

# ENERGY ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Sustainability and Renewable Energy Sources**

##### **Summary and Background**

##### *Chapter 1: Sustainable Energy*

223. **Section 81** requires the Government to publish information about the development and bringing into use of new energy sources, actions taken to ensure the requisite scientific and engineering expertise is available to develop new energy sources and actions taken to achieve the statutory energy efficiency aim of saving 3.5MtC through energy efficiency in the household sector. This information will be published as part of the annual report required under section 1 of the Sustainable Energy Act 2003.
224. **Section 82** provides for publication and implementation of a microgeneration strategy.
225. **Section 83** places a duty on the Secretary of State and GEMA to carry out their respective functions under Part 1 of both the Gas Act 1986 and the Electricity Act 1989, in a manner best calculated to contribute to the achievement of sustainable development.

##### *Chapter 2: Offshore production of energy and Chapter 3: Decommissioning of offshore installations*

226. International law has long recognised that each coastal State has jurisdiction and sovereignty over its territorial waters. At the time the Act was passed the UK Government and Scottish Ministers had given consent to 12 offshore wind farms at various locations around the UK coast, in internal tidal and territorial waters. Whilst some statutes such as the **Food and Environment Protection Act 1985 (c.48)** apply beyond territorial waters there is no comprehensive legal framework in place for offshore renewable energy developments beyond territorial waters. In this part of the Act, Chapter 2, relating to offshore production of energy, and Chapter 3, relating to decommissioning of offshore installations, create such a framework, based on the rights available to the UK as a contracting party to the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”). The text of UNCLOS can be found at <http://www.un.org/Depts/los/index.htm> and was published as Command Paper 8941.
227. Part V of UNCLOS enables coastal States to establish an exclusive economic zone within which they have sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation of the zone such as the production of energy from the water, currents and winds. UNCLOS also gives coastal States the exclusive right to construct and authorize and regulate the construction, operation and use of artificial islands, installations and structures for the purposes outlined above and other economic purposes.

228. The Government published proposals to establish a Renewable Energy Zone under UNCLOS in its consultation paper “Future Offshore, A Strategic Framework for the Offshore Wind Industry” (DTI/Pub/2k/11/02/NP. URN 02/1327, November 2002). Chapter 2 implements those proposals.
229. UNCLOS places an obligation on contracting parties to ensure that renewable energy installations in a Renewable Energy Zone are decommissioned. Chapter 3 sets out a regime for the decommissioning of such installations.
230. [Chapters 2](#) and [3](#) also augment the existing framework of law which applies to offshore renewable energy developments in territorial and internal waters. The effect is to create as far as possible a common legal regime for all offshore renewable energy developments whether they are located in internal waters, territorial waters or a Renewable Energy Zone.

#### ***Chapter 4: Renewables Obligations relating to Electricity***

231. Under the [Electricity Act 1989 \(c.29\)](#) and the [Renewables Obligation Order 2002 \(S.I. 2002/914\)](#), electricity suppliers in England & Wales have a “renewables obligation” to produce to the Gas and Electricity Markets Authority (“GEMA”), before a specified day, certain evidence regarding the supply to customers in Great Britain of electricity generated by using renewable sources. The evidence required is Renewables Obligation Certificates (“ROCs”) issued by GEMA. Scottish electricity suppliers have a similar renewables obligation under the [Renewables Obligation \(Scotland\) Order 2002 \(S.S.I. 2002/163\)](#).
232. As an alternative to providing ROCs, electricity suppliers may discharge their renewables obligations (either fully or partially) by making buy-out payments to GEMA. This Chapter makes it clear that the Secretary of State may provide for more than one specified day in a year. This Chapter also provides for suppliers who do not comply with the renewables obligation by the specified day, to be treated as having subsequently discharged the renewables obligation if they make late buy-out payments, together with an escalating surcharge into a late payments fund. It also makes provision for requiring suppliers to make payments to GEMA to cover some or all of an unrecovered shortfall in the buy-out fund. This process is known as mutualisation. The Order taking these powers is expected to come into force on 1 April 2005.
233. Whilst Northern Ireland has not yet made a renewables obligation Order, it has recently enacted legislation (Articles 52 to 55 of the [Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419\)\(N.I.6\)](#)) which is analogous to the provisions of the Electricity Act creating the renewables obligation. That legislation requires Northern Ireland suppliers to produce, as evidence, Northern Ireland Renewables Obligation Certificates (“NIROCs”) issued by the Northern Ireland equivalent of GEMA, the Northern Ireland Authority for Energy Regulation (“Ofreg”).
234. This Chapter provides for the recognition in Great Britain of Renewables Obligation Certificates issued in Northern Ireland. Taking these powers now paves the way for the reciprocal arrangements to come into force from the outset of the renewables obligation for Northern Ireland. In due course, Northern Ireland is expected to make an analogous Order which will allow electricity suppliers in Northern Ireland to satisfy all or part of their renewables obligation by producing ROCs to Ofreg instead of NIROCs. The Northern Ireland Order is expected to come into force on 1 April 2005.

#### ***Chapter 5: Renewable transport fuel obligations***

235. This Chapter provides a power for the Secretary of State to introduce a renewable transport fuel obligation. The nine sections making provision for this set out details to define the obligation; make arrangements for appointing a body to administer it; determine amounts of fuel for the purposes of discharging the obligation; provide for the issue of certificates to suppliers and for the alternative discharge of the obligation

*These notes refer to the Energy Act 2004 (c.20) which received Royal Assent on 22 July 2004*

through payment; and finally for the civil penalties associated with contravention of the obligation.