



# Utilities Act 2000

## 2000 CHAPTER 27

### PART IV

#### AMENDMENT OF THE ELECTRICITY ACT 1989

##### *Electricity licensing*

#### **28 Prohibition on unlicensed distribution of electricity.**

(1) Section 4 of the 1989 Act (prohibition on unlicensed supply etc. of electricity) is amended as follows.

(2) In subsection (1), after paragraph (b) there is inserted—  
“(bb) distributes electricity for that purpose;”.

(3) In subsection (4)—

(a) before the definition of “supply” there is inserted—

““distribute”, in relation to electricity, means distribute by means of a distribution system, that is to say, a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system;”

(b) for the definition of “supply” there is substituted—

““supply”, in relation to electricity, means supply of electricity conveyed by a distribution system to premises other than premises occupied by a licence holder for the purpose of carrying on the activities which he is authorised by his licence to carry on;”.

#### **Commencement Information**

- II** S. 28 wholly in force at 1.10.2000; s. 28 not in force at Royal Assent see s. 110(2); s. 28(3)(a) in force for certain purposes at 7.11.2000 by [S.I. 2000/2974](#), [art. 2](#), [Sch.](#) (subject to transitional provisions)

*Status: Point in time view as at 08/06/2005.*

**Changes to legislation:** Utilities Act 2000, Part IV is up to date with all changes known to be in force on or before 18 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

in arts. 3-12); s. 28(3)(a) in force for certain purposes at 20.12.2000 by S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15); s. 28(1)(2)(3)(b) in force for all purposes and s. 28(3)(a) in force for all remaining purposes at 1.10.2001 by S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 29 Exemptions from electricity licensing.

For section 5 of the 1989 Act (exemptions from prohibition) there is substituted—

### “5 Exemptions from prohibition.

- (1) The Secretary of State may by order grant exemption from paragraph (a), (b), (bb) or (c) of section 4(1)—
  - (a) either to a person or to persons of a class;
  - (b) either generally or to such extent as may be specified in the order; and
  - (c) either unconditionally or subject to such conditions as may be so specified.
- (2) Before making an order under subsection (1) the Secretary of State shall give notice—
  - (a) stating that he proposes to make such an order and setting out the terms of the proposed order;
  - (b) stating the reasons why he proposes to make the order in the terms proposed; 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,
 and shall consider any representations which are duly made in respect of the proposals and not withdrawn.
- (3) The notice required by subsection (2) shall be given—
  - (a) by serving a copy of it 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 those likely to be affected by the proposed order.
- (4) Notice of an exemption granted to a person shall be given—
  - (a) by serving a copy of the exemption on him; and
  - (b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.
- (5) Notice of an exemption granted to persons of a class shall be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—
  - (a) persons of that class; and
  - (b) other persons who may be affected by it.
- (6) An exemption may be granted—
  - (a) indefinitely; or
  - (b) for a period specified in, or determined by or under, the exemption.

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- (7) Conditions subject to which an exemption is granted may (in particular) require any person carrying on any activity in pursuance of the exemption—
- (a) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;
  - (b) except in so far as the Secretary of State or the Authority consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and
  - (c) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.
- (8) The Secretary of State may by order revoke an order by which an exemption was granted to a person or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) at the person's request;
  - (b) in accordance with any provision of the order by which the exemption was granted; or
  - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (9) The Secretary of State may by order revoke an order by which an exemption was granted to persons of a class or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) in accordance with any provision of the order by which the exemption was granted; or
  - (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (10) The Secretary of State may by direction withdraw an exemption granted to persons of a class from any person of that class—
- (a) at the person's request;
  - (b) in accordance with any provision of the order by which the exemption was granted; or
  - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.
- (11) Before—
- (a) making an order under subsection (8)(b) or (c) or (9); or
  - (b) giving a direction under subsection (10)(b) or (c),
- the Secretary of State shall consult the Authority and give notice of his proposal to do so (with reasons) and of a period within which representations may be made to him.
- (12) The notice under subsection (11) shall be given—
- (a) where the Secretary of State is proposing to make an order under subsection (8)(b) or (c), by serving a copy of it on the person to whom the exemption was granted;
  - (b) where he is proposing to make an order under subsection (9), by publishing it in such manner as the Secretary of State considers

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appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and

- (c) where he is proposing to give a direction under subsection (10)(b) or (c), by serving a copy of it on the person from whom he proposes to withdraw the exemption.”

#### Commencement Information

**I2** S. 29 wholly in force at 1.10.2001; s. 29 not in force at Royal Assent see s. 110(2); s. 29 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### 30 Licences authorising supply etc. of electricity.

For section 6 of the 1989 Act there is substituted—

#### “6 Licences authorising supply, etc.

- (1) The Authority may grant any of the following licences—
  - (a) a licence authorising a person to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given (“a generation licence”);
  - (b) a licence authorising a person to transmit electricity for that purpose in that person’s authorised area (“a transmission licence”);
  - (c) a licence authorising a person to distribute electricity for that purpose (“a distribution licence”); or
  - (d) a licence authorising a person to supply electricity to premises (“a supply licence”).
- (2) The same person may not be the holder of both a distribution licence and a supply licence.
- (3) A supply licence may authorise the holder to supply electricity—
  - (a) to any premises;
  - (b) only to premises specified in the licence, or to premises of a description so specified; or
  - (c) only to any premises situated in a specified area, or to premises of a specified description which are so situated.
- (4) The Authority may, with the consent of the holder of a supply licence, modify terms included in the licence in pursuance of subsection (3) so as to extend or restrict the premises to which the licence holder may give a supply of electricity.
- (5) A distribution licence may authorise the holder to distribute electricity in any area, or only in an area specified in the licence.
- (6) The Authority may, with the consent of the holder of a distribution licence, modify terms included in the licence in pursuance of subsection (5) so as to extend or restrict the area within which the licence holder may distribute electricity.
- (7) A licence and any extension or restriction of a licence under subsection (4) or (6) shall be in writing.

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- (8) A licence shall, unless previously revoked in accordance with any term of the licence, continue in force for such period as may be specified in or determined by or under the licence.
- (9) In this Part—
- “authorised area”, in relation to the holder of a transmission licence, means so much of the area designated as such in the licence as is not for the time being designated in a subsequent transmission licence;
- “electricity distributor” means any person who is authorised by a distribution licence to distribute electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence;
- “electricity supplier” means any person who is authorised by a supply licence to supply electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.

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

#### **6B Applications for transmission licences.**

- (1) This section applies to applications for a transmission licence (in addition to the requirements of section 6A).

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- (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.”

#### Commencement Information

- I3** S. 30 wholly in force at 1.10.2001; s. 30 not in force at Royal Assent see s. 110(2); s. 30 in force for specified purposes at 16.5.2001 by [S.I. 2001/1781, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-10](#)); s. 30 in force for all remaining purposes at 1.10.2001 by [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### 31 Enactments referring to public electricity suppliers.

- (1) References in any enactment to public electricity suppliers shall have effect after the commencement of this section as if they were references to—
  - (a) electricity suppliers;
  - (b) electricity distributors; or
  - (c) both electricity suppliers and electricity distributors,
 according to the nature of the activities carried on by the persons to whom they referred before that time.
- (2) References in any enactment to the supply of electricity shall have effect after the commencement of this section as if they were references to—
  - (a) the supply of electricity;
  - (b) the distribution of electricity; or
  - (c) both the supply and distribution of electricity,
 according to the nature of the activities to which they referred before that time.

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- (3) References in any enactment to holders of licences under section 6(2) of the 1989 Act shall have effect after the commencement of this section as if they were references to electricity suppliers.

#### Commencement Information

- I4** S. 31 wholly in force at 1.10.2001; s. 31 not in force at Royal Assent see s. 110(2); s. 31 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### 32 Electricity licence conditions.

- (1) Section 7 of the 1989 Act (conditions of licences) is amended as follows.
- (2) In subsection (1) for “grantor” and “section 3 above” there is substituted respectively “ Authority ” and “ sections 3A to 3C ”.
- (3) In subsection (2) for “a licence” there is substituted “ a transmission licence or distribution licence ”.
- (4) In subsection (3)—
- (a) for “Conditions included in a licence by virtue of subsection (1)(a) above” there is substituted “ Without prejudice to the generality of paragraph (a) of subsection (1), conditions included in a licence by virtue of that paragraph ”;
  - (b) for “Director” (in each place it appears) there is substituted “ Authority or Secretary of State ”; and
  - (c) in paragraph (c) after “licence” (in the first place it appears) there is inserted “ , or under any document referred to in the licence, ”.
- (5) After subsection (3) there is inserted—
- “(3A) Conditions included in a transmission licence or a distribution licence by virtue of subsection (1)(a) may require the holder, in such circumstances as are specified in the licence—
- (a) so to increase his charges for the transmission or distribution of electricity as to raise such amounts as may be determined by or under the conditions; and
  - (b) to pay the amounts so raised to such licence holders as may be so determined.”
- (6) For subsection (5) there is substituted—
- “(5) Conditions included in a licence may contain provision for the conditions—
- (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or
  - (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.”
- (7) After subsection (6) there is inserted—
- “(6A) Conditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time.”

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- (8) In subsection (7) for “Secretary of State or the Director” there is substituted “ Authority ”.

#### Commencement Information

- I5** S. 32 wholly in force at 1.10.2001; s. 32 not in force at Royal Assent see s. 110(2); s. 32(1) in force for the purpose of s. 32(2) and s. 32(2) in force at 20.12.2000 by [S.I. 2000/3343](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in arts. 3-15); s. 32 in force for specified purposes at 16.5.2001 by [S.I. 2001/1781](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-10](#)); s. 32(1)(3)-(8) in force for all remaining purposes at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### 33 Standard conditions of electricity licences.

- (1) Such conditions as may be determined by the Secretary of State before the commencement of subsection (3), and published by him in such manner as he considers appropriate, in relation to any of the types of licence mentioned in section [F16(1)(a), (c) and (d)] of the 1989 Act (that is to say, in relation to generation licences, F2... distribution licences or supply licences) shall [F3]be standard conditions for the purposes of licences of that type, subject to any modifications of the standard conditions for the purposes of licences of that type made—
- (a) under Part 1 of the 1989 Act after the determination under this section, or
  - (b) under the Energy Act 2004.]
- (2) The standard conditions for the purposes of licences of any type may contain provision—
- (a) for any standard condition included in a licence of that type not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;
  - (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
  - (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.
- (3) After section 8 of the 1989 Act there is inserted—

#### “8A Standard conditions of licences.

- (1) Subject to subsection (2), each condition which by virtue of section 33(1) of the Utilities Act 2000 is a standard condition for the purposes of any of the types of licence mentioned in section 6(1) (that is to say, generation licences, transmission licences, distribution licences or supply licences) shall be incorporated by reference in each licence of that type granted after the commencement of this section.
- (2) Subject to the following provisions of this section, the Authority may, in granting a licence of any type, modify any of the standard conditions for licences of that type in its application to the licence to such extent as it considers requisite to meet the circumstances of the particular case.



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- (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

- F1** Words in s. 33(1) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), [Sch. 19 para. 20\(a\)](#); [S.I. 2004/2184](#), art. 2(2), [Sch. 2](#)
- F2** Words in s. 33(1) repealed (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), [Sch. 19 para. 20\(b\)](#), [Sch. 23 Pt. 1](#); [S.I. 2004/2184](#), art. 2(2), [Sch. 2](#)
- F3** Words in s. 33(1) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), [Sch. 19 para. 20\(c\)](#); [S.I. 2004/2184](#), art. 2(2), [Sch. 2](#)

#### Commencement Information

- I6** S. 33 wholly in force at 1.10.2001; s. 33 not in force at Royal Assent see s. 110(2); s. 33(1)(2) in force at 16.5.2001 by [S.I. 2001/1781](#), art. 2, [Sch.](#) (subject to transitional provisions in [arts. 3-10](#)); s. 33(3) in force at 1.10.2001 by [S.I. 2001/3266](#), art. 2, [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

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### 34 Modification of conditions of particular licence.

- (1) In section 11 of the 1989 Act (modification of licence conditions by agreement), for subsection (1) there is substituted—

“(1) Subject to the following provisions of this section, the Authority may modify the conditions of a particular licence.

- (1A) The Authority may not make any modifications under this section unless the licence holder has consented to the modifications and, in the case of standard conditions of the licence, the Authority is of the opinion that the modifications—

- (a) are requisite to meet the circumstances of the particular case; and
- (b) are such that—
  - (i) the licence holder would not be unduly disadvantaged in competing with other holders of licences of that type; and
  - (ii) 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).”

- (2) After subsection (4) of that section there is inserted—

“(5) The modification under this section of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.”

#### Commencement Information

**I7** S. 34 wholly in force at 1.10.2001; s. 34 not in force at Royal Assent see s. 110(2); s. 34 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### 35 Modification of standard conditions of licences.

After section 11 of the 1989 Act there is inserted—

#### “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

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

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“prescribed” means prescribed in an order made by the Secretary of State; and

“relevant licence holder”, in relation to proposed modifications of standard conditions of licences of any type, means the holder of a licence of that type—

- (a) which is to be modified under the proposals by the inclusion of any new standard condition; or
- (b) which includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect (by virtue of anything done under section 33(2) of the Utilities Act 2000) at the time specified in the notice under subsection (3).

- (11) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

#### Commencement Information

- I8** S. 35 wholly in force at 1.10.2001; s. 35 not in force at Royal Assent see s. 110(2); s. 35 in force for specified purposes at 16.5.2001 by [S.I. 2001/1781, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-10](#)); s. 35 in force for all remaining purposes at 1.10.2001 by [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### 36 Electricity licence modification references.

- (1) Section 12 of the 1989 Act (licence modification references to the Competition Commission) is amended as follows.

- (2) For subsection (1) there is substituted—

“(1) The Authority may make to the 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 relate to the carrying on of activities authorised or regulated by a particular licence and which 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.

- (1A) The Authority may make to the 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 relate to the carrying on of activities authorised or regulated by licences of any type mentioned in section 6(1), and which 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 standard conditions of licences of that type.”

*Status: Point in time view as at 08/06/2005.*

*Changes to legislation: Utilities Act 2000, Part IV is up to date with all changes known to be in force on or before 18 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) In subsection (3)(b), for “conditions of the licence” there is substituted “ relevant conditions ”.
- (4) In subsection (4), after “licence” at the end of paragraph (a) there is inserted “ or, as the case may be, the relevant licence holders and the Council ”.
- (5) In subsection (5), for “this section” there is substituted “ subsection (1A) ”.
- (6) In subsection (6), after “this section” there is inserted “ or in carrying out functions under section 14A ”, after “the investigation” there is inserted “ or the carrying out of those functions ” and after “such investigation” there is inserted “ or such functions ”.
- (7) After subsection (6) there is inserted—
  - “(6A) In this section and sections 13, 14 and 14A—
    - “relevant conditions”—
      - (a) in relation to a reference under subsection (1), means the conditions of the licence to which the reference relates; and
      - (b) in relation to a reference under subsection (1A), means the standard conditions of the licences to which the reference relates; and
    - “relevant licence holder” means the holder of a licence to which a reference under subsection (1A) relates.”

#### **Commencement Information**

**19** S. 36 wholly in force at 1.10.2001; s. 36 not in force at Royal Assent see s. 110(2); s. 36 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### **37 Reports on modification references.**

- (1) Section 13 (reports on modification references) of the 1989 Act is amended as follows.
- (2) In subsection (1)(c), for “conditions of the licence” there is substituted “ relevant conditions ”.
- (3) In subsection (5)—
  - (a) in paragraph (a), for the words from “such” to “relates” there is substituted “ a report on a reference under section 12(1), send a copy of it to the licence holder ”; and
  - (b) in paragraph (b), for “publish the report” there is substituted “ send another copy to the Council and publish that other copy ”.
- (4) After subsection (5) of that section there is inserted—
  - “(5A) Subject to subsection (6), the Authority shall—
    - (a) on receiving a report on a reference under section 12(1A), send a copy of it to the Secretary of State; and
    - (b) not less than 14 days after that copy is received by the Secretary of State—
      - (i) send another copy to the Council and to each relevant licence holder; and

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- (ii) not less than 24 hours after complying with sub-paragraph (i) above, publish the copy sent to the Council in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.”
- (5) In subsection (6) of that section, for the words from “paragraph (b)” to the end there is substituted “ subsection (5) or (5A), direct the Authority to exclude that matter from the copy of the report, or (as the case may be) each copy of the report, to be sent and published as mentioned in paragraph (b) of that subsection. ”

#### Commencement Information

**I10** S. 37 wholly in force at 1.10.2001; s. 37 not in force at Royal Assent see s. 110(2); s. 37 in force at 1.10.2001 by [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### 38 Modification following report.

- (1) Section 14 of the 1989 Act (modification following report) is amended as follows.
- (2) In subsection (1), for “the conditions of the licence” and “the conditions of that licence” there is substituted “ the relevant conditions ”.
- (3) After subsection (1) there is inserted—
- “(1A) Where at any time it modifies under subsection (1) the standard conditions of licences of any type in consequence of a reference under section 12(1A), 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.”
- (4) In subsection (4)(b) after “licence” there is inserted “ or, as the case may be, the relevant licence holders ”.
- (5) After subsection (4) there is inserted—
- “(5) After considering any representations or objections made in response to proposals set out in a notice under subsection (3), the Authority shall give notice to the Competition Commission—
- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
  - (b) stating the reasons for making the modifications.
- (6) The Authority shall include with the notice under subsection (5) a copy of any representations or objections received in relation to the notice under subsection (3).
- (7) If the period of four weeks from the date on which the notice under subsection (5) is given elapses without a direction under section 14A(1)(a) having been given to it, the Authority shall—
- (a) make the modifications set out in the notice; or
  - (b) if a direction under section 14A(1)(b) has been given, make the modifications which are not specified in the direction.

*Status: Point in time view as at 08/06/2005.*

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- (8) The modification under subsection (1) of part of a standard condition of a particular licence in consequence of a reference under section 12(1) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (9) Where the Authority modifies the standard conditions of licences of any type as mentioned in subsection (1A), the Authority—
  - (a) 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) shall publish the modifications made for those purposes in such manner as it considers appropriate.”

#### Commencement Information

**III** S. 38 wholly in force at 1.10.2001; s. 38 not in force at Royal Assent see s. 110(2); s. 38 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### 39 Competition Commission’s power to veto modifications.

After section 14 of the 1989 Act (modification following report) there is inserted—

#### “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—
  - (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—

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- (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 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—



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- (a) in section 82(1) and (2) of the <sup>M1</sup>Fair Trading Act 1973 references to a report of the Commission under that Act were references to a notice under subsection (4)(a), (6) or (8) of this section;
  - (b) in section 85 of that Act references to an investigation on a reference made to the Commission were references to an investigation by the Commission for the purposes of the exercise of its functions under this section.
- (13) The provisions are—
- (a) section 82(1) and (2) of the <sup>M2</sup>Fair Trading Act 1973 (general provisions as to reports under that Act);
  - (b) section 85 of that Act (attendance of witnesses and production of documents);
  - (c) section 24 of the <sup>M3</sup>Competition Act 1980 (modification of provisions about the Competition Commission’s general functions); and
  - (d) Part II of Schedule 7 to the <sup>M4</sup>Competition Act 1998 (the Competition Commission’s general functions).
- (14) This section does not apply to the modification of a licence following a report of the Commission made before the commencement of section 39 of the Utilities Act 2000.”

**Commencement Information**

**I12** S. 39 wholly in force at 1.10.2001; s. 39 not in force at Royal Assent see s. 110(2); s. 39 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

**Marginal Citations**

- M1** 1973 c. 41.
- M2** 1973 c. 41.
- M3** 1980 c. 21.
- M4** 1998 c. 41.

**40 Modification by order under other enactments.**

(1) Section 15 of the 1989 Act (modification of licences by order under enactments other than the 1989 Act) is amended as follows.

<sup>F4</sup>(2) . . . . .

(3) After subsection (2) there is inserted—

“(2A) The modification under subsection (1) of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

(2B) Where the Secretary of State modifies under subsection (1) the standard conditions of licences of any type—

- (a) he 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

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- (b) he may, after consultation with the Authority, make such incidental or consequential modifications as he considers necessary or expedient of any conditions of any licence of that type granted before that time.

(2C) Where at any time the Secretary of State modifies standard conditions under subsection (2B)(a) for the purposes of their incorporation in licences granted after that time, he shall publish those modifications in such manner as he considers appropriate.”

F<sup>4</sup>(4) .....

F<sup>4</sup>(5) .....

**Textual Amendments**

**F4** S. 40(2) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 26](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))

**Commencement Information**

**I13** S. 40 wholly in force at 1.10.2001; s. 40 not in force at Royal Assent see s. 110(2); s. 40 in force at 1.10.2001 by [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

**41 Transfer of electricity licences.**

After section 7 of the 1989 Act there is inserted—

**“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—

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- (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.
- (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.”

#### Commencement Information

**I14** S. 41 wholly in force at 1.10.2001; s. 41 not in force at Royal Assent see s. 110(2); s. 41 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

## 42 Reasons for decisions under 1989 Act.

After section 49 of the 1989 Act (keeping of register) there is inserted—

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#### **“49A Reasons for decisions.**

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

#### **Commencement Information**

**I15** S. 42 wholly in force at 1.10.2001; s. 42 not in force at Royal Assent see s. 110(2); s. 42 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### **43 Altering activities requiring electricity licence.**

After section 56 of the 1989 Act there is inserted—

*“ Alteration of activities requiring licence*

#### **56A Power to alter activities requiring licence.**

- (1) The Secretary of State may by order provide—

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- (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.

#### **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,

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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.

### **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

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- (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;
  - (b) any social or environmental policies set out or referred to in guidance issued under section 3B; and
  - (c) any advice given by the Health and Safety Commission or the Secretary of State under section 3C (advice about health and safety in relation to electricity).
- (7) The provisions mentioned in subsection (8) are to apply in relation to references under this section as if—
  - (a) the functions of the Commission in relation to those references were functions under the <sup>M5</sup>Fair Trading Act 1973;
  - (b) the expression “merger reference” included a reference under this section;
  - (c) in section 70 of the <sup>M6</sup>Fair Trading Act 1973—
    - (i) references to the Secretary of State were references to the Authority; and
    - (ii) the reference to three months were a reference to six months.
- (8) The provisions are—
  - (a) sections 70 (time limit for report on merger), 85 (attendance of witnesses and production of documents) and 93B (false or misleading information) of the <sup>M7</sup>Fair Trading Act 1973;
  - (b) Part II of Schedule 7 to the <sup>M8</sup>Competition Act 1998 (performance of the Commission’s general functions); and

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*Status: Point in time view as at 08/06/2005.*

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- (c) section 24 of the <sup>M9</sup>Competition Act 1980 (modification of provisions about performance of such functions).

#### **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 <sup>M10</sup>Fair Trading Act 1973 (general provisions as to reports) shall apply in relation to reports of the Commission on references under section 56C as it applies to reports of the Commission under that Act.
- (5) A report of the Commission on a reference under section 56C shall be made to the Authority.
- (6) On receiving the report, the Authority shall send a copy of it to the Secretary of State.
- (7) Subject to subsection (8), the Authority shall, not less than 14 days after the copy is received by the Secretary of State, send another copy to the Council and publish that other copy in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (8) If it appears to the Secretary of State that the publication of any matter in the report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in subsection (7), direct the Authority to exclude that matter from the copy of the report to be sent to the Council and published under that subsection.

#### **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,



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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.

#### **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.”

#### **Commencement Information**

**I16** S. 43 wholly in force at 1.10.2001; s. 43 not in force at Royal Assent see s. 110(2); s. 43 in force at 1.10.2001 by [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### **Marginal Citations**

**M5** 1973 c. 41.  
**M6** 1973 c. 41.  
**M7** 1973 c. 41.  
**M8** 1998 c. 41.  
**M9** 1980 c. 21.  
**M10** 1973 c. 41.

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### *Duties of electricity distributors*

#### **44 Duty to connect on request.**

For sections 16 and 17 of the 1989 Act (duty to supply on request and exceptions to that duty) there are substituted—

#### *“ Duties of electricity distributors*

##### **16 Duty to connect on request.**

- (1) An electricity distributor is under a duty—
  - (a) to make a connection between a distribution system of his and any premises, when required to do so by—
    - (i) the owner or occupier of the premises; or
    - (ii) an authorised supplier acting with the consent of the owner or occupier of the premises,
 for the purpose of enabling electricity to be conveyed to or from the premises;
  - (b) to make a connection between a distribution system of his and any distribution system of another authorised distributor, when required to do so by that authorised distributor for the purpose of enabling electricity to be conveyed to or from that other system.
- (2) Any duty under subsection (1) includes a duty to provide such electric lines or electrical plant as may be necessary to enable the connection to be used for the purpose for which it is required.
- (3) The duties under this section shall be performed subject to such terms as may be agreed under section 16A for so long as the connection is required.
- (4) In this section and sections 16A to 23—
  - (a) any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant);
  - (b) any reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines and electrical plant); and
  - (c) any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical plant either by the installation of a new one or by the modification of an existing one.
- (5) The duties under this section are subject to the following provisions of this Part and any regulations made under those provisions.

##### **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.

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- (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.

### **17 Exceptions from duty to connect.**

- (1) Nothing in section 16(1) requires an electricity distributor to make a connection if and to the extent that—
  - (a) he is prevented from doing so by circumstances not within his control;
  - (b) circumstances exist by reason of which his doing so would or might involve his being in breach of regulations under section 29, 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.
- (2) Without prejudice to the generality of subsection (1) an electricity distributor is not required to make a connection if—
  - (a) making the connection involves the distributor doing something which, without the consent of another person, would require the exercise of a power conferred by any provision of Schedule 3 or 4;
  - (b) the distributor's licence does not provide for that provision to have effect in relation to him; and
  - (c) any necessary consent has not, at the time the request is made, been given.

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- (3) Subsection (1)(c) does not permit an electricity distributor to disconnect any premises or distribution system to which a connection is being maintained by him unless the distributor gives—
- (a) where the connection is to premises, to the occupier or to the owner if the premises are not occupied;
  - (b) where the connection is to another distribution system, to the person who is authorised by a licence or exemption to run that system, not less than seven working days' notice of his intention to disconnect the premises or distribution system.”

#### Commencement Information

**I17** S. 44 wholly in force at 1.10.2001; s. 44 not in force at Royal Assent see s. 110(2); s. 44 in force at 1.10.2001 by [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### 45 Abolition of tariffs.

Section 18 of the 1989 Act (charging by reference to tariffs) shall cease to have effect.

#### Commencement Information

**I18** S. 45 wholly in force at 1.10.2001; s. 45 not in force at Royal Assent see s. 110(2); s. 45 in force at 1.10.2001 by [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### 46 Power to recover expenditure.

- (1) Section 19 of the 1989 Act (power to recover expenditure) is amended as follows.
- (2) In subsection (1) for “a public electricity supplier”, “supplier” and “supply of electricity” there is substituted respectively “an electricity distributor”, “distributor” and “connection”.
- (3) For subsection (2) there is substituted—
- “(2) The Secretary of State may, after consultation with the Authority, make provision by regulations for entitling an electricity distributor to require a person requiring a connection in pursuance of section 16(1) to pay to the distributor, in respect of any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of making the connection, such amount as may be reasonable in all the circumstances if—
- (a) the connection is required within the prescribed period after the provision of the line or plant; and
  - (b) a person (“the initial contributor”) has made a payment to the distributor in respect of those expenses, the line or plant having been provided for the purpose of making a connection to any premises or distribution system as required by that person.”
- (4) In subsection (3) for “a public electricity supplier” there is substituted “an electricity distributor.”

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- (5) In subsection (4) for the words from “maintaining” to the end there is substituted “continuing to provide it”.

#### Commencement Information

**I19** S. 46 wholly in force at 1.10.2001; s. 46 not in force at Royal Assent see s. 110(2); s. 46(1)(3)-(5) in force for specified purposes at 16.5.2001 by [S.I. 2001/1781](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-10](#)); s. 46(1)(3)-(5) in force for all remaining purposes and s. 46(2) in force for all purposes at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### 47 Power to require security.

(1) Section 20 of the 1989 Act (power to require security) is amended as follows.

(2) For subsection (1) there is substituted—

“(1) Subject to the following provisions of this section, an electricity distributor may require any person who requires a connection in pursuance of section 16(1) to give him reasonable security for the payment to him under section 19 in respect of the provision of any electric line or electrical plant.

(1A) If a person fails to give any security required under subsection (1), or the security given has become invalid or insufficient, and he fails to provide alternative or additional security, the electricity distributor may if he thinks fit—

- (a) if the connection has not been made, refuse to provide the line or plant for so long as the failure continues; or
- (b) if the connection is being maintained, disconnect the premises or distribution system in question.”

(3) In subsection (3), for “a public electricity supplier” and “supplier” (in each place) there is substituted respectively “an electricity distributor” and “distributor”.

(4) Subsections (2) and (4) shall cease to have effect.

#### Commencement Information

**I20** S. 47 wholly in force at 1.10.2001; s. 47 not in force at Royal Assent see s. 110(2); s. 47 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### 48 Additional terms of connection.

For section 21 of the 1989 Act (additional terms of connection) there is substituted—

##### “21 Additional terms of connection.

An electricity distributor may require any person who requires a connection in pursuance of section 16(1) above to accept in respect of the making of the connection—

- (a) any restrictions which must be imposed for the purpose of enabling the distributor to comply with regulations under section 29;

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- (b) any terms which it is reasonable in all the circumstances for that person to be required to accept; and
- (c) without prejudice to the generality of paragraph (b), any terms restricting any liability of the distributor for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept.”

#### Commencement Information

**I21** S. 48 wholly in force at 1.10.2001; s. 48 not in force at Royal Assent see s. 110(2); s. 48 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### 49 Special agreements with respect to connection.

For section 22 of the 1989 Act (special agreements with respect to supply) there is substituted—

#### “22 Special agreements with respect to connection.

- (1) Notwithstanding anything in sections 16 to 21, a person who requires a connection in pursuance of section 16(1) may enter into an agreement with the electricity distributor (referred to in this Part as a “special connection agreement”) for the making of the connection on such terms as may be agreed by the parties.
- (2) So long as a special connection agreement is effective, the rights and liabilities of the parties shall be those arising under the agreement and not those provided for by sections 16 to 21.
- (3) Nothing in subsection (2) prevents the giving of a notice under section 16A(1) requiring a connection to be made as from the time when a special connection agreement ceases to be effective.”

#### Commencement Information

**I22** S. 49 wholly in force at 1.10.2001; s. 49 not in force at Royal Assent see s. 110(2); s. 49 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### 50 General duties of electricity distributors.

In section 9 of the 1989 Act (general duties of licence holders), for subsection (1) there is substituted—

- “(1) It shall be the duty of an electricity distributor—
- (a) to develop and maintain an efficient, co-ordinated and economical system of electricity distribution;
  - (b) to facilitate competition in the supply and generation of electricity.”

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#### Commencement Information

**I23** S. 50 wholly in force at 1.10.2001; s. 50 not in force at Royal Assent see s. 110(2); s. 50 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### *Electricity code and metering*

#### **51 The electricity code.**

- (1) In section 24 of the 1989 Act (the public electricity supply code), for “supply of electricity by public electricity suppliers” there is substituted “distribution and supply of electricity”.
- (2) For Schedule 6 to the 1989 Act (the public electricity supply code) there is substituted the provisions of Schedule 4.

#### Commencement Information

**I24** S. 51 wholly in force at 1.10.2001; s. 51 not in force at Royal Assent see s. 110(2); S. 51(2) in force at 20.12.2000 for certain purposes by [S.I. 2000/3343](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-15](#)); s. 51(1) in force for all purposes and s. 51(2) in force for all remaining purposes at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### **52 Amendment of Schedule 7 to 1989 Act.**

Schedule 5 (which amends Schedule 7 to the 1989 Act) has effect.

#### Commencement Information

**I25** S. 52 wholly in force at 1.10.2001; s. 52 not in force at Royal Assent see s. 110(2); s. 52 in force for specified purposes at 16.5.2001 by [S.I. 2001/1781](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-10](#)); s. 52 in force for all remaining purposes at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### *Powers of electricity licence holders*

#### **53 Powers of electricity licence holders.**

- (1) Section 10 of the 1989 Act (powers of licence holders) is amended as follows.
- (2) In subsection (1), in paragraph (a) the words “a public electricity supplier or” shall cease to have effect and, in paragraph (b) after “to” (in the second place it appears) there is inserted “an electricity distributor or”.
- (3) In subsection (3), for “A licence under section 6(1)(a) above” there is substituted “A generation licence”.
- (4) After subsection (3) there is inserted—

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“(3A) Subsection (3) applies in relation to any purpose connected with the supply to any premises of any gas or liquid subjected to a cooling effect produced in association with electricity as it applies to a purpose mentioned in that subsection.”

<sup>F5</sup>(5) .....

#### Textual Amendments

**F5** S. 53(5) repealed (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 23 Pt. 1**; S.I. 2004/2184, art. 2(2), **Sch. 2**

#### Commencement Information

**I26** S. 53 wholly in force at 1.10.2001; s. 53 not in force at Royal Assent see s. 110(2); s. 53 in force at 1.10.2001 by **S.I. 2001/3266, art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

### *Electricity performance standards*

#### **54 Standards of performance in individual cases.**

- (1) In section 39 of the 1989 Act—
  - (a) in subsection (2)(a), after “section” there is inserted “ or their rights under section 39A ”; and
  - (b) subsections (5), (5A) and (6) shall cease to have effect.
- (2) After section 39 of the 1989 Act there is inserted—

#### **“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;



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- (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.

### **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.”

#### **Commencement Information**

**I27** S. 54 partly in force; s. 54 not in force at Royal Assent see s. 110(2); s. 54(2) in force for specified purposes at 16.5.2001 by [S.I. 2001/1781](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-10](#)); s. 54(1) in force for all purposes and s. 54(2) in force for all remaining purposes at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

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## 55 Overall standards of performance.

After section 40 of the 1989 Act there is inserted—

### “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.”

#### Commencement Information

**I28** S. 55 wholly in force at 1.10.2001; s. 55 not in force at Royal Assent see s. 110(2); s. 55 in force for specified purposes at 16.5.2001 by [S.I. 2001/1781](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-10](#)); s. 55 in force for all remaining purposes at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

## 56 Standards of performance: procedures.

After section 40A of the 1989 Act (which is inserted by section 55 above) there is inserted—

### “40B Procedures for prescribing or determining standards of performance.

- (1) Before prescribing standards of performance in regulations under section 39 or 39A, or determining standards of performance under section 40 or 40A, the Authority shall—
  - (a) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results;
  - (b) publish a notice of its proposals in accordance with subsections (2) and (3) and consider any representations which are duly made in respect of those proposals; and
  - (c) consult the Council and other persons or bodies mentioned in subsection (4).
- (2) The notice required by subsection (1)(b) is a notice—
  - (a) stating that the Authority proposes to prescribe or determine standards of performance and setting out the standards of performance proposed;

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- (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.”

#### Commencement Information

**I29** S. 56 wholly in force at 1.10.2001; s. 56 not in force at Royal Assent see s. 110(2); s. 56 in force for specified purposes at 16.5.2001 by [S.I. 2001/1781](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-10](#)); s. 56 in force for all remaining purposes at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### 57 Information with respect to levels of performance.

- (1) Section 42 of the 1989 Act is amended as follows.
- (2) In subsection (1), paragraph (c) (and the word “and” preceding it) shall cease to have effect.
- (3) After subsection (1) there is inserted—
- “(1A) The Authority shall from time to time collect information with respect to—
- (a) the compensation made by electricity distributors under section 39A above;
  - (b) the levels of overall performance achieved by electricity distributors.”
- (4) In subsection (2) for the words from the beginning to “year” there is substituted “ At such times ” and in paragraph (b) the words “or 41 above” shall cease to have effect.
- (5) After subsection (2) there is inserted—
- “(2A) At such times as may be specified in a direction given by the Authority, each electricity distributor shall furnish to the Authority the following information, namely—

*Status: Point in time view as at 08/06/2005.*

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- (a) as respects each standard prescribed by regulations under section 39A, 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 40A, such information with respect to the level of performance achieved by the distributor as may be so specified.”
- (6) Subsection (3) shall cease to have effect.

#### Commencement Information

**I30** S. 57 wholly in force at 1.10.2001; s. 57 not in force at Royal Assent see s. 110(2); s. 57 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

## 58 Information to be given to customers.

For section 42A of the 1989 Act there is substituted—

### “42A Information to be given to customers about overall performance.

- (1) The Authority may make regulations requiring such information as may be specified or described in the regulations about—
  - (a) the standards of overall performance determined under section 40 or 40A; and
  - (b) the levels of performance achieved as respects those standards, to be given by electricity suppliers or electricity distributors to customers or potential customers of electricity suppliers.
- (2) Regulations under this section may include provision—
  - (a) specifying the form and manner in which and the frequency with which information is to be given; and
  - (b) requiring information about the matters mentioned in subsection (1)(a) or (b) and relating to electricity distributors to be given by electricity distributors to electricity suppliers and by electricity suppliers to their customers or potential customers.”

#### Commencement Information

**I31** S. 58 wholly in force at 1.10.2001; s. 58 not in force at Royal Assent see s. 110(2); s. 58 in force for specified purposes at 16.5.2001 by [S.I. 2001/1781](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-10](#)); s. 58 in force for all remaining purposes at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### *Enforcement of obligations*

## 59 Financial penalties.

- (1) After section 27 of the 1989 Act there is inserted—

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*Status: Point in time view as at 08/06/2005.*

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**“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 <sup>M11</sup>Competition Act 1998.
- (3) Before imposing a penalty on a licence holder under subsection (1) the Authority shall give notice—
  - (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
  - (b) setting out the relevant condition or requirement or the standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and
  - (d) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (4) Before varying any proposal stated in a notice under subsection (3)(a) the Authority shall give notice—
  - (a) setting out the proposed variation and the reasons for it; and
  - (b) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after imposing a penalty, the Authority shall give notice—
  - (a) stating that it has imposed a penalty on the licence holder and its amount;
  - (b) setting out the relevant condition or requirement or the standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of the penalty and its amount; and

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- (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).
- (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.

#### **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.

#### **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

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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.

### **27D Interest and payment of instalments.**

- (1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the <sup>M12</sup>Judgments Act 1838.
- (2) If an application is made under subsection (6) of section 27A in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the Authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the 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.

### **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.

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- (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.
- (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.

### **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.”



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- (2) In section 28(1) of the 1989 Act (power to require information, etc.), for the words from “the Director” in the first place they appear, to “42B below” there is substituted “the Authority that a licence holder—
- (a) may be contravening, or may have contravened, any relevant condition or requirement; or
  - (b) may be failing, or may have failed, to achieve any standard of performance prescribed under section 39 or 39A,
- the Authority may, for any purpose connected with such of its functions under section 25 or 27A to 27F ”.
- (3) In section 49 of the 1989 Act (keeping of a register), after subsection (2)(d) there is inserted “; and
- (e) every penalty imposed under section 27A(1) and every notice under section 27A(5).”

#### Commencement Information

**I32** S. 59 wholly in force at 1.10.2001; s. 59 not in force at Royal Assent see s. 110(2); s. 59(1) in force at 20.12.2000 for certain purposes by [S.I. 2000/3343, art. 2, Sch.](#) (subject to transitional provisions in arts. 3-15); s. 59(1) in force for all remaining purposes and s. 59(2)(3) in force for all purposes at 1.10.2001 by [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

**M11** 1998 c. 41.

**M12** 1838 c. 110.

## 60 Licence enforcement.

- (1) The 1989 Act is amended as follows.
- (2) In subsection (1) of section 25 (orders for securing compliance with certain provisions), for “and (5)” there is substituted “, (5) and (5A) ”.
- (3) In subsections (2), (4) and (6) of that section, for “subsection (5)” there is substituted “ subsections (5) and (5A) ”.
- (4) In subsection (5) of that section, paragraphs (b) and (c) shall cease to have effect.
- (5) After subsection (5) of that section there is inserted—
- “(5A) The Authority is not required to make a final order or make or confirm a provisional order if it is satisfied—
- (a) that the licence holder has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
  - (b) that the contraventions were or the apprehended contraventions are of a trivial nature.”
- (6) In section 26 (procedural requirements for making orders under section 25), in subsections (1)(c) and (4)(b), for “28” there is substituted “ 21 ”.

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- (7) Subsections (2) to (6) do not have effect in relation to—
- (a) a provisional order which has been made before the commencement of the subsection making the amendment; or
  - (b) a final order in respect of which notice has been given under section 26(1) of the 1989 Act before the commencement of the subsection making the amendment.

#### Commencement Information

**I33** S. 60 wholly in force at 1.10.2001; s. 60 not in force at Royal Assent see s. 110(2); s. 60 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### *Remuneration and service standards*

## **61 Links between directors' remuneration and electricity service standards.**

After section 42B of the 1989 Act there is inserted—

### **“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,

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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.
- (10) In this section—
- “activities subject to price regulation”, in relation to any company, are activities for which—
- (a) a maximum price which may be charged by the company, or a method for calculating such a maximum price; or
  - (b) a maximum revenue which may be received by the company, or a method for calculating such a maximum revenue,
- is determined by or under the licence granted under this Part;
- “company” means a company within the meaning of the <sup>M13</sup>Companies Act 1985 which is limited by shares;
- “remuneration” in relation to a director of a company—
- (a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and
  - (b) includes remuneration in respect of any of his services while a director of the company;
- “service standards” in relation to any company, means standards relating to the quality of service received by customers or potential customers of the company, including any such standards which are—
- (a) set by or under any conditions included in a licence granted under this Part;
  - (b) prescribed by the Authority in regulations made under section 39 or 39A;
  - (c) determined by the Authority under section 40 or 40A; or
  - (d) set or agreed to by the company.”

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#### Commencement Information

**I34** S. 61 wholly in force at 1.10.2001; s. 61 not in force at Royal Assent see s. 110(2); s. 61 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### Marginal Citations

**M13** [1985 c. 6.](#)

### *Electricity from renewable sources*

## 62 **Obligation in connection with electricity from renewable sources.**

For section 32 of the 1989 Act there is substituted—

### **“32 Obligation in connection with electricity from renewable sources.**

- (1) The Secretary of State may by order impose on each electricity supplier falling within a specified description (a “designated electricity supplier”) an obligation to do what is set out in subsection (3) (and that obligation is referred to in this section and sections 32A to 32C as the “renewables obligation”).
- (2) The descriptions of electricity supplier upon which an order may impose the renewables obligation are those supplying electricity—
  - (a) in Great Britain;
  - (b) in England and Wales; or
  - (c) in Scotland,
 excluding such categories of supplier (if any) as are specified.
- (3) Subject to the provisions of this section and sections 32A and 32C, the renewables obligation is that the designated electricity supplier must, before a specified day (or before each of several specified days, or before a specified day in each year), produce to the Authority evidence of a specified kind showing—
  - (a) that it has supplied to customers in Great Britain during a specified period such amount of electricity generated by using renewable sources as is specified in relation to such a supplier; or
  - (b) that another electricity supplier has done so (or that two or more others have done so); or
  - (c) that, between them, they have done so.
- (4) If the order applies only to electricity suppliers in part of Great Britain, it may specify that the only electricity supplied which counts towards discharging the renewables obligation is electricity supplied to customers in that part of Great Britain.
- (5) Evidence of the supply of electricity may not be produced more than once in relation to the same electricity.
- (6) In the case of electricity generated by a generating station fuelled or driven partly by renewable sources and partly by fossil fuel, only the proportion attributable to the renewable sources can count towards discharging the renewables obligation (but this is subject to section 32A(1)(g)).

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- (7) Before making an order, the Secretary of State must consult—
- (a) the Authority;
  - (b) the Council;
  - (c) the electricity suppliers to whom the proposed order would apply;
  - (d) the generators of electricity from renewable sources; and
  - (e) such other persons, if any, as he considers appropriate.
- (8) In this section—
- “fossil fuel” means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products (and “natural gas” and “petroleum products” have the same meanings as in the <sup>M14</sup>Energy Act 1976);
- “renewable sources” means sources of energy other than fossil fuel or nuclear fuel, but includes waste of which not more than a specified proportion is waste which is, or is derived from, fossil fuel;
- “specified” means specified in the order.
- (9) An order under this section 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.”

#### Commencement Information

**I35** S. 62 wholly in force at 1.10.2001; s. 62 not in force at Royal Assent see s. 110(2); s. 62 in force for specified purposes at 16.5.2001 by [S.I. 2001/1781, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-10](#)); s. 62 in force for all remaining purposes at 1.10.2001 by [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### Marginal Citations

**M14** 1976 c. 76.

## 63 Orders under section 32: supplementary.

After section 32 of the 1989 Act there is inserted—

### “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;

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- (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;
  - (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.”

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#### Commencement Information

**I36** S. 63 wholly in force at 1.10.2001; s. 63 not in force at Royal Assent see s. 110(2); s. 63 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### 64 Green certificates.

After section 32A of the 1989 Act there is inserted—

#### “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
  - (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.”

#### Commencement Information

**I37** S. 64 wholly in force at 1.10.2001; s. 64 not in force at Royal Assent see s. 110(2); s. 64 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### 65 Alternative way of discharging renewables obligation: payments.

After section 32B of the 1989 Act there is inserted—

#### “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

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- (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.”

#### Commencement Information

**I38** S. 65 wholly in force at 1.10.2001; s. 65 not in force at Royal Assent see s. 110(2); s. 65 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### 66 Abolition of fossil fuel levy.

Section 33 of the 1989 Act shall cease to have effect.

#### 67 Supplementary.

- (1) The Secretary of State may by order made by statutory instrument make such provision as he considers necessary or expedient for the purpose of—
  - (a) providing for section 32 of the 1989 Act to have effect, before its substitution by section 62 of this Act, with modifications specified in the order (but if this power is exercised the modifications must include the omission of subsections (3) and (4) of section 32);
  - (b) saving orders under section 32 of the 1989 Act made before the coming into force of section 62;
  - (c) preserving, modifying, replacing or otherwise dealing with arrangements (as mentioned in that section) made pursuant to such an order, including making provision for substituting different parties to the arrangements or for replacement arrangements to be between parties different from those party to the replaced arrangements;
  - (d) requiring the continued payment of any fossil fuel levy payable by virtue of section 33 of the 1989 Act and providing for payments out of that levy despite the repeal of that section.
- (2) The power in subsection (1)(c) may be exercised both before the coming into force of section 62 and afterwards.
- (3) An order under this section may, in particular, provide for section 32 (apart from subsections (3) and (4)) or 33 of the 1989 Act (as they had effect immediately before the coming into force of section 62 or 66) to continue to have effect with modifications specified in the order.
- (4) An order under this section may, in particular—
  - (a) provide for what is to happen in relation to the fossil fuel levy and payments out of it if in any month—



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- (i) the cost referred to in section 33(5)(b) of the 1989 Act is greater than the cost referred to in section 33(5)(a) of the 1989 Act, or
    - (ii) the same is true in relation to any other corresponding measures referred to in section 33 of the 1989 Act as modified under subsection (3);
  - (b) provide in such a case for payments of amounts determined in accordance with the order (but not exceeding the difference between the sums referred to in paragraph (a)) to be made by, instead of to, the person to whom payments out of the fossil fuel levy would otherwise have been made.
- (5) An order under this section may provide—
- (a) that any specified requirement contained in it is to be treated as a relevant requirement for the purposes of Part I of the 1989 Act; and
  - (b) for one of those requirements to be that a person referred to in paragraph (a) or (b) of subsection (6) is not to act or omit to act as set out there,
- but while subsections (3) and (4) of section 32 of the 1989 Act remain in force an order may not provide for anything which would be an offence under section 32(3) to be treated as a relevant requirement.
- (6) The persons, acts and omissions referred to in subsection (5)(b) are—
- (a) an act or omission by a person subject to requirements contained in the order which prevents any arrangements made pursuant to the order from securing such results as are specified in the order; and
  - (b) an act or omission by a party to arrangements made pursuant to an order under section 32 of the 1989 Act made before the coming into force of section 62 of this Act (or such arrangements as modified or replaced by virtue of an order under this section) which prevents the arrangements from securing the result mentioned in subsection (2) of that section (or that subsection as modified by virtue of an order under this section), or such corresponding result as is specified in the order.
- (7) An order under this section may make different provision for different areas.
- (8) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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

C1 S. 67: transfer of functions (1.11.2001) by virtue of [S.I. 2001/3504](#), arts. 1(1), 2, 4, [Sch.](#)

*Miscellaneous*

**68 Modification of licences: electricity trading arrangements.**

- (1) After section 15 of the <sup>M15</sup>Electricity Act 1989 (modification of licences by order under other enactments) there is inserted—

**“15A Licence modifications relating to new electricity trading arrangements.**

- (1) The Secretary of State may, in accordance with this section, modify—

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- (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.”

- (2) This section shall come into force on the passing of this Act.

#### **Marginal Citations**

M15 1989 c. 29.

## **69 Help for disadvantaged groups of electricity customers.**

After section 43 of the 1989 Act there is inserted—

### **“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

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order containing a scheme for the adjustment of charges for electricity with a view to eliminating or reducing the less favourable treatment.

- (2) The scheme may include—
  - (a) provision for the adjustment of charges by authorised distributors or authorised transmitters (as well as by suppliers);
  - (b) in relation to charges payable to suppliers, provision for the adjustment of charges payable by customers who are not members of the disadvantaged group (as well as by persons who are).
- (3) The scheme shall—
  - (a) describe the disadvantaged group;
  - (b) specify the persons whose charges are covered by the scheme; and
  - (c) set out the basis of the adjustment of the charges.
- (4) If the scheme does not relate to the whole of Great Britain, it shall specify the area or areas to which it relates.
- (5) The scheme may—
  - (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.

#### **43B Orders: supplementary.**

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

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- (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.”

#### Commencement Information

**I39** S. 69 wholly in force at 1.10.2001; s. 69 not in force at Royal Assent see s. 110(2); s. 69 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

## 70 Energy efficiency requirements for electricity distributors and suppliers.

For section 41 of the 1989 Act (promotion of efficient use of electricity) there is substituted—

### “41A Promotion of the efficient use by consumers of electricity.

- (1) The Secretary of State may by order impose—
  - (a) on each electricity distributor (or each electricity distributor of a specified description); and
  - (b) on each electricity supplier (or each electricity supplier of a specified description),
 an obligation to achieve, within a specified period and in accordance with the order, the energy efficiency target to be determined by the Authority under the order for that distributor or supplier (and that obligation is referred to in this section as an “energy efficiency obligation”).
- (2) In this section “energy efficiency target” means a target for the promotion of improvements in energy efficiency, that is to say, efficiency in the use by consumers of electricity, gas conveyed through pipes or any other source of energy which is specified in the order.
- (3) An order under this section may specify criteria by reference to which the Authority is to determine energy efficiency targets for the electricity distributors or electricity suppliers on whom obligations are imposed by the order.
- (4) The Secretary of State and the Authority shall carry out their respective functions under this section in the manner he or it considers is best calculated to

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ensure that no electricity distributor is unduly disadvantaged in competing with other electricity distributors and no electricity supplier is unduly disadvantaged in competing with other electricity suppliers.

- (5) The order may make provision generally in relation to the energy efficiency obligations which it imposes, including in particular provision—
- (a) as to the treatment of persons who become electricity distributors or electricity suppliers after the beginning of the period to which the order relates;
  - (b) as to the action which qualifies for the purpose of meeting the whole or any part of an energy efficiency target;
  - (c) as to the method by which improvements in energy efficiency attributable to any qualifying action are to be assessed;
  - (d) requiring distributors and suppliers to give to the Authority specified information, or information of a specified nature, about their proposals for complying with their energy efficiency obligations;
  - (e) requiring the Authority to determine—
    - (i) whether any proposed action qualifies for the purpose of achieving the whole or any part of a person’s energy efficiency target; and
    - (ii) if so, what improvement in energy efficiency is to be attributed for that purpose to the proposed action or to any result of that action specified in the determination; and
  - (f) requiring distributors or suppliers to produce to the Authority evidence of a specified kind demonstrating that they have complied with their energy efficiency obligations.
- (6) The order may make provision authorising the Authority to require a distributor or supplier to provide it with specified information, or information of a specified nature, relating to—
- (a) his proposals for complying with his energy efficiency obligation; or
  - (b) the question whether he has complied with that obligation.
- (7) The order may make provision as to circumstances in which—
- (a) a person’s energy efficiency target may be altered during the period to which the order relates;
  - (b) the whole or any part of a person’s energy efficiency target may be treated as having been achieved by action taken otherwise than by or on behalf of that person;
  - (c) any action taken before the period to which the order relates may be treated as qualifying action taken during that period;
  - (d) the whole or any part of a person’s energy efficiency target may be transferred to another electricity distributor or electricity supplier or to a gas transporter or gas supplier (within the meaning of Part I of the <sup>M16</sup>Gas Act 1986); or
  - (e) a person may carry forward the whole or any part of his energy efficiency target for the period to which the order relates to a subsequent period.
- (8) The order may—
- (a) provide for exceptions from any requirement of the order;

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- (b) provide that any specified requirement contained in it is to be treated as a relevant requirement for the purposes of this Part;
  - (c) make supplementary, incidental and transitional provision; and
  - (d) subject to subsection (4), make different provision for different cases (including different provision in relation to different distributors or suppliers).
- (9) The order may include provision for treating the promotion of the supply to premises of—
- (a) electricity generated by a generating station which is operated for the purposes of producing heat, or a cooling effect, in association with electricity;
  - (b) heat produced in association with electricity or steam produced from (or air or water heated by) such heat;
  - (c) any gas or liquid subjected to a cooling effect produced in association with electricity,
- as promotion of energy efficiency.
- (10) 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.
- (11) Before making an order under this section the Secretary of State shall consult the Authority, the Council, electricity distributors and electricity suppliers and such other persons as he considers appropriate.
- (12) An order under this section 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.”

#### Commencement Information

**I40** S. 70 wholly in force at 1.10.2001; s. 70 not in force at Royal Assent see s. 110(2); s. 70 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### Marginal Citations

**M16** 1986 c. 44.

## 71 General duties of transmission licence holders in Scotland.

Section 9(3) and (4) of the 1989 Act (special duty in Scotland for transmission licence holders who also hold licences to supply or generate electricity) shall cease to have effect.

#### Commencement Information

**I41** S. 71 wholly in force at 1.10.2001; s. 71 not in force at Royal Assent see s. 110(2); s. 71 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

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## 72 Uniform prices etc. in certain areas of Scotland.

After section 7A of the 1989 Act (which is inserted by section 41 above) there is inserted—

### “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
  - (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.”

#### Commencement Information

**I42** S. 72 wholly in force at 1.10.2001; s. 72 not in force at Royal Assent see s. 110(2); s. 72 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

## 73 Maximum prices for reselling electricity.

- (1) For section 44 of the 1989 Act (maximum charges for reselling electricity) there is substituted—

### “44 Maximum prices for reselling electricity.

- (1) The Authority may from time to time direct that the maximum prices at which electricity supplied by authorised suppliers may be resold—

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- (a) shall be such as may be specified in the direction; or
- (b) shall be calculated by such method and by reference to such matters as may be so specified;

and shall publish directions under this section in such manner as in its opinion will secure adequate publicity for them.

- (2) A direction under this section may—
  - (a) require any person who resells electricity supplied by an authorised supplier to furnish the purchaser with such information as may be specified or described in the direction; and
  - (b) provide that, in the event of his failing to do so, the maximum price applicable to the resale shall be such as may be specified in the direction, or shall be reduced by such amount or such percentage as may be so specified.
- (3) Different directions may be given under this section as respects different classes of cases, which may be defined by reference to areas or any other relevant circumstances.
- (4) If any person resells electricity supplied by an authorised supplier at a price exceeding the maximum price determined by or under a direction under this section and applicable to the resale—
  - (a) the amount of the excess; and
  - (b) if the direction so provides, interest on that amount at a rate specified or described in the direction,
 shall be recoverable by the person to whom the electricity was resold.”
- (2) Any maximum price fixed under section 44 of the 1989 Act which is in force immediately before the date on which this section comes into force shall be treated on and after that date as if it had been specified in a direction under section 44 as substituted by this section.

#### **Commencement Information**

**I43** S. 73 wholly in force at 1.10.2001; s. 73 not in force at Royal Assent see s. 110(2); s. 73 in force at 1.10.2001 by [S.I. 2001/3266](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))



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