

# ENERGY ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4: Miscellaneous and Supplemental**

##### ***Section 188: Imposition of charges***

465. **Section 188** enables a consistent and transparent charging regime to be put in place that covers a range of energy services that the Secretary of State currently provides. These relate to the exploration, production and transmission of oil and gas; the generation, transmission and distribution or supply of electricity; renewable energy zones and renewable energy installations; and the protection of the environment from these activities. Existing legislation already provides a power for charges to be levied on certain services, such as the approval of decommissioning plans. Regulations which arise from these new powers will allow charges to be levied for individual services where full recovery of the direct costs of providing that specific service will be applied.

##### ***Section 189: International agreements relating to pipelines and offshore installations***

466. **Section 189** provides the power for Her Majesty to modify the **Petroleum Act 1998 (c.17)** by Order in Council to give effect to international agreements relating in whole or in part to the construction, operation, use, decommissioning or abandonment of a pipeline or offshore installation.
467. The power includes the power to provide for provision made by or under the Petroleum Act 1998 to have effect in relation to areas outside the UK and its waters and to apply to individuals and to bodies corporate whether or not they are British citizens or incorporated under the law of a part of the UK.
468. A modification could reflect the fact that an international agreement might provide that disputes over access to a pipeline on the UK Continental Shelf and the Continental Shelf of another State could either be the subject of co-determination by the UK and the other State in accordance with English law or the law of the other State or fall for sole determination by the UK or the other State. Section 17F of the **Petroleum Act 1998 (c.17)** currently gives the Secretary of State the power to make such a determination in relation to a pipeline in UK waters.

##### ***Sections 190 and 191: Application of general duties to Part 3 functions etc and Supplementary provision about licence condition powers***

469. **Section 190** provides that, where appropriate in relation to Part 3 (as well as in relation to certain provisions in Part 2) of the Act, the principal objectives and general duties laid down in sections 4AA to 4B of the Gas Act 1986 and sections 3A to 3D of the Electricity Act 1989 shall apply to the exercise of functions conferred by Part 3 (and as mentioned above, Part 2) of the Act on the Secretary of State or GEMA. In particular, the principal objectives and general duties will apply in the case of any provisions in Part 3 which provide for the granting of licences and the determination or modification of licence conditions and to functions which relate to companies which hold electricity

or gas licences (which includes, for example, the energy administration provisions in Chapter 3 of Part 3). Section 191 ensures that, where any powers granted under Part 3 (and certain powers granted under Part 2) relating to the determination or modification of licence conditions are exercised, certain general provisions of the Gas and Electricity Acts which are relevant to these powers are applicable.

### ***Section 192: Service of notifications and other documents in electronic form***

470. **Section 192** sets out the basis on which those provisions of the Bill requiring the giving of a notification or the sending of a document to a person may be satisfied. It has effect subject to section 194 which makes provision for electronic delivery of notifications and documents. Section 195 makes provision for the Secretary of State to specify the timing and location of things done electronically in order to comply with any of the provisions of the Act. These powers are required in order to enable the NDA to meet the Government's targets for electronic delivery of services and in order to remove any scope for uncertainty about the form in which notifications and documents may be supplied electronically.

### ***Section 197: Repeals***

471. **Section 197** and Schedule 23 provide for a number of repeals, including repeal of the following provisions:

- Repeal of the bulk of the provisions of the **Atomic Energy Authority Act 1995 (c.37)**, with a saving in respect of the provisions relating to transfer schemes already made under that Act. The repealed provisions are no longer necessary in light of the extensive transfer scheme powers in the Act.
- Repeal of sections 11(1) and (2) of the **Atomic Energy Authority Act 1971 (c.11)** ("the 1971 Act"). These powers are no longer needed, in light of the transfer scheme powers in the Act.
- Disapplication of loan and guarantee powers in section 11(4) and section 12(1) of the 1971 Act, and section 1(1) and (2) of the Nuclear Industry (Finance) Act 1977, in relation to Amersham plc (formerly the publicly owned Radiochemical company). These amendments remove the Government's power to take ownership of Amersham shares currently held by UKAEA, subscribe for shares in Amersham, and make and guarantee loans to Amersham. Now that Amersham plc is privately owned these powers are no longer necessary or appropriate.
- Repeal of section 11(3) of the 1971 Act. Repeal of section 11(3) will remove the requirement on the Secretary of State to hold more than 50% of the shares in BNFL and is a necessary first step for the proposed restructuring of BNFL. There is also a consequential repeal of section 1(6) of the **Atomic Energy (Miscellaneous Provisions) Act 1981 (c.48)**.
- Repeal of section 20(4) of the 1971 Act. This provision is spent.
- Repeal of the provisions setting out the current status and jurisdiction of the UKAEA Constabulary, including the identified paragraphs in Schedule 3 of the **Atomic Energy Authority Act 1954 (c.32)**; the identified paragraphs in Schedule 1 of the **Nuclear Installations Act 1965 (c.57)**; section 6(3) and (4) of the **Police and Criminal Evidence Act 1984 (c.60)**; and the identified provisions in the **Ministry of Defence Police Act 1987 (c.4)**, the **Criminal Justice and Police Act 2001 (c.16)**, the **Anti-Terrorism Crime and Security Act 2001 (c.24)** and the **Police Reform Act 2002 (c.30)**. These provisions are otiose given the creation of the Civil Nuclear Police Authority and the specific provision made in the Act for the role and jurisdiction of the Civil Nuclear Constabulary.