



Electricity Act 1989

1989 CHAPTER 29

PART I

ELECTRICITY SUPPLY

Modifications etc. (not altering text)

- C1** 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.
- C2** 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.
- C3** 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.

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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.
- (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)

- C4** 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 ^{F1}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

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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.

[^{F2}(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
- (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) [^{F3}, (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.

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- (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.
- [^{F4}(6A) Subsections (1) to (5) above do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 43(3) below (“Competition Act functions”).
- (6B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (1) to (5) above (“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 the exercise of any function mentioned in subsection (6) above, regard may not be had to any general matter.]
- (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, ss. 115, 120(1), **Sch. 22 para. 38(2)** (with ss. 7(6), 117); S.I. 1995/1983, **art. 3**
- F2** S. 3(2A)-(2C) inserted (21.9.1995) by 1995 c. 25, ss. 115, 120(1), **Sch. 22 para. 38(3)** (with ss. 7(6), 117); S.I. 1995/1983, **art. 3**
- F3** Words in s. 3(3) substituted (21.9.1995) by 1995 c. 25, ss. 115, 120(1), **Sch. 22 para. 38(4)** (with ss. 7(6), 117); S.I. 1995/1983, **art. 3**
- F4** S. 3(6A)(6B) inserted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, ss. 54(2), 66(5), **Sch. 10 Pt. II para. 4(3)** (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2)); S.I. 2000/344, art. 2, **Sch.**

Modifications etc. (not altering text)

- C5** S. 3: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch.1** (with art. 7)

VALID FROM 20/12/2000

[^{F5}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.

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- (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 ^{M1}Gas Act 1986); and
 - (b) any interests of consumers in relation to—
 - (i) telecommunication services and telecommunication apparatus (within the meaning of the ^{M2}Telecommunications Act 1984); or
 - (ii) water services or sewerage services (within the meaning of the ^{M3}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—
- (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;

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

Textual Amendments

F5 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

[^{F6}3B] **[^{F6} 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.
- (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.

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(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

- F5** 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. 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

^{F7} [F⁷ Health and safety.]

- ^{F7}3C (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—
- members of the public; or
 - persons employed in connection with any of those activities.]

Textual Amendments

- F5** 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. 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)

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VALID FROM 20/12/2000

[^{F8}3D] [^{F8} 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

- F5** 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)
- F8** 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)

- C6** S. 3D(4) excluded (20.12.2000) by S.I. 2000/3343, art. 10(1)(b) (subject to transitional provisions in arts. 3-15)

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;

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- (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)

C7 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.

Modifications etc. (not altering text)

C8 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—

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- (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;
 - (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—

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“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)

- C9** 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

[^{F9}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;
 - (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.

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(7) Any sums received by the Authority under this section shall be paid into the Consolidated Fund.]

Textual Amendments

F9 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

[^{F10}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
 - (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

F10 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)

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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.
- (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.

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VALID FROM 01/10/2001

[^{F11}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.
- (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.

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(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

F11 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

[^{F12} 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,

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

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- (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

- F11** 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)
- F12** 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 ^{M4}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

- F11** 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.

VALID FROM 01/10/2001

[^{F13}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.

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- (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.]

Textual Amendments

F13 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.

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- (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; 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.

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- (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

[^{F14}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.
- (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;

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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—
- (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

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“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

- F14** 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 [^{F15}Competition 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 [^{F16}Competition 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 [^{F16}Competition Commission] in carrying out the investigation on the reference—
- (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

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- (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 [F16Competition 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 [F16Competition 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 [F16Competition 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.
- [F17](8) The provisions mentioned in subsection (8A) are to apply in relation to references under this section as if—
- (a) the functions of the Competition 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 section 70 of the 1973 Act—
 - (i) references to the Secretary of State were references to the Director, and
 - (ii) the reference to three months were a reference to six months.
- (8A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
 - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
 - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).
- (9) For the purposes of references under this section, the Secretary of State is to appoint not less than eight members of the Competition Commission.
- (9A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under subsection (9) to be members of the group.]

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Textual Amendments

- F15** Words in s. 12(1) substituted (1.4.1999) by S.I. 1999/506, art. 24(a)
F16 Words in s. 12(2)(3)(5)(6)(7) substituted (1.4.1999) by S.I. 1999/506, art. 24(b)
F17 S. 12(8)(8A)(9)(9A) substituted for s. 12(8)(9) (1.4.1999) by 1998 c. 41, ss. 54(3), 66(5), Sch. 10 Pt. IV para. 12(2) (with s. 73); S.I. 1999/505, art. 2, Sch.

VALID FROM 20/06/2003

[^{F18}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

- F18** Ss. 12A, 12B inserted (prosp.) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, Sch. 25 {para. 20(4)}

VALID FROM 20/06/2003

[^{F19}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—

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- (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

F19 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 [F20Competition Commission]—
- (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

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- (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 [^{F20}Competition Commission]] conclude that the holder of the licence is a party to an agreement to which the ^{M5}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 [^{F20}Competition Commission] on references under section 12 above as it applies to reports of the Commission under that Act.
- (4) A report of the [^{F20}Competition 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.

Textual Amendments

F20 Words in S. 13(1)(2)(3)(4) substituted (1.4.1999) by S.I. 1999/506, art. 24(b)

Marginal Citations

M5 1976 c. 34.

14 Modification following report.

- (1) Where a report of the [^{F21}Competition 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;
- (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,

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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.

Textual Amendments

F21 Words in [S. 14\(1\)](#) substituted (1.4.1999) by [S.I. 1999/506](#), [art. 24\(b\)](#)

VALID FROM 01/10/2001

^{F22}**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.
- (4) If the Commission gives a direction under subsection (1), the Commission—

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- (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.
- (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

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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 ^{M6}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 ^{M7}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 ^{M8}Competition Act 1980 (modification of provisions about the Competition Commission’s general functions); and
 - (d) Part II of Schedule 7 to the ^{M9}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

- F22** 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

- M6** 1973 c. 41.
M7 1973 c. 41.
M8 1980 c. 21.
M9 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—
- (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;

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- (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

[^{F23}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.
- (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.]

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Textual Amendments

F23 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;
 - (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—

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- (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

[^{F24}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.]

Textual Amendments

- F24** 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)

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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;
- 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.

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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.
- (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;

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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.
- (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

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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.
- [^{F25}(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 ^{F26} . . . 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 ^{F26} . . . 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.

Textual Amendments

F25 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.

F26 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.

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Modifications etc. (not altering text)

C10 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.
- (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

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- 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 [^{F27} or section 40(3), 41(3), 42A or 42B below].

Textual Amendments

F27 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—
- (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

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- (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.
- (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.

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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

^{F28}27A Penalties.

- (1) Where the Authority is satisfied that a licence holder—
 - (a) has contravened or is contravening any relevant condition or requirement; or
 - (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 ^{M10}Competition Act 1998.

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- (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—
- (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).

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- (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

F28 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

M10 1998 c. 41.

VALID FROM 20/12/2000

[^{F29}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.]

Textual Amendments

F29 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)

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[^{F30}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

F30 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

[^{F31}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 ^{M11}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 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.]

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Textual Amendments

F31 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

M11 1838 c. 110.

VALID FROM 20/12/2000

[^{F32}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.
- (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.

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- (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

F32 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)

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[^{F33}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

F33 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 [^{F34}or 42B below] as are exercisable in relation to that matter, serve a notice under subsection (2) below on any person.

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- (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

F34 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.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may—

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- (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;
 - (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

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- (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,
- 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.

^{F35}(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,

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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 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—

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- (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;

[^{F36}“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 ^{M12}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 a requirement to consult with the Area Boards or, as the case may be, the Scottish Boards.

Textual Amendments

F35 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)

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F36 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)

- C11** S. 32: power to modify conferred (29.9.2000) by 2000 c. 27, s. 67(1)(a); S.I. 2000/2412, art. 2, **Sch. S. 32: power to continue (with modifications) conferred (29.9.2000) by 2000 c. 27, s. 67(3); S.I. 2000/2412, art. 2, Sch.**
- C12** 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)
- C13** S. 32(5)–(8) modified by S.I. 1990/264, **art. 2**
- C14** S. 32(5)(a) amended by S.I. 1990/265, **arts. 3, 4(3), 5(2)(3)(b)**

Marginal Citations

M12 1976 c. 76.

VALID FROM 01/10/2001

[^{F37}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);
 - (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;

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- (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

F37 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)

VALID FROM 01/10/2001

[^{F38} 32B] **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

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(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

F37 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)

F38 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)

C15 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

[^{F39} 32C] **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 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

F37 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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F39 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)

C16 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—
 - (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

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- 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.
- [^{F40}(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;
- “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;
- [“^{F41}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;]
- ^{F42}
...
- “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

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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.

[^{F43}(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

- F40** S. 33(7A)(7B) inserted (22.4.1997) by S.I. 1997/1185, **art. 2(1)**
- F41** 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**
- F42** Definition of “qualifying arrangements” in s. 33(8) repealed (22.4.1997) by S.I. 1997/1185, **art. 2(2)**
- F43** 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)

- C17** S. 33: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)
- C18** S. 33 continued (with modifications) (27.10.2000 with effect on 21.11.2000) by S.I. 2000/2727, **art. 11**
- C19** 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 ^{M13}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.
- (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.

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- (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

F37 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)

C20 S. 34: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

C21 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

M13 1974 c. 40.

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

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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 ^{M14}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

F37 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)

C22 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

M14 1976 c. 76.

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.

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- (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

F37 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. 36 restricted by S.I. 1990/442, art. 3(1)(a)

C24 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))

C25 S. 36: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, art. 2, Sch. 1 (with art. 7)

C26 S. 36(2) modified (S.) by S.I. 1990/392, art. 2

C27 S. 36(2) modified (E.W.) (1.12.2001) by S.I. 2001/3642, art. 2

C28 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;

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- (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

F37 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)

C29 S. 37 restricted by S.I. 1990/442, art. 3(1)(b)

C30 S. 37 excluded (16.3.1992) by Midland Metro Act 1992 (c. vii), s. 10(3)

C31 S. 37 modified (S.) (27.5.1997) by 1997 c. 8, ss. 57(2), 278(2) (with ss. 64, 219)

C32 S. 37: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, art. 2, **Sch. 1** (with art. 7)

C33 S. 37(1) excluded (1.1.1993) by S.I. 1992/3074, **reg.3**

C34 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.]

Textual Amendments

F37 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; ^{F44} . . .

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- (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, ^{F45}; 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.
- ^{F46}(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

F44 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.

F45 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.

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F46 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)

C35 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

[^{F47}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 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.]

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Textual Amendments

- F47** 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

[^{F48}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.]

Textual Amendments

- F48** 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, ^{F49} . . . 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.

- [^{F50}(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

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- (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.
- [^{F51}(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

- F49** 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.
- F50** 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
- F51** 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

[^{F52}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.
- (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

- F52** 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](#))

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VALID FROM 16/05/2001

[^{F53} **Procedures for prescribing or determining standards of performance.**]

[^{F53} **40B**

- (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.
- (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

- F52** 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)
- F53** 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)

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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—
 - (a) 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
 - (b) 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.
- [^{F54}(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—
 - (a) the standards determined under this section which are applicable to that supplier; and
 - (b) that supplier's level of performance as respects those standards.]

Textual Amendments

F54 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—
 - (a) the compensation made by public electricity suppliers under section 39 above;
 - (b) the levels of overall performance achieved by such suppliers in connection with the provision of electricity supply services; and
 - (c) the levels of performance achieved by such suppliers in connection with the promotion of the efficient use of electricity by consumers.
- (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.

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- (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.

[^{F55}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

F55 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

VALID FROM 07/11/2000

[^{F56}42AAPublication 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.]

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Textual Amendments

F56 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)

[^{F57} 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.
- (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

F57 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

Status: Point in time view as at 01/07/1999. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/10/2001

[^{F58}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
 - (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.

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(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 ^{M15}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

F58 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

M15 1985 c. 6.

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

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- (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.
- [^{F59}(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
 - (b) conduct of the kind mentioned in section 18(1) of that Act,
- which relate to commercial activities connected with the generation, transmission or supply of electricity.]
- (4) Before either Director first exercises in relation to any matter functions [^{F60}mentioned in] any of the following provisions, namely—
- (a) paragraph (a) of subsection (2) above;
 - (b) paragraph (b) of that subsection; and
- [^{F61}(c) subsection (3) above, [^{F62}and]]
- [^{F62}(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 [^{F60}mentioned in] any of those provisions if functions [^{F60}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 [^{F63}Competition Commission] in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) [^{F64}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.
- (6) If any question arises [^{F65}in any particular case as to the jurisdiction of the Director under any of the provisions mentioned in] subsection (2) or (3) above [^{F66}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
- [^{F67}(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),] 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.
- [^{F68}(6A) Section 93B of the 1973 Act (offences of supplying false or misleading information) is to have effect so far as relating to functions exercisable by the Director by virtue of—

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- (a) subsection (2) above and paragraph 1 of Schedule 10 to the Competition Act 1998, or
- (b) paragraph 4 of Schedule 2 to the ^{M16}Deregulation and Contracting Out Act 1994,

as if the reference in section 93B(1)(a) to the Director General of Fair Trading included a reference to the Director.]

- (7) Expressions used in this section which are also used in the 1973 Act [^{F69} or the 1980 Act] have the same meanings as in that Act.

Textual Amendments

- F59** S. 43(3)(3A) substituted for s. 43(3) (26.11.1998 for specified purposes and otherwise *prosp.*) by 1998 c. 41, ss. 66(5), 76(3), **Sch. 10 Pt. II para. 4(4)(5)** (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2))
- F60** 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)**
- F61** S. 43(4)(c) and word “and” immediately following repealed (26.11.1998 for specified purposes and otherwise *prosp.*) by 1998 c. 41, ss. 66(5), 74(3), 76(3), **Sch. 10 Pt. II para. 4(6)**, **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2))
- F62** S. 43(4)(d) and word “and” immediately preceding 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)**
- F63** Words in S. 43(5) substituted (1.4.1999) by S.I. 1999/506, **art. 24(b)**
- F64** Words in s. 43(5) repealed (26.11.1998 for specified purposes and otherwise *prosp.*) by 1998 c. 41, ss. 66(5), 74(3), 76(3), **Sch. 10 Pt. II para. 4(7)**, **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2))
- F65** 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)**
- F66** 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)**
- F67** S. 43(6)(b) substituted (26.11.1998 for specified purposes and otherwise *prosp.*) by 1998 c. 41, ss. 66(5), 76(3), **Sch. 10 Pt. II para. 4(8)** (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2))
- F68** S. 43(6A) inserted (1.4.1999) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 12(6)**; S.I. 1999/505, art. 2, **Sch.**
- F69** Words in s. 43(7) repealed (26.11.1998 for specified purposes and otherwise *prosp.*) by 1998 c. 41, ss. 66(5), 74(3), 76(3), **Sch. 10 Pt. II para. 4(9)**, **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2))

Modifications etc. (not altering text)

- C36** S. 43(2) applied (3.1.1995) by 1994 c. 40, ss. 7(2), 82(2)(a)(b), **Sch. 2 para. 4(2)**
- C37** S. 43(3) restricted (26.11.1998 for specified purposes and otherwise *prosp.*) by 1998 c. 41, ss. 66(5), 76(3), **Sch. 10 Pt. II para. 4(1)** (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2))

Marginal Citations

- M16** 1994 c. 40

VALID FROM 01/10/2001

[^{F70} 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

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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—
- (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

F70 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

[^{F71} 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

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- (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.
- (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

F71 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.

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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.
- (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.

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- (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

[^{F72}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—
 - (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.

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- (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

F72 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—
- (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.

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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;
 - (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

[^{F73}49A Reasons for decisions.

- (1) This section applies to the following decisions of the Authority or the Secretary of State, namely—

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- (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 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

F73 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 [^{F74}Competition Commission] 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;

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- (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.
- (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 [^{F74}Competition Commission] on which the Director is required to report by this section.

Textual Amendments

F74 Words in s. 50(1)(a)(ii)(6) substituted (1.4.1999) by S.I. 1999/506, art. 24(b)

Modifications etc. (not altering text)

C38 S. 50(1) amended (*prosp.*) by 2000 c. 27, ss. 108, 110(2), Sch. 8

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.

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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
 - (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 ^{M17}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

M17 1947 c. 54.

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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.

^{F75}(2)

- (3) [^{F76}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

F75 S. 56(2) repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

F76 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)

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VALID FROM 01/10/2001

[^{F77} Alteration of activities requiring licence

Textual Amendments

F77 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)

^{F78}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.
- (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.

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Textual Amendments

F78 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)

F79 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.
- (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.

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Textual Amendments

F79 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)

^{F80}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—
 - (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;

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- (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 ^{M18}Fair Trading Act 1973;
 - (b) the expression “merger reference” included a reference under this section;
 - (c) in section 70 of the ^{M19}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 ^{M20}Fair Trading Act 1973;
 - (b) Part II of Schedule 7 to the ^{M21}Competition Act 1998 (performance of the Commission’s general functions); and
 - (c) section 24 of the ^{M22}Competition Act 1980 (modification of provisions about performance of such functions).

Textual Amendments

F80 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)

Modifications etc. (not altering text)

C39 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

M18 1973 c. 41.

M19 1973 c. 41.

M20 1973 c. 41.

M21 1998 c. 41.

M22 1980 c. 21.

VALID FROM 20/06/2003

^{F77} **References under section 56C: time limits**

^{F81} **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.

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- (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

F81 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 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—

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- (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

F81 Ss. 56CA, 56CB inserted (prosp.) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 {para. 20(12)}

F82 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.
- (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 ^{M23}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.

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- (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

F82 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

M23 [1973 c. 41](#).

^{F83}**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.
- (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

F83 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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^{F84}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

F84 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)

Miscellaneous

VALID FROM 20/12/2000

^{F85}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

F85 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—

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- (a) for the purpose of facilitating the carrying out by the Secretary of State, the Director or the [^{F86}Competition Commission] of any of his or, as the case may be, their functions under this Part;
 - [^{F87}(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 [^{F86}Competition 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;
 - [^{F88}(viii) the Rail Regulator;]
 - [^{F89}(viii) the Director General of Electricity Supply for Northern Ireland;]
 - (viii) the Civil Aviation Authority;
 - (ix) the Insolvency Practitioners Tribunal; ^{F90} . . .
 - [^{F91}(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;
 - (c) for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by the ^{M24}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 ^{M25}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 ^{M26}Trade Descriptions Act 1968;
 - (b) the 1973 Act;
 - (c) the ^{M27}Consumer Credit Act 1974;
 - [(d) the ^{M28}Restrictive Trade Practices Act 1976;]
 - (e) the ^{M29}Resale Prices Act 1976;
 - (f) the ^{M30}Estate Agents Act 1979;
 - (g) the 1980 Act;
 - (h) the ^{M31}National Audit Act 1983;

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- (i) the ^{M32}Telecommunications Act 1984;
 - (j) the ^{M33}Airports Act 1986;
 - (k) the ^{M34}Gas Act 1986;
 - (l) the Insolvency Act 1986;
 - (m) the ^{M35}Consumer Protection Act 1987;
 - (n) the ^{M36}Water Act 1989 [^{F92}the Water Industry Act 1991 or any of the other consolidation Acts (within the meaning of section 206 of that Act of 1991)];
 - [^{F93}(nn) the Railways Act 1993]
 - [^{F94}[^{F95}(no)]]
 - [^{F96}(nop) the Competition Act 1998]
 - [^{F97}(np) the Electricity (Northern Ireland) Order 1992 ^{F98}]
 - (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 [^{F86}Competition 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

- F86** Words in S. 57(2)(a)(2)(b)(iii)(5)(a) substituted (1.4.1999) by S.I. 1999/506, **art. 24(b)**
- F87** S. 57(2)(aa) inserted (1.12.1996) by S.I. 1996/2716, **art. 2**
- F88** S. 57(2)(b)(viii) 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)**
- F89** S. 57(2)(b)(viib) inserted (1.10.1995) by S.I. 1995/2356, **art. 2(1)**
- F90** 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**
- F91** 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**
- F92** 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)**.
- F93** 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)**
- F94** S. 57(3)(nnn) renumbered as (no) (1.10.1995) by S.I. 1995/2356, **art. 2(2)(a)**

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- F95** 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**
- F96** S. 57(3)(nop) inserted (11.1.1999) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 12(7)(b)** (with s. 73); S.I. 1998/3166, **art. 2, Sch.**
- F97** S. 57(3)(np) inserted (1.10.1995) by S.I. 1995/2356, **art. 2(2)(b)**
- F98** S.I. 1992/231 (N.I. 1); the only relevant amending instrument is S.I. 1992/1720 (N.I. 13).

Marginal Citations

- M24** 1986 c. 60.
M25 1986 c. 45.
M26 1968 c. 29.
M27 1974 c. 39.
M28 1976 c. 34.
M29 1976 c. 53.
M30 1979 c. 38.
M31 1983 c. 44.
M32 1984 c. 12.
M33 1986 c. 31.
M34 1986 c. 44.
M35 1987 c. 43.
M36 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 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.

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(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 ^{M37}Income and Corporation Taxes Act 1988.]

Textual Amendments

F85 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)

C40 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

M37 1988 c. 1.

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.

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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.

Modifications etc. (not altering text)

- C41** 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)
- C42** 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 ^{M38}Acquisition of Land Act 1981 or Schedule 1 to the ^{M39}Acquisition of Land

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(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,

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)

C43 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

M38 1981 c. 67.

M39 1947 c. 42.

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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 [^{F99} or a matter relating to a function which is exercisable by the Scottish Ministers].
- [^{F100}(1A) The Scottish Ministers may cause an inquiry to be held in any case where they consider it advisable to do so in connection with any matter relating to the exercise by them of a function under this Part.]
- (2) The provisions of subsections (2) to (5) of section 250 of the ^{M40} Local Government Act 1972 or subsections (2) to (8) of section 210 of the ^{M41} 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 [^{F101} caused to be held by the Secretary of State] 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.
- [^{F102}(5) Where—
- (a) an inquiry is to be caused to be held by the Scottish Ministers 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 inquiry which is to be caused to be held by the Scottish Ministers, it appears to the Scottish Ministers that the matters are so far cognate that they should be considered together,
- the Scottish Ministers may direct that the two inquiries be held concurrently or combined as one inquiry.]

Textual Amendments

- F99** Words in s. 62(1) added (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(1)(2)** (with art. 7)
- F100** S. 62(1A) inserted (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(3)** (with art. 7)
- F101** Words in s. 62(1) substituted (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(4)** (with art. 7)
- F102** S. 62(5) added (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(5)** (with art. 7)

Marginal Citations

- M40** 1972 c. 70.
- M41** 1973 c. 65.

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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 ^{M42} Fair Trading Act 1973;
 - “the 1980 Act” means the ^{M43} 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;
 - (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—

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- (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;

“ F103
 . . .

“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;

“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^{M44} Banking and Financial Dealings Act 1971.

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- (2) The provision of section 3 of the ^{M45} 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.

Textual Amendments

F103 S. 64(1): definition of “Monopolies Commission” repealed (1.4.1999) by S.I. 1999/506, art. 24(c)

Modifications etc. (not altering text)

C44 S. 64: definitions applied by Heathrow Express Railway Act 1991 (c. vii), s. 37(1)(a)

Marginal Citations

M42 1973 c. 41.

M43 1980 c. 21.

M44 1971 c. 80.

M45 1972 c. 59

PART II

REORGANISATION OF THE INDUSTRY

Modifications etc. (not altering text)

C45 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 ^{M46} 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.
- (5) In this Part “supply company” means a company nominated for the purposes of subsection (1) above.

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Marginal Citations

M46 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—
 - (a) two shall be designated as generating companies; and
 - (b) 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—
 - (a) for the transfer to a company nominated for the purposes of this subsection by the Secretary of State; or
 - (b) 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 ^{M47}Companies Act 1985.
- (4) On the transfer date each company so nominated must be—
 - (a) a company limited by shares which is wholly owned by the Crown; or
 - (b) 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—
 - (a) all property, rights and liabilities to which immediately before that date the Generating Board was entitled or subject; and
 - (b) 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—
 - (a) 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);
 - (b) 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 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.

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Marginal Citations

M47 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;
 - (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

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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.

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.

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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 ^{M48}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

M48 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.
- (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.

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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—
 - (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

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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;
 - (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)

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(d) of the ^{M49}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

M49 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 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;

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(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” [^{F104}has the meaning given by section 736 of]the ^{M50}Companies Act 1985.

Textual Amendments

F104 Words substituted by S.I. 1990/1395, reg. 2

Marginal Citations

M50 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.

(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—

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- (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 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

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- (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 ^{M51}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.
- (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 “relevant 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.

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- (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

M51 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,
- 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 ^{M52}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.

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Marginal Citations

M52 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 ^{M52} 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

M53 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.
- (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

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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 ^{M54}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
 - (b) the power conferred on the Secretary of State by subsection (2) of section 24 of the ^{M55}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

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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 ^{M56}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;
 - “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 ^{M57}Exchange Equalisation Account Act 1979 with respect to the payments falling to be made in respect of that loan.

Marginal Citations

M54 1963 c. 59.

M55 1979 c. 11.

M56 1957 c. 48.

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M57 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—
 - (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

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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 ^{M58}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

M58 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 ^{M59}Electricity Act 1957, a sum equal to the amounts accruing 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,

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as money entrusted to them for payment to holders of the Stock concerned and section 5 of the ^{M60}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 ^{M61}Electricity Act 1957 or under section 40 of the ^{M62}Electricity Act 1947;

“North of Scotland Electricity Stock” means any stock created and issued under section 13 of the ^{M63}Hydro-Electric Development (Scotland) Act 1943.

Marginal Citations

M59 1957 c. 48.

M60 1955 c. 6.

M61 1957 c. 48.

M62 1947 c. 54.

M63 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.

Supplemental

93 Parliamentary disqualification.

In the ^{M64}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 ^{M65}Northern Ireland Assembly Disqualification Act 1975.

Marginal Citations

M64 1975 c. 24.

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M65 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;
 - “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;

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“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.
- (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.

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- (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;
 - (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 [^{F105}or to the Scottish Ministers] 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.

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- (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.

Textual Amendments

F105 Words in s. 98(5) inserted (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 95

Modifications etc. (not altering text)

C46 S. 98(1)(2): certain functions made exercisable by the Scottish Ministers concurrently with the Minister (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 3, Sch. 2 (with art. 7)

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 ^{M66}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.

Marginal Citations

M66 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 ^{M67}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.
- [^{F106}(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

F106 S. 100(6) inserted (21.2.1992) by [S.I. 1992/232, art. 5](#); [S.R. 1992/63, art. 2\(2\)](#)

Marginal Citations

M67 1976 c. 34.

101 Rights of entry.

In section 2 of the ^{M68}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

M68 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 ^{M69}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 ^{M70}Local Government (Miscellaneous Provisions) Act 1976) shall have effect.

Marginal Citations

M69 1973 c. 65.

M70 1976 c. 57.

103 Stamp duty exemption for certain contracts.

Electricity shall be treated as goods for the purposes of section 59 of the ^{M71}Stamp Act 1891 (certain contracts chargeable as conveyances on sale).

Marginal Citations

M71 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 ^{M72}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 ^{M73} Local Government Act 1972 or the ^{M74} Local Government (Scotland) Act 1973, means the proper officer within the meaning of that Act.

Marginal Citations

M72 1978 c. 30.

M73 1972 c. 70.

M74 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 ^{M75}Electricity Act 1947;

Status: Point in time view as at 01/07/1999. 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)

“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

M75 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—
- in respect of any reference in that Act or subordinate legislation to any of the Electricity Boards or the Electricity Council;
 - 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;
 - in respect of any reference in that Act or subordinate legislation to any enactment repealed by this Act; or
 - 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 ^{M76}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

- M76** 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^{M77}Fair Trading Act 1973),
 does not extend to Northern Ireland.

Marginal Citations

- M77** 1973 c. 41.

Status:

Point in time view as at 01/07/1999. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:

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