that notice of any such application shall, in such circumstances as may be prescribed by the regulations or where the Secretary of State so directs, be served on such persons as may be so prescribed or, as the case may be, specified in the direction;
  - (c) that every notice published or served in pursuance of the regulations shall state the time within which, and the manner in which, objections to the application may be made by persons other than the relevant planning authority, and that the time so stated shall not be less than such minimum period as may be prescribed by the regulations; and
  - (d) that, in so far as any such notice requires objections to be sent to any person other than the Secretary of State, copies of the objections shall be sent to the Secretary of State by that person;
- and in relation to applications for consent under section 36 of this Act to the extension of a generating station or to the operation of such a station in a different manner,

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the regulations may include provision for enabling the Secretary of State to give directions dispensing with the requirements of the regulations in such cases as he thinks fit.

- (2) Where in the case of an application for consent under section 36 or 37 of this Act—
- (a) the Secretary of State is not required by virtue of paragraph 2(2) above to cause a public inquiry to be held; but
  - (b) objections or copies of objections have been sent to the Secretary of State in pursuance of regulations made under this paragraph,

the Secretary of State shall consider those objections, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the application and, if he thinks it appropriate to do so, shall cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the application.

#### *Public inquiries*

- 4 (1) Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held in respect of an application for consent under section 36 or 37 of this Act, the Secretary of State shall inform the applicant accordingly; and the applicant shall in two successive weeks publish a notice stating—
- (a) the fact that the application has been made, and the purpose of it, together with a description of the land to which it relates;
  - (b) a place in the locality where a copy of the application, and of the map referred to in it, can be inspected; and
  - (c) the place, date and time of the public inquiry.
- (2) A notice under sub-paragraph (1) above shall be published in one or more local newspapers circulating in the locality in which the land in question is situated, or circulating respectively in the several localities in which different parts of that land are situated, as the applicant may consider appropriate.
- (3) If it appears to the Secretary of State that, in addition to the publication of a notice in accordance with sub-paragraphs (1) and (2) above, further notification of the public inquiry should be given (either by the service of notices, or by advertisement, or in any other way) in order to secure that the information specified in paragraphs (a) to (c) of sub-paragraph (1) above is sufficiently made known to persons in the locality, the Secretary of State may direct the applicant to take such further steps for that purpose as may be specified in the direction.
- (4) Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held in respect of an application for consent under section 36 or 37 of this Act and the Secretary of State is proceeding concurrently as mentioned in section 61(2) or (4) of this Act, the public inquiry shall extend to all the matters arising in the concurrent proceedings, and any notice of the inquiry (in addition to any other matters required to be stated in it) shall indicate the extent of the inquiry accordingly.
- (5) In the application of this paragraph to Scotland, for sub-paragraphs (1) to (3) there shall be substituted the following sub-paragraph—
- “(1) Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held, and it appears to the Secretary of State that in addition to any public notice of such an inquiry any further notification concerning the inquiry is necessary or expedient (either by way of service of notice upon any person

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or in any other way), the Secretary of State may direct the applicant to take such further steps for this purpose as may be specified in the direction.”

*Provisions supplementary to paragraphs 2 to 4*

- 5 (1) Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held and the application for consent relates to land in the areas of two or more relevant planning authorities—
  - (a) the application shall not be the subject of a public inquiry in so far as it relates to land which is not within the area of a planning authority who have notified the Secretary of State that they object to the application, unless the Secretary of State otherwise directs having regard to objections by other persons of which he has notice; and
  - (b) in so far as the application is to be the subject of a public inquiry in relation to land in the areas of two or more relevant planning authorities, the Secretary of State may direct that separate public inquiries shall be held;
 and, where the Secretary of State gives any such directions, the provisions of paragraphs 2 to 4 above shall apply with the necessary modifications.
- (2) For the purposes of sub-paragraph (1)(a) above a relevant planning authority who have notified the Secretary of State that they object to the application shall be treated as not having done so if the Secretary of State proposes to accede to the application subject to such modifications or conditions as will give effect to the objection.

*Special provisions as to consents under section 37*

- 6 (1) Where an application for consent under section 37 of this Act states that all necessary wayleaves have not been agreed with owners and occupiers of land proposed to be crossed by the electric line, the Secretary of State may—
  - (a) give notice to the applicant that he does not intend to proceed with the application until he is satisfied, with respect to all the land over which wayleaves have not been agreed, that the applicant has applied to the Secretary of State for consent under paragraph 6 (acquisition of wayleaves) of Schedule 4 to this Act; or
  - (b) grant his consent subject to the condition (either in respect of the whole of the line or in respect of any part of it specified in the consent) that the work is not to proceed until the Secretary of State has given his permission.
- (2) In determining at any time whether to give permission for any work to proceed, either generally or in respect of any part of the line, the Secretary of State—
  - (a) shall have regard to the extent to which the necessary wayleaves have been agreed by that time; and
  - (b) in so far as any such wayleaves have not then been agreed in respect of any part of the line, shall take into account any prejudicial effect which, in his opinion, the giving of permission (whether in respect of that part or of any adjacent part of the line) might have on any subsequent proceedings relating to the outstanding wayleaves.

*Deemed planning permission etc.*

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### Textual Amendments

**F124** Sch. 8 para. 7 repealed (E.W.) by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\), s. 3, Sch. 1 Pt. II](#) and (S.) (27.5.1997) by [1997 c. 11, ss. 3, 6\(2\), Sch. 1 Pt. I](#) (with s. 5, Sch. 3)

### Supplemental

- 8 (1) In this Schedule “relevant planning authority” has the meaning given by paragraph 2(6) above.
- (2) In section 149 of the <sup>M109</sup>Local Government, Planning and Land Act 1980, each of the following, namely—
- (a) subsection (3)(a) (power of Secretary of State to confer on urban development corporation functions of local planning authority in England and Wales); and
  - (b) subsection (8)(a) (which makes corresponding provision in relation to Scotland),
- shall have effect in relation to the provisions of this Schedule (so far as applying to applications for consent under section 37 of this Act) as it has effect in relation to the provisions referred to in that subsection.

### Marginal Citations

**M109** 1980 c. 65.

## SCHEDULE 9

Section 38.

### PRESERVATION OF AMENITY AND FISHERIES.

#### *Preservation of amenity: England and Wales*

- 1 (1) In formulating any relevant proposals, a licence holder or a person authorised by exemption to generate or supply electricity—
- (a) shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archeological interest; and
  - (b) shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.
- (2) In considering any relevant proposals for which his consent is required under section 36 or 37 of this Act, the Secretary of State shall have regard to—
- (a) the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and
  - (b) the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of that sub-paragraph.

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- (3) In this paragraph—  
 “building” includes structure;  
 “relevant proposals” means any proposals—
- (a) for the construction or extension of a generating station of a capacity not less than 10 megawatts, or for the operation of such a station in a different manner;
  - (b) for the installation (whether above or below ground) of an electric line; or
  - (c) for the execution of any other works for or in connection with the transmission or supply of electricity.
- (4) The Secretary of State may by order provide that sub-paragraph (3) above shall have effect as if for the capacity mentioned in paragraph (a) there were substituted such other capacity as may be specified in the order.
- (5) This paragraph and paragraph 2 below extend to England and Wales only.
- 2 (1) A licence holder shall within twelve months from the grant of his licence prepare, and from time to time modify, a statement setting out the manner in which he proposes to perform his duty under paragraph 1(1) above, including in particular the consultation procedures which he intends to follow.
- (2) Before preparing or modifying a statement under this paragraph, a licence holder shall consult the Countryside Commission,  
 [<sup>F125</sup>and—
- (a) where the activities which he is authorised by his licence to carry on include activities in England, the Nature Conservancy Council for England and the Historic Buildings and Monuments Commission for England; and
  - (b) where those activities include activities in Wales, the Countryside Council for Wales and] the Historic Buildings Council for Wales.
- (3) As soon as practicable after preparing or modifying a statement under this paragraph, the licence holder shall publish the statement as so prepared or so modified in such manner as he considers appropriate.

#### Textual Amendments

**F125** Words in [Sch. 9 para. 2\(2\)](#) substituted (1.4.1991) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 132(1)(a), [Sch. 9 para. 16\(a\)](#); S.I. 1991/685, [art. 3](#)

#### *Preservation of amenity and fisheries: Scotland*

- 3 (1) In formulating any relevant proposals, a licence holder or a person authorised by an exemption to generate or supply electricity—
- (a) shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and

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- (b) shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.
- (2) In considering any relevant proposals for which his consent is required under section 36 or 37 of this Act, the Secretary of State shall have regard to—
- (a) the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and
- (b) the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of that sub-paragraph.
- (3) Without prejudice to sub-paragraphs (1) and (2) above, in exercising any relevant functions each of the following, namely, a licence holder, a person authorised by an exemption to generate or supply electricity and the Secretary of State shall avoid, so far as possible, causing injuries to fisheries or to the stock of fish in any waters.
- (4) In this paragraph—
- “building” includes structure;
- “relevant proposals” has the same meaning as in paragraph 1 above and, for the purposes of this paragraph, any such order as is mentioned in sub-paragraph (4) of that paragraph may be made under this sub-paragraph;
- “relevant functions” means any powers conferred and any duties imposed by or under this Act.
- (5) This paragraph and paragraphs 4 and 5 below extend to Scotland only.

**Modifications etc. (not altering text)**

**C58** Sch. 9 para. 3: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

- 4 (1) A licence holder shall within twelve months from the grant of his licence prepare, and from time to time modify, a statement setting out the manner in which he proposes to perform his duty under paragraph 3(1) above, including in particular the consultation procedures which he intends to follow.
- (2) Before preparing or modifying a statement under this paragraph, a licence holder shall consult with [<sup>F126</sup>Scottish Natural Heritage], the Ancient Monuments Board for Scotland and the Historic Buildings Council for Scotland.
- (3) As soon as practicable after preparing or modifying a statement under this paragraph, the licence holder shall publish the statement so prepared or so modified in such a manner as he considers appropriate.

**Textual Amendments**

**F126** Words in Sch. 9 para. 4(2) substituted (1.4.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), ss. 27(1), 28(2), Sch. 10 para.13; S.I. 1991/2633, art. 4

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### *Fisheries Committee: Scotland*

- 5 (1) The Fisheries Committee appointed under section 5(2) of the <sup>M110</sup>Electricity (Scotland) Act 1979 shall continue in existence, and shall have the function of giving advice and assistance (whether specifically requested or not), on questions relating to the effect in Scotland—
- (a) on fisheries, or
  - (b) on the stock of fish in any waters,
- of generating stations wholly or mainly driven by water, to the Secretary of State and to any person engaged in, or proposing to engage in, the operation of such a generating station.
- (2) The Committee shall consist of such a number of persons, appointed by the Secretary of State, as he may think proper.
- (3) The Committee shall have the power to regulate its own procedure.
- (4) Persons engaged in, or proposing to engage in, the operation of such a generating station as is mentioned in sub-paragraph (1) above shall furnish to the Committee any maps, plans, drawings or information which the Committee may reasonably require, and give to the Committee reasonable facilities for inspection.
- (5) A person making an application to the Secretary of State for consent under section 36 of this Act as respects such a generating station as is mentioned in sub-paragraph (1) above shall, before or on doing so, consult the Committee as regards the matter to which the application relates.
- (6) Upon being so consulted the Committee may make recommendations to the applicant or to any other person and shall transmit a copy of the recommendations to the Secretary of State; and the applicant shall intimate to the Committee and to the Secretary of State whether or not he is prepared to give effect to such recommendations as have been made to him.
- (7) If an applicant is not prepared to give effect to a recommendation made to him under sub-paragraph (6) above, the Secretary of State may, after considering any representation made, refuse the consent applied for.
- (8) Any expenses reasonably incurred by the Committee shall be defrayed by the Secretary of State out of money provided by Parliament.
- (9) Where recommendations are made under sub-paragraph (6) above to a person other than the applicant, that person shall have regard to the recommendations in carrying out any activities to which they are relevant.

#### **Modifications etc. (not altering text)**

**C59** Sch. 9 para. 5: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750](#), arts. 1, 2, [Sch. 1](#) (with art. 7)

#### **Marginal Citations**

**M110** 1979 c. 11



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## SCHEDULE 10

Section 70.

### TRANSFERS UNDER SECTIONS 66 AND 67

#### Modifications etc. (not altering text)

- C60** Sch. 10 applied (with modifications) (8.11.1995) by 1995 c. 25, ss. 17(1), 18(2)(c), Sch. 5 Pt. I paras. 1, 7(1)
- C61** Sch. 10 applied (with modifications) (16.5.2001) by 2000 c. 27, s. 108, Sch. 7 para. 7; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10)

#### *Allocation of property, rights and liabilities: general*

- 1 (1) The provisions of this paragraph shall apply where the transfers effected in pursuance of a transfer scheme include a transfer of all property, rights and liabilities comprised in a specified part of the transferor's undertaking, but shall not apply to any such rights or liabilities under a contract of employment.
- (2) Any property, right or liability comprised partly in the specified part of the transferor's undertaking and partly in some other part or parts of that undertaking shall, where the nature of the property, right or liability permits, be divided or apportioned between the transferee of the specified part ("transferee A") and the transferee of the other part or each of the other parts ("transferee B") in such proportions as may be appropriate.
- (3) Where any estate or interest in land falls to be so divided—
- (a) any rent payable under a lease in respect of that estate or interest; and
- (b) any rent charged on that estate or interest,
- shall be correspondingly apportioned or divided so that the one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest.
- (4) Sub-paragraph (3) above shall apply, with any necessary modifications, in relation to any feu duty payable in respect of an estate or interest in land in Scotland as it applies in relation to any rents charged on an estate or interest in land.
- (5) Any property, right or liability comprised as mentioned in sub-paragraph (2) above the nature of which does not permit its division or apportionment as so mentioned shall be transferred to transferee A or transferee B according to—
- (a) in the case of an estate or interest in land, whether on the transfer date transferee A or transferee B appears to be in greater need of the security afforded by that estate or interest or, where neither appears to be in greater need of that security, whether on that date transferee A or transferee B appears likely to make use of the land to the greater extent;
- (b) in the case of any other property or any right or liability, whether on the transfer date transferee A or transferee B appears likely to make use of the property, or as the case may be to be affected by the right or liability, to the greater extent,
- subject (in either case) to such arrangements for the protection of the other of them as may be agreed between them.
- 2 (1) The provisions of this paragraph shall apply where the transfers effected in pursuance of a transfer scheme include a transfer of all property, rights and liabilities comprised

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in a specified part of the transferor's undertaking, but shall not apply to any such rights or liabilities under a contract of employment.

- (2) It shall be the duty of the transferee of the specified part of the transferor's undertaking ("transferee A") and each of the other transferees ("transferee B"), whether before or after the transfer date, so far as practicable to arrive at such written agreements and to execute such other instruments as are necessary or expedient to identify or define the property, rights and liabilities transferred to transferee A or transferee B and as will—
  - (a) afford to transferee A and transferee B as against one another such rights and safeguards as they may require for the carrying on of their respective undertakings; and
  - (b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarification and modifications of the division of the transferor's undertaking as will best serve the carrying on of the respective undertakings of transferee A and transferee B.
- (3) Any such agreement shall provide so far as it is expedient—
  - (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;
  - (b) for the granting of indemnities in connection with the severance of leases and other matters; and
  - (c) for responsibility for registration of any matter in any statutory register.
- (4) If transferee A or transferee B represents to the Secretary of State, or if it appears to the Secretary of State without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (2) above that such agreement will be reached, the Secretary of State, whether before or after the transfer date, may—
  - (a) give a direction determining that matter; and
  - (b) include in the direction any provision which might have been included in an agreement under sub-paragraph (2) above.
- (5) Any property, rights or liabilities required by a direction under sub-paragraph (4) above to be transferred to transferee A or transferee B shall be regarded as having been transferred by this Act to, and by virtue thereof vested in, that transferee accordingly.

*Allocation of rights and liabilities: contracts of employment*

- 3 (1) The provisions of this paragraph shall apply where—
  - (a) the transfers effected in pursuance of a transfer scheme include a transfer of all property, rights and liabilities comprised in a specified part of the transferor's undertaking; and
  - (b) it falls to be determined whether the rights and liabilities transferred to the transferee of that part ("transferee A") include rights and liabilities under a particular contract of employment.
- (2) Rights and liabilities under the contract of employment shall be transferred to transferee A only if immediately before the transfer date the employee is employed wholly or mainly for the purposes of the specified part of the transferor's undertaking.

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- (3) The employee, transferee A or any of the other transferees may apply to the Secretary of State to determine whether or not rights and liabilities in respect of the employee's services under the contract of employment are transferred to transferee A, and the Secretary of State's decision on the application shall be final.

*Variation of transfers by agreement*

- 4 (1) The provisions of this paragraph shall apply where the transfers effected in pursuance of a transfer scheme include a transfer of all property, rights and liabilities comprised in a specified part of the transferor's undertaking.
- (2) At any time before the end of the period of twelve months beginning with the transfer date the transferee of the specified part and the transferee of any property, rights and liabilities comprised in some other part of the transferor's undertaking may, with the approval of the Secretary of State, agree in writing that—
- (a) as from such date as may be specified in or determined under the agreement; and
  - (b) in such circumstances (if any) as may be so specified,
- there shall be transferred from the one transferee to, and vested in, the other transferee any property, rights and liabilities specified in the agreement; but no such agreement shall have effect in relation to rights and liabilities under a contract of employment unless the employee concerned is a party to the agreement.
- (3) Subject to sub-paragraph (4) below, in the case of an agreement under sub-paragraph (2) above, the property, rights and liabilities in question shall on the date of the coming into force of the agreement be transferred, and by virtue of the agreement vest, in accordance with the agreement.
- (4) The following provisions of this Schedule shall have effect as if—
- (a) any reference to a transfer effected in pursuance of a transfer scheme included a reference to a transfer effected in pursuance of an agreement under sub-paragraph (2) above;
  - (b) any reference to a transaction effected in pursuance of paragraph 2(2) above or of a direction under paragraph 2(4) above included a reference to such an agreement; and
  - (c) any reference to a vesting by virtue of this Act included a reference to a vesting by virtue of such an agreement.

*Right to production of documents of title*

- 5 (1) The provisions of this paragraph shall apply where the transferee under a transfer effected in pursuance of a transfer scheme ("transferee A") is entitled to possession of any document relating in part to the title to, or to the management of, any land or other property transferred to the transferee under some other transfer effected in pursuance of that scheme ("transferee B").
- (2) Where the land or other property is situated in England and Wales—
- (a) transferee A shall be deemed to have given to transferee B an acknowledgment in writing of the right of transferee B to production of the document and to delivery of copies thereof; and

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- (b) section 64 of the <sup>M111</sup>Law of Property Act 1925 shall have effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.
- (3) Where the land or other property is situated in Scotland, subsections (1) and (2) of section 16 of the <sup>M112</sup>Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) shall have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words “unless specially qualified” were omitted.

#### Marginal Citations

**M111** 1925 c. 20.

**M112** 1979 c. 33.

#### *Proof of title by certificate*

- 6 (1) Where two or more transfers are effected in pursuance of a transfer scheme, a certificate issued by either or any of the transferees (“transferee A”) with the concurrence of the other or others of them that—
- any property specified in the certificate;
  - any such interest in or right over any such property as may be so specified; or
  - any right or liability so specified,
- is by virtue of this Act for the time being vested in transferee A shall be conclusive evidence for all purposes of that fact, and shall constitute a link of title for the purposes of section 5(1) of the <sup>M113</sup>Conveyancing (Scotland) Act 1924 (deduction of title).
- (2) If, on the expiration of one month after a request from either or any of the transferees (“transferee A”) for the other or one of the others of them (“transferee B”) to concur in the issue of such a certificate, transferee B has failed so to concur—
- transferee A may refer the matter to the Secretary of State; and
  - the Secretary of State may direct transferee B to concur in the issue of a certificate prepared in such terms as are specified in the direction.

#### Marginal Citations

**M113** 1924 c. 27.

#### *Restrictions on dealing with certain land*

- 7 (1) Where two or more transfers are effected in pursuance of a transfer scheme and the Secretary of State is satisfied, on the representation of either or any of the transferees (“transferee A”), that—
- in consequence of those transfers, different interests in land, whether the same or different land, are held by transferee A and by the other or one of the other transferees (“transferee B”); and
  - the circumstances are such that the provisions of this paragraph should have effect,

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the Secretary of State may direct that those provisions shall apply to such of that land as may be specified in the direction; and while the direction remains in force, those provisions shall have effect accordingly.

- (2) Neither transferee A nor transferee B shall dispose of any interest to which they may respectively be entitled in any of the specified land except with the consent of the Secretary of State.
- (3) If, in connection with any proposal to dispose of any interest of either transferee A or transferee B in any of the specified land, it appears to the Secretary of State to be necessary or expedient for the protection of either of them, he may—
  - (a) require either transferee A or transferee B to dispose of any interest to which it may be entitled in any of the specified land to such person and in such manner as may be specified in the requirement;
  - (b) require either transferee A or transferee B to acquire from the other any interest in any of the specified land to which that other is entitled; or
  - (c) consent to the proposed disposal subject to compliance with such conditions as the Secretary of State may see fit to impose.
- (4) A person other than transferee A and transferee B dealing with, or with a person claiming under, either transferee A or transferee B shall not be concerned to see or enquire—
  - (a) whether this paragraph applies or has applied in relation to any land to which the dealing relates; or
  - (b) whether the provisions of this paragraph have been complied with in connection with that or any other dealing with that land,and no transaction between persons other than transferee A and transferee B shall be invalid by reason of any failure to comply with those provisions.

*Third parties affected by vesting provisions*

- 8 (1) A transaction of any description which, in pursuance of paragraph 2(2) above or of a direction under paragraph 2(4) above, is effected between transferee A and transferee B—
  - (a) shall have effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register; but
  - (b) subject to that, shall be binding on all persons notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.
- (2) If any transaction is effected in pursuance of paragraph 2(2) above or of a direction under paragraph 2(4) above, transferee A and transferee B shall notify any person who has rights or liabilities which thereby become enforceable as to part by or against transferee A and as to part by or against transferee B.
- (3) If, within 28 days of being notified, such a person as is mentioned in sub-paragraph (2) above applies to the Secretary of State and satisfies him that the transaction operated unfairly against him, the Secretary of State may give such directions to transferee A and transferee B as appear to him appropriate for varying the transaction.

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- 9 (1) If in consequence of two or more transfers effected in pursuance of a transfer scheme or of anything done in pursuance of the provisions of this Schedule—
- (a) the rights or liabilities of any person other than the transferor and the transferees which were enforceable against or by the transferor become enforceable as to part against or by one transferee and as to part against or by another transferee; and
  - (b) the value of any property or interest of that person is thereby diminished,
- such compensation as may be just shall be paid to that person by one or more of the transferees.
- (2) Any dispute as to whether, and if so how much, compensation is payable under sub-paragraph (1) above, or as to the person to or by whom it shall be paid, shall be referred to and determined—
- (a) by an arbitrator appointed by the Lord Chancellor; or
  - (b) where the proceedings are to be held in Scotland, by an arbiter appointed by the Lord President of the Court of Session.
- [<sup>F127</sup>(3) A person shall not be appointed after the day on which he attains the age of 70 to be an arbitrator or arbiter under sub-paragraph (2) above.]

#### Textual Amendments

**F127** Sch. 10 para. 9(3) added (31.3.1995) by 1993 c. 8, s. 26, **Sch. 6 para.66** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**

#### Modifications etc. (not altering text)

**C62** Sch. 10 para. 9(2) restricted (31.3.1995) by 1993 c. 8, s. 26(8)(g) (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**

### Interpretation

- 10 Any reference in this Schedule to a transfer effected in pursuance of a transfer scheme is a reference to a transfer effected by this Act in pursuance of such a scheme.

## SCHEDULE 11

Section 90.

### TAXATION PROVISIONS

#### General

- 1 (1) Subject to sub-paragraphs (2) and (3) below, the following provisions shall apply for the purposes of the Corporation Tax Acts, namely—
- (a) all the trades or parts of trades carried on by the existing bodies which are transferred by this Act to successor companies shall be treated as having been, at the time of their commencement and at all times since that time, separate trades carried on by those companies respectively;

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- (b) the trade carried on by each of those companies after the transfer date shall be treated as the same trade as that which, by virtue of paragraph (a) above, it is treated as having carried before that date;
  - (c) all property, rights and liabilities of an existing body which are transferred by this Act to a successor company shall be treated as having been, at the time when they became vested in that body and at all times since that time, property, rights and liabilities of that company; and
  - (d) anything done by an existing body in relation to property, rights and liabilities which are transferred by this Act to a successor company shall be deemed to have been done by that company.
- (2) Except in the case of an Area Board, there shall be made such apportionments of unallowed tax losses and of expenditure by reference to which capital allowances may be made as may be specified in the transferor’s transfer scheme.
- (3) Where any property, rights and liabilities of an existing body in England and Wales which are transferred by this Act to a successor company became vested in that body by virtue of a qualifying transfer, or two or more successive qualifying transfers—
- (a) sub-paragraph (1)(c) above shall have effect as if the reference to the time when the property, rights and liabilities became vested in that body were a reference to the time when they became vested in the original transferor, that is to say, the transferor under the qualifying transfer or, as the case may be, the first qualifying transfers; and
  - (b) if the property, rights and liabilities became vested in the original transferor by virtue of a transfer made by a company in which, at the time of the transfer, the original transferor or another existing body in England or Wales held an interest, that interest shall be deemed to have been held at that time by the successor company.
- (4) Where any property, rights and liabilities of an existing body in England or Wales which are transferred by this Act to a successor company became vested in that body by virtue of a transfer made by a company in which, at the time of the transfer, that body or another body held an interest, that interest shall be deemed to have been held at that time by the successor company.
- (5) In this paragraph—
- “capital allowance” has the same meaning as in the Tax Acts;
- “the final accounting period” means the last complete accounting period of the relevant body, that is to say—
- (a) in the case of an existing body in England or Wales, the Electricity Council;
  - (b) in the case of an existing body in Scotland, that body,
- ending before that transfer date;
- “qualifying transfer” means a transfer to an existing body in England and Wales by another such body;
- “unallowed tax losses” means any losses, allowances or amounts which, as at the end of the final accounting period, are tax losses within the meaning given by section 400(2) of the 1988 Act;
- and in construing sub-paragraphs (1) to (4) above, section 511(2) of the 1988 Act and the corresponding earlier enactments shall be disregarded.

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- (6) This paragraph shall have effect in relation to accounting periods beginning after the final accounting period.

### *Chargeable gains*

- 2 (1) This paragraph applies where—
- (a) by virtue of a transfer of property, rights and liabilities effected by this Act to a successor company (in this paragraph referred to as “the transferee”), a company would, but for paragraph (1) above, cease to be a member of a group of which an existing body is a member; and
  - (b) assets have been acquired by that company from that body or from any other member of that group.
- (2) On the company ceasing to be a member of a group of which the transferee is a member, section [F128 178 or 179 of the 1992 Act] (company ceasing to be a member of a group) shall apply as if any assets acquired at any time as mentioned in subparagraph (1) above had been acquired by the company from the transferee at that time.
- (3) In this paragraph “group” has the meaning given by section [F128 170 of the 1992 Act]; and in construing this paragraph the provisions of section 511(2) of the 1988 Act and the corresponding earlier enactments shall be disregarded.

#### **Textual Amendments**

**F128** Words in [Sch. 11 para. 2](#) substituted (6.3.1992 with effect for the year 1992-93 and subsequent years of assessment) by [Taxation and Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 10 para. 20\(1\)](#)

[F129 2A In this Schedule “the 1992 Act” means the Taxation of Chargeable Gains Act 1992.]

#### **Textual Amendments**

**F129** [Sch. 11 para. 2A](#) added (6.3.1992 with effect for 1992-93 and subsequent years of assessment) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 10 para. 20\(1\)](#)

### *Roll-over relief*

- 3 (1) Where—
- (a) a held over gain would, but for the provisions of section [F130 154 of the 1992 Act], have been carried forward to a depreciating asset; and
  - (b) that asset is transferred by this Act to a successor company,
- that section shall have effect as if the gain had accrued to, and the claim for it to be held over had been made by, that company.
- (2) In this paragraph the expressions which are used in the said section [F130 154] have the same meanings as in that section.



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### Textual Amendments

**F130** Words in [Sch. 11 para. 3](#) substituted (6.3.1992 with effect for the year 1992-93 and subsequent years of assessment) by [Taxation of Chargeable Gains Act 1992 \(c. 12\), ss. 289, 290, Sch. 10 para. 20\(2\)](#)

### *Unallowed capital losses*

- 4 (1) Any unallowed capital losses of an existing body shall be treated as allowable capital losses accruing to the appropriate successor company on the disposal of an asset on the transfer date.
- (2) Immediately before the transfer date the unallowed capital losses of the Electricity Council shall be divided between the existing bodies in England and Wales; and there shall be allocated to each such body such proportion (if any) of those losses as is given by the formula—

$$\frac{A}{B}$$

where—

A is the amount which, but for section 511(2) of the 1988 Act and the corresponding earlier enactments, would have been the amount of the unallowed capital losses of that body;

B is the aggregate of the amounts which, but for that section and those enactments, would have been the amounts of the unallowed capital losses of those bodies.

- (3) In this paragraph—

“allowable capital losses” means losses which are allowable for the purposes of the [F131 1992 Act];

“unallowed capital losses”, in relation to any body, means any allowable capital losses which have been accrued to that body before the transfer date, in so far as they have not been allowed as deductions from chargeable gains.

### Textual Amendments

**F131** Words in [Sch. 11 para. 4](#) substituted (6.3.1992 with effect for the year 1992-93 and subsequent years of assessment) by [Taxation of Chargeable Gains Act 1992 \(c. 12\), ss. 289, 290, Sch. 10 para. 20\(3\)](#).

### *Transaction in pursuance of section 68(2)(c)*

- 5 (1) Sub-paragraph (2) below applies to any disposal (within the meaning of the [F132 1992 Act]) which is effected, and sub-paragraphs (3) and (4) below apply to any lease which is granted, in pursuance of a provision included in a transfer scheme by virtue of section 68(2) of this Act.

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- (2) A disposal to which this sub-paragraph applies shall be taken for the purposes of the <sup>F132</sup>1992 Act] to be effected for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the disponent.
- (3) <sup>F133</sup>Neither subsection (6)(a) of section 11 of the Capital Allowances Act 1990 (“the 1990 Act”) nor]subsection (6)(a) of section 37 of the <sup>M114</sup>Finance Act 1978 (capital allowances: long leases) shall . . . <sup>F134</sup>prevent the application of <sup>F135</sup>section 11 or section 37]in any case where the lease is a lease to which this sub-paragraph applies.
- (4) Where, in the case of any machinery or plant which is a fixture and on the provision of which for the purposes of the transferor’s trade the transferor incurred capital expenditure, a lease of the relevant land (with or without other land) is a lease to which this sub-paragraph applies—
- (a) the lessor shall not be required to bring the disposal value of the machinery or plant into account in accordance with section 44 of the <sup>M115</sup>Finance Act 1971 <sup>F136</sup>or section 24 of the 1990 Act](writing down allowances and balancing adjustments); and
- (b) so far as relating to the bringing of disposal values into account, <sup>F137</sup>section 44 of the Finance Act 1971, section 24 of the 1990 Act, Schedule 17 to the Finance Act 1985 and Chapter VI of Part II of the 1990 Act](capital allowances for fixtures) shall have effect as if—
- (i) the capital expenditure incurred by the transferor had been incurred by the lessee on the provision of the machinery or plant wholly and exclusively for the purposes of the lessee’s trade; and
- (ii) the machinery or plant had become a fixture, immediately after the grant of the lease.
- (5) In sub-paragraph (4) above “the transferor” means the transferor under the transfer scheme in question and expressions which are used in Schedule 17 to the Finance Act 1985 <sup>F138</sup>or Chapter VI of Part II of the 1990 Act]have the same meaning as in that Schedule <sup>F138</sup>or Chapter]; and in construing that sub-paragraph the provisions of section 511(2) of the 1988 Act and the corresponding earlier enactments shall be disregarded.

#### Textual Amendments

- F132** Words in [Sch. 11 para. 5](#) substituted (6.3.1992 with effect for the year 1992-93 and subsequent years of assessment) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 10 para. 20\(3\)](#)
- F133** Words inserted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(3), [Sch. 1 para. 11\(a\)](#)
- F134** Word repealed by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(4)(5), [Sch. 2](#)
- F135** Words substituted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(3), [Sch. 1 para. 11\(a\)](#)
- F136** Words inserted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(3), [Sch. 1 para. 11\(b\)](#)
- F137** Words substituted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(3), [Sch. 1 para. 11\(c\)](#)
- F138** Words inserted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(3), [Sch. 1 para. 11\(d\)](#)

#### Marginal Citations

- M114** 1978 c. 42.
- M115** 1971 c. 68.

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### *Transfers in pursuance of Schedule 10*

- 6 Where any property, rights and liabilities to which a transfer effected by this Act relates are, in pursuance of Schedule 10 to this Act, transferred by the transferee to another successor company—
- (a) the foregoing provisions of this Schedule shall have effect as if the transfer effected by this Act had been a transfer to the other successor company; and
  - (b) anything which, in relation to the property, rights and liabilities transferred, was done by the transferee for the purposes of the transferee's trade shall be deemed to have been done by the other successor company for the purposes of that company's trade.

### *Apportionments etc.*

- 7 (1) This paragraph applies where any apportionment or other matter arising under the foregoing provisions of this Schedule appears to be material as respects the liability to tax (for whatever period) or two or more successor companies.
- (2) Any question which arises as to the manner in which the apportionment is to be made or the matter to be dealt with shall be determined, for the purposes of tax of all the companies—
- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those companies, by those Commissioners, unless all the companies agree that it shall be determined by the Special Commissioners;
  - (b) in a case where different bodies of Commissioners have jurisdiction with respect to those companies, by such of those bodies as the Board may direct, unless all the companies agree that it shall be determined by the Special Commissioners; and
  - (c) in any other case, by the Special Commissioners.
- (3) The Commissioners by whom the question falls to be determined shall make the determination in like manner as if it were an appeal except that all the companies shall be entitled to appear and be heard by the Commissioners or to make representations to them in writing.

### *Securities of successor companies*

- 8 (1) Any share issued by a successor company in pursuance of section 71 or 80 of this Act shall be treated for the purposes of the Corporation Tax Acts as if it had been issued wholly in consideration of a subscription paid to that company of an amount equal to the nominal value of the share.
- (2) Any debenture issued by a successor company in pursuance of section 71 or 80 of this Act shall be treated for the purposes of the Corporation Tax Acts as if it had been issued—
- (a) wholly in consideration of a loan made to that company of an amount equal to the principal sum payable under the debenture; and
  - (b) wholly and exclusively for the purposes of the trade carried on by that company.

[<sup>F139</sup>and if any such debenture includes provision for the payment of a sum expressed as interest in respect of a period which falls wholly or partly before the issue of the debenture, any payment made in pursuance of that provision in respect of that period shall be treated for the purposes of the Corporation Tax Acts as if the debenture had

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been issued at the commencement of that period and, accordingly, as interest on the principal sum payable under the debenture.]

#### Textual Amendments

**F139** Words in [Sch. 11 para. 8\(2\)](#) added(*retrospectively*) by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), [s.80](#).

#### *Extinguishment of liabilities: restriction of tax losses*

- 9 (1) Section 400(1) of the 1988 Act (write-off of government investment: restriction of tax losses) shall not have effect by virtue of section 80(1) of this Act; but in the case of any such extinguishment (whether or not it is a case as regards which the said section 400(1) would, but for the foregoing provisions of this sub-paragraph, have effect) the Secretary of State may, with the consent of the Treasury, from time to time, direct that such amount (“amount” including nil) as is specified in the direction shall be set off against the successor company’s tax losses as at the end of the accounting period ending last before the date of the direction.
- (2) In any direction under sub-paragraph (1) above it may further be provided that the balance of tax losses remaining after the set off shall be aggregated with the balance of another successor company’s (or other successor companies’) tax losses remaining after a direction under that sub-paragraph in respect of that other company (or directions in respect of those other companies) and the losses so aggregated apportioned between the companies in such manner as may be specified in the direction which makes such further provision.
- (3) No direction shall be given under sub-paragraph (1) above in relation to a successor company as a time when the company has ceased to be wholly owned by the Crown.
- (4) For the purpose of sub-paragraphs (1) and (2) above, a successor company’s tax losses at the end of the accounting period mentioned in the said sub-paragraph (1) are those referred to in paragraphs (a) to (e) of subsection (2) of the said section 400; and subsections (3) and (4) of that section shall have effect in relation to any set off under sub-paragraph (1) above as if—
- (a) any reference to subsection (1) of that section were a reference to sub-paragraph (1) above; and
  - (b) the reference in subsection (4) of that section to the write-off date were a reference to the date of the direction under sub-paragraph (1) above.
- (5) Subsection (6) of the said section 400 shall apply in relation to any such extinguishment as is mentioned in sub-paragraph (1) above as if the reference to the body in question were a reference to the company whose liabilities are so extinguished.
- (6) The trade carried on by a company whose liabilities are extinguished by virtue of section 80(1) of this Act shall, if the company’s tax losses are aggregated and apportioned by virtue of sub-paragraph (2) above, be treated for the purposes of giving any relief under the Corporation Tax Acts in respect of the losses so apportioned as being, and having at all times been, the trade carried on by the successor companies to which the losses are apportioned.
- (7) In this paragraph “accounting period” has the same meaning as in the 1988 Act.

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### *Income tax exemption for certain interests*

- 10 The vesting in a successor company by this Act of a liability for any loan made to an existing body shall not effect any direction in respect of the loan given or having effect as if given by the Treasury under section 581 of the 1988 Act (income tax exemption for interest on foreign securities).

### *Stamp Duty*

PROSPECTIVE

- 11 (1) No transfer effected by this Act shall give rise to any liability to stamp duty.
- (2) Stamp duty shall not be chargeable on a transfer scheme or, subject to sub-paragraph (3) below, on any instrument which is certified to the Board by the Secretary of State as having been made in pursuance of such a scheme.
- (3) No instrument which is certified as mentioned in sub-paragraph (2) above shall be taken as duly stamped unless—
- (a) it is stamped with the duty to which it would but for that sub-paragraph be liable; or
  - (b) it has, in accordance with section 12 of the <sup>M116</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped.
- (4) Stamp duty shall not be chargeable on any instrument which is made in pursuance of Schedule 10 to this Act.
- (5) Stamp duty shall not be chargeable on any instrument by which the Secretary of State, or any nominee of the Treasury or the Secretary of State, transfers securities of a company to another company if—
- (a) either or both of the companies are successor companies; and
  - (b) each of the companies is, at the time when the instrument is made, wholly owned by the Crown.

#### **Marginal Citations**

**M116** 1891 c. 39.

### *Stamp duty reserve tax*

- 12 (1) No agreement made for the purposes of or for purposes connected with a transfer scheme shall give rise to a charge to stamp duty reserve tax.
- (2) No agreement which is made in pursuance of Schedule 10 to this Act shall give rise to a charge to stamp duty reserve tax.
- (3) No agreement by which the Treasury or the Secretary of State, or any nominee of the Treasury or Secretary of State, agrees to transfer securities of a company to another company shall give rise to a charge to stamp duty reserve tax if—
- (a) either or both of the companies are successor companies; and
  - (b) each of the companies is, at the time when the agreement is made,

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wholly owned by the Crown.

*Interpretation etc.*

- 13 (1) In this Schedule—
- “the 1988 Act” means the <sup>M117</sup>Income and Corporation Tax Act 1988;
  - “the Board” means the Commissioners of Inland Revenue;
  - “existing body in England and Wales” means an Area Board, the Generating Board or the Electricity Council;
  - “existing body in Scotland” means a Scottish board.
- (2) For the purposes of this Schedule a transfer, instrument or agreement shall be regarded as made in pursuance of Schedule 10 to this Act if the making of that transfer, instrument or agreement is required or authorised by or under paragraph 2 or 4 of that Schedule.

**Marginal Citations**

[M117 1988 c. 1.](#)

SCHEDULE 12

Section 97.

NUCLEAR LIABILITIES: FINANCIAL ASSISTANCE

*Grants by Secretary of State*

- 1 (1) Subject to paragraph 4 below, the Secretary of State may, with the approval of the Treasury, make grants of such amounts as he thinks fit towards qualifying expenditure, that is to say, expenditure incurred or to be incurred by any person in connection with—
- (a) the storage or reprocessing of nuclear fuel;
  - (b) the treatment, storage or disposal of radioactive waste; or
  - (c) the decommissioning of any installation the operation of which requires a licence under section 1 of the <sup>M118</sup>Nuclear Installations Act 1965.
- (2) Subject to paragraph 4 below, the Secretary of State may, with the approval of the Treasury, enter into an agreement with any person under which the Secretary of State undertakes that, if such conditions as may be specified in the agreement are satisfied, he will exercise the power conferred by this paragraph in such manner and to such extent as may be specified in the agreement.
- (3) A grant under this paragraph may be made at such times, in such manner and subject to such conditions as the Secretary of State with the approval of the Treasury may determine.
- (4) Any sums required by the Secretary of State for making grants under this paragraph shall be paid out of money provided by Parliament.

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#### Marginal Citations

M118 1965 c. 57.

#### *Loans by Secretary of State*

- 2
- (1) Subject to paragraph 4 below, the Secretary of State may, with the approval of the Treasury, make loans of such amounts as he thinks fit towards qualifying expenditure.
  - (2) A loan under this paragraph—
    - (a) may be made at such times, in such manner and subject to such conditions as the Secretary of State may with the approval of the Treasury determine; and
    - (b) shall be repaid to him at such times and by such methods, and interest thereon shall be paid to him at such rates and at such times, as he may, with the approval of the Treasury, from time to time direct.
  - (3) Any sums required by the Secretary of State for making loans under this paragraph shall be paid out of money provided by Parliament.
  - (4) Any sums received under sub-paragraph (2) above by the Secretary of State shall be paid into the Consolidated Fund.
  - (5) It shall be the duty of the Secretary of State—
    - (a) to prepare in respect of each financial year, in such form as the Treasury may direct, an account of sums issued to him for loans under this paragraph or received by him under this paragraph, and of the disposal by him of those sums; and
    - (b) to send the account to the Comptroller and Auditor General not later than the end of November in the following financial year;and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it and of his report before each House of Parliament.

#### *Guarantees by Secretary of State*

- 3
- (1) Subject to paragraph 4 below, the Secretary of State with the approval of the Treasury may guarantee, in such manner and on such terms as he may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Secretary of State for the purpose of meeting qualifying expenditure.
  - (2) Immediately after a guarantee is given under this paragraph, the Secretary of State shall lay a statement of the guarantee before each House of Parliament; and immediately after any sum is paid for fulfilling a guarantee so given, the Secretary of State shall so lay a statement relating to that sum.
  - (3) Any sums required by the Secretary of State for fulfilling a guarantee under this paragraph shall be paid out of money provided by Parliament.
  - (4) If any sums are paid out in fulfilment of a guarantee given under this paragraph the person whose obligations are so fulfilled shall make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct—
    - (a) payments of such amounts as the Secretary of State may so direct in or towards repayment of the sums so paid out; and

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(b) payments of interest on what is outstanding for the time being in respect of sums so paid out at such rate as the Secretary of State may so direct; and the approval of the Treasury shall be required for the giving of a direction under this sub-paragraph.

(5) Any sums received under sub-paragraph (4) above by the Secretary of State shall be paid into the Consolidated Fund.

#### *Financial limits*

- 4 (1) The aggregate of the following, namely—
- (a) grants made or agreed to be made by the Secretary of State under paragraph 1 above;
  - (b) any amounts outstanding by way of principal in respect of—
    - (i) loans made by the Secretary of State under paragraph 2 above; or
    - (ii) sums paid by the Secretary of State in fulfilment of guarantees under paragraph 3 above,
 shall not exceed £1,000 million or such greater sum, not exceeding £2,500 million, as the Secretary of State may by order specify.
- (2) No order shall be made under this paragraph unless a draft of the order has been approved by a resolution of the House of Commons.

#### *Interpretation*

- 5 In this Schedule “qualifying expenditure” has the meaning given by paragraph 1(1) above.

### SCHEDULE 13

Section 102.

#### PRODUCTION AND SUPPLY OF HEAT OR ELECTRICITY ETC. BY SCOTTISH LOCAL AUTHORITIES

In the <sup>M119</sup>Local Government (Scotland) Act 1973, the following provisions shall be inserted after section 170—

#### *“ Heating and electricity*

#### **170A Production and supply of heat and electricity etc. by local authorities.**

- (1) Subject to subsections (2) and (3) of this section, a local authority may—
- (a) produce heat or electricity or both;
  - (b) establish and operate such generating stations and other installations as the authority think fit for the purpose of producing heat or electricity or both;
  - (c) buy or otherwise acquire heat;
  - (d) use, sell or otherwise dispose of heat produced or acquired, or electricity produced, by the authority by virtue of this section;
  - (e) without prejudice to the generality of the preceding paragraph, enter into and carry out agreements for the supply by the authority, to premises within or



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outside the authority's area, of such heat as is mentioned in the preceding paragraphs and steam produced from and air and water heated by such heat.

- (2) Nothing in subsection (1) of this section shall be construed as exempting a local authority from the requirements of Part I of the Electricity Act 1989.
- (3) Except in such cases as may be prescribed, a local authority shall not be entitled to sell electricity which is produced otherwise than in association with heat.
- (4) A local authority may—
  - (a) construct, lay and maintain pipes and associated works for the purpose of conveying heat produced or acquired by the authority by virtue of this section and steam produced from and air and water heated by such heat;
  - (b) contribute towards the cost incurred by another person in providing or maintaining pipes or associated works which are connected with pipes provided by the authority in pursuance of the preceding paragraph.
- (5) Parts I and II of Schedule 3 to the Water (Scotland) Act 1980 (which relate to the breaking open of roads and the laying of communication and supply pipes etc.) shall apply in relation to pipes and associated works provided or to be provided in pursuance of paragraph (a) of the preceding subsection as those Parts apply in relation to water mains and pipes but as if—
  - (a) in paragraph 1 of that Schedule the words “which they are authorised to lay” were omitted;
  - (b) for the reference to the special Act in paragraph 2(3) of that Schedule there were substituted a reference to this subsection;
  - (c) for any reference to a water authority or a water development board there were substituted a reference to the local authority in question, whether acting alone or jointly with some other person; and
  - (d) for any reference to the limits of supply or area of a water authority or a water development board there were substituted a reference to the area of the local authority.
- (6) It shall be the duty of a local authority by whom an installation for producing heat is operated in pursuance of this section in any financial year to furnish to the Secretary of State, as soon as practicable after the end of that year, such particulars relating to the installation and heat produced at the installation as are prescribed.
- (7) In this section “associated works”, in relation to pipes, means any of the following connected with the pipes, namely, any valve, filter, stopcock, pump, meter, inspection chamber and manhole and such other works as are prescribed.
- (8) Nothing in this section (except the restrictions imposed by subsection (3)) shall be construed as prejudicing any power exercisable by a local authority apart from this section.
- (9) Regulations under subsection (3) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **170B Provisions supplementary to s.170A.**

- (1) A local authority who supply or propose to supply heat, hot air, hot water or steam in pursuance of the preceding section may make byelaws—

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- (a) with respect to the works and apparatus to be provided or used by persons other than the authority in connection with the supply;
  - (b) for preventing waste and unauthorised use of the supply and unauthorised interference with works and apparatus used by the authority or any other person in connection with the supply;
  - (c) providing for any specified contravention of the byelaws to be an offence punishable on summary conviction with a fine of such an amount, not exceeding level 3 on the standard scale, as is specified in the byelaws.
- (2) Subsections (1) to (7) of section 38 of the Water (Scotland) Act 1980 (which relates to the entry of premises by authorised officers of water authorities or water development boards) shall have effect for the purpose of authorising the entry of premises by authorised officers of a local authority who provide or propose to provide such a supply as is mentioned in the preceding subsection as if for any reference to water authorities or water development boards there were substituted a reference to the local authority and as if in subsection (1) of that section—
- (a) for paragraph (a) there were substituted the following paragraph—
    - “(a) for the purpose of installing, examining, adjusting, removing or reading any meter used or to be used by the local authority for measuring the heat, hot air, hot water or steam supplied or to be supplied by that authority;”
  - (b) for the words from “this Act” onwards in paragraph (b) there were substituted the words “byelaws in force by virtue of section 170B of the Local Government (Scotland) Act 1973”; and
  - (c) for the words “this Act” in paragraphs (c) and (d) there were substituted the words “section 170A of that Act”.
- (3) Regulations may repeal or alter subsection (1) of this section or any provision of byelaws in force by virtue of that subsection and may make any modification of the preceding subsection which the Secretary of State considers is appropriate in consequence of the repeal or alteration.
- (4) An instrument containing regulations under subsection (3) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Section 80 of the Health and Safety at Work etc. Act 1974 (which among other things provides that regulations under subsection (1) of that section may repeal or modify any provision to which that subsection applies if it appears to the authority making the regulations that it is expedient to do so in consequence of any provision made by or under Part I of that Act) shall have effect as if the provisions to which subsection (1) of that section applies included subsection (1) of this section and byelaws in force by virtue of subsection (1) of this section.
- (6) The accounts of a local authority by whom expenditure is incurred under any of the provisions of the preceding section and this section shall include a separate account of that expenditure and of any income connected with functions conferred on the authority by those provisions.”

#### **Marginal Citations**

**M119** 1973 c. 65.

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M119 1973 c. 65.

## SCHEDULE 14

Section 104.

### THE ELECTRICITY SUPPLY PENSION SCHEME

#### *Power to amend scheme*

- 1 (1) The Secretary of State may make regulations amending the Electricity Supply Pension Scheme (in this Schedule referred to as “the scheme”) for any of the following purposes, namely—
  - (a) for enabling the following persons to participate in or acquire pension rights under the scheme on such terms and conditions as may be prescribed, namely—
    - (i) members and former members of existing bodies;
    - (ii) officers and former officers of the Electricity Consumers’ Council; and
    - (iii) persons (other than successor companies) whose participation in the scheme will not prejudice its approval for the purposes of the relevant enactments, and employees of such persons;
  - (b) for requiring any persons (including persons not participating in the scheme) to make payments to the trustees of the scheme in such circumstances as may be prescribed;
  - (c) for requiring or enabling any functions exercisable under the scheme by existing bodies to be exercisable by such persons, and in such circumstances, as may be prescribed;
  - (d) for enabling the scheme to be wound up (in whole or in part) in such circumstances as may be prescribed; and
  - (e) for securing that the scheme continues to be approved for the purposes of the relevant enactments, notwithstanding the transfers made by this Act and the repeal by this Act of section 54 of the <sup>M120</sup>Electricity Act 1947.
- (2) Regulations under this paragraph may make such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (3) Regulations under this paragraph may be made so as to have effect from a date prior to their making, so however that so much of any regulations as provides that any provision of regulations shall have effect from a date prior to their making shall not place any person other than existing bodies or Scottish Boards, or their successor companies, in a worse position than he would have been in if the regulations had been made to have effect only from the date of their making.
- (4) Regulations under this paragraph shall not be made at any time after any supply or generating company has ceased to be wholly owned by the Crown.

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### Marginal Citations

M120 1947 c. 54.

### *Protection for certain persons*

- 2 (1) The Secretary of State may make regulations for the purpose of securing that—
- (a) no person to whom paragraph 3(1) or (2) below applies is placed in any worse position by reason of—
    - (i) any winding up, in whole or in part, of a relevant scheme, that is to say, the scheme or any other scheme which is provided or amended in pursuance of the regulations; or
    - (ii) any amendment of a relevant scheme which results in benefits under that scheme being reduced, or contributions by employees being increased, and is made otherwise than in such circumstances as may be prescribed;
  - (b) no person to whom paragraph 3(1) below applies is prevented from continuing to participate in or acquire pension rights under the scheme by reason of any change of employer—
    - (i) which does not affect his continuity of employment and is made otherwise than in such circumstances as may be prescribed; and
    - (ii) in the case of which his new employer either is a participant in the scheme or is wholly owned by one or more companies which or each of which is such a participant; and
  - (c) no person to whom paragraph 3(1) below applies is placed in any worse position by reason of any change of employer which does not affect his continuity of employment but prevents him from continuing to participate in or acquire pension rights under a relevant scheme;
- and the references in paragraphs (a) and (c) above to any worse position shall be construed, in relation to a person to whom paragraph 3(1) below applies who, after the transfer date, ceases to participate in or acquire pension rights under the scheme, as references to a position which is any worse than his position immediately before he so ceases.
- (2) Regulations under this paragraph may impose duties (whether as to the amendment of the scheme, the provision or amendment of other schemes, the purchase of annuities, the making of payments or otherwise) on persons who are or have been employers of persons to whom paragraph 3(1) or (2) below applies; and duties so imposed on any person may include duties owed to persons of whom he is not and has not been an employer.
  - (3) Regulations under this paragraph may also provide for any dispute arising under them to be referred to arbitration.
  - (4) Sub-paragraphs (2) and (4) of paragraph 1 above shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph.
- 3 (1) Subject to sub-paragraph (3) below, this sub-paragraph applies to—
- (a) any existing employee who, immediately before the transfer date, is a participant in the scheme;

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- (b) any existing employee who, after that date, participates in the scheme within three months of his attaining the minimum age for such participation;
  - (c) any former participant who, after that date, participates in or acquires pension rights under the scheme in such circumstances as may be prescribed by regulations under paragraph 2 above; and
  - (d) any person who participates in the scheme in pursuance of regulations made under paragraph 1(1)(a)(i) or (ii) above.
- (2) Subject to sub-paragraph (3) below, this sub-paragraph applies to—
- (a) any person not falling within sub-paragraph (1)(c) above who, immediately before the transfer date, is not a participant in the scheme but has pension rights under the scheme; and
  - (b) any person who, after that date, acquires pension rights under a relevant scheme by reason of the death of a person falling within sub-paragraph (1) or paragraph (a) above,
- but only as respects the pension rights by virtue of which he falls within paragraph (a) or (b) above.
- (3) Any person to whom sub-paragraph (1) or (2) above applies may elect in such manner as may be prescribed by regulations under paragraph 2 above that that sub-paragraph shall cease to apply to him; and if any person to whom sub-paragraph (1) above applies—
- (a) ceases to be in continuous employment; or
  - (b) voluntarily withdraws from a relevant scheme,
- otherwise than in such circumstances as may be so prescribed, that sub-paragraph shall cease to apply to him except as respects pension rights which have accrued to him before that time.
- 4 (1) [<sup>F140</sup>Chapter I of Part XIV of the Employment Rights Act 1996] shall apply for the purposes of paragraphs 2 and 3 as if—
- (a) those paragraphs were contained in that Act; and
  - (b) in that Schedule “associated employer”, in relation to a company participating in a relevant scheme, included any other company participating in such a scheme and any other company of which a company so participating has control, or two or more companies so participating together have control;
- but regulations under paragraph 2 above may provide that no account shall be taken for those purposes of any person ceasing to be in continuous employment for such periods and in such circumstances as may be prescribed by the regulations.
- (2) For the purposes of sub-paragraph (1) above, a company has control, or two or more companies together have control, of another company (“the other company”) if—
- (a) that company, or each of those companies, is a member of the other company and that company controls, or those companies together control, the composition of the other company’s board of directors;
  - (b) that company holds, or those companies together hold, more than half in nominal value of the other company’s equity share capital;
  - (c) a company of which the company has control, or those companies together have control, has control of the other company; or

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(d) two or more companies of which that company has control, or those companies together have control, together have control of the other company;

and subsections (2) to (4) of section 736 of the <sup>M121</sup>Companies Act 1985 (as originally enacted) shall, with any necessary modifications, apply for the purposes of this subparagraph as they apply for purposes of subsection (1) of that section.

#### Textual Amendments

**F140** Words in Sch. 14 para. 4(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 43(3)(a) (with ss. 191-195, 202)

#### Marginal Citations

**M121** 1985 c. 6.

### Interpretation

5 (1) In this Schedule—

“Consultative Council” means a Consultative Council established under section 7 of the <sup>M122</sup>Electricity Act 1947 for the area of an Area Board;

“employer”, in relation to a person employed by a company which is a wholly-owned subsidiary of another company, includes that other company;

“existing body” means any of the following, namely, the Area Boards, the Generating Board and the Electricity Council;

“existing employee” means any person who, immediately before the transfer date, is employed by an existing body or a Consultative Council, or falls to be treated as employed by an existing body by virtue of regulations made under section 54(4) of the <sup>M123</sup>Electricity Act 1947 (service as a member to count as service as an employee);

“former participant” means any person who, immediately before the transfer date, is not a participant in the scheme but has pension rights under the scheme by virtue of his having been such a participant;

“pension”, in relation to any person, means a pension of any kind payable to or in respect of him, and includes a lump sum, allowance or gratuity so payable and a return of contributions, with or without interest or any other addition;

“pension rights”, in relation to any person, includes—

- (a) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him; and
- (b) any expectation of the accruer of a pension to or in respect of him;

and includes a right of allocation in respect of the present or future payment of a pension;

“the relevant enactments” means Chapter I of Part XIV of the <sup>M124</sup>Income and Corporation <sup>M125</sup>Taxes Act 1988 (retirement benefit schemes) and Part III of the [<sup>F141</sup>Pension Schemes Act 1993 (so far as relating to occupational pension schemes within the meaning of that Act)];

“relevant scheme” has the meaning given by paragraph 2(1) above;

“the scheme” has the meaning given by paragraph 1(1) above;

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“wholly-owned subsidiary” has the same meaning as in the Companies Act 1985.

- (2) For the purposes of this Schedule, a company is wholly owned by one or more other companies if it has no members except—
  - (a) that other or those others and its or their nominees; and
  - (b) wholly-owned subsidiaries of that other or those others and their nominees.
- (3) Subject to sub-paragraph (1) above, expressions used in this Schedule which are also used in Part I or II of this Act have the same meanings as in that Part.

#### Textual Amendments

**F141** Words in Sch. 14 para. 5(1) substituted (7.2.1994) by 1993 c. 48, ss. 190, Sch. 8 para.23 (with ss. 6(8), 164); S.I. 1994/86, art. 2

#### Marginal Citations

**M122** 1947 c. 54.

**M123** 1947 c. 54.

**M124** 1988 c. 1.

**M125** 1975 c. 60.

## SCHEDULE 15

Section 105.

### THE SCOTTISH PENSION SCHEMES

#### *Power to amend schemes*

- 1 (1) The Secretary of State may make regulations amending the Hydroboard Superannuation Fund (in this Schedule referred to as “the North Scheme”) and the South of Scotland Electricity Board’s Superannuation Scheme (in this Schedule referred to as “the South Scheme”) for any of the following purposes, namely—
  - (a) for enabling members, former members and existing employees of the Scottish Boards to participate in or acquire pension rights under the North Scheme or the South Scheme on such terms and conditions as may be prescribed;
  - (b) for requiring any persons to make payments to the trustees of the schemes in such circumstances as may be prescribed;
  - (c) for enabling either scheme, or both schemes, to be wound up (in whole or in part) in such circumstances as may be prescribed; and
  - (d) for securing that the schemes continue to be approved for the purposes of the relevant enactments notwithstanding the transfers made by this Act and the repeal by this Act of section 37 of the <sup>M126</sup>Electricity (Scotland) Act 1979.
- (2) Without prejudice to the generality of paragraph (c) of sub-paragraph (1) above, regulations made for the purposes of that paragraph may require persons not participating in—
  - (a) the North Scheme to make payments to the trustees of the North Scheme;
  - (b) the South Scheme to make payments to the trustees of the South Scheme.

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**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Electricity Act 1989. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (3) Regulations under this paragraph may make such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (4) Regulations under this paragraph may be made so as to have effect from a date prior to their making, so however that so much of any regulations as provides that any provision of regulations shall have effect from a date prior to their making shall not place any person other than the Boards or existing bodies (within the meaning of Schedule 14 to this Act), or their successor companies, in a worse position than he would have been in if the regulations had been made to have effect only from the date of their making.
- (5) Regulations under this paragraph shall not be made at any time after any Scottish electricity company has ceased to be wholly owned by the Crown.

**Marginal Citations**

M126 1979 c. 11.

*Protection for certain persons*

- 2 (1) The Secretary of State may make regulations for the purpose of securing that (regardless of which scheme an existing employee of the Scottish Boards is a participant in immediately before the transfer date)—
  - (a) no person to whom paragraph 3(1) or (2) below applies is placed in any worse position by reason of—
    - (i) any winding up, in whole or in part, of a relevant scheme, that is to say, the North Scheme or the South Scheme or any other scheme which is provided or amended in pursuance of the regulations; or
    - (ii) any amendment of a relevant scheme which results in benefits under that scheme being reduced, or contributions by employees being increased, and is made otherwise than in such circumstances as may be prescribed; and
  - (b) no person to whom paragraph 3(1) below applies is prevented from continuing to participate in or acquire pension rights under the North Scheme or the South Scheme by reason of any change of employer—
    - (i) which does not affect his continuity of employment and is made otherwise than in such circumstances as may be prescribed; and
    - (ii) in the case of which his new employer either is a participant in that scheme or is wholly owned by one or more companies which or each of which is such a participant; and
  - (c) no person to whom paragraph 3(1) below applies is placed in any worse position by reason of any change of employer which does not affect his continuity of employment but prevents him from continuing to participate in or acquire pension rights under a relevant scheme;

and the references in paragraphs (a) and (c) above to any worse position shall be construed, in relation to a person to whom paragraph 3(1) below applies who, after the transfer date, ceases to participate in or acquire pension rights under the North Scheme or the South Scheme, as references to a position which is any worse than his position, immediately before he so ceases, under whichever of the schemes he is then participating in or last acquired pension rights under.



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- (2) Regulations under this paragraph may impose duties (whether as to the amendment of either scheme, the provision or amendment of other schemes, the purchase of annuities, the making of payments or otherwise) on persons who are or have been employers of persons to whom paragraph 3(1) or (2) below applies; and duties so imposed on any person may include duties owed to persons of whom he is not and has not been an employer.
        - (3) Regulations made under this paragraph may also provide for any dispute arising under them to be referred to arbitration.
        - (4) Sub-paragraphs (3) and (5) of paragraph 1 above shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph.
- 3
  - (1) Subject to sub-paragraph (3) below, this sub-paragraph applies to—
    - (a) any—
      - (i) existing employee of the Scottish Boards; or
      - (ii) existing employee of a Consultative Council,who, immediately before the transfer date, is a participant in the North Scheme or the South Scheme;
    - (b) any existing employee of the Scottish Boards who, after that date, participates in either scheme within three months of his attaining the minimum age for such participation;
    - (c) any former participant in either scheme who, after that date, participates in or acquires pension rights under either scheme in such circumstances as may be prescribed by regulations under paragraph 2 above; and
    - (d) any person who participates in either scheme in pursuance of regulations made under paragraph 1(1)(a) above.
  - (2) Subject to sub-paragraph (3) below, this sub-paragraph applies to—
    - (a) any person not falling within sub-paragraph (1)(c) above who, immediately before the transfer date, is not a participant in the North Scheme or the South Scheme but has pension rights under either scheme; and
    - (b) any person who, after that date, acquires pension rights under a relevant scheme by reason of the death of a person falling within sub-paragraph (1) or paragraph (a) above,but only as respects the pension rights by virtue of which he falls within paragraph (a) or (b) above.
  - (3) Any person to whom sub-paragraph (1) or (2) above applies may elect in such manner as may be prescribed by regulations under paragraph 2 above that that sub-paragraph shall cease to apply to him; and if, otherwise than in such circumstances as may be so prescribed, any person to whom sub-paragraph (1) above applies—
    - (a) ceases to be in continuous employment; or
    - (b) voluntarily withdraws from a relevant scheme and does not forthwith—
      - (i) become a participant in another such scheme; and
      - (ii) transfer to that scheme the pension rights which have accrued to him before that time under the scheme from which he is withdrawing,that sub-paragraph shall cease to apply to him except as respects pension rights which have so accrued.
- 4
  - (1) <sup>F142</sup>Chapter I of Part XIV of the Employment Rights Act 1996] shall apply for the purposes of paragraphs 2 and 3 above as if—

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- (a) those paragraphs were contained in that Act; and
- (b) in that Schedule “associated employer”, in relation to a company participating in a relevant scheme, included any other company participating in such a scheme and any other company of which a company so participating has control, or companies so participating together have control;

but regulations under paragraph 2 above may provide that no account shall be taken for the purposes of this paragraph of any person ceasing to be in continuous employment for such periods and in such circumstances as may be prescribed by the regulations.

- (2) For the purposes of sub-paragraph (1) above, a company has control, or two or more companies together have control, of another company (“the other company”) if—
- (a) that company, or each of those companies, is a member of the other company and that company controls, or those companies together control, the composition of the other company’s board of directors;
  - (b) that company holds, or those companies together hold, more than half in nominal value of the other company’s equity share capital;
  - (c) a company of which that company has control, or those companies together have control, has control of the other company; or
  - (d) two or more companies of which that company has control, or those companies together have control, together have control of the other company;

and subsections (2) to (4) of section 736 of the <sup>M127</sup>Companies Act 1985 (as originally enacted) shall, with any necessary modifications, apply for the purposes of this sub-paragraph as they apply for purposes of subsection (1) of that section.

#### Textual Amendments

**F142** Words in [Sch. 15 para. 4\(1\)](#) substituted (22.8.1996) by [1996 c. 18, ss. 240, 243, Sch. 1 para. 43\(3\)\(b\)](#) (with [ss. 191-195, 202](#))

#### Marginal Citations

**M127** [1985 c. 6.](#)

### Interpretation

- 5 (1) In this Schedule—

“Consultative Council” means a Consultative Council established under section 7A of the <sup>M128</sup>Electricity Act 1947 for the district of a Scottish Board;

“employer”, in relation to a person employed by a company which is a wholly-owned subsidiary of another company, includes that other company;

“existing employee of a Consultative Council” means any person who, immediately before the transfer date, is employed by a Consultative Council;

“existing employee of the Scottish Boards” means any person who, immediately before the transfer date, is employed by one or other of those Boards or falls to be treated as so employed by virtue of regulations made under section 54(4) of the <sup>M129</sup>Electricity Act 1947 (service as a member to count as service as an employee);

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“former participant” means any person who, immediately before the transfer date, is not a participant in the North Scheme or the South Scheme but has pension rights under one or other (or both) of the schemes by virtue of his having been such a participant;

“pension”, in relation to any person, means a pension of any kind payable to or in respect of him, and includes a lump sum, allowance or gratuity so payable and a return of contributions, with or without interest or any other addition;

“pension rights”, in relation to any person, includes—

- (a) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him; and
- (b) any expectation of the accruer of a pension to or in respect of him;

and includes a right of allocation in respect of the present or future payment of a pension;

“the relevant enactments” means Chapter I of Part XIV of the <sup>M130</sup>Income and Corporation <sup>M131</sup>Taxes Act 1988 (retirement benefit schemes) and Part III of the [<sup>F143</sup>Pension Schemes Act 1993 (so far as relating to occupational pension schemes within the meaning of that Act)];

“relevant scheme” has the meaning given by paragraph 2(1) above;

“wholly-owned subsidiary” has the same meaning as in the <sup>M132</sup>Companies Act 1985.

- (2) For the purposes of this Schedule, a company is wholly owned by one or more other companies if it has no members except—
  - (a) that other or those others and its or their nominees; and
  - (b) wholly-owned subsidiaries of that other or those others and their nominees.
- (3) Subject to sub-paragraph (1) above, expressions used in this Schedule which are also used in Part I or II of this Act have the same meanings as in that Part.

#### Textual Amendments

**F143** Words in Sch. 15 para. 5(1) substituted (7.2.1994) by 1993 c. 48, s. 190, Sch. 8 para.23 (with ss. 6(8), 164); S.I. 1994/86, art. 2

#### Marginal Citations

**M128** 1947 c. 54.

**M129** 1947 c. 54.

**M130** 1988 c. 1.

**M131** 1975 c. 60.

**M132** 1985 c. 6.

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## SCHEDULE 16

Section 112(1).

## MINOR AND CONSEQUENTIAL AMENDMENTS

*Enactments relating to statutory undertakers etc.*

- 1 (1) The holder of a licence under section 6(1) of this Act shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of the following enactments, namely—
- (i) section 16 of the <sup>M133</sup>Public Health Act 1925;
  - (ii) the <sup>M134</sup>Public Health Act 1936;
  - <sup>F144</sup>(iii) . . . . .
  - (iv) Schedule 3 to the <sup>M135</sup>Water Act 1945;
  - (v) section 4 of the <sup>M136</sup>Requisitioned Land and War Works Act 1948;
  - <sup>F145F146</sup>(vi) the <sup>M137</sup>Water Act 1948;]
  - (vii) the National Parks and Access to the <sup>M138</sup>Countryside Act 1949;
  - (viii) the <sup>M139</sup>Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951;
  - (ix) the <sup>M140</sup>Landlord and Tenant Act 1954;
  - (x) the <sup>M141</sup>Opencast Coal Act 1958;
  - (xi) the <sup>M142</sup>Flood Prevention (Scotland) Act 1961;
  - (xii) section 17(10) of the <sup>M143</sup>Public Health Act 1961;
  - (xiii) the <sup>M144</sup>Pipe-lines Act 1962;
  - (xiv) Schedule 3 to the <sup>M145</sup>Harbours Act 1964;
  - (xv) Schedule 6 to the <sup>M146</sup>Gas Act 1965;
  - (xvi) . . . . . <sup>F147</sup>
  - (xvii) section 40 of the <sup>M147</sup>Forestry Act 1967;
  - (xviii) section 50 of the <sup>M148</sup>Agriculture Act 1967;
  - (xix) section 38 of the <sup>M149</sup>Countryside (Scotland) Act 1967;
  - (xx) paragraph 6 of Schedule 2 to the <sup>M150</sup>Countryside Act 1968;
  - (xxi) section 22 of the <sup>M151</sup>Sewerage (Scotland) Act 1968;
  - (xxii) . . . . . <sup>F148</sup>
  - <sup>F149</sup>(xxiii) . . . . .
  - (xxiv) . . . . . <sup>F148</sup>
  - (xxv) sections 51 . . . <sup>F148</sup>of the <sup>M152</sup>Land Compensation Act 1973;
  - (xxvi) sections 47 <sup>F150</sup> . . . of the <sup>M153</sup>Land Compensation (Scotland) Act 1973;
  - (xxvii) Part III of the <sup>M154</sup>Control of Pollution Act 1974;
  - (xxviii) . . . . . <sup>F151</sup>
  - (xxix) the <sup>M155</sup>Welsh Development Agency Act 1975;
  - (xxx) sections 15(3) and 26 of the <sup>M156</sup>Local Government (Miscellaneous Provisions) Act 1976;
  - <sup>F152</sup>(xxxii) . . . . .
  - (xxxii) section 9(3) of the <sup>M157</sup>Inner Urban Areas Act 1978;

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- (xxxiii) the <sup>M158</sup>Ancient Monuments and Archaeological Areas Act 1979;
- (xxxiv) [<sup>F153</sup>Part]XVI of the <sup>M159</sup>Local Government, Planning and Land Act 1980;
- (xxxv) section 53 of the <sup>M160</sup>Civil Aviation Act 1982;
- (xxxvi) section 30 of the <sup>M161</sup>Local Government (Miscellaneous Provisions) Act 1982;
- (xxxvii) section 120 of the <sup>M162</sup>Civic Government (Scotland) Act 1982;
- (xxxviii) section 2(2)(c) of the <sup>M163</sup>Cycle Tracks Act 1984;
- (xxxix) the <sup>M164</sup>Building Act 1984;
  - (xl) section 283(2) of the <sup>M165</sup>Housing Act 1985;
  - (xli) paragraph 11 of Schedule 8 to the <sup>M166</sup>Housing (Scotland) Act 1987.
- [<sup>F145</sup>(xlii) section 9 of the Enterprise and New Towns (Scotland) Act 1990.]
- (2) References in the <sup>M167</sup>Landlord and Tenant Act 1927 to a statutory company shall be construed as including references to the holder of a licence under section 6(1) of this Act.
- (3) In the <sup>M168</sup>Civil Defence Act 1939, references to public utility undertakers shall be construed as including references to a person who is carrying on activities which he is authorised by a licence or exemption to carry on and references to an electricity undertaking shall be construed as references to the undertaking carried on by any such person.
- (4) The references in sections 73(11)(c) and 74(11)(b) of the <sup>M169</sup>Highways Act 1980 to electricity undertakers shall be construed as references to the holder of a licence under section 6(1)(a) of this Act.
- [<sup>F146</sup>(5) The holder of a licence under section 6(1) of this Act shall be deemed to be an excepted undertaker for the purposes of section 6 of the <sup>M170</sup>Water Act 1981.]
- (6) Paragraph 23 of Schedule 2 to the <sup>M171</sup>Telecommunications Act 1984 (undertakers' works) shall apply to a licence holder for the purposes of any works carried out by him.
- (7) The reference in section 82(4) of the <sup>M172</sup>Building Act 1984 (provisions with respect to demolition orders) to a person authorised by an enactment to carry on an undertaking for the supply of electricity shall be construed as a reference to a licence holder.
- (8) A licence holder shall be deemed to be a public undertaker and his undertaking a public undertaking for the purposes of section 125 of, and paragraphs 9 and 10 of Schedule 8 to, the <sup>M173</sup>Housing (Scotland) Act 1987.

#### Textual Amendments

- F144** Sch. 16 para. 1(1)(iii) repealed (31.10.1994) by 1994 c. 21, s. 67, **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F145** Sch. 16 para. 1(1)(xlii) added by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(1), **Sch 4 para. 17(a)**
- F146** Sch. 16 para. 1(1)(vi) and (5) repealed (E.W.) (01.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I**.

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- F147** Sch. 16 para. 1(1)(xvi) repealed by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(2), **Sch. 5 Pt. III**
- F148** Sch. 16 para. 1(1)(xxii)(xxiv) and words in para. 1(1)(xxv) repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, **Sch. 1 Pt. I**
- F149** Sch. 16 para. 1(1)(xxiii) repealed (27.5.1997) by 1997 c. 11 ss. 3, 6(2), Sch. 1 Pt. I (with s. 5, Sch. 3)
- F150** Words in Sch. 16 para. 1(1)(xxvi) repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. I** (with s. 5, Sch. 3)
- F151** Sch. 16 para. 1(1)(xxviii), para. 3(2)(f) repealed by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(2), **Sch. 5 Pt. I**
- F152** Sch. 16 para. 1(1)(xxxi) repealed (1.10.1998) by 1998 c. 38, s. 152, **Sch. 18 Pt. IV** (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1998/2244, **art. 4**
- F153** Words in Sch. 16 para. 1(1)(xxxiv) substituted (1.10.1998) by 1998 c. 38, s. 135(2)(b) (with ss. 139(2), 143(2)); S.I. 1998/2244, **art. 4**

### Marginal Citations

- M133** 1925 c. 71.  
**M134** 1936 c. 49.  
**M135** 1945 c. 42.  
**M136** 1948 c. 17.  
**M137** 1948 c. 22.  
**M138** 1949 c. 97.  
**M139** 1951 c. 65.  
**M140** 1954 c. 56.  
**M141** 1958 c. 69.  
**M142** 1961 c. 41.  
**M143** 1961 c. 64.  
**M144** 1962 c. 58.  
**M145** 1964 c. 40.  
**M146** 1965 c. 36.  
**M147** 1967 c. 10.  
**M148** 1967 c. 22.  
**M149** 1967 c. 86.  
**M150** 1968 c. 41.  
**M151** 1968 c. 47.  
**M152** 1973 c. 26.  
**M153** 1973 c. 56.  
**M154** 1974 c. 40.  
**M155** 1975 c. 70.  
**M156** 1976 c. 57.  
**M157** 1978 c. 50.  
**M158** 1979 c. 46.  
**M159** 1980 c. 65.  
**M160** 1982 c. 16.  
**M161** 1982 c. 30.  
**M162** 1982 c. 45.  
**M163** 1984 c. 38.  
**M164** 1984 c. 55.  
**M165** 1985 c. 68.  
**M166** 1987 c. 27.  
**M167** 1927 c. 36.  
**M168** 1939 c. 31.  
**M169** 1980 c. 66.  
**M170** 1981 c. 12.

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M171 1984 c. 12.  
M172 1984 c. 55.  
M173 1987 c. 26.

- 2 (1) A licence holder who is entitled to exercise any power conferred by Schedule 3 or 4 to this Act shall be deemed to be a statutory undertaker for the purposes of section 66 of the <sup>M174</sup>Countrywide (Scotland) Act 1967 and section 11 of the <sup>M175</sup>Countrywide Act 1968.
- (2) A licence holder who is entitled to exercise any power conferred by Schedule 3 to this Act shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of the following enactments, namely—
- (a) the <sup>M176</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;
  - (b) the <sup>M177</sup>New Towns (Scotland) Act 1968;
  - (c) ..... <sup>F154</sup>
  - <sup>F155</sup>(d) .....
  - (e) section 120 of the <sup>M178</sup>Local Government, Planning and Land Act 1980;
  - (f) the <sup>M179</sup>New Towns Act 1981;
  - (g) the <sup>M180</sup>Acquisition of Land Act 1981; and
  - (h) sections 47, 48, 49 and 51 of, and Schedule 9 to, the <sup>M181</sup>Civil Aviation Act 1982.
- (3) The reference in section 48(6) of the Civil Aviation Act 1982 to an electricity undertaker shall be construed as a reference to a licence holder who is entitled to exercise any power conferred by Schedule 4 to this Act.
- (4) A licence holder who is entitled to exercise any power conferred by paragraph 1 of Schedule 4 to this Act shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of the following enactments, namely—
- (a) section 26 of the <sup>M182</sup>Public Health Act 1925;
  - (b) section 17(1)(b) of the <sup>M183</sup>Requisitioned Land and War Works Act 1945;
  - (c) ..... <sup>F154</sup>
  - (d) the <sup>M184</sup>Highways Act 1980; and
  - (e) sections 296 and 611 of the <sup>M185</sup>Housing Act 1985.
- (5) References in the following enactments, namely—
- (a) section 6 of the <sup>M186</sup>Local Government (Miscellaneous Provisions) Act 1953;
  - (b) ..... <sup>F154</sup>
  - (c) sections 176 and 185 of the <sup>M187</sup>Highways Act 1980; and
  - (d) paragraph 3 of Schedule 5 to the <sup>M188</sup>Road Traffic Regulation Act 1984;
- to electricity undertakers shall be construed as references to licence holders entitled to exercise any power conferred by paragraph 1 of Schedule 4 to this Act.
- (6) A licence holder entitled to exercise any power conferred by paragraph 1 of Schedule 4 to this Act shall be deemed to be a public utility undertaker for the purposes of the Highways Act 1980 <sup>F156</sup> . . . .

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- (7) A licence holder who is entitled to exercise any power conferred by paragraph 2 of Schedule 4 to this Act shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of the following enactments, namely—
- <sup>F155</sup>(a) .....
- (b) the <sup>M189</sup>Roads (Scotland) Act 1984.
- (8) References in the <sup>M190</sup>Local Government (Omnibus Shelters and Queue Barriers) (Scotland) Act 1958 <sup>F157</sup> . . . to electricity undertakers shall be construed as references to licence holders entitled to exercise any power conferred by paragraph 2 of Schedule 4 to this Act.
- (9) It is immaterial for the purposes of this paragraph whether any power conferred by, or by any provision of, Schedule 3 or 4 to this Act on the holder of a licence under section 6(1)(a) or (2) of this Act is qualified by restrictions, exceptions or conditions included in the licence.

#### Textual Amendments

**F154** Sch. 16 para. 2(2)(c)(4)(c)(5)(b) repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, **Sch. 1 Pt. 1**

**F155** Sch. 16 para. 2 (2)(d)(7)(a) repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. 1** (with s. 5, Sch. 3)

**F156** Words in Sch. 16 para. 2(6) repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59), s. 168(2), **Sch. 9**; (E.W.) S.I. 1992/2984, art. 2(2), **Sch. 2** and (S.) S.I. 1992/2990, art. 2(2), **Sch. 2**.

**F157** Words in Sch. 16 para. 2(8) repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. 1** (with s. 5, Sch. 3)

#### Marginal Citations

**M174** 1967 c. 86.

**M175** 1968 c. 41.

**M176** 1947 c. 42.

**M177** 1968 c. 16.

**M178** 1980 c. 65.

**M179** 1981 c. 64.

**M180** 1981 c. 67.

**M181** 1982 c. 16.

**M182** 1925 c. 71.

**M183** 1945 c. 43.

**M184** 1980 c. 66.

**M185** 1985 c. 68.

**M186** 1953 c. 26.

**M187** 1980 c. 66.

**M188** 1984 c. 27.

**M189** 1984 c. 54.

**M190** 1958 c. 50.

- 3 (1) In the following enactments, namely—
- [<sup>F158</sup>(a) the <sup>M191</sup>Water Act 1948;]
- (b) section 39 of the <sup>M192</sup>Opencast Coal Act 1958 except in its application to Scotland;
- (c) paragraph 2 of Schedule 6 to the <sup>M193</sup>Gas Act 1965;



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(d) ..... **F159**

(e) the <sup>M194</sup>Welsh Development Agency Act 1975;

<sup>F160</sup>(f) .....

(g) the <sup>M195</sup>New Towns Act 1981,

“the appropriate Minister”, in relation to a a licence holder, shall mean the [<sup>F161</sup>Secretary of State for Trade and Industry].

(2) In the following enactments, namely—

(a) section 39 of the Opencast Coal Act 1958 in its application to Scotland;

(b) the <sup>M196</sup>Pipe-lines Act 1962;

(c) Schedule 3 to the <sup>M197</sup>Harbours Act 1964;

(d) the <sup>M198</sup>New Towns (Scotland) Act 1968;

<sup>F162</sup>(e) .....

(f) ..... **F163**

(g) section 121 of the <sup>M199</sup>Highways Act 1980;

(h) the <sup>M200</sup>Acquisition of Land Act 1981,

[<sup>F164</sup>(i) section 9 of the Enterprise and New Towns (Scotland) Act 1990;]“the appropriate Minister”, in relation to a licence holder, shall mean the Secretary of State.

#### Textual Amendments

**F158** Sch. 16 para. 3(1)(a) repealed (E.W.) (01.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 3(1), 4(2), **Sch. 3 Pt. I**.

**F159** Sch. 16 para. 3(1)(d) repealed by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 3, **Sch. 1 Pt. I**

**F160** Sch. 16 para. 3(1)(f) repealed (1.10.1998) by [1998 c. 38, s. 152](#), **Sch. 18 Pt. IV** (with ss. 137(1), 139(2), 141(1), 143(2)); [S.I. 1998/2244](#), **art. 4**

**F161** Words in Sch. 16 para. 3(1) substituted (5.7.1992) by [S.I. 1992/1314](#), **art. 3(3)**, **Sch. para. 1(e)**.

**F162** Sch. 16 para. 3(2)(e) repealed (27.5.1997) by [1997 c. 11, ss. 3, 6\(2\)](#), **Sch. 1 Pt. I** (with s. 5, Sch. 3)

**F163** Sch. 16 para. 3(2)(f) repealed by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\)](#), s. 38(2), **Sch. 5 Pt. I**

**F164** Sch. 16 para. 3(2)(i) inserted by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\)](#), s. 38(1), **Sch. 4 para. 17(b)**

#### Marginal Citations

**M191** 1948 c. 42.

**M192** 1958 c. 69.

**M193** 1965 c. 36.

**M194** 1975 c. 70.

**M195** 1981 c. 64.

**M196** 1962 c. 58.

**M197** 1964 c. 40.

**M198** 1968 c. 16.

**M199** 1980 c. 66.

**M200** 1981 c. 67.

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*The Civil Defence Act 1939 (c.31)*

- 4 In section 90 of the Civil Defence Act 1939 (interpretation), in the definition of “the appropriate department” for the words “the Electricity Commissioners” (as originally enacted) there shall be substituted the words “the Secretary of State”.

*The Water Act 1945 (c.42)*

- 5 In Schedule 3 to the Water Act 1945 (incorporated provisions: water undertakings), in section 70, in paragraph (b) of the proviso, for the words “section fifteen of the Electric Lighting Act, 1882, or section seventeen of the Schedule to the Electric Lighting (Clauses) Act, 1899” there shall be substituted the words “paragraph 3 of Schedule 4 to the Electricity Act 1989”.

*The Wireless Telegraphy Act 1949 (c.54)*

- 6 In section 19(2) of the Wireless Telegraphy Act 1949 (definition of “electric line”) for the words “the Electric Lighting Act, 1882” there shall be substituted the words “the Electricity Act 1989”.

*The Public Utilities Street Works Act 1950 (c.39)*

F1657 .....

**Textual Amendments**

**F165** Sch. 16 para. 7 repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59), s. 168(2), Sch.9; (E.W.) S.I. 1992/2984, art. 2(2), Sch. 2 and (S.) S.I. 1992/2990, art. 2(2), Sch.2.

*The Rights of Entry (Gas and Electricity Boards) Act 1954 (c.21)*

- 8 (1) The Rights of Entry (Gas and Electricity Boards) Act 1954 shall be amended as follows.
- (2) For subsection (2) of section 1 there shall be substituted the following subsection—
- “(2) This Act applies to all rights of entry conferred by—
- (a) the Gas Act 1986, regulations made under it or any other enactment relating to gas,
  - (b) Schedule 6 to the Electricity Act 1989, and
  - (c) any local enactment relating to gas or electricity,
- in so far as those rights are exercisable for the purposes of a public gas supplier or a public electricity supplier.”
- (3) In subsection (1) of section 2—
- (a) for the words from “required” to “Board”, in the second place where it occurs, there shall be substituted the words “required by a public gas supplier, a public electricity supplier or by an employee of such a supplier”;
  - (b) for the words “the supplier or Board or his or their employee”, in both places where they occur, there shall be substituted the words “the supplier or his employee”.

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(4) For subsection (3) of that section there shall be substituted the following subsection—

“(3) Where paragraph (a) of subsection (2) above applies—

- (a) section 46 of the Gas Act 1986 (if entry is required for the purposes of a public gas supplier); or
- (b) section 109 of the Electricity Act 1989 (if entry is required for the purposes of a public electricity supplier),

shall apply to the service of the notice required by that paragraph.”

(5) In section 3(1)—

- (a) the definition of “Electricity Board” shall cease to have effect;
- (b) for the definition of “employee” there shall be substituted the following definition—

““employee”, in relation to a gas or electricity supplier, means an officer, servant or agent of the supplier”

- (c) after the definition of “premises” there shall be inserted the following definition—

““public electricity supplier” has the same meaning as in Part I of the Electricity Act 1989;”.

*The Land Powers (Defence) Act 1958 (c.30)*

9 In section 14(2)(b) of the Land Powers (Defence) Act 1958 for the words “Electric Lighting Act, 1882” there shall be substituted the words “Electricity Act 1989”.

*The Water Resources Act 1963 (c.38)*

[<sup>F166</sup>10 In section 19(4)(f) of, and in paragraph 4(h) of Schedule 7 to, the Water Resources Act 1963, for the words “Central Electricity Generating Board” there shall be substituted the words “a person authorised by a licence under Part I of the Electricity Act 1989 to generate electricity”.]

**Textual Amendments**

**F166** Sch. 16 para. 10 repealed (E.W.) (01.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 3(1), 4(2), [Sch. 3 Pt.I](#).

*The Nuclear Installations Act 1965 (c.57)*

11 For subsection (4) of section 3 of the Nuclear Installations Act 1965 (nuclear site licences) there shall be substituted the following subsection—

“(4) Subsection (3) of this section shall not apply in relation to an application in respect of a site for a generating station where a consent under section 36 of the Electricity Act 1989 or Article 33 of the Electricity Supply (Northern Ireland) Order 1972 is required for the operation of the station.”

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*The Building Control Act 1966 (c.27)*

- 12 In section 5(1) of the Building Control Act 1966, after paragraph (f) there shall be inserted the following paragraph—
- “(ff) a public electricity supplier within the meaning of Part I of the Electricity Act 1989”.

*The Forestry Act 1967 (c.10)*

- 13 (1) Section 9 of the Forestry Act 1967 (licences for tree felling) shall be amended as follows.
- (2) In subsection (4)(c), for the words from “an Electricity Board” to the end there shall be substituted “an electricity operator, because the tree is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by the operator as to have the effect mentioned in paragraph 9(1)(a) or (b) of Schedule 4 to the Electricity Act 1989;”
- (3) In subsection (6) for the definitions of “Electricity Board” and “electric line” there shall be substituted—
- ““electricity operator” means a licence holder within the meaning of Part I of the Electricity Act 1989 by whom the powers conferred by paragraph 9 (tree lopping) of Schedule 4 to that Act are exercisable;
- “electric line” and “electrical plant” have the same meanings as in Part I of the Electricity Act 1989;”.

*The Transport Act 1968 (c. 73)*

- 14 In section 109(2) of the Transport Act 1968, for paragraphs (e), (f) and (g), there shall be substituted—
- “(e) a public electricity supplier within the meaning of Part I of the Electricity Act 1989;”.

*The Post Office Act 1969 (c.48)*

- 15 In section 7(1A) of the Post Office Act 1969 (powers of Post Office), after paragraph (ca) there shall be inserted the following paragraph—
- “(cb) a public electricity supplier (within the meaning of Part I of the Electricity Act 1989);”.

*The Fair Trading Act 1973 (c.41)*

- 16 (1) The Fair Trading Act 1973 shall be amended as follows.
- (2) At the end of subsection (1) of section 16 there shall be added the words “or
- (c) is carried on in connection only with the supply of electricity by a licence holder within the meaning of Part I of the Electricity Act 1989.”
- (3) After subsection (2) of that section there shall be inserted the following subsection—

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“(2A) In this section “the appropriate Minister”, in relation to a licence holder within the meaning of Part I of the Electricity Act 1989, means the Secretary of State responsible for matters relating to energy.”

- (4) In section 133(2)(a) (exceptions to general restriction on disclosure of information), after the words “the Director General of Water Services,” there shall be inserted the words “the Director General of Electricity Supply,” and after the words “the Water Act 1989,” there shall be inserted the words “or the Electricity Act 1989.”
- (5) In Schedule 5 (goods and services referred to in section 16), paragraph 3 (electricity) shall cease to have effect.

*The Consumer Credit Act 1974 (c. 39)*

- 17 (1) The Consumer Credit Act 1974 shall be amended as follows.
- (2) In section 174(3)(a) (exceptions to restrictions on disclosure of information), after the words “Water Act 1989” there shall be inserted the words “or the Electricity Act 1989” and after the words “the Director General of Water Services” there shall be inserted the words “the Director General of Electricity Supply.”
- (3) In section 189, for the words “the Electric Lighting Act 1882” there shall be substituted the words “the Electricity Act 1989”.

*The Control of Pollution Act 1974 (c. 40)*

- [<sup>F167</sup>18(1) Section 21 of the Control of Pollution Act 1974 (power of disposal authority to produce and dispose of energy from waste) shall be amended as follows.
- (2) In subsection (1), for the words “subsections (2) and (3)” there shall be substituted the words “subsection (2)” and after the words “use, sell or otherwise dispose of any heat” there shall be inserted the words “or electricity”.
- (3) For subsections (2) and (3) there shall be substituted the following subsection—
- “(2) Nothing in subsection (1) of this section shall be construed as exempting a disposal authority from the requirements of Part I of the Electricity Act 1989.”
- (4) In subsection (6), the words “(except the restrictions imposed by subsections (2) and (3))” shall cease to have effect.]

**Textual Amendments**

**F167** Sch. 16 para. 18 repealed (prosp.) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), ss. 162(2), 164(2)(3), [Sch. 16 Pt. II](#)

*The Restrictive Trade Practices Act 1976 (c. 34)*

- 19 In section 41(1)(a) of the Restrictive Trade Practices Act 1976 (disclosure of information), after the words “the Director General of Water Supply” there shall be inserted the words “the Director General of Electricity Supply” and after the words “or the Water Act 1989” there shall be inserted the words “or the Electricity Act 1989”.

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*The Local Government (Miscellaneous Provisions) Act 1976 (c. 57)*

- 20 (1) Section 11 of the Local Government (Miscellaneous Provisions) Act 1976 (production and supply of energy by local authorities) shall be amended as follows.
- (2) In subsection (1)(d), after the words “heat produced or acquired” there shall be inserted the words “or electricity produced”.
- (3) For subsections (2) and (3) there shall be substituted the following subsections—
- “(2) Nothing in subsection (1) of this section shall be construed as exempting a local authority from the requirements of Part I of the Electricity Act 1989.
- (3) Except in such cases as may be prescribed, a local authority shall not be entitled to sell electricity which is produced otherwise than in association with heat.”
- (4) In subsection (7)—
- (a) the definition of “Electricity Board” shall cease to have effect;
- (b) at the end of the definition of “prescribed” there shall be added the words “which, in the case of regulations under subsection (3) of this section, shall be subject to annulment in pursuance of a resolution of either House of Parliament”; and
- (c) after the words “local authority” there shall be inserted the words “(in its capacity as such)”.

*The Land Drainage Act 1976 (c. 70)*

- [<sup>F168</sup>21 In section 112(2)(a) of the Land Drainage Act 1976 (protection of nationalised undertakings etc.) for the words “any Electricity Board” there shall be substituted the words “any public electricity supplier (within the meaning of Part I of the Electricity Act 1989) or any person authorised by a licence under that Part to generate or transmit electricity”.]

**Textual Amendments**

**F168** Sch. 16 para. 21 repealed (E.W.) (01.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 3(1), 4(2), [Sch. 3 Pt.I](#).

*The Energy Act 1976 (c. 76)*

- 22 In section 14 of the Energy Act 1976 (fuelling for new and converted power stations), for subsection (6) there shall be substituted the following subsection—
- “(6) This section does not affect section 36 of the Electricity Act 1989 (which operates so as, in certain circumstances, to require the Secretary of State’s consent for power station construction etc.).”

*The Land Registration (Scotland) Act 1979 (c. 33)*

- 23 In section 28(1) of the Land Registration (Scotland) Act 1979 (interpretation), in the definition of “overriding interest”, after paragraph (ee) there shall be inserted the following paragraphs—

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- “(ef) a licence holder within the meaning of Part I of the Electricity Act 1989 having such a wayleave as is mentioned in paragraph 6 of Schedule 4 to that Act (wayleaves for electric lines), whether granted under that paragraph or by agreement between the parties;
- (eg) a licence holder within the meaning of Part I of the Electricity Act 1989 who is authorised by virtue of paragraph 1 of Schedule 5 to that Act to abstract, divert and use water for a generating station wholly or mainly driven by water.”.

*The Estate Agents Act 1979 (c. 38)*

- 24 In section 10(3)(a) of the Estate Agents Act 1979 (exceptions to restrictions on disclosure of information), after the words “Water Act 1989” there shall be inserted the words “or the Electricity Act 1989” and after the words “the Director General of Water Services,” there shall be inserted the words “the Director General of Electricity Supply”.

*The Competition Act 1980 (c. 21)*

- 25 In section 19 of the Competition Act 1980 (exceptions to restrictions on disclosure of information)—
- (a) in subsection (2)(a), after the words “the Director General of Water Services,” there shall be inserted the words “the Director General of Electricity Supply,”; and
  - (b) in subsection (3), after paragraph (l) there shall be inserted the following paragraph—
    - “(m) the Electricity Act 1989.”

*The Water (Scotland) Act 1980 (c. 45)*

- 26 (1) The Water (Scotland) Act 1980 shall be amended as follows.
- (2) In Schedule 1 (procedure in relation to orders and byelaws)—
- (a) in paragraph 2(ii), after the words “public undertakers” there shall be inserted the words “or licence holder within the meaning of Part I of the Electricity Act 1989”, and after the words “authorised by” there shall be inserted the words “or by virtue of”;
  - (b) in paragraph 6, after the words “undertakers” there shall be inserted the words “or licence holder”;
  - (c) in paragraph 11(ii), after the words “public undertakers” there shall be inserted the words “or licence holder within the meaning of Part I of the Electricity Act 1989”, and after the words “authorised by” there shall be inserted the words “or by virtue of”; and
  - (d) in paragraph 15, after the word “undertakers” there shall be inserted the words “or licence holder”.
- (3) In Schedule 4 (provisions to be incorporated in orders relating to statutory undertakers)—
- (a) in section 5(4), for the words from “the expressions” to the end there shall be substituted the words—

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““electric line” has the same meaning as in Part I of the Electricity Act 1989;

“electricity undertakers” means public electricity suppliers within the meaning of Part I of the Electricity Act 1989 and persons authorised by a licence under that Part to generate or transmit electricity.”; and

- (b) in paragraph (b) of the proviso to section 36, for the words “electricity undertakers” there shall be substituted the words “public electricity supplier (within the meaning of Part I of the Electricity Act 1989) or any person authorised by a licence under that Part to generate or transmit electricity.”

*The Highways Act 1980 (c. 66)*

F169<sup>27</sup> .....

**Textual Amendments**

**F169** Sch. 16 para. 27 repealed (1.1.1993) by *New Roads and Street Works Act 1991 (c. 22, SIF 59)*, s. 168(2), **Sch.9**; (E.W.) *S.I. 1992/2984*, art. 2(2), **Sch.2** and (S.) *S.I. 1992/2990*, art. 2(2), **Sch.2**.

*The Acquisition of Land Act 1981 (c. 67)*

28 In section 28 of the Acquisition of Land Act 1981 (acquisition of rights over land by the creation of new rights), after paragraph (g) there shall be inserted the following paragraph—

“(h) paragraph 1 of Schedule 3 to the Electricity Act 1989.”

*The Telecommunications Act 1984 (c. 12)*

29 (1) The Telecommunications Act 1984 shall be amended as follows.

(2) In section 98 (use of certain conduits for telecommunications purposes)—

- (a) for the words “the Electric Lighting Act 1882” there shall be substituted the words “the Electricity Act 1989”; and  
(b) in the definition of “electricity authority”, for the words from “an” to “1983” there shall be substituted the words “a person authorised by a licence under Part I of the Electricity Act 1989 to transmit or supply electricity”.

(3) In section 101 (general restrictions on disclosure of information)—

- (a) in subsection (2)(b), after the words “Director General of Water Services” there shall be inserted the words “the Director General of Electricity Supply”; and  
(b) in subsection (3), after paragraph (j) there shall be inserted the following paragraph—  
“(k) the Electricity Act 1989.”

*The Roads (Scotland) Act 1984 (c. 54)*

30 In section 61(4) of the Roads (Scotland) Act 1984 (permission to place and maintain apparatus under a road), for the words from the beginning to “permission” in the



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second place where it occurs there shall be substituted the words “Works carried out by a person in pursuance of permission under subsection (1) above are not”.

*The Building Act 1984 (c. 55)*

31 In section 80(3) of the Building Act 1984 (notice to local authority of intended demolition) for paragraph (c) there shall be substituted the following paragraph—

“(c) the public electricity supplier (as defined in Part I of the Electricity Act 1989) in whose authorised area (as so defined) the building is situated and any other person authorised by a licence under that Part to supply electricity to the building;”.

*The Bankruptcy (Scotland) Act 1985 (c. 66)*

32 In section 70(4)(b) of the Bankruptcy (Scotland) Act 1985 (supplies of gas, water, electricity etc. to certain individuals), for the words from “an Electricity Board (within the meaning of the Energy Act 1983)” there shall be substituted the words “a public electricity supplier within the meaning of Part I of the Electricity Act 1989”.

*The Airports Act 1986 (c. 31)*

33 In section 74 of the Airports Act 1986 (restrictions on disclosure of information)—

(a) in subsection (2)(a), after the words “Director General of Water Services” there shall be inserted the words “ the Director General of Electricity Supply”; and

(b) in subsection (3), after paragraph (k) there shall be inserted the following paragraph—

“(l) the Electricity Act 1989.”

*The Gas Act 1986 (c. 44)*

34 In section 42 of the Gas Act 1986 (general restrictions on disclosure of information)

(a) in subsection (2)(b), after the words “Director General of Water Services” there shall be inserted the words “the Director General of Electricity Supply”; and

(b) in subsection (3), after paragraph (l) there shall be inserted the following paragraph—

“(m) the Electricity Act 1989.”

*The Insolvency Act 1986 (c. 45)*

35 (1) The Insolvency Act 1986 shall be amended as follows.

(2) In section 233 (supplies of gas, water, electricity etc to certain companies)—

(a) in subsection (3), for paragraph (b) there shall be substituted the following paragraph—

“(b) a public supply of electricity;” and

(b) in subsection (5), for paragraph (b), there shall be substituted the following paragraph—

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“(b) “public supply of electricity” means a supply of electricity by a public electricity supplier within the meaning of Part I of the Electricity Act 1989;”.

(3) In section 372 (supplies of gas, water, electricity etc to certain individuals)—

(a) in subsection (4), for paragraph (b) there shall be substituted the following paragraph—

“(b) a public supply of electricity;” and

(b) in subsection (5), for paragraph (b), there shall be substituted the following paragraph—

“(b) “public supply of electricity” means a supply of electricity by a public electricity supplier within the meaning of Part I of the Electricity Act 1989;”.

*The Consumer Protection Act 1987 (c. 43)*

36 In section 38 of the Consumer Protection Act 1987 (general restrictions on disclosure of information)—

(a) in subsection (3), after paragraph (l) there shall be inserted the following paragraph—

“(m) the Electricity Act 1989;” and

(b) in subsection (6)(b), after the words “Director General of Gas Supply” there shall be inserted the words “or the Director General of Electricity Supply”.

*The Water Act 1989 (c. 15)*

[<sup>F170</sup>37 In section 160 of the Water Act 1989 (protection of certain undertakings), in subsection (3), for paragraph (f) there shall be substituted the following paragraph—

“(f) the undertaking of any person authorised by a licence under Part I of the Electricity Act 1989 to generate, transmit or supply electricity;”].

**Textual Amendments**

**F170** Sch. 16 para. 37 repealed (E.W.) (01.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 3(1), 4(2), [Sch. 3 Pt.I](#).

*Interpretation*

38 In this Schedule expressions which are used in Part I of this Act have the same meanings as in that Part.

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## SCHEDULE 17

Section 112(4).

### TRANSITIONAL PROVISIONS AND SAVINGS

#### PART I

##### PROVISIONS AND SAVINGS FOR PART I OF ACT

- 1 (1) In so far as any requisition made under section 27 of the Schedule to the Electric Lighting (Clauses) Act 1899 which is effective on the day appointed for the coming into force of section 16 of this Act requires a supply of electricity to continue to be given, it shall have effect as if made under subsection (1) of the said section 16; and the provisions of Part I of this Act shall apply accordingly.
- (2) In so far as any requisition made under section 27 of the Schedule to the Electric Lighting (Clauses) Act 1899 which is effective on the day appointed for the coming into force of that section's repeal by this Act requires a supply of electricity to be given, the repeal shall not affect the operation of that section in relation to that requisition.
- (3) The repeal by this Act of sections 24 to 26 of the Schedule to the <sup>M201</sup>Electric Lighting (Clauses) Act 1899 shall not affect the operation of those sections in relation to any requisition made under the said section 24 which is effective on the day appointed for the coming into force of the repeal.

#### Marginal Citations

<sup>M201</sup> 1899 c. 19.

- 2 Any tariff fixed under section 37(3) of the <sup>M202</sup>Electricity Act 1947 or section 22(1) of the <sup>M203</sup>Electricity (Scotland) Act 1979 which is effective on the day appointed for the coming into force of section 18 of this Act shall have effect as if fixed under subsection (1) of the said section 18; and the provisions of Part I of this Act shall apply accordingly.

#### Marginal Citations

<sup>M202</sup> 1947 c. 54.

<sup>M203</sup> 1979 c. 11.

- 3 Any regulations made under section 16 of the <sup>M204</sup>Energy Act 1983 which are effective on the day appointed for the coming into force of section 29 of this Act shall have effect as if—
- (a) they were made under the said section 29; and
  - (b) references to an Electricity Board were references to a person authorised by a licence to supply or transmit electricity;
- and the provisions of Part I of this Act shall apply accordingly.

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#### Commencement Information

- I2** Sch. 17 para. 3 wholly in force at 9.11.2001; Sch. 17 para. 3 not in force at Royal Assent see s. 113(2); Sch. 17 para. 3 in force at 31.3.1990 except for para. (b) and word “and” preceding it by S.I. 1990/117, art. 3(c); Sch. 17 para. 3(b) and word “and” preceding it in force at 9.11.2001 by S.I. 2001/3419, art. 2(b)

#### Marginal Citations

M204 1983 c. 25.

- 4 (1) Where any application made under section 2 of the <sup>M205</sup>Electric Lighting Act 1909 or section 35 of the Electricity (Scotland) Act 1979 is effective on the day appointed for the coming into force of section 36 of this Act—
- (a) the application shall have effect as if made under the said section 36 modified for that purpose by the omission of subsections (2) and (3);
  - (b) anything done before that day in relation to the application (whether under the said section 2 or 35 or under section 33 or 34 of the <sup>M206</sup>Electricity Act 1957) shall have effect as if done under the corresponding provisions of Schedule 8 to this Act; and
  - (c) the provisions of Part I of this Act shall apply accordingly.
- (2) The repeal by this Act of section 2 of the Electric Lighting Act 1909 or section 35 of the Electricity (Scotland) Act 1979 shall not affect the validity of any consent granted under that section before the day appointed for the coming into force of the repeal.
- (3) Section 36 of this Act shall not apply in relation to—
- (a) the construction of a generating station, or its operation as constructed; or
  - (b) the extension of a generating station, or its operation as extended,
- if its construction or, as the case may be, extension is authorised by a consent given or having effect as if given under section 2 of the Electric Lighting Act 1909 or section 35 of the Electricity (Scotland) Act 1979, or by a planning permission granted on an application made before the day appointed for the coming into force of the said section 36.

#### Marginal Citations

M205 1909 c. 34.

M206 1957 c. 48.

- 5 (1) Where any application made under section 10(b) of the Schedule to the Electric Lighting (Clauses) Act 1899 is effective on the day appointed for the coming into force of section 37 of this Act—
- (a) the application shall have effect as if made under the said section 37 modified for that purpose by the omission of subsection (2);
  - (b) anything done before that day in relation to the application (whether under the said section 10(b) or under section 32 or 34 of the Electricity Act 1957) shall have effect as if done under the corresponding provisions of Schedule 8 to this Act; and
  - (c) the provisions of Part I of this Act shall apply accordingly.

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- (2) The repeal by this Act of section 10(b) of the Schedule to the <sup>M207</sup>Electric Lighting (Clauses) Act 1899 shall not affect the validity of any consent granted under that section before the day appointed for the coming into force of the repeal.
- (3) Where such a consent as is mentioned in sub-paragraph (2) above includes a direction that planning permission for the installation of the electric line shall be deemed to be granted, or otherwise has effect as a grant of planning permission for that installation, that permission shall be deemed to extend to the installation of any of the following, namely—
  - (a) any support for that line, that is to say, any structure, pole or other thing in, on, by or from which that line is to be supported, carried or suspended;
  - (b) any apparatus connected to that line for the purpose of carrying electricity; and
  - (c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, that line.
- (4) Section 37 of this Act shall not apply in relation to an electric line if its installation is authorised by a consent given under section 10(b) of the Schedule to the Electric Lighting (Clauses) Act 1899 or by a planning permission granted on an application made before the day appointed for the coming into force of the said section 37.
- (5) Section 37 of this Act shall not apply to any electric line which—
  - (a) is a service line within the meaning of section 1 of the Schedule to the Electric Lighting (Clauses) Act 1899; and
  - (b) is or was installed before the day appointed for the coming into force of the said section 37.

**Marginal Citations**

[M207 1899 c. 19.](#)

- 6 Any maximum charge fixed by an Electricity Board under section 29 of the <sup>M208</sup>Electricity Act 1957 or section 23 of the <sup>M209</sup>Electricity (Scotland) Act 1979 for the resale of electricity supplied by it which is effective on the day appointed for the coming into force of section 44 of this Act shall have effect as a maximum price fixed by the Director under the said section 44 for the resale of electricity so supplied.

**Marginal Citations**

[M208 1957 c. 48.](#)

[M209 1979 c. 11.](#)

- 7 Where any representation, reference or report made under, or in such circumstances as are mentioned in, any of the following enactments, namely—
  - (a) section 7 of the <sup>M210</sup>Electricity Act 1947;
  - (b) Schedule 7 to the Electricity (Scotland) Act 1979; and
  - (c) section 21 of the <sup>M211</sup>Energy Act 1983,

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is effective on the day appointed for the coming into force of the repeal by this Act of that enactment, the representation, reference or report shall have effect as if it were a representation made to the Director; and the provisions of Part I of this Act shall apply accordingly.

#### Marginal Citations

**M210** 1947 c. 54.

**M211** 1983 c. 25.

- 8 (1) Any land which has been compulsorily acquired under section 9 of the Electricity Act 1947 or section 12 of the Electricity (Scotland) Act 1979 before the day appointed for the coming into force of Part I of Schedule 3 to this Act shall be treated for the purposes of that Part as compulsorily acquired by virtue of that Part.
- (2) Any compulsory purchase order made under section 9 of the Electricity Act 1947 or section 12 of the Electricity (Scotland) Act 1979 before the day appointed for the coming into force of Part I of Schedule 3 to this Act shall have effect as if made under that Part; and the provisions of that Schedule shall apply accordingly.
- 9 Any consent given under subsection (1) of section 22 of the <sup>M212</sup>Electricity (Supply) Act 1919 which is effective on the day appointed for the coming into force of Schedule 4 to this Act shall have effect as if granted under paragraph 6(3) of that Schedule; anything done before that day with a view to, or otherwise in connection with, the giving of a consent under that subsection (whether under that section or under section 11 of the <sup>M213</sup>Electricity (Supply) Act 1922) shall have effect as if done under the corresponding provisions of that Schedule; and the provisions of Part I of this Act shall apply accordingly.

#### Marginal Citations

**M212** 1919 c. 100.

**M213** 1922 c. 46.

- 10 Any order made under subsection (3) of section 34 of the <sup>M214</sup>Electricity (Supply) Act 1926 which is effective on the day appointed for the coming into force of Schedule 4 to this Act shall have effect as if made under paragraph 9(6) of that Schedule; anything done under that section before that day with a view to, or otherwise in connection with, the making of an order under that subsection shall have effect as if done under the corresponding provisions of that Schedule; and the provisions of Part I of this Act shall apply accordingly.

#### Marginal Citations

**M214** 1926 c. 51.

- 11 (1) Any meter of a pattern which is approved for the purposes of section 12 of the <sup>M215</sup>Energy Act 1983 immediately before the day appointed for the coming into force of Schedule 7 to this Act shall be treated as being of an approved pattern for the purposes of that Schedule.

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- (2) Any meter which is certified under section 50 of the Schedule to the <sup>M216</sup>Electric Lighting (Clauses) Act 1899 immediately before the day appointed for the coming into force of Schedule 7 to this Act shall be treated as certified under paragraph 5 of the said Schedule 7.
- (3) Any regulations made under section 30(1) of the <sup>M217</sup>Electricity Act 1957 which are effective on the day appointed for the coming into force of Schedule 7 to this Act shall have effect as if made under paragraph 5 of that Schedule.
- (4) Paragraphs (a) and (b) of paragraph 2(1) of Schedule 7 to this Act shall not apply in relation to a meter installed before (and not moved since) the day appointed for the coming into force of that Schedule until, in the case of paragraph (b)—
  - (a) electricity is supplied through the meter in pursuance of a notice given under section 16(2) of this Act more than twelve months after that day; or
  - (b) the period of ten years beginning with that day expires,whichever first occurs.
- (5) Sub-paragraph (2) of paragraph 12 of Schedule 7 to this Act shall not prevent a pre-payment meter from being used as mentioned in that sub-paragraph in pursuance of an agreement made before the day appointed for the coming into force of that Schedule.

#### Marginal Citations

**M215** 1983 c. 25.

**M216** 1899 c. 19.

**M217** 1957 c. 48.

- 12 Any regulations made under section 34(2) of the Electricity Act 1957 which are effective on the day appointed for the coming into force of Schedule 8 to this Act shall have effect as if they were made under paragraph 3(1) of that Schedule; and the provisions of that Schedule shall apply accordingly.
- 13 Where—
  - (a) any sum was deposited with an Electricity Board by way of security under any provision of the Electricity Acts; and
  - (b) on and after the day appointed for the coming into force of any provision of Part I of this Act that sum is treated by the Board as deposited under that provision of that Part,any period beginning three months or less before that day, being a period during which the sum was deposited with the Board, shall be treated for the purposes of the payment of interest on that sum as a period during which the sum was deposited under that provision of that Part.
- 14 (1) Where immediately before the day appointed for the coming into force of any provision of Part I of this Act there is in force an agreement which—
  - (a) confers or imposes on an Electricity Board any rights or liabilities; and
  - (b) refers (in whatever terms and whether expressly or by implication) to any provision of the Electricity Acts, to an Electricity Board's statutory electricity undertaking or to statutory purposes,the agreement shall have effect, in relation to anything falling to be done on or after that day, as if that reference included or, as the case may require, were a reference

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to the corresponding provision of this Act, to the Board's undertaking as a person authorised by a licence to generate, transmit or supply electricity or to purposes connected with the generation, transmission or supply of electricity.

- (2) References in this paragraph to an agreement include references to a deed, bond or other instrument.
- 15 The repeal by this Act of any provision by virtue of which any enactment applies in relation to a person carrying on an electricity undertaking shall not affect the continuing validity of anything done under that enactment before the day appointed for the coming into force of that repeal.
- 16 In this Part of this Schedule “the Electricity Acts” means—
- (a) the Electricity Acts 1947 to 1961 and the <sup>M218</sup>Electricity (Scotland) Act 1979; and
  - (b) such of the provisions of the <sup>M219</sup>Energy Act 1976 and the <sup>M220</sup>Energy Act 1983 as are repealed by this Act;
- and expressions which are used in Part I of this Act have the same meanings as in that Part.

#### Marginal Citations

**M218** 1979 c. 11.

**M219** 1976 c. 76.

**M220** 1983 c. 25.

## PART II

### PROVISIONS AND SAVINGS FOR PART II OF ACT

- 17 Any licence granted under section 6 of this Act to an Electricity Board which is effective on the transfer date shall have effect as if granted to the appropriate successor company.
- 18 Any tariff fixed, or having effect as if fixed, under section 18(1) of this Act by an Electricity Board which is effective on the transfer date shall have effect as if fixed by its successor company.
- 19 Any consent given under section 36 of this Act to an Electricity Board which is effective on the transfer date shall have effect as if given to the appropriate successor company.
- 20 Any consent given under section 37 of this Act to an Electricity Board which is effective on the transfer date shall have effect as if given to the appropriate successor company.
- 21 Any maximum price fixed, or having effect as if fixed, under section 44 of this Act for the resale of electricity supplied by an Electricity Board which is effective on the transfer date shall have effect as if fixed for the resale of electricity by the appropriate successor company.
- 22 A direction given under section 96 of this Act to an Electricity Board which is effective on the transfer date shall have effect as if given to the appropriate successor company.



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- 23 (1) Any land compulsorily acquired by an Electricity Board before the transfer date which was so acquired by virtue of Part I of Schedule 3 to this Act, or is treated as so acquired for the purposes of that Part, shall be treated for those purposes as so acquired by the appropriate successor company; but nothing in paragraph 4 of that Schedule (as applied by this sub-paragraph) shall be taken as requiring the consent of the Director to any disposal which is affected in pursuance of a provision included in a transfer scheme by virtue of section 68(2)(c) of this Act or in pursuance of Schedule 10 to this Act.
- (2) Any compulsory purchase order made by an Electricity Board which is made, or has effect as if made, by virtue of Part I of Schedule 3 to this Act and is effective on the transfer date shall have effect as if made by the appropriate successor company.
- 24 (1) Where immediately before the transfer date there is in force an agreement which—
- (a) confers or imposes on an Electricity Board or the Electricity Council any rights or liabilities which vest in the appropriate successor company by virtue of this Act; and
  - (b) refers (in whatever terms and whether expressly or by implication) to a member or officer of that Board or Council,
- the agreement shall have effect, in relation to anything falling to be done on or after that date, as if for that reference there were substituted a reference to such person as that company may appoint or, in default of appointment, to the officer of that company who corresponds as nearly as may be to the member or officer of the Board or Council in question.
- (2) References in this paragraph to an agreement include references to a deed, bond or other instrument.
- 25 (1) Any agreement made, transaction effected or other thing done by, to or in relation to an Electricity Board or the Electricity Council which is in force or effective immediately before the transfer date shall have effect as if made, effected or done by, to or in relation to the appropriate successor company, in all respects as if that company were the same person in law as the Board or Council; and accordingly references to an Electricity Board or the Electricity Council—
- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument;
  - (b) in any process or other document issued, prepared or employed for the purposes of any proceeding before any court or other tribunal or authority; and
  - (c) in any other document whatsoever (other than an enactment) relating to or affecting any property, right or liability of that Board or Council which is transferred by this Act,
- shall be taken as referring to the appropriate successor company.
- (2) Nothing in sub-paragraph (1) above shall be taken as applying in relation to any agreement made, transaction effected or other thing done with respect to, or any document relating to or affecting, any rights and liabilities which are excepted rights and liabilities within the meaning of section 66 or 67 of this Act.
- 26 It is hereby declared for the avoidance of doubt that—
- (a) the effect of Part II of this Act in relation to any contract of employment with an Electricity Board or the Electricity Council which is in force immediately before the transfer date is merely to modify the contract by

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substituting the appropriate successor company as the employer (and not to terminate the contract or vary it in any other way); and

- (b) that Part is effective to vest the rights and liabilities of an Electricity Board or the Electricity Council under any agreement or arrangement for the payment of pensions, allowances or gratuities in the appropriate successor company along with all other rights and liabilities of the Board or Council;

and accordingly any period of employment with an Electricity Board or the Electricity Council, or a wholly owned subsidiary of such a Board or that Council, shall count for all purposes as a period of employment with the appropriate successor company or (as the case may be) a wholly owned subsidiary of the appropriate successor company.

27 The <sup>M221</sup>Transfer of Undertakings (Protection of Employment) Regulations 1981 shall apply to any transfer effected by Part II of this Act, being a transfer of—

- (a) all property, rights and liabilities comprised in the Electricity Council's undertaking (other than excepted rights and liabilities within the meaning of section 66 of this Act); or
- (b) all property, rights and liabilities comprised in a specified part of that undertaking,

whether or not, apart from this paragraph, that undertaking would be treated as an undertaking in the nature of a commercial venture for the purposes of those Regulations.

#### Marginal Citations

[M221 S.I. 1981/1794.](#)

28 Any agreement made under section 53 of the <sup>M222</sup>Electricity Act 1947 or section 12 of the <sup>M223</sup>Electricity Act 1957 (machinery for settling terms and conditions of employment) which is effective on the transfer date shall have effect as if—

- (a) the parties to the agreement on the employers' side were the successor companies and not the Electricity Council and the Scottish Boards; and
- (b) each of the parties to the agreement were entitled to withdraw from it on giving the other parties 12 months' notice in writing.

#### Marginal Citations

[M222 1947 c. 54.](#)

[M223 1957 c. 48.](#)

29 (1) It shall be the duty of an Electricity Board or the Electricity Council and (in either case) the appropriate successor company to take, as and when during the transitional period that company considers appropriate, all such steps as may be requisite to secure that the vesting in that company by virtue of Part II of this Act or this paragraph of any foreign property, right or liability is effective under the relevant foreign law.

(2) During the transitional period, until the vesting in a successor company by virtue of Part II of this Act or this paragraph of any foreign property, right or liability is effective under the relevant foreign law, it shall be the duty of the Board or Council concerned to hold that property or right for the benefit of, or to discharge that liability on behalf of, the successor company.

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- (3) Nothing in sub-paragraphs (1) and (2) above shall be taken as prejudicing the effect under the law of the United Kingdom or of any part of the United Kingdom of the vesting in a successor company by virtue of Part II of this Act or this paragraph of any foreign property, right or liability.
  - (4) An Electricity Board or the Electricity Council shall have all such powers as may be requisite for the performance of its duty under this paragraph, but—
    - (a) it shall be the duty of the appropriate successor company during the transitional period to act on behalf of the Board or Council (so far as possible) in performing the duty imposed on the Board or Council by this paragraph; and
    - (b) any foreign property, rights and liabilities acquired or incurred by the Board or Council during that period shall immediately become property, rights and liabilities of the appropriate successor company.
  - (5) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
  - (6) Any expenses incurred by an Electricity Board or the Electricity Council under this paragraph shall be met by the appropriate successor company.
- 30 (1) Notwithstanding the repeal by this Act of section 46 of the <sup>M224</sup>Electricity Act 1947, it shall be the duty of the Electricity Council, the Generating Board and each Area Board to prepare statements of accounts in accordance with that section in respect of each financial year ending before the transfer date, and that section shall continue to apply during the transitional period in relation to those statements and the auditing of those statements.
- (2) Notwithstanding the repeal by this Act of section 10 of the <sup>M225</sup>Electricity Act 1957, it shall be the duty of each Area Board, the Generating Board and the Electricity Council—
  - (a) to make a report to the Secretary of State in accordance with that section in respect of each financial year ending before the transfer date; and
  - (b) in the case of each Area Board and the Generating Board, to send a copy of the report, as soon as it is so made, to the Electricity Council.
- (3) Notwithstanding the repeal by this Act of section 11 of that Act, it shall be the duty of the Electricity Council to prepare consolidated statements of accounts in accordance with that section in respect of each financial year ending before the transfer date, and that section shall continue to apply during the transitional period in relation to those statements and the auditing of those statements.
- (4) Any expenses incurred by the Electricity Council, the Generating Board or an Area Board under this paragraph shall be met by the appropriate successor company.

#### Marginal Citations

**M224** 1947 c. 54.

**M225** 1957 c. 48.

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- 31 (1) Notwithstanding the repeal by this Act of section 30 of the <sup>M226</sup>Electricity (Scotland) Act 1979, it shall be the duty of each Scottish Board to prepare an annual statement of accounts in accordance with that section in respect of each financial year ending before the transfer date, and that section shall continue to apply during the transitional period in relation to such a statement and the auditing of such a statement.
- (2) Notwithstanding the repeal by this Act of section 42 of that Act, it shall be the duty of each Scottish Board to make an annual report to the Secretary of State in accordance with that section in respect of each financial year ending before the transfer date.
- (3) Any expenses incurred by a Scottish Board under this paragraph shall be met by the appropriate successor company.

#### Marginal Citations

M226 1979 c. 11.

- 32 Notwithstanding the repeal by this Act of sections 10 and 11 of and Schedule 5 to the Electricity (Scotland) Act 1979—
- (a) any constructional scheme prepared by a Scottish Board and confirmed by an order of the Secretary of State made under, or having effect as if made under, Schedule 5 to that Act;
  - (b) the powers conferred by section 11 of that Act for the purpose of carrying out any such scheme; and
  - (c) any authorisation of a Scottish Board under section 10(3) of that Act to execute works of a minor character without the preparation of a constructional scheme,
- shall have effect after the transfer date in relation to the appropriate successor company as they had effect before that date in relation to the Scottish Board.
- 33 Where by virtue of anything done before the transfer date, any enactment amended by Schedule 16 to this Act has effect in relation to an Electricity Board or the Electricity Council, that enactment shall have effect in relation to the appropriate successor company as if that company were the same person, in law, as the Board or Council.
- 34 Without prejudice to the powers conferred by section 112(2) of this Act, every provision contained in a local Act, or in subordinate legislation, which is in force immediately before the transfer date and then applicable to an Electricity Board or the Electricity Council shall have effect as if—
- (a) for references therein to the Board or Council there were substituted references to the appropriate successor company; and
  - (b) for any reference (however worded and whether expressly or by implication) to the undertaking or business, or any part of the undertaking or business, of the Board or Council there were substituted a reference to the undertaking or business, or the corresponding part of the undertaking or business, of the appropriate successor company.
- 35 (1) Nothing in this Act shall affect the validity of anything done by, or in relation to, an Electricity Board before the transfer date under or by virtue of the <sup>M227</sup>Public Utilities Street Works Act 1950; and anything which, immediately before that date, is in process of being done under, or by virtue of, that Act by or in relation to the

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Board (including, in particular, any legal proceedings to which it is a party) may be continued by, or in relation to, the appropriate successor company.

- (2) Any notice or direction given or other thing whatsoever done under the said Act of 1950 by an Electricity Board shall, if effective at the transfer date, continue in force and have effect as if similarly given or done by the appropriate successor company.

#### Marginal Citations

M227 1950 c. 30.

- 36 (1) Where immediately before the transfer date an Electricity Board falls, by virtue of section 34(3) of the <sup>M228</sup>General Rate Act 1967, to be treated for the purposes of that Act as occupying in a rating area a hereditament of a rateable value calculated in accordance with the provisions of Part I of Schedule 7 to that Act, that Board shall, notwithstanding the transfers of property, rights and liabilities effected by Part II of this Act, continue to be so treated until 1st April 1990.
- (2) Section 16(1) of the <sup>M229</sup>Valuation and Rating (Scotland) Act 1956 (liability for rates) shall, in relation to such lands and heritages as the Secretary of State may after consultation with the Scottish Boards by regulations prescribe, have effect until 1st April 1990 as if any reference to a rate being payable by occupiers only were a reference to the rate being payable by the Scottish Board from which the lands and heritages were transferred by Part II of this Act.
- (3) Any sums which by virtue of this paragraph fall to be paid by an Electricity Board after the transfer date shall be met by the appropriate successor company.

#### Marginal Citations

M228 1967 c. 9.

M229 1956 c. 60.

- 37 (1) An application or claim by an Electricity Board for hazardous substances consent which is effective on the transfer date—
- (a) shall have effect as if made by the appropriate successor company; and
- <sup>F171</sup>(b) in the case of an application or claim made to the Secretary of State, shall be determined by him notwithstanding that the land to which it relates is no longer land to which <sup>F172</sup>section 2 of the Planning (Hazardous Substances) Act 1990] or, as the case may be, section 56B of the <sup>M230</sup>Town and Country Planning (Scotland) Act 1972 applies.]
- (2) A hazardous substances consent granted or deemed to be granted to an Electricity Board which is effective on the transfer date shall have effect as if it had been granted to the appropriate successor company.

#### Textual Amendments

**F171** Sch. 17 para. 37(1)(b) repealed (*prosp.*) by Environmental Protection Act 1990 (c. 43, SIF 46:4), ss. 162(2), 164(2)(3), **Sch. 16 Pt. VII**

**F172** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 83(2)**

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#### Marginal Citations

M230 1972 c. 52.

- 38 (1) Where an asset, or the right to receive an asset, vests in a successor company by virtue of this Act, then for the purposes of Part I of the <sup>M231</sup>Industry Act 1972 and Part II of the <sup>M232</sup>Industrial Development Act 1982—
- (a) so much of any expenditure incurred by the appropriate Board or Council in providing that asset as is approved capital expenditure (of any description relevant for the purposes of regional development grant) in respect of which no payment of regional development grant has been made to the Board or Council shall be treated as having been incurred by the successor company and not by the Board or Council; and
  - (b) where the asset itself vests in the successor company by virtue of this Act, it shall be treated as a new asset if it would have fallen to be so treated if it had remained vested in the Board or Council.
- (2) In this paragraph “regional development grant” means a grant under Part I of the Industry Act 1972 or Part II of the Industrial Development Act 1982 and “approved capital expenditure” has the same meaning as it has for the purposes of the provisions relating to regional development grant.

#### Marginal Citations

M231 1972 c. 63.

M232 1982 c. 52.

- 39 (1) Where a distribution is proposed to be declared during the accounting reference period of a successor company which includes the transfer date or before any accounts are laid or filed in respect of that period, sections 270 to 276 of the <sup>M233</sup>Companies Act 1985 (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—
- (a) references in section 270 to the company’s accounts or to accounts relevant under that section; and
  - (b) references in section 273 to initial accounts,
- included references to such accounts as, on the assumptions stated in subparagraph (2) below, would have been prepared under section 227 of that Act in respect of the relevant year.
- (2) The said assumptions are—
- (a) that the relevant year had been a financial year of the successor company;
  - (b) that the vesting effected by Part II of this Act had been a vesting of all the property, rights and liabilities (other than excepted rights and liabilities within the meaning of section 66 or 67 of this Act) to which the Board or Council concerned was entitled or subject immediately before the beginning of the relevant year and had been effected immediately after the beginning of that year;
  - (c) that the value of any asset and the amount of any liabilities of the Board or Council concerned vested in the successor company by virtue of that section had been the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the statement of accounts prepared by that

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- Board or Council in respect of the financial year immediately preceding the relevant year;
- (d) that any securities of the successor company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year; and
- (e) such other assumptions (if any) as may appear to the directors of the successor company to be necessary or expedient for the purposes of this paragraph.
- (3) For the purposes of the said accounts the amount to be included in respect of any item shall be determined as if anything done by the Board or Council concerned (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

Accordingly (but without prejudice to the generality of the preceding provision) the amount to be included in any reserves of the successor company as representing its accumulated realised profits shall be determined as if any profits realised and retained by the Board or Council concerned had been realised and retained by the successor company.

- (4) The said accounts shall not be regarded as statutory accounts for the purposes of section 76 of this Act.
- (5) In this paragraph—  
“complete financial year” means a financial year ending with 31st March;  
“the relevant year” means the last complete financial year ending before the transfer date.

#### Marginal Citations

M233 1985 c. 6.

- 40 In this Part of this Schedule expressions which are used in Part II of this Act have the same meanings as in that Part.

## SCHEDULE 18

Section 112(4).

### REPEALS

#### Commencement Information

**I3** Sch. 18 wholly in force at 9.11.2001; Sch. 18 not in force at Royal Assent see s. 113(2); Sch. 18 in force with the exception of specified repeals at 31.3.1990 by S.I 1990/117, art. 3(b); Sch. 18 in force insofar as not already in force at 9.11.2001 by S.I. 2001/3419, art. 2(c)

45 & 46 Vict. c. 56.

The Electric Lighting Act  
1882.

The whole Act.

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51 & 52 Vict. c. 12.	The Electric Lighting Act 1888.	The whole Act.
62 & 63 Vict. c. 19.	The Electric Lighting (Clauses) Act 1899.	The whole Act.
9 Edw. 7 c. 34.	The Electric Lighting Act 1909.	The whole Act.
9 & 10 Geo. 5 c. 100.	The Electricity (Supply) Act 1919.	The whole Act.
12 & 13 Geo. 5 c. 46.	The Electricity (Supply) Act 1922.	The whole Act.
15 & 16 Geo. 5 c. 71.	The Public Health Act 1925.	In section 7(3), the word “electricity”.
16 & 17 Geo. 5 c. 51.	The Electricity (Supply) Act 1926.	The whole Act.
17 & 18 Geo. 5 c. 36.	The Landlord and Tenant Act 1927.	In section 25, in the definition of “statutory company”, the word “electricity”.
23 & 24 Geo. 5 c. 14.	The London Passenger Transport Act 1933.	Section 23(9)(b).
25 Geo. 5 and 1 Edw. 8 c. 20.	The Electricity Supply (Meters) Act 1936.	The whole Act.
25 Geo. 5 and 1 Edw. 8 c. 49.	The Public Health Act 1936.	In section 343, in the definition of “statutory undertakers”, the word “electricity”.
2 & 3 Geo. 6 c. 31.	The Civil Defence Act 1939.	In section 90(1), in the definition of “public utility undertakers”, the word “electricity”.
6 & 7 Geo. 6 c. 32.	The Hydro-Electric Development (Scotland) Act 1943.	The whole Act.
8 & 9 Geo. 6 c. 19.	The Ministry of Fuel and Power Act 1945.	Section 7(3).
8 & 9 Geo. 6 c. 42.	The Water Act 1945.	In section 1(1) of Schedule 3, in the definition of “statutory undertakers”, the word “electricity”.
9 & 10 Geo. 6 c. 49.	The Acquisition of Land (Authorisation Procedure) Act 1946.	In section 8(1), in the definition of “statutory undertakers”, the word “electricity”.



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		In Schedule 4, the entry relating to the Electricity (Supply) Act 1919.
10 & 11 Geo. 6 c. 35.	The Finance Act 1947.	In section 57(2), the words from “all stock” to “and to” and the word “other”.
10 & 11 Geo. 6 c. 42.	The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.	Section 1(5).  In section 7(1), in the definition of “statutory undertakers”, the word “electricity”.
10 & 11 Geo. 6 c. 54.	The Electricity Act 1947.	The whole Act.
11 & 12 Geo. 6 c. 22.	The Water Act 1948.	In section 15(1), in the definition of “appropriate Minister”, the word “electricity” and, in the definition of “statutory undertakers”, the word “electricity”.
14 Geo. 6 c. 39.	The Public Utilities Street Works Act 1950.	In section 20(3), the words from “Section thirteen” to “subsists, and”.  In Schedule 5, the entries relating to the Gasworks Clauses Act 1847 as incorporated with the Electric Lighting Act 1882 by section 12 of that Act, the Electric Lighting Act 1882 and the Schedule to the Electric Lighting (Clauses) Act 1899.
2 & 3 Eliz. 2 c.19.	The Civil Defence (Electricity Undertakings) Act 1954.	The whole Act.
2 & 3 Eliz. 2 c. 21.	The Rights of Entry (Gas and Electricity Boards) Act 1954.	In section 3(1), the definition of “Electricity Board”.
2 & 3 Eliz. 2 c. 60.	The Electricity Reorganisation (Scotland) Act 1954.	The whole Act.
4 & 5 Eliz. 2 c. 52.	The Clean Air Act 1956.	Section 10(4).
5 & 6 Eliz. 2 c. 48.	The Electricity Act 1957.	The whole Act.
6 & 7 Eliz. 2 c. 69.	The Opencast Coal Act 1958.	In section 51(1), in the definition of “appropriate

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		Minister”, the words “electricity or”.
		In section 52(2), in the definition of “appropriate Minister”, the words “electricity or”.
9 & 10 Eliz. 2 c. 8.	The Electricity (Amendment) Act 1961.	The whole Act.
10 & 11 Eliz. 2 c. 58.	The Pipe-lines Act 1962.	In section 58(1), paragraphs (c) to (e).
10 & 11 Eliz. 2 c. 58.— <i>cont.</i>	The Pipe-lines Act 1962.— <i>cont.</i>	In section 66(1), in the definition of “statutory undertakers”, the word “electricity”.
1963 c. 41.	The Offices, Shops and Railway Premises Act 1963.	Section 90(2).
1963 c. 59.	The Electricity and Gas Act 1963.	The whole Act.
1964 c. 40.	The Harbours Act 1964.	In paragraph 6(2)(c) of Schedule 3, the word “electricity”.
1965 c. 6.	The Nuclear Installations (Amendment) Act 1965.	Section 17(2).
1965 c. 36.	The Gas Act 1965.	In section 28(1), in the definition of “statutory undertakers”, the word “electricity”.
1966 c. 27.	The Building Control Act 1966.	In the Schedule, the entries relating to the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board.
1966 c. 34.	The Industrial Development Act 1966.	In Schedule 2, the entries relating to an Area Electricity Board, the North of Scotland Hydro-Electric Board, the South of Scotland Electricity Board, the Central Electricity Generating Board and the Electricity Council.
1967 c. 10.	The Forestry Act 1967.	In section 40(2)(d), the word “electricity”.
1967 c. 86.	The Countryside (Scotland) Act 1967.	Section 64.
		In section 65(5), paragraphs (h) and (i).

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1968 c. 13.	The National Loans Act 1968.	In Schedule 1, the entry relating to the Electricity and Gas Act 1963.
1968 c. 16.	The New Towns (Scotland) Act 1968.	In section 47(1), in the definition of “the appropriate Minister”, the words “electricity or” and, in the definition of “statutory undertakers”, the word “electricity”.
1968 c. 39.	The Gas and Electricity Act 1968.	The whole Act.
1968 c. 62.	The Clean Air Act 1968.	In section 6(10), the words from “not being a furnace” to the end.
1969 c. 32.	The Finance Act 1969.	In Schedule 20, paragraph 28(2).
1971 c. 78.	The Town and Country Planning Act 1971.	In section 224(1), the words “electricity or”.  In section 290(1), in the definition of “statutory undertakers”, the word “electricity”.
1972 c. 17.	The Electricity Act 1972.	The whole Act.
1972 c. 52.	The Town and Country Planning (Scotland) Act 1972.	In section 213(1)(e), the words “electricity or”.  In section 275(1), in the definition of “statutory undertakers”, the word “electricity”.
1972 c. 70.	The Local Government Act 1972.	Section 271(1)(a).
1973 c. 41.	The Fair Trading Act 1973.	In section 137, in subsection (2), in the definition of “goods”, the words “but does not include electricity”, and subsection (4).  In Schedule 5, paragraph 3.
1973 c. 65.	The Local Government (Scotland) Act 1973.	Section 236(1).  In Schedule 27, paragraphs 13, 14, 49, 55, 68, 87 and 129 to 131.

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1974 c. 8.	The Statutory Corporations (Financial Provisions) Act 1974.	In Schedule 2, the entries relating to the Electricity Council, the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board.
1974 c. 40.	The Control of Pollution Act 1974.	In section 21(6), the words “(except the restrictions imposed by subsections (2) and (3))”.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In section 73(1), in the definition of “statutory undertakers”, the word “electricity”.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part II, the entries relating to an Area Electricity Board in England and Wales, the Central Electricity Generating Board, the Electricity Council, the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board.
1975 c. 55.	The Statutory Corporations (Financial Provisions) Act 1975.	Section 5(2).
1975 c. 55.	The Statutory Corporations (Financial Provisions) Act 1975.	Section 6(1).
1975 c. 70.	The Welsh Development Agency Act 1975.	In Schedule 2, the entries relating to the Electricity Council, the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board.
1975 c. 70.	The Welsh Development Agency Act 1975.	In Schedule 3, Part I.
1975 c. 70.	The Welsh Development Agency Act 1975.	In section 27, in the definition of “statutory undertakers”, the word “electricity”.
1976 c. 57.	The Local Government (Miscellaneous Provisions) Act 1976.	In section 11(7), the definition of “Electricity Board”.
1976 c. 61.	The Electricity (Financial Provisions) (Scotland) Act 1976.	The whole Act.
1976 c. 75.	The Development of Rural Wales Act 1976.	In section 34(1), the word “electricity”.

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		In column (1) of the table to paragraph 56 of Schedule 3, the words “electricity or”.
1976 c. 76.	The Energy Act 1976.	Section 7. Section 16. In Schedule 2, in paragraph 6(1), the words “or 7”.
1978 c. 25.	The Nuclear Safeguards and Electricity (Finance) Act 1978.	Section 5.
1978 c. 44.	The Employment Protection (Consolidation) Act 1978.	In Schedule 10, paragraphs 7 and 17.
1979 c. 11.	The Electricity (Scotland) Act 1979.	The whole Act.
1979 c. 14.	The Capital Gains Tax Act 1979.	In Schedule 2, in Part I, in paragraph 1, paragraph (b) and the word “and” immediately preceding paragraph (b).
1979 c. 46.	The Ancient Monuments and Archaeological Areas Act 1979.	In section 61(2)(a), the word “electricity”. In Schedule 4, paragraph 1.
1980 c. 43.	The Magistrates’ Courts Act 1980.	In Schedule 1, paragraph 10.
1980 c. 63.	The Overseas Development and Co-operation Act 1980.	In Schedule 1, in Part I, the entries relating to an Area Electricity Board, the Central Electricity Generating Board, the Electricity Council, the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board.
1980 c. 65.	The Local Government, Planning and Land Act 1980.	In section 108(1)(a), the word “electricity”. In section 120(3), in the definition of “statutory undertakers”, the word “electricity”. In section 170(1)(a), the word “electricity”. In Schedule 16, in the definition of “statutory undertakers”, the word “electricity”.

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		In paragraph 2 of Schedule 19, the word “electricity”.
1980 c. 66.	The Highways Act 1980.	In section 121(6)(a), the word “electricity”.  In section 329(1), the definition of “electricity undertakers”.  In section 329(1), in the definition of “public utility undertakers”, the word “electricity”.  In section 329(1), in the definition of “statutory undertakers”, in paragraph (b), the word “electricity”.
1981 c. 64.	The New Towns Act 1981.	In section 78(1)(b), the words “electricity or”.  In section 79(1)(a)(iii) the word “electricity”.
1981 c. 67.	The Acquisition of Land Act 1981.	In section 8(1)(a), the word “electricity”.  In Schedule 4, the entry relating to the Electricity Act 1947.
1982 c. 16.	The Civil Aviation Act 1982.	In section 105(1), in the definition of “statutory undertaker”, in paragraph (b), the words “electricity or”.
1982 c. 30.	The Local Government (Miscellaneous Provisions) Act 1982.	In section 30(1), paragraph (b) and the word “or” immediately preceding it.
1982 c. 41.	The Stock Transfer Act 1982.	In section 1(3)(c), the words “section 16(3) of the Electricity Act 1957 or”.
1982 c. 43.	The Local Government and Planning (Scotland) Act 1982.	In Schedule 3, paragraphs 35 and 36.
1982 c. 48.	The Criminal Justice Act 1982.	In Schedule 15, paragraphs 2 and 22.
1983 c. 25.	The Energy Act 1983.	Part I.  Schedules 1 to 3.

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1983 c. 29.	The Miscellaneous Financial Provisions Act 1983.	Section 4(3).
1983 c. 44.	The National Audit Act 1983.	In Schedule 4, the entries relating to the Central Electricity Generating Board, the Electricity Council and the Area Boards within the meaning of the Electricity Act 1947, the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board.
1984 c. 12.	The Telecommunications Act 1984.	In Schedule 2, in paragraph 23(10), in the definition of “relevant undertaker”, sub-paragraph (a)(ii).  In Schedule 4, paragraphs 6, 8, 9, 13, 15, 24, 34 and 70.
1984 c. 54.	The Roads (Scotland) Act 1984.	In Schedule 9, paragraphs 10, 13, 19, 23 and 79.
1984 c. 55.	The Building Act 1984.	In section 126, in the definition of “statutory undertakers” the word “electricity”.
1985 c. 51.	The Local Government Act 1985.	In Schedule 4, in Part II, paragraph 46.
1985 c. 68.	The Housing Act 1985.	In section 283(3), the word “electricity”.  In section 296(4)(a), the word “electricity”.  In section 611(6)(a), the word “electricity”.
1986 c. 44.	The Gas Act 1986.	In Schedule 7, paragraph 2(1) (xxxvi) and, in paragraph 4, sub-paragraphs (1) to (4) and (5)(b).
1986 c. 62.	The Salmon Act 1986.	Section 4.
1986 c. 63.	The Housing and Planning Act 1986.	Section 44.
1987 c. 26.	The Housing (Scotland) Act 1987.	In section 338(1), in the definition of “public undertakers”, the word “electricity”.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 511, subsections (1) to (3) and (6).

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1988 c. 15.	The Public Utility Transfers and Water Charges Act 1988.	Section 1, so far as relating to electricity boards within the meaning of that section.
1988 c. 37.	The Electricity (Financial Provisions) (Scotland) Act 1988.	The whole Act.

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