



Energy Act 2008

2008 CHAPTER 32

PART 1

GAS IMPORTATION AND STORAGE

CHAPTER 1

GAS IMPORTATION AND STORAGE ZONES

1 Exploitation of areas outside the territorial sea for gas importation and storage

- (1) The rights to which this section applies have effect, by virtue of this section, as rights belonging to Her Majesty.
- (2) This section applies to the rights under Part V of the Convention that are exercisable by the United Kingdom in areas outside the territorial sea—
 - (a) with respect to any of the matters mentioned in subsection (3), or
 - (b) for any other purposes connected with any of those matters.
- (3) The matters are—
 - (a) the exploitation of those areas for the unloading of gas to installations or pipelines;
 - (b) the exploitation of those areas for the storing of gas (whether or not with a view to its being recovered), or the recovery of gas so stored;
 - (c) the exploration of those areas with a view to their exploitation as mentioned in paragraph (a) or (b).
- (4) For the purposes of subsection (3), references to gas include any substance which consists wholly or mainly of gas.
- [^{F1}(5) The area within which the rights to which this section applies are exercisable (the “Gas Importation and Storage Zone”)—

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

Changes to legislation: Energy Act 2008 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)

- (a) is any area for the time being designated under section 41(3) of the Marine and Coastal Access Act 2009 (exclusive economic zone), but
 - (b) if Her Majesty by Order in Council declares that the Gas Importation and Storage Zone extends to such other area as may be specified in the Order, is the area resulting from the Order.]
- (6) In this section—
- “the Convention” means the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) and any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom;
- “gas” means any substance which is gaseous at a temperature of 15°C and a pressure of 101.325 kPa (1013.25 mb);
- “installation” includes any floating structure or device maintained on a station by whatever means.

Textual Amendments

- F1** S. 1(5) substituted (12.11.2009 for specified purposes, 31.3.2014 in so far as not already in force) by Marine and Coastal Access Act 2009 (c. 23), s. 324(1)(c)(d), **Sch. 4 para. 5(2)**; S.I. 2013/3055, art. 2

Commencement Information

- II** S. 1 in force at 6.4.2009 by S.I. 2009/45, art. 4(a)(i)

CHAPTER 2

IMPORTATION AND STORAGE OF COMBUSTIBLE GAS

Activities requiring a licence

2 Prohibition on unlicensed activities

- (1) No person may carry on an activity within subsection (3) except in accordance with a licence.
- (2) But subsection (1) is subject to [F2]sections 3 and 3A].
- (3) The activities are—
 - (a) the use of a controlled place for the unloading of gas to an installation or pipeline;
 - (b) the use of a controlled place for the storage of gas;
 - (c) the conversion of any natural feature in a controlled place for the purpose of storing gas;
 - (d) the recovery of gas stored in a controlled place;
 - (e) the exploration of a controlled place with a view to, or in connection with, the carrying on of activities within paragraphs (a) to (d);
 - (f) the establishment or maintenance in a controlled place of an installation for the purposes of activities within this subsection.
- (4) In this section—

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“controlled place” means a place in, under or over—

- (a) the territorial sea, or
- (b) waters in a Gas Importation and Storage Zone (within the meaning of section 1(5));

“gas” means any combustible substance which is gaseous at a temperature of 15°C and a pressure of 101.325 kPa (1013.25 mb) and which consists wholly or mainly of—

- (a) methane,
- (b) ethane,
- (c) propane,
- (d) butane,
- (e) a substance designated for the purposes of this section by an order made by the Secretary of State, or
- (f) a mixture of two or more of the substances mentioned in paragraphs (a) to (e).

Textual Amendments

- F2** Words in s. 2(2) substituted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), **ss. 14(2)**, 115(7); [S.I. 2015/994](#), art. 6(d)

Commencement Information

- I2** S. 2 in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), **art. 2** (with [arts. 3, 4](#))

3 Exception for activities carried on partly on land etc

(1) This Chapter does not apply in relation to—

- (a) the use of a controlled place for the unloading of gas to an installation which is connected with land by a permanent structure providing access at all times and for all purposes;
- (b) the conversion of a natural feature of which part is in a controlled place and part under land, if the operations necessary for the conversion take place wholly or mainly on, over or under land;
- (c) the use of a place for the storage of gas, or the recovery of gas so stored, where—
 - (i) the gas was, or is to be, introduced into the store by means of a well on land, and
 - (ii) part of the place is a controlled place and part is under land;
- (d) the establishment or maintenance of an installation for the purposes of activities falling within paragraph (a).

(2) In this section—

“land” means—

- (a) land in England;
 - (b) land in Wales;
 - (c) land in Scotland landward of the low water mark;
- “well” includes a borehole.

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Commencement Information

I3 S. 3 in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), [art. 2](#) (with [art. 4](#))

[^{F3}3A Exception for unloading to an installation in certain circumstances

The prohibition in section 2(1) does not apply to a person (“A”) who uses a controlled place for the unloading of gas to an installation if—

- (a) the installation is maintained by another person (“B”) who has a licence in respect of the maintenance of the installation and the use of a controlled place for the unloading of gas to it, and
- (b) B consents to the use by A of the controlled place for the unloading of gas to the installation.]

Textual Amendments

F3 S. 3A inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), [ss. 14\(1\)](#), 115(7); [S.I. 2015/994](#), [art. 6\(d\)](#)

Licensing

4 Licences

- (1) The Secretary of State may grant a person a licence in respect of one or more activities within section 2(3).
- (2) The controlled place in respect of which a licence is granted may be determined by reference to the provisions of a Crown lease which has been or may be granted.
- (3) For this purpose “Crown lease” means a lease of property forming part of the Crown Estate, or an authorisation to exercise rights forming part of that Estate (whether by virtue of section 1 or otherwise).

Commencement Information

I4 S. 4 in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), [art. 2](#) (with [art. 4](#))

5 Applications

The Secretary of State may by regulations—

- (a) prescribe the persons, or classes of persons, by whom an application for a licence may be made;
- (b) prescribe requirements which must be met by, or in relation to, a person who makes an application;
- (c) prescribe the manner in which an application must be made;
- (d) prescribe the information which an application must contain and any documents which must accompany it;
- (e) require an application to be accompanied by a fee of an amount prescribed by, or determined in accordance with, the regulations.

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Commencement Information

I5 S. 5 in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), [art. 2](#) (with [art. 4](#))

6 Terms and conditions

- (1) A licence may be granted on such terms and subject to such conditions as the Secretary of State considers appropriate.
- (2) The provisions of a licence may be expressed by reference to provision made in a Crown lease, and, in particular, may provide—
 - (a) for the commencement of the licence to be conditional upon the commencement of a Crown lease which has been or may be granted in respect of the controlled place to which the licence relates or any part of that place;
 - (b) for the period of the licence to be determined by reference to the period of such a Crown lease.
- (3) A licence may authorise, in such circumstances and subject to such conditions as are specified, the transfer of the licence to another person (or the inclusion of another person as a joint licence holder).
- (4) The provisions of a licence may include—
 - (a) provision requiring the licence holder to obtain the prior written consent of the Secretary of State or another person for specified acts or omissions;
 - (b) provision providing that any such consent may be given subject to conditions.
- (5) The conditions imposed on a consent by virtue of subsection (4)(b) may include conditions requiring, or otherwise providing for, the modification of the licence in such manner as the Secretary of State considers appropriate.
- (6) In this section—
 - “Crown lease” has the same meaning as in section 4;
 - “specified”, in relation to a licence, means specified in, or determined in accordance with, the licence.

Commencement Information

I6 S. 6 in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), [art. 2](#) (with [art. 4](#))

7 Model clauses

- (1) The Secretary of State may make regulations prescribing model clauses for licences.
- (2) Subject to subsection (3), the model clauses, as they have effect at the time a licence is granted, are deemed to be incorporated into the licence.
- (3) The Secretary of State may decide to exclude or modify one or more of those model clauses in the case of a particular licence.

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Commencement Information

I7 S. 7 in force at 13.11.2009 for specified purposes by S.I. 2009/2809, art. 2 (with art. 4)

Enforcement

8 Offence to carry on unlicensed activities

- (1) It is an offence for a person to carry on an activity within section 2(3) at a controlled place unless, at the time the activity is carried on, that person—
 - (a) has a licence for the carrying on of that activity at that place, or
 - (b) is carrying on the activity on behalf of a person who has such a licence.
- (2) It is an offence for a person to cause or permit another person to commit an offence under subsection (1).
- (3) But subsections (1) and (2) are subject to section 3.
- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

Commencement Information

I8 S. 8 in force at 13.11.2009 for specified purposes by S.I. 2009/2809, art. 2 (with arts. 3, 4)

9 Offences relating to licences

- (1) An offence is committed by a licence holder if—
 - (a) a thing is done for which the licence specifies that the prior consent of the Secretary of State or any other person is required, without that consent first having been obtained;
 - (b) such a thing is done in circumstances where that consent was obtained subject to conditions and those conditions have not been satisfied;
 - (c) the licence holder fails to keep records, give a notice or make a return or report, in accordance with the provisions of the licence;
 - (d) the licence holder breaches any other provision of the licence which is specified, or of a description specified, in an order made by the Secretary of State.
- (2) In proceedings against a person for an offence under subsection (1), it is a defence for the person to prove that due diligence was exercised to avoid committing the offence.
- (3) It is an offence for a person to make a statement which the person knows to be false, or recklessly to make a statement which is false, in order to obtain—
 - (a) a licence, or
 - (b) the consent of the Secretary of State or any other person for the purposes of any requirement imposed by virtue of section 6(4).

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- (4) It is an offence for a person to fail to disclose information which the person knows, or ought to know, to be relevant to an application for—
 - (a) a licence, or
 - (b) the consent of the Secretary of State or any other person for the purposes of any requirement imposed by virtue of section 6(4).
- (5) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

Commencement Information

19 S. 9 in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), [art. 2](#) (with [art. 4](#))

10 Secretary of State's power of direction

- (1) This section applies if a licence holder fails to comply with any provision of the licence.
- (2) The Secretary of State may direct the licence holder to take steps which the Secretary of State considers necessary or appropriate to comply with the provision within a period specified in the direction.
- (3) The Secretary of State must consult the licence holder before giving a direction under subsection (2).
- (4) If the licence holder fails to comply with a direction under subsection (2), the Secretary of State may—
 - (a) comply with the direction on behalf of the licence holder, or
 - (b) make arrangements for another person to do so.
- (5) A person taking action by virtue of subsection (4) may—
 - (a) do anything which the licence holder could have done, and
 - (b) recover from the licence holder any reasonable costs incurred in taking the action.
- (6) A person (“P”) liable to pay any sum by virtue of subsection (5)(b) must also pay interest on that sum for the period beginning with the day on which the person taking action by virtue of subsection (4) notified P of the sum payable and ending with the date of payment.
- (7) The rate of interest payable in accordance with subsection (6) is a rate determined by the Secretary of State as comparable with commercial rates.
- (8) The licence holder must provide a person taking action by virtue of subsection (4) with such assistance as the Secretary of State may direct.
- (9) The power to give a direction under this section is without prejudice to any provision made in the licence with regard to the enforcement of any of its provisions.

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Commencement Information

I10 S. 10 in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), [art. 2](#) (with [art. 4](#))

11 Failure to comply with a direction under section 10

- (1) It is an offence for a person to fail to comply with a direction under section 10, unless the person proves that due diligence was exercised in order to avoid the failure.
- (2) A person guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

Commencement Information

I11 [S. 11](#) in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), [art. 2](#) (with [art. 4](#))

12 Injunctions restraining breaches of section 2(1)

- (1) Where the Secretary of State considers it necessary or expedient to restrain any actual or apprehended breach of section 2(1), the Secretary of State may apply to the court for an injunction or, in Scotland, an interdict.
- (2) An application may be made whether or not the Secretary of State has exercised or is proposing to exercise any of the other powers under this Chapter.
- (3) On an application under subsection (1), the court may grant such an injunction or interdict as the court thinks appropriate for the purpose of restraining the breach.
- (4) Rules of court may provide for an injunction or interdict to be issued against a person whose identity is unknown.
- (5) In this section “the court” means—
 - (a) the High Court, or
 - (b) in Scotland, the Court of Session.

Commencement Information

I12 [S. 12](#) in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), [art. 2](#) (with [art. 4](#))

13 Inspectors

- (1) The Secretary of State may appoint persons to act as inspectors to assist in carrying out the functions of the Secretary of State under this Chapter.
- (2) The Secretary of State may make payments, by way of remuneration or otherwise, to inspectors appointed under this section.
- (3) The Secretary of State may make regulations about—
 - (a) the powers and duties of inspectors appointed under this section;

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- (b) the powers and duties of any other person acting on the directions of the Secretary of State in connection with a function under this Chapter;
 - (c) the facilities and assistance to be accorded to persons mentioned in paragraph (a) or (b).
- (4) The powers conferred by virtue of subsection (3) may include powers of a kind specified in section 108(4) of the Environment Act 1995 (c. 25) (powers of entry, investigation, etc).
- (5) Any regulations under this section may provide for the creation of offences which are punishable—
- (a) on summary conviction by a fine not exceeding the statutory maximum or such lesser amount as is specified in the regulations, and
 - (b) on conviction on indictment by a fine.

Commencement Information

I13 S. 13 in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), [art. 2](#) (with [art. 4](#))

14 Criminal proceedings

- (1) Proceedings for a relevant offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (restriction on prosecutions) does not apply to any proceedings for a relevant offence.
- (3) Proceedings for a relevant offence alleged to have been committed in a controlled place may not be instituted in England and Wales except—
- (a) by the Secretary of State or a person authorised by the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions.
- (4) Proceedings for a relevant offence alleged to have been committed in a controlled place may not be instituted in Northern Ireland except—
- (a) by the Secretary of State or a person authorised by the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) In the application of subsection (3) or (4) to an offence created by regulations under section 13—
- (a) the words “alleged to have been committed in a controlled place” are to be omitted, and
 - (b) the references to a person authorised by the Secretary of State are to be read as references to an inspector appointed under that section.
- (6) In this section “relevant offence” means an offence under this Chapter or created by regulations under section 13.

Commencement Information

I14 S. 14 in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), [art. 2](#) (with [art. 4](#))

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Supplementary

15 Interaction with the petroleum licensing requirements

- (1) This section applies where there is a licence for the recovery of gas stored in a controlled place.
- (2) The Secretary of State may give a direction in respect of the place or any part of it (“the relevant stratum”).
- (3) The effect of the direction is that any operations under the licence to recover gas from the relevant stratum are not to be regarded as resulting in the boring for or getting of petroleum for the purposes of Part 1 of the Petroleum Act 1998 (c. 17).
- (4) A direction may be given only if the Secretary of State is satisfied that the amount of petroleum which exists in its natural condition in the relevant stratum is so small that it ought to be disregarded for the purposes of that Part.
- (5) Where a direction has effect, if the Secretary of State ceases to be satisfied as mentioned in subsection (4), the Secretary of State must give the licence holder a notice revoking the direction and specifying a time for the purposes of subsection (6).
- (6) Where a notice is given under subsection (5), the revocation of the direction takes effect—
 - (a) if an application for a petroleum licence in respect of the relevant stratum is made by the licence holder before the specified time, immediately before the time the application is determined or withdrawn, and
 - (b) in any other case, at the specified time.
- (7) Before giving or revoking a direction, the Secretary of State must consult the licence holder.
- (8) In this section—
 - “petroleum” means petroleum to which section 3 of the Petroleum Act 1998 (c. 17) applies;
 - “petroleum licence” means a licence under that section authorising a person to bore for and get petroleum.

Commencement Information

I15 S. 15 in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), [art. 2](#) (with [art. 4](#))

Interpretation

16 Chapter 2: interpretation

In this Chapter—

- “controlled place” has the meaning given by section 2(4);
- “gas” has the meaning given by section 2(4);
- “installation” includes any floating structure or device maintained on a station by whatever means;

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“licence”, except where the context otherwise requires, means a licence under section 4, and “licence holder” is to be construed accordingly.

Commencement Information

I16 S. 16 in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), [art. 2](#) (with [art. 4](#))

CHAPTER 3

STORAGE OF CARBON DIOXIDE

Activities requiring a licence

17 Prohibition on unlicensed activities

(1) No person may carry on an activity within subsection (2) except in accordance with a licence.

(2) The activities are—

- (a) the use of a controlled place for the storage of carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal);
- (b) the conversion of any natural feature in a controlled place for the purpose of storing carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal);
- (c) the exploration of a controlled place with a view to, or in connection with, the carrying on of activities within paragraph (a) or (b);
- (d) the establishment or maintenance in a controlled place of an installation for the purposes of activities within this subsection.

(3) In this section, “controlled place” means a place in, under or over—

- (a) the territorial sea, or
- (b) waters in a Gas Importation and Storage Zone.

[^{F4}(3A) In this section, “controlled place” also includes a place—

- (a) in England, Wales or Northern Ireland, or
- (b) in, under or over so much of the internal waters of the United Kingdom as are adjacent to England, Wales or Northern Ireland.]

[^{F5}(4) In relation to Scotland, “controlled place” includes—

- (a) a place in Scotland, or
- (b) a place within the seaward limits of the territorial sea adjacent to Scotland.]

Textual Amendments

F4 S. 17(3A) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), [reg. 2](#)

F5 S. 17(4) inserted (S.) (1.4.2011) by [The Energy Act 2008 \(Storage of Carbon Dioxide\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/224\)](#), [regs. 1, 2\(2\)](#)

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Modifications etc. (not altering text)

- C1** S. 17(1) restricted (16.9.2011) by [The Storage of Carbon Dioxide \(Access to Infrastructure\) Regulations 2011 \(S.I. 2011/2305\)](#), regs. 1, **16(1)(b)**

Commencement Information

- I17** S. 17 in force at 6.4.2009 by [S.I. 2009/45](#), **art. 4(a)(ii)**

Licensing

18 Licences

- (1) The licensing authority may grant a licence to a person in respect of one or more activities within section 17(2).
- (2) The licensing authority is—
 - (a) in the case of a licence in respect of activities within section 17(2)(a) to (c) and [^{F6}an offshore controlled place which is not][^{F7}in, under or over the territorial sea adjacent to Scotland][^{F7}a Scottish controlled place][^{F8}(an “offshore UK-controlled place”)], the Secretary of State,
 - (b) in the case of a licence in respect of [^{F9}activities within section 17(2)(a) to (c)] and a [^{F10}controlled place which is in, under or over][^{F11}the territorial sea adjacent to Scotland][^{F10}Scottish controlled place], the Scottish Ministers,
 - (c) in the case of a licence in respect of [^{F12}activities within section 17(2)(a) to (c)] and [^{F13}an offshore controlled place] only part of which is in, under or over [^{F14}the territorial sea adjacent to Scotland], either the Secretary of State or the Scottish Ministers,^{F15}...
 - [^{F16}(ca) in the case of a licence in respect of activities within section 17(2)(a) to (c) and an English controlled place, the Secretary of State,
 - (cb) in the case of a licence in respect of activities within section 17(2)(a) to (c) and a Welsh controlled place, the Welsh Ministers,
 - (cc) in the case of a licence in respect of activities within section 17(2)(a) to (c) and a Northern Ireland controlled place, the Department of Enterprise, Trade and Investment in Northern Ireland,
 - (cd) in the case of a licence in respect of activities within section 17(2)(a) to (c) and a controlled place part of which is a Welsh controlled place and the rest of which is an English controlled place or an offshore UK-controlled place (or a combination of such places), either the Welsh Ministers or the Secretary of State,
 - (ce) in the case of a licence in respect of activities within section 17(2)(a) to (c) and a controlled place part of which is a Northern Ireland controlled place and the rest of which is an offshore UK-controlled place, either the Department of Enterprise, Trade and Investment in Northern Ireland or the Secretary of State, and]
 - (d) in the case of a licence in respect of activities within section 17(2)(d), whichever of the Secretary of State[^{F17}, the Welsh Ministers, the Department of Enterprise, Trade and Investment in Northern Ireland] or the Scottish Ministers licenses the activities for the purposes of which the installation is established or maintained;

and in this Chapter references to the licensing authority in relation to a licence falling within paragraph (c)[^{F18}, (cd) or (ce)] are references to the person who grants the

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licence or, if the licence has not yet been granted, to whom the application for the licence was made.

- (3) The controlled place in respect of which a licence is granted may be determined by reference to the provisions of a Crown lease which has been or may be granted.
- (4) For this purpose a “Crown lease” means a lease of property forming part of the Crown Estate, or an authorisation to exercise rights forming part of that Estate (whether by virtue of section 1 or otherwise).

[^{F19}(4A) In this section—

“English controlled place” means a controlled place in England or in, under or over so much of the internal waters of the United Kingdom as are adjacent to England;

“Northern Ireland controlled place” means a controlled place in Northern Ireland or in, under or over so much of the internal waters of the United Kingdom as are adjacent to Northern Ireland;

“Welsh controlled place” means a controlled place in Wales or in, under or over so much of the internal waters of the United Kingdom as are adjacent to Wales.]

[^{F20}(5) In this section, “Scottish controlled place” means—

- (a) a controlled place in Scotland, or
- (b) a controlled place within the seaward limits of the territorial sea adjacent to Scotland.]

Textual Amendments

- F6** Words in s. 18(2)(a) substituted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 3(1)(a)(i)**
- F7** Words in s. 18(2)(a) substituted (S.) (1.4.2011) by [The Energy Act 2008 \(Storage of Carbon Dioxide\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/224\)](#), regs. 1, **2(3)(a)**
- F8** Words in s. 18(2)(a) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 3(1)(a)(ii)**
- F9** Words in s. 18(2)(b) substituted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 3(1)(b)(i)**
- F10** Words in s. 18(2)(b) substituted (S.) (1.4.2011) by [The Energy Act 2008 \(Storage of Carbon Dioxide\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/224\)](#), regs. 1, **2(3)(b)**
- F11** Words in s. 18(2)(b) substituted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 3(1)(b)(ii)**
- F12** Words in s. 18(2)(c) substituted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 3(1)(c)(i)**
- F13** Words in s. 18(2)(c) substituted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 3(1)(c)(ii)**
- F14** Words in s. 18(2)(c) substituted (1.4.2011 for S. and 16.11.2011 for E.W. N.I.) by [The Energy Act 2008 \(Storage of Carbon Dioxide\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/224\)](#), regs. 1, **2(3)(c)**; [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 3(1)(c)(iii)**
- F15** Word in s. 18(2) omitted (16.11.2011) by virtue of [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 3(1)(d)**
- F16** S. 18(2)(ca)-(ce) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 3(1)(d)**

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Changes to legislation: Energy Act 2008 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)

- F17** Words in s. 18(2)(d) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 3(1)(e)**
- F18** Words in s. 18(2)(d) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 3(1)(f)**
- F19** S. 18(4A) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 3(2)**
- F20** S. 18(5) inserted (S.) (1.4.2011) by [The Energy Act 2008 \(Storage of Carbon Dioxide\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/224\)](#), regs. 1, **2(3)(d)**

Commencement Information

- I18** S. 18 in force at 6.4.2009 by [S.I. 2009/45](#), **art. 4(a)(ii)**

19 Requirements relating to grant of licences

- (1) Each licensing authority may by regulations make provision about the circumstances in which it may grant licences, including—
- (a) provision about the requirements to be met by or in relation to an applicant, and
 - (b) provision about any other requirements which must be met for a licence to be granted.
- (2) Regulations under subsection (1)(a) may, in particular—
- (a) prescribe the persons, or classes of persons, by whom an application for a licence may be made;
 - (b) prescribe the manner in which an application must be made;
 - (c) prescribe the information which an application must contain and any documents which must accompany it;
 - (d) require an application to be accompanied by a fee of an amount prescribed by, or determined in accordance with, the regulations;
 - (e) require an applicant, before a licence is granted, to make arrangements (whether by way of trust or otherwise) to provide financial security in respect of the applicant's future obligations relating to the activities under the licence (whether those obligations will or may arise under the licence or otherwise).

[^{F21}(3) In subsection (1) “licensing authority” does not include the Welsh Ministers or the Department of Enterprise, Trade and Investment in Northern Ireland.]

Textual Amendments

- F21** S. 19(3) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 4**

Commencement Information

- I19** S. 19 in force at 6.4.2009 by [S.I. 2009/45](#), **art. 4(a)(ii)**

20 Terms and conditions

- (1) A licence may be granted on such terms and subject to such conditions as the licensing authority considers appropriate, subject to regulations under section 21.

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- (2) Subject to such regulations, a licence may, in particular, include provision of a kind mentioned in subsections (3) to (7).
- (3) A licence may include—
 - (a) provision about the circumstances in which financial security (which may be provided by way of a trust or other arrangements) may be required in respect of the obligations mentioned in section 19(2)(e) (in addition to any security required by virtue of that section), and the form of any such security;
 - (b) provision about the circumstances in which financial security may be released (in whole or in part);
 - (c) provision enabling the licensing authority to review the licence in specified circumstances or at specified intervals;
 - (d) provision enabling the licensing authority, after consulting the licence holder, to modify the licence in specified circumstances (with or without the consent of the licence holder);
 - (e) provision preventing or enabling the licensing authority to prevent a licence holder, in specified circumstances, from carrying on an activity in respect of which the licence was granted;
 - (f) provision about closure of a carbon storage facility;
 - (g) provision about obligations of a licence holder between closure of a carbon storage facility and termination of the licence;
 - (h) provision about termination of the licence (which may include provision about financial arrangements).
- (4) The provisions of a licence may be expressed by reference to provision made in a Crown lease and, in particular, may provide—
 - (a) for the commencement of the licence to be conditional upon the commencement of a Crown lease which has been or may be granted in respect of the controlled place to which the licence relates or any part of that place;
 - (b) for the period of the licence to be determined by reference to the period of such a Crown lease.
- (5) A licence may authorise, in such circumstances and subject to such conditions as are specified, the transfer of the licence to another person (or the inclusion of another person as a joint licence holder).
- (6) The provisions of a licence may include—
 - (a) provision requiring the licence holder to obtain the prior written consent of the licensing authority or another person for specified acts or omissions;
 - (b) provision providing that any such consent may be given subject to conditions.
- (7) The conditions imposed on a consent by virtue of subsection (6)(b) may include conditions requiring, or otherwise providing for, the modification of the licence in such manner as the licensing authority considers appropriate.
- (8) In this section—

“carbon storage facility” means a controlled place, or part of a controlled place, in which carbon dioxide has been stored pursuant to a licence;

“closure”, in relation to a carbon storage facility, means the point at which carbon dioxide has ceased to be added to the facility and the licence holder intends, or the licensing authority directs in accordance with the licence, that the cessation should be permanent;

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“Crown lease” has the same meaning as in section 18;
“specified”, in relation to a licence, means specified in, or determined in accordance with, the licence.

Commencement Information

I20 S. 20 in force at 6.4.2009 by [S.I. 2009/45, art. 4\(a\)\(ii\)](#)

21 Content of licences: regulations

- (1) Each licensing authority may make regulations about the terms and conditions of licences granted by it.
- (2) Regulations under subsection (1) may specify that a licence must contain specified provisions or provisions of a specified description.
- [^{F22}(3) In subsection (1) “licensing authority” does not include the Welsh Ministers or the Department of Enterprise, Trade and Investment in Northern Ireland.]

Textual Amendments

F22 S. 21(3) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\), reg. 5](#)

Commencement Information

I21 S. 21 in force at 6.4.2009 by [S.I. 2009/45, art. 4\(a\)\(ii\)](#)

Enforcement

22 Offence to carry on unlicensed activities

- (1) It is an offence for a person to carry on an activity within section 17(2) at a controlled place unless, at the time the activity is carried on, that person—
 - (a) has a licence for the carrying on of the activity at that place, or
 - (b) is carrying on the activity on behalf of a person who has such a licence.
- (2) It is an offence for a person to cause or permit another person to commit the offence in subsection (1).
- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to [^{F23}a fine not exceeding £50,000][^{F23}a fine], or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (4) If the activity constituting the offence falls within section 17(2)(c), or relates to the establishment or maintenance of an installation for the purposes of an activity mentioned in that provision, subsection (3) has effect as if—
 - [^{F24}(a) the reference to £50,000 were a reference to the statutory maximum, and]
 - (b) the reference to imprisonment were omitted.

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[^{F25}]^{F26}(4A) If the activity constituting the offence is carried on at an English controlled place, a Welsh controlled place or a Northern Ireland controlled place, subsection (3) has effect as if the reference to £50,000 were a reference to the statutory maximum.]]

[^{F27}(5) If the activity constituting the offence is carried out in a Scottish controlled place other than a place within the area of the territorial sea, subsection (3)(a) has effect as if the reference to £50,000 were a reference to £5,000.]

Textual Amendments

- F23** Words in s. 22(3)(a) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 42\(2\)\(a\)](#) (with reg. 5(1))
- F24** S. 22(4)(a) omitted (E.W.) (12.3.2015) by virtue of [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 42\(2\)\(b\)](#) (with reg. 5(1))
- F25** S. 22(4A) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), [reg. 6](#)
- F26** S. 22(4A) omitted (E.W.) (12.3.2015) by virtue of [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 42\(2\)\(c\)](#) (with reg. 5(1))
- F27** S. 22(5) inserted (1.4.2011) by [The Energy Act 2008 \(Storage of Carbon Dioxide\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/224\)](#), regs. 1, [2\(4\)](#)

Commencement Information

- I22** S. 22 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(a\)\(ii\)](#)

23 Offences relating to licences

- (1) An offence is committed by a licence holder if—
- a thing is done for which the licence specifies that the prior consent of the licensing authority or any other person is required, without that consent first having been obtained;
 - such a thing is done in circumstances where that consent was obtained subject to conditions and those conditions have not been satisfied;
 - the licence holder fails to keep records, give a notice or make a return or report, in accordance with the provisions of the licence;
 - the licence holder breaches any other provision of the licence which is specified, or of a description specified, in an order made by the licensing authority.
- (2) In proceedings against a person for an offence under subsection (1), it is a defence for the person to prove that due diligence was exercised to avoid committing the offence.
- (3) A person guilty of an offence under subsection (1) is liable—
- on summary conviction, to [^{F28}a fine not exceeding £50,000][^{F28}a fine], or
 - on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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- (4) If an offence under subsection (1) relates to an activity within section 17(2)(c), or relates to the establishment or maintenance of an installation for the purposes of an activity mentioned in that provision, subsection (3) has effect as if—
- [^{F29}(a) the reference to £50,000 were a reference to the statutory maximum, and]
 - (b) the reference to imprisonment were omitted.
- (5) It is an offence for a person to make a statement which the person knows to be false, or recklessly to make a statement which is false, in order to obtain—
- (a) a licence, or
 - (b) the consent of the licensing authority or any other person for the purposes of any requirement imposed by virtue of section 20(6).
- (6) It is an offence for a person to fail to disclose information which the person knows, or ought to know, to be relevant to an application for—
- (a) a licence, or
 - (b) the consent of the licensing authority or any other person for the purposes of any requirement imposed by virtue of section 20(6).
- (7) A person guilty of an offence under subsection (5) or (6) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.
- [^{F30}(8) In subsection (1)(d) “licensing authority” does not include the Welsh Ministers or the Department of Enterprise, Trade and Investment in Northern Ireland.]

Textual Amendments

- F28** Words in s. 23(3)(a) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 42\(3\)\(a\)](#) (with [reg. 5\(1\)](#))
- F29** S. 23(4)(a) omitted (E.W.) (12.3.2015) by virtue of [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 42\(3\)\(b\)](#) (with [reg. 5\(1\)](#))
- F30** S. 23(8) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), [reg. 7](#)

Commencement Information

- I23** S. 23 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(a\)\(ii\)](#)

24 Licensing authority's power of direction

- (1) This section applies if a licence holder fails to comply with any provision of the licence.
- (2) The licensing authority may direct the licence holder to take steps which the licensing authority considers necessary or appropriate to comply with the provision within a period specified in the direction.
- (3) The licensing authority must consult the licence holder before giving a direction under subsection (2).

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- (4) If the licence holder fails to comply with a direction under subsection (2), the licensing authority may—
 - (a) comply with the direction on behalf of the licence holder, or
 - (b) make arrangements for another person to do so.
- (5) A person taking action by virtue of subsection (4) may—
 - (a) do anything which the licence holder could have done, and
 - (b) recover from the licence holder any reasonable costs incurred in taking the action.
- (6) A person (“P”) liable to pay any sum by virtue of subsection (5)(b) must also pay interest on that sum for the period beginning with the day on which the person taking action by virtue of subsection (4) notified P of the sum payable and ending with the date of payment.
- (7) The rate of interest payable in accordance with subsection (6) is a rate determined by the licensing authority as comparable with commercial rates.
- (8) The licence holder must provide a person taking action by virtue of subsection (4) with such assistance as the licensing authority may direct.
- (9) The power to give a direction under this section is without prejudice to any provision made in the licence with regard to the enforcement of any of its provisions.

Commencement Information

I24 S. 24 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(a\)\(ii\)](#)

25 Failure to comply with a direction under section 24

- (1) It is an offence for a person to fail to comply with a direction under section 24, unless the person proves that due diligence was exercised in order to avoid the failure.
- (2) A person guilty of an offence under subsection (1) is liable—
 - (a) on summary conviction, to [^{F31}a fine not exceeding £50,000][^{F31}a fine], or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

Textual Amendments

F31 Words in s. 25(2)(a) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 42\(4\)](#) (with reg. 5(1))

Commencement Information

I25 S. 25 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(a\)\(ii\)](#)

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26 Injunctions restraining breaches of section 17(1)

- [^{F32}(A1) Where the Secretary of State considers it necessary or expedient to restrain any actual or apprehended breach of section 17(1) in relation to an English controlled place, the Secretary of State may apply to the High Court for an injunction.
- (A2) Where the Welsh Ministers consider it necessary or expedient to restrain any actual or apprehended breach of section 17(1) in relation to a Welsh controlled place, they may apply to the High Court for an injunction.]
- (1) Where the Scottish Ministers consider it necessary or expedient to restrain any actual or apprehended breach of section 17(1) in relation to a [^{F33}controlled place in, under or over the territorial sea adjacent to Scotland][^{F33}Scottish controlled place], they may apply to the Court of Session for an interdict.
- [^{F34}(1A) Where the Department of Enterprise, Trade and Investment in Northern Ireland considers it necessary or expedient to restrain any actual or apprehended breach of section 17(1) in relation to a Northern Ireland controlled place, it may apply to the High Court for an injunction.]
- (2) Where the Secretary of State considers it necessary or expedient to restrain any ^{F35}...actual or apprehended breach of section 17(1) [^{F36}in relation to an offshore UK-controlled place], the Secretary of State may apply—
- (a) to the High Court for an injunction, or
 - (b) to the Court of Session for an interdict.
- (3) An application may be made under this section whether or not the applicant has exercised or is proposing to exercise any of the other powers under this Chapter.
- (4) On an application under this section, the Court of Session may grant such an interdict, or the High Court may grant such an injunction, as it thinks appropriate for the purpose of restraining the breach.
- (5) Rules of court may provide for an injunction or interdict to be issued against a person whose identity is unknown.

Textual Amendments

- F32** S. 26(A1)(A2) inserted (16.11.2011) by The Storage of Carbon Dioxide (Amendment of the Energy Act 2008 etc.) Regulations 2011 (S.I. 2011/2453), **reg. 8(a)**
- F33** Words in s. 26(1) substituted (S.) (1.4.2011) by The Energy Act 2008 (Storage of Carbon Dioxide) (Scotland) Regulations 2011 (S.S.I. 2011/224), regs. 1, **2(5)**
- F34** S. 26(1A) inserted (16.11.2011) by The Storage of Carbon Dioxide (Amendment of the Energy Act 2008 etc.) Regulations 2011 (S.I. 2011/2453), **reg. 8(b)**
- F35** Word in s. 26(2) omitted (16.11.2011) by virtue of The Storage of Carbon Dioxide (Amendment of the Energy Act 2008 etc.) Regulations 2011 (S.I. 2011/2453), **reg. 8(c)(i)**
- F36** Words in s. 26(2) inserted (16.11.2011) by The Storage of Carbon Dioxide (Amendment of the Energy Act 2008 etc.) Regulations 2011 (S.I. 2011/2453), **reg. 8(c)(ii)**

Commencement Information

- I26** S. 26 in force at 6.4.2009 by S.I. 2009/45, **art. 4(a)(ii)**

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
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27 Inspectors

- (1) The Secretary of State may appoint persons to act as inspectors to assist in carrying out the functions of the Secretary of State under this Chapter.
- (2) The Secretary of State may make payments, by way of remuneration or otherwise, to inspectors appointed under this section.
- (3) The Secretary of State may make regulations about—
 - (a) the powers and duties of inspectors appointed under this section;
 - (b) the powers and duties of any other person acting on the directions of the Secretary of State in connection with a function under this Chapter;
 - (c) the facilities and assistance to be accorded to persons mentioned in paragraph (a) or (b).
- (4) The powers conferred by virtue of subsection (3) may include powers of a kind specified in section 108(4) of the Environment Act 1995 (c. 25) (powers of entry, investigation, etc).
- (5) Any regulations under this section may provide for the creation of offences which are punishable—
 - (a) on summary conviction by a fine not exceeding the statutory maximum or such lesser amount as is specified in the regulations, and
 - (b) on conviction on indictment by a fine.
- (6) This section applies in relation to the Scottish Ministers and the functions of the Scottish Ministers under this Chapter as it applies in relation to the Secretary of State and the functions of the Secretary of State under this Chapter.
- [^{F37}(7) Subsections (1) and (2) apply in relation to the Welsh Ministers and the Department of Enterprise, Trade and Investment in Northern Ireland and their respective functions under this Chapter as they apply in relation to the Secretary of State and the functions of the Secretary of State under this Chapter.]

Textual Amendments

F37 S. 27(7) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 9**

Commencement Information

I27 S. 27 in force at 6.4.2009 by [S.I. 2009/45](#), **art. 4(a)(ii)**

28 Criminal proceedings

- (1) Proceedings for a relevant offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (restriction on prosecutions) does not apply to any proceedings for a relevant offence.
- (3) Proceedings for a relevant offence alleged to have been committed in [^{F38}an offshore controlled place] may not be instituted in England and Wales except—
 - (a) by the Secretary of State or a person authorised by the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions.

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- (4) Proceedings for a relevant offence alleged to have been committed in [F39 an offshore controlled place] may not be instituted in Northern Ireland except—
- (a) by the Secretary of State or a person authorised by the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) In the application of subsection (3) or (4) to an offence created by regulations under section 27—
- (a) the words “alleged to have been committed in [F40 an offshore controlled place]” are to be omitted, and
 - (b) the references to a person authorised by the Secretary of State are to be read as references to an inspector appointed under that section.
- (6) In this section “relevant offence” means an offence under this Chapter or created by regulations under section 27.

Textual Amendments

- F38** Words in s. 28(3) substituted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 10**
- F39** Words in s. 28(4) substituted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 10**
- F40** Words in s. 28(5)(a) substituted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 10**

Commencement Information

- I28** S. 28 in force at 6.4.2009 by [S.I. 2009/45](#), **art. 4(a)(ii)**

Registration

29 Requirement for public register

- (1) The Secretary of State must maintain a register containing prescribed information relating to licences.
- (2) Information is not to be included in the register if—
- (a) the Secretary of State thinks that disclosure of the information would be contrary to the interests of national security, or
 - (b) the licensing authority thinks that disclosure of the information would prejudice to an unreasonable degree a person's commercial interests.
- (3) Information excluded from the register by virtue of subsection (2)(b) is treated, subject to subsection (4), as ceasing to prejudice a person's commercial interests at the end of the period of 4 years beginning with the date on which the licensing authority made the decision to exclude it.
- (4) The licensing authority may, on the application of the person whose commercial interests are affected, decide whether the information should be included in the register at the end of the period mentioned in subsection (3) or should continue to be excluded.

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- (5) Where information of any description is excluded from the register by virtue of subsection (2)(b), a statement is to be included in the register indicating the existence of information of that description.
- (6) The Secretary of State must—
 - (a) secure that the register maintained under this section is available for inspection by the public free of charge, and
 - (b) afford to members of the public facilities for obtaining copies of entries, on payment of a fee.
- (7) In this section “prescribed” means prescribed by regulations made by the Secretary of State.

Commencement Information

I29 S. 29 in force at 6.4.2009 by S.I. 2009/45, art. 4(a)(ii)

Abandonment of offshore [F41] infrastructure]

Textual Amendments

F41 Word in Pt. 1 Ch. 3(crossheading) substituted (18.12.2011) by Energy Act 2011 (c. 16), ss. 107(3), 121(3)

30 Abandonment of installations

- (1) Part 4 of the Petroleum Act 1998 (c. 17) ([F42]referred to in this section and sections 30A and 30B as “the 1998 Act”]) applies in relation to a carbon storage installation as it applies in relation to an offshore installation within the meaning given by section 44 of the 1998 Act, subject to subsections (2) and (4)[F43] and section 30A].
- (2) In relation to a carbon storage installation established or maintained at a controlled place under a licence granted by the Scottish Ministers—
 - (a) the functions conferred on the Secretary of State by Part 4 of the 1998 Act are exercisable by the Scottish Ministers rather than the Secretary of State (and, accordingly, the reference in section 39(6) of the 1998 Act to either House of Parliament is to be read as a reference to the Scottish Parliament), and
 - (b) the Scottish Ministers may make regulations providing that that Part applies with such other modifications as may be specified in the regulations.
- (3) For the purposes of subsection (2), orders under section 33(1) are to be disregarded and installations used for a purpose ancillary to getting petroleum (within the meaning of section 1 of the 1998 Act) are not to be treated as carbon storage installations.
- (4) In relation to any other carbon storage installation, the Secretary of State may make regulations providing that Part 4 of the 1998 Act applies in relation to such an installation with such modifications as may be specified in the regulations.

[F44(4A) The power in subsection (4) is subject to section 30A.]

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(5) In this section^[F45] and section 30A], “carbon storage installation” means an installation^[F46] falling within subsection (6) that is] established or maintained for the purposes of an activity mentioned in section 17(2)(a), (b) or (c).

^[F47](6) An installation falls within this subsection if it is established or maintained in the water, or on the foreshore or other land intermittently covered with water, and is not connected with dry land by a permanent structure providing access at all times and for all purposes.]

Textual Amendments

F42 Words in s. 30(1) substituted (18.12.2011) by Energy Act 2011 (c. 16), ss. 107(4)(a)(i), 121(3)

F43 Words in s. 30(1) inserted (18.12.2011) by Energy Act 2011 (c. 16), ss. 107(4)(a)(ii), 121(3)

F44 S. 30(4A) inserted (18.12.2011) by Energy Act 2011 (c. 16), ss. 107(4)(b), 121(3)

F45 Words in s. 30(5) inserted (18.12.2011) by Energy Act 2011 (c. 16), ss. 107(4)(c), 121(3)

F46 Words in s. 30(5) inserted (16.11.2011) by The Storage of Carbon Dioxide (Amendment of the Energy Act 2008 etc.) Regulations 2011 (S.I. 2011/2453), reg. 11(a)

F47 S. 30(6) inserted (16.11.2011) by The Storage of Carbon Dioxide (Amendment of the Energy Act 2008 etc.) Regulations 2011 (S.I. 2011/2453), reg. 11(b)

Commencement Information

I30 S. 30 in force at 6.4.2009 by S.I. 2009/45, art. 4(a)(ii)

^[F48]30A Installations converted for CCS demonstration projects

- (1) The Secretary of State may by order designate an installation as an eligible CCS installation.
- (2) But an order may not be made under subsection (1) in relation to—
 - (a) a carbon storage installation established or maintained under a licence granted by the Scottish Ministers, or
 - (b) any other installation established or maintained wholly or partly in Scotland.
- (3) An order under subsection (1) ceases to have effect if the installation in relation to which it is made becomes an installation within subsection (2)(a).
- (4) An eligible CCS installation qualifies for change of use relief if—
 - (a) the installation is or has been used as part of a CCS demonstration project, and
 - (b) the trigger event has occurred in relation to the installation at a time when the installation was so used (whether before or after it was designated under this section).
- (5) The trigger event occurs—
 - (a) in relation to an installation used for the injection of captured carbon dioxide into a carbon storage facility as part of a CCS demonstration project, when captured carbon dioxide is first present at the installation, and
 - (b) in relation to an installation used as part of a CCS demonstration project for any other purpose, when captured carbon dioxide is first present at another installation used as mentioned in paragraph (a) as part of the same project.
- (6) Where an eligible CCS installation qualifies for change of use relief—

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- (a) an abandonment programme notice must not be served on a person who is within section 30(1) of the 1998 Act only because one or more of subsections (7) to (9) applies in relation to the person (but this does not affect the validity of a notice served on any such person before the installation qualified for change of use relief), and
 - (b) a proposal must not be made under section 34(1)(b) of the 1998 Act if the effect of the proposal (if implemented) would be to impose an abandonment liability on a person who is within section 34(2)(a) of the 1998 Act only because one or more of subsections (7) to (10) applies in relation to the person.
- (7) This subsection applies in relation to a person if—
- (a) the person is within paragraph (b) of section 30(1) of the 1998 Act in relation to the installation only by virtue of the fact that the person had a right mentioned in section 30(5)(a) of that Act when an activity mentioned in section 30(6) of that Act was last carried on from, by means of or on the installation, and
 - (b) any such activity was last so carried on before the trigger event occurred in relation to the installation.
- (8) This subsection applies in relation to a person if—
- (a) the person is within paragraph (ba) of section 30(1) of the 1998 Act in relation to the installation, and
 - (b) the transfer mentioned in sub-paragraph (i) of that paragraph took place before the trigger event occurred in relation to the installation.
- (9) This subsection applies in relation to a person if the person is within paragraph (e) of section 30(1) of the 1998 Act only by virtue of being associated with a body corporate which is within subsection (7) or (8).
- (10) This subsection applies in relation to a person if the person has been within any of paragraphs (a), (b), (c), (d) or (e) of section 30(1) of the 1998 Act in relation to the installation, but only at a time—
- (a) when the installation was an offshore installation (within the meaning given by section 44 of the 1998 Act), and
 - (b) before the trigger event occurred in relation to the installation.
- (11) The power conferred by subsection (1) does not include a power to revoke an order made under that subsection.
- (12) In this section—
- “ abandonment liability ”, in relation to an installation, means a duty to secure that an abandonment programme for the installation is carried out;
 - “ abandonment programme ”, in relation to an installation, means a programme in respect of the installation approved, or having effect as if approved, by the Secretary of State under section 32 of the 1998 Act;
 - “ abandonment programme notice ” means a notice served under section 29(1) of the 1998 Act;
 - “ captured carbon dioxide ” means carbon dioxide that has been produced by, or in connection with, commercial electricity generation and captured with a view to its disposal by way of permanent storage;
 - “ carbon dioxide ”, “ CCS demonstration project ” and “ commercial electricity generation ” have the same meanings as in Part 1 of the Energy Act 2010 (see section 7 of that Act);

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“ carbon storage facility ” has the same meaning as in section 20;
 “ Scotland ” has the same meaning as in the Scotland Act 1998 (see section 126(1) of that Act).

- (13) Section 30(8) to (9) of the 1998 Act (when one body corporate is associated with another) apply for the purposes of this section.

Textual Amendments

F48 S. 30A, 30B inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), ss. **107(2)**, **121(3)**

30B Submarine pipelines converted for CCS demonstration projects

- (1) The Secretary of State may by order designate a submarine pipeline as an eligible CCS pipeline.
- (2) An eligible CCS pipeline qualifies for change of use relief if—
 - (a) the pipeline is or has been used as part of a CCS demonstration project for a purpose other than the transport of petroleum, and
 - (b) the trigger event has occurred in relation to the pipeline at a time when the pipeline was so used (whether before or after it was designated under this section).
- (3) The trigger event—
 - (a) in relation to a pipeline used to transport captured carbon dioxide as part of a CCS demonstration project, occurs when captured carbon dioxide is first present in the pipeline, and
 - (b) in relation to a pipeline used as part of a CCS demonstration project for any other purpose, occurs—
 - (i) when captured carbon dioxide is first present in another pipeline used as part of the same project, or
 - (ii) if earlier, when captured carbon dioxide is first present at an installation used as part of the same project for the injection of captured carbon dioxide into a carbon storage facility.
- (4) Where an eligible CCS pipeline qualifies for change of use relief, a proposal must not be made under section 34(1)(b) of the 1998 Act if the effect of the proposal (if implemented) would be to impose an abandonment liability on a person who is within section 34(2)(b) of the 1998 Act only because subsection (5) applies in relation to the person.
- (5) This subsection applies in relation to a person if the person has been within any of paragraphs (a) to (c) of section 30(2) of the 1998 Act in relation to the pipeline, but only at a time—
 - (a) when the pipeline was used solely for activities other than activities connected with any mentioned in section 17(2)(a), (b) or (c), and
 - (b) before the trigger event occurred in relation to the pipeline.
- (6) The power conferred by subsection (1) does not include a power to revoke an order made under that subsection.
- (7) In this section—

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“ abandonment liability ”, in relation to a submarine pipeline, is a duty to secure that an abandonment programme for the pipeline is carried out;

“ abandonment programme ”, in relation to a submarine pipeline, means a programme in respect of the pipeline approved, or having effect as if approved, by the Secretary of State under section 32 of the 1998 Act;

“ captured carbon dioxide ” and “ CCS demonstration project ” have the same meanings as in section 30A;

“ carbon storage facility ” has the same meaning as in section 20;

“ petroleum ” has the same meaning as in Part 1 of the 1998 Act (see section 1 of that Act) and includes petroleum that has undergone any processing;

“ submarine pipeline ” has the same meaning as in Part 4 of the Petroleum Act 1998 (see section 45 of that Act).]

Textual Amendments

F48 S. 30A, 30B inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 107(2), 121(3)**

Termination of the licence

31 Termination of licence: regulations

- (1) The licensing authority may by regulations make provision—
 - (a) about the circumstances in which a licence may be terminated;
 - (b) imposing obligations on the licensing authority in respect of a carbon storage facility on or after the termination of a licence relating to the facility.
- (2) Regulations under this section may, in particular, make provision about financial arrangements to be made in relation to a closed carbon storage facility on or after the termination of a licence relating to the facility.
- (3) A licence has effect subject to any regulations under this section.

[^{F49}(4) In subsection (1) “licensing authority” does not include the Welsh Ministers or the Department of Enterprise, Trade and Investment in Northern Ireland.]

Textual Amendments

F49 S. 31(4) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 12**

Commencement Information

I31 S. 31 in force at 6.4.2009 by [S.I. 2009/45](#), **art. 4(a)(ii)**

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Miscellaneous

32 Safety zones

Sections 21, 23 and 24 of the Petroleum Act 1987 (c. 12) (safety zones) apply in relation to a carbon storage installation as they apply in relation to an installation within section 21(1) of that Act.

Commencement Information

I32 S. 32 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(a\)\(ii\)](#)

33 Enhanced petroleum recovery: power to make orders

- (1) The use of carbon dioxide, in a controlled place, for a purpose ancillary to getting petroleum is to be regarded as—
 - (a) an activity within section 17(2), or
 - (b) the storage of gas for the purposes of section 1(3)(b),
 only in the circumstances specified by the Secretary of State by order.
- (2) Subsection (1) and orders made under it are without prejudice to Part 1 of the Petroleum Act 1998 (c. 17).
- (3) An order under subsection (1) may provide that the use of carbon dioxide, in a designated place, for a purpose ancillary to getting petroleum is to be regarded, for the purposes of this Chapter, as the use of carbon dioxide in a controlled place for such a purpose.
- (4) A designated place means a place designated by the order which is a place in, under or over waters in an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29), other than waters in a Gas Importation and Storage Zone.
- (5) In this section “petroleum” has the meaning given by section 1 of the Petroleum Act 1998 (c. 17).

Commencement Information

I33 S. 33 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(a\)\(ii\)](#)

34 Power of Secretary of State etc to transfer functions

- (1) The Secretary of State may by order transfer to a public body any function conferred on the Secretary of State by or under this Chapter, other than a power to make regulations or an order.
- (2) A function transferred by an order under subsection (1) reverts to the Secretary of State if the order is revoked.
- (3) An order under subsection (1) may—
 - (a) transfer different functions to different bodies;
 - (b) transfer functions to a body in respect of all activities within section 17(2) or only specified activities;

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- (c) transfer the same function to different bodies in respect of different activities;
 - (d) transfer functions to different bodies in respect of different places.
- (4) An order under subsection (1) may—
- (a) provide for the Secretary of State to make payments to a body to which a function has been transferred in respect of the body's expenditure in connection with the exercise of the function;
 - (b) require any fee paid to such a body under this Chapter to be paid into the Consolidated Fund;
 - (c) make such modifications of section 188 of the Energy Act 2004 (c. 20) (power to impose charges to fund energy functions), or any regulations made under that section, as the Secretary of State considers appropriate in consequence of the transfer of a function by virtue of this section.
- (5) The Secretary of State may give a direction to a body to which functions have been transferred under subsection (1) about—
- (a) whether, or in what circumstances, a function specified in the direction is to be carried out;
 - (b) the manner in which a function specified in the direction is to be carried out.
- (6) A direction under subsection (5) may be general or specific.
- (7) The Secretary of State may not give a direction under subsection (5) without first consulting the body to which the Secretary of State proposes to give the direction.
- (8) This section applies in relation to the Scottish Ministers and any functions conferred on them by or under this Chapter as it applies in relation to the Secretary of State and any functions conferred on the Secretary of State by or under this Chapter, except that—
- (a) in its application to the Scottish Ministers the reference in subsection (4)(b) to the Consolidated Fund is to be read as a reference to the Scottish Consolidated Fund, and
 - (b) the reference in that subsection to section 188 of the Energy Act 2004 (c. 20) is to be read as a reference to that section as applied and modified by subsection (12) (inserted by paragraph 13(e) of Schedule 1 to this Act).

Commencement Information

I34 S. 34 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(a\)\(ii\)](#)

Interpretation

35 Chapter 3: interpretation

(1) In this Chapter—

- “carbon storage facility” has the meaning given by section 20(8);
- “carbon storage installation” has the meaning given by section 30(5);
- “closure”, in relation to a carbon storage facility, has the meaning given by section 20(8);
- “controlled place” has the meaning given by section 17(3) [^{F50}and (3A)] [^{F51}and (4)];
- [^{F52}“English controlled place” has the meaning given by section 18(4A);]

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[^{F53}“Gas Importation and Storage Zone” is to be read in accordance with section 1(5);]

“installation” includes any floating structure or device maintained on a station by whatever means;

“licence” means a licence granted under section 18(1), and “licence holder” is to be construed accordingly;

“licensing authority” has the meaning given by section 18(2).

[^{F52}“Northern Ireland controlled place” has the meaning given by section 18(4A);]

[^{F52}“offshore controlled place” means a place that is mentioned in section 17(3);]

[^{F52}“offshore UK-controlled place” has the meaning given by section 18(2)(a);]

[^{F54} “ Scottish controlled place” has the meaning given by section 18(5)]

[^{F52}“Welsh controlled place” has the meaning given by section 18(4A).]

- (2) An Order in Council under section 126(2) of the Scotland Act 1998 (c. 46) (apportionment of sea areas) has effect for the purposes of this Chapter if, or to the extent that, the Order is expressed to apply—
- (a) by virtue of this subsection, for the purposes of this Chapter, or
 - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- [^{F55}(3) An Order in Council under section 98(8) of the Northern Ireland Act 1998 has effect for the purposes of this Chapter if, or to the extent that, the Order in Council is expressed to apply—
- (a) by virtue of this subsection, for the purposes of this Chapter, or
 - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (4) An order or Order in Council made under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006 (apportionment of sea areas) has effect for the purposes of this Chapter if, or to the extent that, the order or Order in Council is expressed to apply—
- (a) by virtue of this subsection, for the purposes of this Chapter, or
 - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.]

Textual Amendments

- F50** Words in s. 35(1) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 13(1)(a)**
- F51** Words in s. 35(1) inserted (S.) (1.4.2011) by [The Energy Act 2008 \(Storage of Carbon Dioxide\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/224\)](#), regs. 1, **2(6)(a)**
- F52** Words in s. 35(1) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), **reg. 13(1)(b)**
- F53** Words in s. 35(1) substituted (31.3.2014) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 4 para. 5(3)**; S.I. 2013/3055, art. 2
- F54** Definition of "Scottish controlled place" in s. 35(1) inserted (S.) (1.4.2011) by [The Energy Act 2008 \(Storage of Carbon Dioxide\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/224\)](#), regs. 1, **2(6)(b)**

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F55 S. 35(3)(4) inserted (16.11.2011) by [The Storage of Carbon Dioxide \(Amendment of the Energy Act 2008 etc.\) Regulations 2011 \(S.I. 2011/2453\)](#), [reg. 13\(2\)](#)

Commencement Information

I35 S. 35 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(a\)\(ii\)](#)

CHAPTER 4

GENERAL PROVISIONS ABOUT GAS IMPORTATION AND STORAGE

36 Chapters 2 and 3: consequential amendments

Schedule 1 contains amendments relating to Chapters 2 and 3.

Commencement Information

I36 S. 36 in force at 6.4.2009 for specified purposes by [S.I. 2009/45](#), [art. 4\(a\)\(iii\)](#)

I37 [S. 36](#) in force at 13.11.2009 for specified purposes by [S.I. 2009/2809](#), [art. 2](#) (with [art. 4](#))

PART 2

ELECTRICITY FROM RENEWABLE SOURCES

The renewables obligation

37 The renewables obligation

For sections 32 to 32C of the Electricity Act 1989 (c. 29) substitute—

“32 The renewables obligation

- (1) The relevant minister may make a renewables obligation order.
- (2) “The relevant minister” means—
 - (a) in the case of Scotland, the Scottish Ministers,
 - (b) in any other case, the Secretary of State.
- (3) In subsection (2) “Scotland” includes—
 - (a) so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland, and
 - (b) a Renewable Energy Zone, or any part of such a Zone, which is designated by order under section 84(5) of the Energy Act 2004 (areas in relation to which Scottish Ministers have functions).
- (4) A renewables obligation order is an order which imposes the renewables obligation on each electricity supplier falling within a specified description (a “designated electricity supplier”).

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- (5) The descriptions of electricity supplier upon which a renewables obligation order may impose the renewables obligation are those supplying electricity to customers in the relevant part of Great Britain, excluding such categories of supplier (if any) as are specified.
- (6) The renewables obligation is that the designated electricity supplier must, by each specified day, have produced to the Authority the required number of renewables obligation certificates in respect of the amount of electricity supplied by it during a specified period to customers in the relevant part of Great Britain.
- (7) Subsection (6) is subject to sections 32A to 32M.

32A Further provision about the renewables obligation

- (1) A renewables obligation order may make provision generally in relation to the renewables obligation.
- (2) A renewables obligation order may, in particular, specify—
 - (a) how the number of renewables obligation certificates required to be produced by an electricity supplier in respect of the amount of electricity supplied by it to customers in the relevant part of Great Britain during a specified period is to be calculated;
 - (b) different obligations for successive periods of time;
 - (c) that renewables obligation certificates issued in respect of electricity generated—
 - (i) using specified descriptions of renewable sources,
 - (ii) by specified descriptions of generating stations,
 - (iii) in specified ways, or
 - (iv) in other specified cases or circumstances,
 are to count towards discharging an electricity supplier's obligation only up to a specified number, or a specified proportion, of the certificates required to be produced to discharge the obligation;
 - (d) that a specified number, or a specified proportion, of the renewables obligation certificates produced by an electricity supplier when discharging its renewables obligation must be certificates in respect of electricity generated—
 - (i) using specified descriptions of renewable sources,
 - (ii) by specified descriptions of generating station,
 - (iii) in specified ways, or
 - (iv) in other specified cases or circumstances;
 - (e) how the amount of electricity supplied by an electricity supplier to customers in the relevant part of Great Britain during a specified period is to be calculated;
 - (f) that specified information, or information of a specified nature, is to be given to the Authority;
 - (g) the form in which such information is to be given and the time by which it is to be given.
- (3) A renewables obligation certificate may count once only towards the discharge of the renewables obligation.

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- (4) Except as provided by a renewables obligation order, a renewables obligation certificate counts towards discharging the renewables obligation regardless of whether the order under which it is issued is made by the Secretary of State or the Scottish Ministers.
- (5) A renewables obligation order may specify that the only renewables obligation certificates which count towards discharging the renewables obligation are certificates which are issued—
 - (a) in respect of electricity supplied to customers in the relevant part of Great Britain, or
 - (b) in respect of electricity used in a permitted way (within the meaning of section 32B(9) and (10)) in that part of Great Britain.
- (6) A renewables obligation order may, in relation to any specified period (“the current period”)—
 - (a) provide that renewables obligation certificates in respect of electricity supplied in a later period may, when available, be counted towards discharging the renewables obligation for the current period;
 - (b) provide that renewables obligation certificates in respect 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, or maximum number of, the renewables obligation certificates issued in respect of electricity supplied in any period which may be counted towards discharging the renewables obligation for a different period.
- (7) For the purposes of subsection (6) a certificate which certifies that electricity has been used in a permitted way (within the meaning of section 32B(9) and (10)) in a particular period is to be treated as if it were a certificate which certifies that electricity has been supplied in that period.

32B Renewables obligation certificates

- (1) A renewables obligation order 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 (“a renewables obligation certificate”) to—
 - (a) the operator of a generating station,
 - (b) an electricity supplier or a Northern Ireland supplier, or
 - (c) if the order so provides, a person of any other description specified in the order.
- (2) A renewables obligation certificate is to certify—
 - (a) the matters within subsection (3) or (4), or
 - (b) if the order provides that a certificate may certify the matters within subsection (5), (6), (7) or (8), the matters within that subsection.
- (3) The matters within this subsection are—

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- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, 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 by an electricity supplier to customers in Great Britain (or the part of Great Britain stated in the certificate).
- (4) The matters within this subsection are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate,
 - (b) that the generating station in question is not a generating station mentioned in Article 54(1) of the Energy (Northern Ireland) Order 2003, and
 - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (5) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
 - (b) that it has been supplied by an electricity supplier to customers in Great Britain (or the part of Great Britain stated in the certificate).
- (6) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate,
 - (b) that none of them is a generating station mentioned in Article 54(1) of the Energy (Northern Ireland) Order 2003, and
 - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (7) The matters within this subsection are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
 - (b) that the electricity has been used in a permitted way.
- (8) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
 - (b) that the electricity has been used in a permitted way.
- (9) For the purposes of subsections (7) and (8), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if—
- (a) it is used in one of the ways mentioned in subsection (10), and
 - (b) that way is specified in the order as a permitted way—
 - (i) in relation to all generating stations, or

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- (ii) in relation to generating stations of that description.
- (10) Those ways are—
- (a) being consumed by the operator of the generating station or generating stations by which it was generated;
 - (b) being supplied to customers in Great Britain through a private wire network;
 - (c) being provided to a distribution system or a transmission system in circumstances in which its supply to customers cannot be demonstrated;
 - (d) being used, as respects part, as mentioned in one of paragraph (a), (b) or (c) and as respects the remainder—
 - (i) as mentioned in one of the other paragraphs, or
 - (ii) as respects part, as mentioned in one of the other paragraphs and as respects the remainder as mentioned in the other;
 - (e) being used, as respects part, as mentioned in paragraph (a), (b), (c) or (d) and as respects the remainder by being supplied by an electricity supplier to customers in Great Britain or by a Northern Ireland supplier to customers in Northern Ireland, or both.
- (11) For the purposes of subsection (10)(b) electricity is supplied through a private wire network if it is conveyed to premises by a system which is used for conveying electricity from a generating station in circumstances where—
- (a) the operator of the generating station is exempt from section 4(1)(c) and does not hold a supply licence, and
 - (b) the electricity is supplied to one or more customers—
 - (i) by the operator directly, or
 - (ii) by a person to whom the operator supplies the electricity, being a person who is exempt from section 4(1)(c) and does not hold a supply licence.
- (12) In this section “generating station”—
- (a) in the case of an order made by the Scottish Ministers, means a generating station which is situated in Scotland;
 - (b) in the case of an order made by the Secretary of State, means a generating station which is not situated in Scotland.
- (13) For this purpose “Scotland” is to be construed in accordance with section 32(3).

32C Section 32B: supplemental provision

- (1) A renewables obligation order may provide—
- (a) that no renewables obligation certificates are to be issued in respect of electricity generated in specified cases or circumstances, or
 - (b) that renewables obligation certificates are to be issued in respect of a proportion only of the electricity generated in specified cases or circumstances.
- (2) In particular, provision made by virtue of subsection (1) may specify—
- (a) electricity generated using specified descriptions of renewable sources,
 - (b) electricity generated by specified descriptions of generating station, or

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- (c) electricity generated in specified ways.
- (3) Provision made by virtue of subsection (1)(b) may include—
- (a) provision about how the proportion is to be determined;
 - (b) provision about what, subject to such exceptions as may be specified, constitutes sufficient evidence of any matter required to be established for the purpose of determining that proportion;
 - (c) provision authorising the Authority, in specified circumstances, to require an operator of a generating station to arrange—
 - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the Authority, and
 - (ii) for the results of that analysis to be made available to the Authority.
- (4) In the case of electricity generated by a generating station fuelled or driven—
- (a) partly by renewable sources, and
 - (b) partly by fossil fuel (other than waste which constitutes a renewable source),
- only the proportion attributable to the renewable sources is to be regarded as generated from such sources.
- (5) A renewables obligation order may specify—
- (a) how the proportion referred to in subsection (4) is to be determined, and
 - (b) the consequences for the issuing of renewables obligation certificates if a generating station of the type mentioned in that subsection uses more than a specified proportion of fossil fuel during a specified period.
- (6) Those consequences may include the consequence that no certificates are to be issued in respect of any of the electricity generated by that generating station during that period.
- (7) A renewables obligation order may specify circumstances in which the Authority may revoke a renewables obligation certificate before its production for the purposes of the renewables obligation.
- (8) A renewables obligation order must—
- (a) prohibit the issue of a renewables obligation certificate certifying matters within section 32B(4) or (6) where the Northern Ireland authority has notified the Authority that it is not satisfied that the electricity in question has been supplied to customers in Northern Ireland, and
 - (b) require the revocation of such a certificate if the Northern Ireland authority so notifies the Authority at a time between the issue of the certificate and its production for the purposes of the renewables obligation.
- (9) References in section 32B and this section to the supply of electricity to customers in Northern Ireland are to be construed in accordance with the definition of “supply” in Article 3 of the Electricity (Northern Ireland) Order 1992.

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32D Amounts of electricity specified in certificates

- (1) A renewables obligation order may specify the amount of electricity to be stated in each renewables obligation certificate, and different amounts may be specified in relation to different cases or circumstances.
- (2) In particular, different amounts may be specified in relation to—
 - (a) electricity generated from different renewable sources;
 - (b) electricity generated by different descriptions of generating station;
 - (c) electricity generated in different ways.
- (3) In this section “banding provision” means provision made in a renewables obligation order by virtue of subsection (1).
- (4) Before making any banding provision, the relevant minister must have regard to the following matters—
 - (a) the costs (including capital costs) associated with generating electricity from each of the renewable sources or with transmitting or distributing electricity so generated;
 - (b) the income of operators of generating stations in respect of electricity generated from each of those sources or associated with the generation of such electricity;
 - (c) the effect of paragraph 19 of Schedule 6 to the Finance Act 2000 (c. 17) (supplies of electricity from renewable sources exempted from climate change levy) in relation to electricity generated from each of those sources;
 - (d) the desirability of securing the long term growth, and economic viability, of the industries associated with the generation of electricity from renewable sources;
 - (e) the likely effect of the proposed banding provision on the number of renewables obligation certificates issued by the Authority, and the impact this will have on the market for such certificates and on consumers;
 - (f) the potential contribution of electricity generated from each renewable source to the attainment of any target which relates to the generation of electricity or the production of energy and is imposed by, or results from or arises out of, [F56 an EU] obligation.
- (5) For the purposes of subsection (4)(a), the costs associated with generating electricity from a renewable source include any costs associated with the production or supply of heat produced in connection with that generation.
- (6) For the purposes of subsection (4)(b), an operator's income associated with the generation of electricity from a renewable source includes any income connected with—
 - (a) the acquisition of the renewable source;
 - (b) the supply of heat produced in connection with the generation;
 - (c) the disposal of any by-product of the generation process.
- (7) After the first order containing banding provision is made by the relevant minister, no subsequent order containing such provision may be made by that minister except following a review held by virtue of subsection (8).

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- (8) A renewables obligation order—
- (a) may authorise the relevant minister to review the banding provision at such intervals as are specified in or determined in accordance with the order, and
 - (b) may authorise the relevant minister to review the whole or any part of the banding provision at any time when that minister is satisfied that one or more of the specified conditions is satisfied.

32E Section 32D: transitional provision and savings

- (1) This section applies where a renewables obligation order contains banding provision.
- (2) The order may provide for the effect of any banding provision made in an earlier order, or of any provision of a pre-commencement order, to continue, in such circumstances as may be specified, in relation to—
 - (a) the electricity generated by generating stations of such a description as may be specified, or
 - (b) so much of that electricity as may be determined in accordance with the order.
- (3) For the purposes of subsection (2) “pre-commencement order” means an order made under section 32 before the coming into force of this section.
- (4) Subsection (6) applies to a generating station in respect of which a statutory grant has been awarded if—
 - (a) the generating station is of a specified description, or
 - (b) the circumstances of the case meet specified requirements.
- (5) The requirements specified under subsection (4)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this section).
- (6) A renewables obligation order which contains banding provision may provide for the operation of that provision in relation to electricity generated by a generating station to which this subsection applies to be conditional upon the operator of the station agreeing—
 - (a) if the grant or any part of it has been paid, to repay to the Secretary of State the whole or a specified part of the grant or part before the repayment date,
 - (b) to pay to the Secretary of State interest on an amount repayable under paragraph (a) for such period, and at such rate, as may be determined by the Secretary of State, and
 - (c) if the grant or any part of it has not yet been paid, to consent to the cancellation of the award of the grant or part.
- (7) If the grant in respect of which an amount falls to be paid under paragraph (a) or (b) of subsection (6) was paid by the Scottish Ministers, the references in those paragraphs to the Secretary of State are to be read as references to those Ministers.
- (8) For the purposes of subsection (6)—

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- (a) “the repayment date” means the date specified in or determined in accordance with the order, and
- (b) the period for which interest is payable must not begin before the grant was paid or, if the repayment relates to an instalment of the grant, before the instalment was paid;

and, for the purposes of provision made under that subsection, a renewables obligation order may make provision about the cancellation of an award of a statutory grant or an instalment of such a grant.

- (9) In this section “statutory grant” means—
 - (a) a grant awarded under section 5(1) of the Science and Technology Act 1965 (grants to carry on or support scientific research), or
 - (b) any other grant which is payable out of public funds and awarded under or by virtue of an Act.
- (10) This section is without prejudice to section 32K(1)(b) (power for renewables obligation order to include transitional provision and savings).

32F Use of renewables obligation certificates issued in Northern Ireland

- (1) A renewables obligation order may provide that—
 - (a) in such cases as may be specified in the order, and
 - (b) subject to such conditions as may be so specified,an electricity supplier may (to the extent provided for in accordance with the order) discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a Northern Ireland certificate.
- (2) In this section “Northern Ireland certificate” means a certificate issued by the Northern Ireland authority in accordance with provision included, by virtue of Article 54 of the Energy (Northern Ireland) Order 2003, in an order under Article 52 of that Order (renewables obligations for Northern Ireland suppliers).

32G Payment as alternative to complying with renewables obligation order

- (1) A renewables obligation order may provide—
 - (a) that an electricity supplier may (in whole or in part) discharge its renewables obligation by making a payment to the Authority before the last discharge day, and
 - (b) that an electricity supplier's renewables obligation that was not discharged in whole or in part before the last discharge day is to be treated as having been discharged to the extent specified in the order where the payment for which the order provides is made to the Authority before the end of the late payment period.
- (2) The order may make provision—
 - (a) as to the sum which for the purposes of subsection (1) is to correspond to a renewables obligation certificate,
 - (b) for the sums that must be paid in order for an obligation to be treated as having been discharged to increase at a rate specified in the order for each day after the last discharge day;

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- (c) for different sums or rates falling within paragraph (a) or (b) in relation to different periods;
 - (d) for different such sums or rates in relation to electricity generated in different cases or circumstances specified in the order (including those of a kind referred to in section 32A(2)(c));
 - (e) for any such sum or rate to be adjusted from time to time for inflation by a method specified in the order.
- (3) The method specified under subsection (2)(e) may, in particular, refer to a specified scale or index (as it may have effect from time to time) or to other specified data of any description.
- (4) A renewables obligation order may provide that, where—
- (a) a renewables obligation is one in relation to which provision made by virtue of subsection (1)(b) applies in the case of the electricity supplier who is subject to the obligation, and
 - (b) the period ending with such day (after the last discharge day) as may be specified in or determined under the order has not expired,
- the taking of steps under section 27A in respect of a contravention by that supplier of that obligation is prohibited or otherwise restricted to the extent specified in the order.
- (5) A renewables obligation order may provide that, in a case in which the amount received by the Authority, or by the Northern Ireland authority, by way of discharge payments for a period falls short of the amount due in respect of that period, every person who—
- (a) was subject to a renewables obligation for the relevant period or for a subsequent period specified in or determined under the order, and
 - (b) is of a description so specified or determined,
- must by the time and in the circumstances so specified or determined make a payment (or further payment) to the Authority of an amount calculated in the manner so specified or determined.
- (6) A renewables obligation order may not by virtue of subsection (5) confer an entitlement on the Authority to receive a payment in respect of the shortfall for any period—
- (a) in the case of a shortfall in the amount received by the Authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of subsection (4) applies, in one or more cases, to the taking of steps in relation to contraventions of renewables obligations for that period, or
 - (b) in the case of a shortfall in the amount received by the Northern Ireland authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of a corresponding provision having effect in Northern Ireland applies, in one or more cases, to the taking of steps in relation to contraventions of Northern Ireland obligations for that period.
- (7) The provision that may be made by virtue of subsection (5) includes—
- (a) provision for the making of adjustments and repayments at times after a requirement to make payments in respect of a shortfall for a period has already arisen, and

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- (b) provision that sections 25 to 28 are to apply in relation to a requirement imposed by virtue of that subsection on a person who is not a licence holder as if the person were a licence holder.
- (8) References in this section to an electricity supplier's renewables obligation include references to its renewables obligation in relation to a particular period.
- (9) For the purposes of this section, the amount received by the Authority by way of discharge payments for a period falls short of the amount due in respect of that period if, and to the extent that, the Authority would have received more by way of discharge payments if every renewables obligation for that period, so far as it was not otherwise discharged, had been discharged by payment.
- (10) For the purposes of this section the amount received by the Northern Ireland authority by way of discharge payments for a period falls short of the amount due in respect of that period if, and to the extent that, that authority would have received more by way of discharge payments if every Northern Ireland obligation for that period, so far as not otherwise discharged, had been discharged by payment.
- (11) In this section—
- “discharge payment”, in relation to a period, means—
- (a) a payment by virtue of subsection (1)(a) for discharging (in whole or in part) an electricity supplier's renewables obligation for that period,
- (b) so much of a payment by virtue of subsection (1)(b) for securing that such an obligation is treated as discharged to any extent as does not exceed the payment that would have discharged that obligation to the same extent if it had been made before the last discharge day, or
- (c) so much of any payment to the Northern Ireland authority as corresponds in relation to a Northern Ireland obligation for that period, to anything falling within paragraph (a) or (b) above;
- “last discharge day” means the day specified as the day by which renewables obligation certificates must be produced for the purposes of section 32(6);
- “late payment period” means such period beginning with the last discharge day as may be specified;
- “Northern Ireland obligation” means a renewables obligation of a Northern Ireland supplier under Article 52 of the Energy (Northern Ireland) Order 2003;
- “the relevant period”—
- (a) in relation to a shortfall in amounts received by the Authority by way of discharge payments for a period, means that period, and
- (b) in relation to a shortfall in amounts received by the Northern Ireland authority by way of discharge payments for a period, means any period that includes the whole or a part of that period.

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32H Allocation of amounts to electricity suppliers

- (1) The amounts received by the Authority by virtue of section 32G must be paid by it to electricity suppliers in accordance with a system of allocation specified in a renewables obligation order.
- (2) Subsection (1) does not apply to those amounts to the extent that they are used by the Authority under section 32I.
- (3) The system of allocation specified in the order may provide for payments to specified categories of electricity supplier only.
- (4) That system may also provide for the postponement of a requirement to make payments to electricity suppliers of amounts received by the Authority under section 32G(1)(b) if, at the time the payments would otherwise fall to be made, the aggregate of the amounts so received (and not used under section 32I or already paid under subsection (1)) is less than an amount specified in the order.
- (5) The references in this section to electricity suppliers include references to Northern Ireland suppliers.

32I Costs of the Authority and the Northern Ireland authority

- (1) A renewables obligation order may provide for amounts received by the Authority by virtue of section 32G to be used by the Authority—
 - (a) to make payments into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred by the Authority in connection with the performance of its functions conferred by or under sections 32 to 32M, or
 - (b) to make payments to the Northern Ireland authority in respect of costs (or a proportion of costs) which have been or are expected to be incurred by that authority in connection with the performance of its functions conferred by or under Articles 52 to 55 of the Energy (Northern Ireland) Order 2003.
- (2) A renewables obligation order—
 - (a) may exclude amounts of a specified description from being used as mentioned in subsection (1);
 - (b) may prevent the Authority using amounts to make payments in respect of costs of a specified description.

32J Information

- (1) A renewables obligation order may provide for the Authority to require—
 - (a) an electricity supplier to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether the supplier is discharging, or has discharged, its renewables obligation;
 - (b) a person to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether a renewables obligation certificate is, or was or will in future be, required to be issued to the person.

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- (2) That information must be given to the Authority in whatever form it requires.
- (3) A renewables obligation order may—
 - (a) require operators of generating stations generating electricity (wholly or partly) from biomass to give specified information, or information of a specified kind, to the Authority;
 - (b) specify what, for this purpose, constitutes “biomass”;
 - (c) require the information to be given in a specified form and within a specified period;
 - (d) authorise or require the Authority to postpone the issue of certificates under section 32B to the operator of a generating station who fails to comply with a requirement imposed by virtue of paragraph (a) or (c) until such time as the failure is remedied;
 - (e) authorise or require the Authority to refuse to issue certificates to such a person or to refuse to issue them unless the failure is remedied within a prescribed period.
- (4) The Authority may publish information obtained by virtue of subsection (3).
- (5) No person is required by virtue of this section to provide any information which the person could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.

32K Renewables obligation order: general provision

- (1) A renewables obligation order may—
 - (a) make further provision as to the functions of the Authority in relation to the matters dealt with by the order;
 - (b) make transitional provision and savings;
 - (c) provide for anything falling to be calculated or otherwise determined under the order to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the order;
 - (d) make different provision for different cases or circumstances.
- (2) Provision made by virtue of subsection (1)(b) may, in particular, include provision about the treatment of certificates issued under section 32B before the substitution of that section by section 37 of the Energy Act 2008.
- (3) Provision made by virtue of subsection (1)(d) may, in particular, make—
 - (a) different provision in relation to different suppliers;
 - (b) different provision in relation to generating stations of different descriptions;
 - (c) different provision in relation to different localities.
- (4) In subsection (3) “supplier” means an electricity supplier or a Northern Ireland supplier.

32L Renewables obligation orders: procedure

- (1) Before making a renewables obligation order, the relevant minister must consult—

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- (a) the Authority,
 - (b) the Council,
 - (c) the electricity suppliers to whom the proposed order would apply,
 - (d) such generators of electricity from renewable sources as the relevant minister considers appropriate, and
 - (e) such other persons, if any, as the relevant minister considers appropriate.
- (2) A renewables obligation order is not to be made by the Secretary of State unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (3) A renewables obligation order is not to be made by the Scottish Ministers unless a draft of the instrument containing it has been laid before and approved by a resolution of the Scottish Parliament.

32M Interpretation of sections 32 to 32M

- (1) In this section and sections 32 to 32L—
- “banding provision” is to be construed in accordance with section 32D(3);
- “fossil fuel” means—
- (a) coal,
 - (b) lignite,
 - (c) natural gas (within the meaning of the Energy Act 1976),
 - (d) crude liquid petroleum,
 - (e) petroleum products (within the meaning of that Act), or
 - (f) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (e);
- “generated” means generated at any place whether situated in the United Kingdom or elsewhere, and cognate expressions are to be construed accordingly;
- “Northern Ireland authority” means the Northern Ireland Authority for Utility Regulation;
- “Northern Ireland supplier” means an electricity supplier within the meaning of Part 7 of the Energy (Northern Ireland) Order 2003;
- “the relevant minister” has the meaning given by section 32;
- “the relevant part of Great Britain” means—
- (a) in the case of a renewables obligation order made by the Secretary of State, England and Wales (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to England or Wales);
 - (b) in the case of a renewables obligation order made by the Scottish Ministers, Scotland (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland);
- “the renewables obligation” is to be construed in accordance with section 32(4);
- “renewables obligation certificate” is to be construed in accordance with section 32B;

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“renewables obligation order” is to be construed in accordance with section 32;

“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”, in relation to a renewables obligation order, means specified in the order.

- (2) For the purposes of the definition of “renewable sources”, a renewables obligation order may make provision—
 - (a) about what constitutes “waste”;
 - (b) about how the proportion of waste which is, or is derived from, fossil fuel is to be determined;
 - (c) about what, subject to such exceptions as may be specified, constitutes sufficient evidence of that proportion in any particular case;
 - (d) authorising the Authority, in specified circumstances, to require an operator of a generating station to arrange—
 - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the Authority, and
 - (ii) for the results of that analysis to be made available to the Authority.
- (3) For the purposes of the definition of “the relevant part of Great Britain”, the territorial sea adjacent to England is the territorial sea adjacent to the United Kingdom, other than the territorial sea adjacent to Scotland, Wales or Northern Ireland.
- (4) An Order in Council under section 126(2) of the Scotland Act 1998 (c. 46) (apportionment of sea areas) has effect for the purposes of this section and sections 32 to 32L if, or to the extent that, the Order is expressed to apply—
 - (a) by virtue of this subsection, for those purposes, or
 - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (5) An order or Order in Council made under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006 (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the order or Order in Council is expressed to apply—
 - (a) by virtue of this subsection, for those purposes, or
 - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (6) An Order in Council under section 98(8) of the Northern Ireland Act 1998 (c. 46) (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the Order is expressed to apply—
 - (a) by virtue of this subsection, for those purposes, or
 - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
Changes to legislation: Energy Act 2008 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)

- (7) A renewables obligation order may make provision, for the purposes of sections 32 to 32L, about the circumstances in which electricity is to be regarded as having been supplied—
- (a) to customers in Great Britain;
 - (b) to customers in the relevant part of Great Britain;
 - (c) to customers in Northern Ireland.”

Textual Amendments

F56 Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), [arts. 3, 6](#) (with [arts. 3\(2\)\(3\), 4\(2\), 6\(4\)\(5\)](#))

Commencement Information

I38 S. 37 partly in force; s. 37 in force for certain purposes at Royal Assent, see s. 110(1)(a)

I39 S. 37 in force at 1.4.2009 in so far as not already in force by [S.I. 2009/45](#), [art. 3\(a\)](#) (with [art. 5](#))

38 Section 37: supplemental provision

- (1) In the case of an order made under section 32 of the Electricity Act 1989 (c. 29) after the commencement of section 37, the requirements of section 32L(1) of that Act (as substituted by section 37) may be satisfied by consultation undertaken before that commencement or the passing of this Act.
- (2) Where a NI amending order is made, the Secretary of State may, by order—
- (a) make consequential amendments to any reference to a provision of the NI Energy Order contained in sections 32 to 32M of the Electricity Act 1989 (as substituted by section 37);
 - (b) amend section 32K(2) of that Act (as so substituted) so as to extend it to certificates issued before the relevant time by the Northern Ireland Authority for Utility Regulation under provision included, by virtue of Article 54 of the NI Energy Order, in an order made under Article 52 of that Order.
- (3) In this section—
- “NI amending order” means an order under Article 56 of the NI Energy Order which (by virtue of section 40(2)) makes amendments to Part 7 of that Order to take account of any amendments made or proposed to be made by section 37;
- “NI Energy Order” means the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));
- “the relevant time” means the time when the first order made under Article 52 of the NI Energy Order by virtue of a NI amending order comes into force.

Commencement Information

I40 S. 38 partly in force; s. 38(1) in force at Royal Assent, see s. 110(1)(a)

I41 S. 38(2) in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(a\)\(i\)](#)

I42 S. 38(3) in force at 7.3.2009 by [S.I. 2009/559](#), [art. 2](#)

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
Changes to legislation: Energy Act 2008 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)

39 Existing savings relating to section 32 of the Electricity Act 1989

In section 67 of the Utilities Act 2000 (c. 27) (savings relating to section 32 of the Electricity Act 1989 etc), in subsection (1)(c) for “(as mentioned in that section) made pursuant to such an order” substitute “ made pursuant to such an order (or such arrangements as modified or replaced by virtue of an order under this section) ”.

Commencement Information

I43 S. 39 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(a\)\(ii\)](#)

40 The Northern Ireland renewables obligation

- (1) In section 121 of the Energy Act 2004 (c. 20) (power of Gas and Electricity Markets Authority to act on behalf of Northern Ireland regulator)—
 - (a) in subsection (1) for “Energy” substitute “ Utility ”,
 - (b) in subsection (2) for “Articles 52” to the end substitute “ the Northern Ireland provisions. ”, and
 - (c) after that subsection insert—
 - “(3) For this purpose “the Northern Ireland provisions” means—
 - (a) Articles 52 to 55 of the Energy (Northern Ireland) Order 2003 (renewables obligations for Northern Ireland suppliers), and
 - (b) any provision made (whether before or after the passing of the Energy Act 2008) by an order under Article 56 of the Energy (Northern Ireland) Order 2003 which amends Part 7 of that Order.”
- (2) In Article 56(1) of the NI Energy Order (power to amend Part 7 of that Order to take account of amendments of corresponding Great Britain provisions), the reference to amendments made to sections 32 to 32C of the Electricity Act 1989 (c. 29) includes a reference to section 37 of this Act.
- (3) In the case of an order under Article 52 of the NI Energy Order made by virtue of a NI amending order, the requirements of Article 52(6) of the NI Energy Order (consultation before making a renewables order) may be satisfied by consultation undertaken before the NI amending order came into force or the passing of this Act.
- (4) In this section “NI amending order” and “NI Energy Order” have the same meaning as in section 38.

Commencement Information

I44 S. 40 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(a\)\(iii\)](#)

Feed-in tariffs for small-scale generation of electricity

41 Power to amend licence conditions etc: feed-in tariffs

- (1) The Secretary of State may modify—

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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- (a) a condition of a particular licence under section 6(1)(c) or (d) of the Electricity Act 1989 (distribution and supply licences);
 - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
 - (c) a document maintained in accordance with the conditions of licences under section 6(1) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) for the purpose only of—
- (a) establishing, or making arrangements for the administration of, a scheme of financial incentives to encourage small-scale low-carbon generation of electricity;
 - (b) requiring or enabling the holder of a distribution licence to make arrangements for the distribution of electricity generated by small-scale low-carbon generation;
 - (c) requiring the holder of a licence to make arrangements related to the matters mentioned in paragraph (a) or (b).
- (3) Modifications made by virtue of subsection (1) may include—
- (a) provision requiring the holder of a supply licence to make a payment to a small-scale low-carbon generator, or to the Authority for onward payment to such a generator, in specified circumstances;
 - (b) provision specifying how a payment under paragraph (a) is to be calculated;
 - (c) provision for the level of payment under paragraph (a) to decrease year by year in accordance with a formula published, or to be published, by the Secretary of State;
 - (d) provision about the circumstances in which no payment, or a reduced payment, may be made to a small-scale low-carbon generator;
 - (e) provision about the circumstances in which a payment may be recovered from a small-scale low-carbon generator;
 - (f) a requirement for the holder of a supply licence or distribution licence to pay a levy to the Authority at specified times;
 - (g) provision specifying how a levy under paragraph (f) is to be calculated (which may require specified matters to be determined by the Authority or the Secretary of State);
 - (h) provision conferring an entitlement on the holder of a supply licence or distribution licence to receive a payment from the Authority.
- (4) In this section—
- “Authority” means the Gas and Electricity Markets Authority;
 - “distribution licence” means a licence under section 6(1)(c) of the Electricity Act 1989 (c. 29);
 - “owner”, in relation to any plant which is the subject of a hire purchase agreement, a conditional sale agreement or any agreement of a similar nature, means the person in possession of the plant under that agreement;
 - “plant” includes any equipment, apparatus or appliance;
 - “small-scale low-carbon generation” means the use, for the generation of electricity, of any plant—

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(a) which, in generating electricity, relies wholly or mainly on a source of energy or a technology mentioned in subsection (5), and

(b) the capacity of which to generate electricity does not exceed the specified maximum capacity;

“small-scale low-carbon generator” means an owner of plant used or intended to be used for small-scale low-carbon generation, whether or not the person is also operating or intending to operate the plant;

“specified maximum capacity” means the capacity specified by the Secretary of State by order, which must not exceed [^{F57}10] megawatts;

“supply licence” means a licence under section 6(1)(d) of the Electricity Act 1989 (c. 29).

(5) The sources of energy and technologies are—

- (a) biomass;
- (b) biofuels;
- (c) fuel cells;
- (d) photovoltaics;
- (e) water (including waves and tides);
- (f) wind;
- (g) solar power;
- (h) geothermal sources;
- (i) combined heat and power systems with an electrical capacity of 50 kilowatts or less.

(6) The Secretary of State may by order modify the list of sources of energy and technologies for the time being listed in subsection (5).

(7) The power conferred by subsection (1)—

- (a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
- (b) may be exercised differently in different cases or circumstances;
- (c) includes a power to make incidental, supplemental, consequential or transitional modifications.

(8) Provision included in a licence by virtue of that power—

- (a) need not relate to the activities authorised by the licence;
- (b) may make different provision for different cases.

Textual Amendments

F57 Word in s. 41(4) substituted (18.2.2014) by Energy Act 2013 (c. 32), ss. 146, 156(2)

Commencement Information

I45 S. 41 in force at 26.1.2009 by S.I. 2009/45, art. 2(a)(iv)

42 Power to amend licence conditions etc: procedure

- (1) Before making a modification, the Secretary of State must consult—
- (a) the holder of any licence being modified,

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- (b) the Gas and Electricity Markets Authority, and
 - (c) such other persons as the Secretary of State considers appropriate.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
 - (3) Before making modifications, the Secretary of State must lay a draft of the modifications before Parliament.
 - (4) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
 - (5) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
 - (6) Subsection (4) does not prevent a new draft of proposed modifications being laid before Parliament.
 - (7) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
 - (8) In this section, “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
 - (9) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
 - (10) In this section “modification” means a modification under section 41(1).

Commencement Information

I46 S. 42 in force at 26.1.2009 by [S.I. 2009/45](#), art. 2(a)(iv)

43 Feed-in tariffs: supplemental

- (1) A modification under section 41 of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Electricity Act 1989 (c. 29).
- (2) Where the Secretary of State makes modifications under section 41(1)(b) of the standard conditions of a licence of any type, the Gas and Electricity Markets Authority (“the Authority”) must—
 - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
 - (b) publish the modification.
- (3) The Secretary of State may by order—
 - (a) make provision conferring functions on the Authority or the Secretary of State (or both) in connection with the administration of any scheme established by virtue of section 41;

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- (b) make such modifications of provision made by or under an Act or an Act of the Scottish Parliament (whenever passed or made) as the Secretary of State considers appropriate in consequence of provision made under paragraph (a) or section 41.

Commencement Information

I47 S. 43 in force at 26.1.2009 by S.I. 2009/45, art. 2(a)(iv)

Offshore electricity transmission

44 Offshore electricity transmission

- (1) Part 1 of the Electricity Act 1989 (electricity supply) is amended as follows.
(2) After section 6C insert—

“6D Section 6C: supplemental provision

- (1) The provision made by regulations under section 6C(1) may also include—
- (a) provision requiring a person within subsection (2), in relation to a tender exercise, to make payments to the Authority, in prescribed circumstances, in respect of the Authority's tender costs in relation to the exercise;
 - (b) provision requiring a person within subsection (2)(a) (“the relevant person”) in prescribed circumstances—
 - (i) to pay a deposit of a prescribed amount to the Authority, or to provide the Authority with security in a form approved by it, or
 - (ii) to make arrangements for a person approved by the Authority to pay to the Authority such a deposit or provide it with such security,in respect of any liability which the relevant person has, or may in future have, by virtue of paragraph (a);
 - (c) provision requiring the owner of a regulated asset, in a case where a transitional tender exercise has been held, to make a payment of a prescribed amount to the Authority in respect of any costs incurred by the Authority in connection with any assessment of the costs which have been, or ought to have been, incurred in connection with that asset;
 - (d) provision about the times at which payments are to be made under regulations made by virtue of paragraph (a) or (c) or deposits or other forms of security are to be provided under regulations made by virtue of paragraph (b);
 - (e) provision about—
 - (i) the circumstances in which a payment made in accordance with regulations made by virtue of paragraph (a) is to be repaid (wholly or in part);

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- (ii) the circumstances in which such a repayment is to include an amount representing interest accrued on the whole or part of the payment;
 - (iii) the circumstances in which a deposit (including any interest accrued on it) or other security provided in accordance with regulations made by virtue of paragraph (b) is to be released or forfeited (wholly or in part);
 - (f) provision about the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of this subsection, and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (2) The persons within this subsection, in relation to a tender exercise, are—
- (a) the person who made the connection request for the purposes of which the tender exercise has been, is being or is to be, held;
 - (b) any person who submits an application for the offshore transmission licence to which the tender exercise relates.
- (3) For the purposes of subsection (2)(a) a person makes a connection request when the person—
- (a) makes an application to the holder of a co-ordination licence (in accordance with any provision made by the licence) for an offer of connection to and use of a transmission system, or
 - (b) before the coming into force of section 180 of the Energy Act 2004 (meaning of “high voltage line”), makes an application to the holder of a distribution licence (in accordance with any provision made by the licence) for an offer of connection to and use of a system in circumstances where the application is for connection to and use of that system by a system—
 - (i) which was a distribution system at the time the application was made (or would have been had it been in existence at that time), and
 - (ii) which consists (wholly or mainly) of electric lines of a nominal voltage of 132 kilovolts.
- (4) A person (“P”) is to be treated as within subsection (2)(a) if—
- (a) P would have made the connection request, but for the fact that another person had already made an application within subsection (3) (a) or (b), and
 - (b) the benefit of that application, or any agreement resulting from it, is vested in P.
- (5) Where regulations are made by virtue of subsection (1)(a) or (b), regulations made by virtue of subsection (1)(e) must ensure that, as soon as reasonably practicable after a tender exercise is finished, steps are taken by the Authority, in accordance with the regulations, to ensure that the aggregate of—
- (a) any fees under section 6A(2) in respect of applications for the offshore transmission licence to which the tender exercise relates,
 - (b) any payments made in accordance with regulations made by virtue of subsection (1)(a) and not repaid, and
 - (c) the value of any security forfeited in accordance with regulations made by virtue of subsection (1)(e)(iii),

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does not exceed the Authority's tender costs.

- (6) Where regulations under section 6C—
- (a) restrict the making of applications for offshore transmission licences, or
 - (b) operate so as to prevent an application from being considered or further considered, if the applicant does not meet one or more prescribed requirements,

such regulations may make provision enabling a person to apply to the Authority for a decision as to the effect of any such restriction or requirement if the person were to make an application for such a licence.

- (7) Regulations made by virtue of subsection (6) may enable the Authority to charge a person who makes such an application a prescribed fee for any decision given in response to it.

- (8) In this section—

“co-ordination licence” means a transmission licence which authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system—

- (a) by means of which the transmission of electricity takes place, and
- (b) the whole or a part of which is at a relevant place (within the meaning of section 4(5));

“offshore transmission licence” has the same meaning as in section 6C;

“prescribed” has the same meaning as in that section;

“regulated asset”, in relation to a tender exercise, means an asset which the person granted the offshore transmission licence requires in order to enable that person to comply with the obligations under the licence;

“successful bidder”, in relation to a tender exercise, means the person to whom, as a result of that exercise, the offshore transmission licence has been, or is to be, granted;

“tender costs”, in relation to a tender exercise, means—

- (a) any costs incurred or likely to be incurred by the Authority for the purposes of the exercise, and
- (b) such proportion as the Authority considers appropriate of the costs which—
 - (i) have been, or are likely to be, incurred by it under or for the purposes of section 6C or of regulations under that section, and
 - (ii) are not directly attributable to a particular tender exercise;

“tender exercise” means the steps taken in accordance with regulations under section 6C with a view to determining to whom a particular offshore transmission licence is to be granted;

“transitional tender exercise” means a tender exercise in relation to which paragraph 1(1) of Schedule 2A applies.

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- (9) Any sums received by the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund.

6E Property schemes in respect of offshore transmission licences

Schedule 2A (which provides for property schemes in connection with grants of offshore transmission licences) shall have effect.”

- (3) In section 64 (interpretation of Part 1), after subsection (1) insert—

“(1A) An electric line is a relevant offshore line for the purposes of the definition in subsection (1) of “high voltage line” if—

- (a) it is wholly or partly in an area of GB internal waters, an area of the territorial sea adjacent to the United Kingdom or an area designated under section 1(7) of the Continental Shelf Act 1964, and
- (b) it is—
 - (i) used to convey electricity to a place in Scotland, or
 - (ii) constructed wholly or mainly for the purpose of conveying, to any other place, electricity generated by a generating station situated in an area mentioned in paragraph (a).

(1AA) In subsection (1A)(a) “GB internal waters” means waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea adjacent to Great Britain, but do not form part of that territorial sea.”

- (4) Before Schedule 3 insert the Schedule set out in Schedule 2 (property schemes).

Commencement Information

I48 S. 44(1)(2)(4) in force at 20.5.2009 by [S.I. 2009/1270](#), [art. 2](#)

I49 S. 44(3) in force at 29.7.2010 for specified purposes by [S.I. 2010/1888](#), [art. 2\(1\)](#)

I50 S. 44(3) in force at 10.6.2014 in so far as not already in force by [S.I. 2014/1461](#), [art. 2\(a\)](#)

PART 3

DECOMMISSIONING OF ENERGY INSTALLATIONS

CHAPTER 1

NUCLEAR SITES: DECOMMISSIONING AND CLEAN-UP

Funded decommissioning programmes

45 Duty to submit a funded decommissioning programme

- (1) This section applies where, on or after the day on which this section comes into force, a person applies for a nuclear site licence in respect of a site to which subsection (2) applies.

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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- (2) This subsection applies to—
- (a) a site on which the person intends to construct a nuclear installation for a purpose for which a licence under section 6(1)(a) of the Electricity Act 1989 (c. 29) or Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I.)) (generating licences) is required, and
 - (b) a site to which this section previously applied by virtue of paragraph (a) and on which the person intends to operate a nuclear installation which was constructed for such a purpose.
- (3) The person must—
- (a) give written notice of the application to the Secretary of State, and
 - (b) prepare and submit to the Secretary of State a funded decommissioning programme.
- (4) A funded decommissioning programme is a programme which—
- (a) makes provision for the technical matters, and
 - (b) specifies how the implementation of that provision, so far as it relates to the designated technical matters, is to be financed.
- (5) The technical matters, in relation to a site, are—
- (a) the treatment, storage, transportation and disposal of hazardous material (within the meaning of section 37 of the Energy Act 2004 (c. 20)) during the operation of a nuclear installation on the site,
 - (b) the decommissioning of any relevant nuclear installation and the cleaning-up of the site, and
 - (c) activities preparatory to the matters mentioned in paragraph (b);
- and for the purposes of paragraph (a) a nuclear installation is not to be regarded as being operated at a time when it is being decommissioned.
- (6) The designated technical matters, in relation to a site, are—
- (a) such of the matters within subsection (5)(a) or (c) as are specified by the Secretary of State by order, and
 - (b) the matters within subsection (5)(b).
- (7) The funded decommissioning programme must, in particular, contain—
- (a) details of the steps to be taken under the programme in relation to the technical matters,
 - (b) estimates of the costs likely to be incurred in connection with the designated technical matters, and
 - (c) details of any security to be provided in connection with those costs.
- (8) A person who submits a programme must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect of the costs mentioned in subsection (9), at a time determined in accordance with such regulations.
- (9) The costs are those incurred by the Secretary of State in relation to the consideration of the programme, including, in particular, the costs of obtaining advice in relation to—
- (a) the programme, or
 - (b) information required in relation to the programme in accordance with section 52(4).

*Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
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Commencement Information

I51 S. 45 in force at 6.4.2009 by S.I. 2009/45, art. 4(b)(i)

[^{F58} 45A Costs incurred in considering proposed programmes

- (1) A person who informs the Secretary of State of a proposal to submit a funded decommissioning programme under section 45 must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect of the costs mentioned in subsection (2), at a time determined in accordance with such regulations.
- (2) The costs are those incurred by the Secretary of State in relation to the consideration of the proposed programme (or any particular aspect of it), including, in particular, the costs of obtaining advice in relation to it.]

Textual Amendments

F58 S. 45A inserted (E.W. N.I.) (18.2.2014) by Energy Act 2013 (c. 32), ss. 149(2), 156(2)

46 Approval of a programme

- (1) The Secretary of State may approve or reject a funded decommissioning programme submitted under section 45 in respect of a site.
 - (2) The Secretary of State may approve a programme—
 - (a) with or without modifications, and
 - (b) unconditionally or subject to conditions.
 - (3) A modification under subsection (2) may, in particular, impose obligations, or additional obligations, on a body corporate associated with the person who submitted the programme.
- [^{F59}(3A) When approving a programme the Secretary of State may agree to exercise, or not to exercise, the section 48 power—
- (a) in a particular manner;
 - (b) within a particular period.
- (3B) An agreement under subsection (3A) may subsequently be amended by the Secretary of State and the other party to the agreement.
- (3C) The Secretary of State may not make such an agreement or amend such an agreement unless satisfied that the agreement (or the agreement as amended) includes adequate provision for the modification of the programme in the event that the provision made by it for the technical matters (including the financing of the designated technical matters) ceases to be prudent.
- (3D) Provision in such an agreement (including the provision mentioned in subsection (3C)) may include provision—
- (a) for a determination by a third party in relation to a relevant matter specified in the agreement, and
 - (b) for the Secretary of State to be bound by such a determination.

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- (3E) A “relevant matter” is a matter relating to the provision made by the programme for the technical matters.
- (3F) Subsections (3A) to (3D) apply notwithstanding that the agreement or amendment fetters the Secretary of State's discretion.
- (3G) In subsection (3A) “ section 48 power ” means the power of the Secretary of State under section 48 to propose a modification of the programme or a modification of the conditions to which the approval of the programme is subject.]
- [^{F60}(3H) Where the Secretary of State makes or amends an agreement under subsection (3A), or it is proposed that such an agreement be made or amended, the site operator must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect of the costs mentioned in subsection (3I), at a time determined in accordance with such regulations.
- (3I) The costs are those incurred by the Secretary of State in relation to the consideration of the agreement or amendment, including, in particular, the costs of obtaining advice in relation to the agreement or amendment.]
- (4) The Secretary of State's powers under subsections (1) to [^{F61}(3B)] must be exercised with the aim of securing that prudent provision is made for the technical matters (including the financing of the designated technical matters).
- (5) Before deciding whether to approve or reject a programme, the Secretary of State must consult each interested body about—
- (a) the programme, and
 - (b) any modification which it is proposed to make, or any condition it is proposed to impose,
- so far as it relates to a function conferred on the interested body by or under an enactment.
- (6) “Interested body” means—
- [^{F62}(a) the Office for Nuclear Regulation,]
 - (b) in relation to a funded decommissioning programme for a site in England and Wales, the Environment Agency, and
 - (c) in relation to a funded decommissioning programme for a site in Northern Ireland, the Department of the Environment for Northern Ireland.
- (7) Before approving a programme with modifications or subject to conditions, the Secretary of State must give the following persons an opportunity to make written representations about the proposed modifications or conditions—
- (a) the site operator;
 - (b) any other person with obligations under the programme;
 - (c) in the case of proposed modifications, any person who would have such obligations were the modifications made.
- (8) The Secretary of State may not reject a programme without informing the site operator of the reasons for doing so.
- (9) The Secretary of State must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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- (10) Where a nuclear site licence has been applied for, but not yet granted, in respect of a site, references in this section to the site operator include references to the person who has applied for a nuclear site licence in respect of the site.

Textual Amendments

- F59** S. 46(3A)-(3G) inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 106(2)**, 121(3)
F60 S. 46(3H)(3I) inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 149(3)**, 156(2)
F61 Word in s. 46(4) substituted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 106(3)**, 121(3)
F62 S. 46(6)(a) substituted (1.4.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(1), **Sch. 12 para. 96**; S.I. 2014/251, art. 4

Commencement Information

- I52** S. 46 in force at 6.4.2009 by [S.I. 2009/45](#), **art. 4(b)(i)**

47 Prohibition on use of site in absence of approved programme

- (1) This section applies where a person is required to submit a programme under section 45 by reason of an application made for a nuclear site licence in respect of a site.
- (2) It is an offence for the person to use or permit another person to use the site, by virtue of the licence, at a time when there is no programme submitted in accordance with that requirement and approved under section 46.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

Commencement Information

- I53** S. 47 in force at 6.4.2009 by [S.I. 2009/45](#), **art. 4(b)(i)**

Modification of approved programmes

48 Modification of approved programme

- (1) Where the Secretary of State has approved a funded decommissioning programme in respect of a site, a person mentioned in subsection (2) may—
- (a) propose a modification of the programme, or
 - (b) propose a modification of the conditions to which the approval of the programme is subject.
- (2) Those persons are—
- (a) the Secretary of State,
 - (b) the site operator, and
 - (c) any other person who has obligations under the programme (provided that the site operator consents to the proposed modification).

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
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- (3) A proposal under subsection (1) may, in particular, propose—
- (a) that obligations, or additional obligations, be imposed on a body corporate associated with the site operator, or
 - (b) the removal of obligations imposed on a body corporate which is or was so associated.
- (4) In subsection (1)(b) “modification of the conditions” includes the imposition of conditions where the programme was approved unconditionally.

Commencement Information

I54 S. 48 in force at 6.4.2009 by S.I. 2009/45, art. 4(b)(i)

49 Procedure for modifying approved programme

- (1) This section applies in relation to a proposal for the modification of an approved funded decommissioning programme, or of the conditions, under section 48 (but is subject to regulations under section 50).
- (2) The proposal must be made by notice in writing given—
- (a) if the proposal is made by the Secretary of State, to the site operator, and
 - (b) in any other case, to the Secretary of State.
- (3) Where a proposal is made,^[F63] or advice is sought from the Secretary of State about the making of a proposal,] the site operator must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect of the costs mentioned in subsection (4), at a time determined in accordance with such regulations.
- (4) The costs are those incurred by the Secretary of State in relation to the consideration of the proposal^[F64] (or the making of a proposal)], including, in particular, the costs of obtaining advice in relation to—
- (a) the proposal, or
 - (b) information required in relation to the proposal in accordance with section 52(4).
- (5) Where the Secretary of State makes the proposal, the following persons must be given the opportunity to make written representations about the proposal—
- (a) the site operator;
 - (b) any other person with obligations under the programme;
 - (c) any person who would have such obligations if the proposed modification were made.
- (6) The Secretary of State must—
- (a) decide whether the proposed modification is to be made, and
 - (b) give notice of the decision, and the reasons for it, to every person who has obligations under the approved funded decommissioning programme, and
 - (c) if the decision is to make the modification, give such notice to any other person who will have such obligations by reason of the modification.

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- (7) The Secretary of State's power under subsection (6)(a) must be exercised with the aim of securing that prudent provision is made for the technical matters (including the financing of the designated technical matters).
- (8) Before deciding whether the proposed modification is to be made, the Secretary of State must consult each interested body (within the meaning of section 46(6)) in so far as the modification relates to a function conferred on the interested body by or under an enactment.

Textual Amendments

F63 Words in s. 49(3) inserted (18.2.2014) by Energy Act 2013 (c. 32), ss. 149(4)(a), 156(2)

F64 Words in s. 49(4) inserted (18.2.2014) by Energy Act 2013 (c. 32), ss. 149(4)(b), 156(2)

Modifications etc. (not altering text)

C2 S. 49 excluded (4.3.2013) by The Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2013 (S.I. 2013/126), regs. 1, 11

Commencement Information

I55 S. 49 in force at 6.4.2009 by S.I. 2009/45, art. 4(b)(i)

50 Power to disapply section 49

- (1) The Secretary of State may make regulations disapplying section 49 in relation to modifications which—
- (a) are proposed by a person within section 48(2) (other than the Secretary of State), and
 - (b) are of a description specified by the regulations.
- (2) Before making regulations under subsection (1), the Secretary of State must consult—
- [^{F65}(a) the Office for Nuclear Regulation,]
 - (b) the Environment Agency, and
 - (c) the Department of the Environment for Northern Ireland,
- in so far as the regulations relate to a function conferred on the body by or under an enactment.
- (3) The regulations may, in particular—
- (a) describe a modification by reference to its financial consequences;
 - (b) specify that, in determining whether a modification is of a specified description or not, the cumulative financial effect of all modifications, or all modifications of a specified class, within a specified period is to be taken into account.
- (4) In the case of a modification to which the regulations apply, the site operator must give notice of the modification to the Secretary of State in such manner as may be specified in the regulations.

Textual Amendments

F65 S. 50(2)(a) substituted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), Sch. 12 para. 97; S.I. 2014/251, art. 4

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Commencement Information

I56 S. 50 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

51 Time when modification takes effect

- (1) This section applies where, in the case of an approved funded decommissioning programme, a modification is made of the programme or of the conditions to which its approval is subject.
- (2) The modification does not take effect until the relevant time, and from that time this Chapter has effect—
 - (a) in the case of a modification of the programme, as if the programme had been approved by the Secretary of State under section 46 in the modified form;
 - (b) in the case of a modification of the conditions to which the approval of the programme is subject, as if the Secretary of State had approved the programme under that section subject to the modified conditions.
- (3) “The relevant time” means—
 - (a) in the case of a modification to which section 49 applies, the time specified in the notice given under section 49(6)(b) of the Secretary of State's decision that the modification is to be made, and
 - (b) in the case of a modification to which regulations under section 50 apply, the time specified in the notice of the modification given to the Secretary of State in accordance with section 50(4).
- (4) The time specified in a notice, as mentioned in subsection (3)(a) or (b), must not be earlier than the time the notice is given.

Commencement Information

I57 S. 51 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

Information

52 Provision of information and documents

- (1) This section applies where either Condition A or Condition B is satisfied.
- (2) Condition A is that a funded decommissioning programme has been submitted to the Secretary of State under section 45 and the Secretary of State has not yet decided whether to approve or reject it.
- (3) Condition B is that—
 - (a) a modification of a programme, or of the conditions subject to which a programme is approved, has been proposed in accordance with section 48,
 - (b) the modification is not one to which regulations under section 50(1) apply, and
 - (c) the Secretary of State has not yet decided whether the modification should be made.
- (4) The Secretary of State may by notice in writing require a person within subsection (5) —

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- (a) to produce documents, or documents of a description, specified in the notice, or
 - (b) to provide information, or information of a description, specified in the notice.
- (5) Those persons are—
- (a) the site operator;
 - (b) any other person with obligations under the programme;
 - (c) in a case where Condition A is satisfied, any body corporate associated with the site operator and in relation to which the Secretary of State is considering making a modification under section 46 which, if made, would result in the body corporate having obligations under the programme;
 - (d) in a case where Condition B is satisfied, any person who would have such obligations if the proposed modification were made.
- (6) A notice under subsection (4)—
- (a) must specify the period within which the documents or information are to be provided or produced;
 - (b) may, in the case of information, require it to be provided in a manner or form specified in the notice.
- (7) This section applies only to information and documents the provision or production of which the Secretary of State considers necessary for the purpose of making the decision referred to in subsection (2) or (3).
- (8) If at any time it appears to the Secretary of State that a person has failed to comply with a notice under subsection (4), the Secretary of State may make an application to the High Court under this section.
- (9) If, on an application under this section, the High Court decides that the person has failed to comply with the notice, it may order the person to take such steps as it directs for securing that the notice is complied with.
- (10) Where a nuclear site licence has been applied for, but not yet granted, in respect of a site, references in this section to the site operator include references to the person who has applied for a nuclear site licence in respect of the site.

Commencement Information

I58 S. 52 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

53 Power to review operation of programme

- (1) This section applies where a funded decommissioning programme has been approved by the Secretary of State in relation to a site under section 46.
- (2) The Secretary of State may by notice in writing require information relating to the operation of the programme from—
- (a) the site operator;
 - (b) any other person who has obligations under the programme.
- (3) A notice under subsection (2) may be given only for the purpose of enabling the Secretary of State to determine—
- (a) whether the programme is being complied with;

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- (b) whether it will be possible for obligations under the programme arising at a future date to be complied with;
 - (c) whether the programme makes prudent provision for the technical matters (including the financing of the designated technical matters).
- (4) Subsection (5) applies if the Secretary of State has reason to believe (whether as a result of information obtained under this section or otherwise)—
- (a) that the programme is not being complied with,
 - (b) that it will not be possible for an obligation under the programme arising at a future date to be complied with, or
 - (c) that the programme does not make prudent provision for the matters mentioned in subsection (3)(c).
- (5) The Secretary of State may by notice in writing require information from—
- (a) the site operator,
 - (b) any other person who has obligations under the programme, or
 - (c) any body corporate associated with the site operator,
- for the purpose of enabling the Secretary of State to determine whether to make a proposal, or the nature of any proposal to be made, under section 48 in respect of the programme.
- (6) Where a notice under subsection (2) or (5) has been given, the Secretary of State may require the site operator to pay to the Secretary of State such fee in respect of costs incurred by the Secretary of State in obtaining advice in relation to the information as may be determined in accordance with regulations under section 54.
- (7) A fee under subsection (6) must be paid at a time determined in accordance with regulations under section 54.
- (8) If at any time it appears to the Secretary of State that a person has failed to comply with a notice under subsection (2) or (5), the Secretary of State may make an application to the High Court under this section.
- (9) If, on an application under this section, the High Court decides that the person has failed to comply with the notice, it may order the person to take such steps as it directs for securing that the notice is complied with.

Commencement Information

I59 S. 53 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

Regulations and guidance

54 Nuclear decommissioning: regulations and guidance

- (1) The Secretary of State may make regulations about—
- (a) the preparation, content and implementation of funded decommissioning programmes,
 - (b) the modification of funded decommissioning programmes under sections 48 to 51, and

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- (c) the modification, under those sections, of the conditions subject to which funded decommissioning programmes are approved.
- (2) Regulations under this section may, in particular, make provision—
- (a) about the technical matters in relation to sites to which section 45(2) applies;
 - (b) about the estimation of the costs likely to be incurred in connection with the designated technical matters in relation to such sites, and about the manner in which such estimates are to be verified (which may include provision requiring verification by an independent third party);
 - (c) about the financing of those designated technical matters, including the security to be provided for the performance of obligations imposed in respect of those matters by virtue of programmes and the establishment and maintenance, for the purposes of such security, of trusts or other arrangements to hold and accumulate funds;
 - (d) about payments to a site operator or another person from funds so held or accumulated;
 - (e) for information prescribed, or of a description prescribed, by the regulations to be supplied to the Secretary of State by persons with obligations under programmes at such intervals, or on such occasions, as may be so prescribed;
 - (f) enabling the Secretary of State to charge a fee to a site operator in order to recover the costs of obtaining advice in relation to information supplied in accordance with regulations under paragraph (e);
 - (g) about how fees payable under this Chapter are to be determined;
 - (h) about when fees payable under this Chapter are to be paid.
- (3) Regulations under this section may include provision making it an offence to contravene specified provisions of the regulations.
- (4) Where regulations under subsection (3) create an offence, they must also make provision as to the mode of trial and punishment of offences; but—
- (a) any provision as to punishment on summary conviction must not authorise a fine exceeding the statutory maximum or imprisonment, and
 - (b) any provision as to punishment on conviction on indictment must not authorise imprisonment for a term exceeding 2 years.
- (5) The Secretary of State may publish guidance about the preparation, content, modification and implementation of funded decommissioning programmes (including any matter mentioned in subsection (2)(a) to (e)).
- (6) The Secretary of State must publish guidance about factors which it may be appropriate to consider in deciding whether or not—
- (a) to approve a programme,
 - (b) to approve a programme with modifications or subject to conditions, or
 - (c) to make a proposed modification to a programme or the conditions subject to which it is approved.
- (7) When making a decision of a kind mentioned in subsection (6), the Secretary of State must have regard to the guidance for the time being in force under this section.
- (8) Before making regulations or publishing guidance under this section, the Secretary of State must consult—
- [^{F66}(a) the Office for Nuclear Regulation,]

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- (b) the Environment Agency, and
 - (c) the Department of the Environment in Northern Ireland,
- in so far as the regulations or guidance relate to functions conferred on them by or under an enactment.
- (9) Subsection (8) may be satisfied by consultation before, as well as by consultation after, the commencement of this section or the passing of this Act.
 - (10) The Secretary of State must lay before Parliament a copy of any guidance published under this section.
 - (11) Guidance under this section may make different provision for different cases or circumstances.

Textual Amendments

F66 S. 54(8)(a) substituted (1.4.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(1), [Sch. 12 para. 98](#); [S.I. 2014/251](#), art. 4

Commencement Information

I60 S. 54 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

55 Funded decommissioning programmes: verification of financial matters

- (1) Regulations under section 54 may make provision enabling the Secretary of State to rely, in specified circumstances, on verification of financial matters by an independent third party.
- (2) Regulations may, in particular, provide that for the purposes of the Secretary of State's functions under this Chapter, the Secretary of State may—
 - (a) rely on estimates of costs verified by an independent third party in accordance with the regulations;
 - (b) rely on an independent third party's assessment of the prudence or otherwise of any provision made for the financing of the designated technical matters.

Commencement Information

I61 S. 55 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

Protection of decommissioning funds

56 Protection of security under approved programme

- (1) This section applies where, in relation to a site to which section 45 applies, any security for the performance of obligations relating to the designated technical matters has been provided by a person (“the security provider”) by way of a trust or other arrangements, in accordance with an approved funded decommissioning programme.
- (2) In this section a reference to “the protected assets” is a reference to the security and any property or rights in which it consists.

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- (3) In this section “security” includes—
- (a) a charge over a bank account or any other asset;
 - (b) a deposit of money;
 - (c) a performance bond or guarantee;
 - (d) an insurance policy;
 - (e) a letter of credit.
- (4) The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider's insolvency or otherwise) is to be determined in accordance with the trust or other arrangements.
- (5) For the purposes of subsection (4), no regard is to be had to so much of the Insolvency Act 1986 (c. 45), the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would—
- (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or
 - (b) prevent or restrict their enforcement for the purposes of being so applied.

Commencement Information

I62 S. 56 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

Enforcement

57 Offence to fail to comply with approved programme

- (1) It is an offence for a site operator or a body corporate associated with a site operator (a “relevant person”) to fail to comply with an obligation imposed on the relevant person by an approved funded decommissioning programme in respect of the site.
- (2) In proceedings against a person for an offence under this section, it is a defence for the person to prove that due diligence was exercised to avoid committing the offence.
- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

Commencement Information

I63 S. 57 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

58 Secretary of State's power of direction

- (1) This section applies where—
 - (a) a person fails to comply with an obligation imposed on the person by an approved funded decommissioning programme, or

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- (b) a person on whom obligations are imposed by such a programme has engaged in unlawful conduct which the Secretary of State thinks may affect the programme.
- (2) In this section—
- “the defaulter” means a person to whom subsection (1)(a) or (b) applies, and
- “unlawful conduct” means conduct which is unlawful under the criminal law of a part of the United Kingdom.
- (3) A person has engaged in unlawful conduct for the purposes of subsection (1) if—
- (a) the person has been found guilty of the unlawful conduct by a court in a part of the United Kingdom,
- (b) the period for an appeal against the conviction has expired, and
- (c) if an appeal has been made, it has been withdrawn or finally determined.
- (4) The Secretary of State may direct the defaulter to take steps which the Secretary of State considers necessary or appropriate to comply with the obligation or remedy the effects of the unlawful conduct.
- (5) Before giving a direction under subsection (4), the Secretary of State must consult each interested body (within the meaning of section 46(6)) in so far as the direction relates to a function conferred on the interested body by or under an enactment.
- (6) If at any time it appears to the Secretary of State that the defaulter has failed to comply with a direction under subsection (4), the Secretary of State may make an application to the High Court under this section.
- (7) If, on an application under this section, the High Court decides that the defaulter has failed to comply with the direction, it may order the defaulter to take such steps as it directs for securing that the direction is complied with.

Commencement Information

I64 S. 58 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

59 Offence of further disclosure of information

- (1) A person who discloses information obtained by virtue of a notice under section 52(4) or 53(2) or (5), or regulations under section 54(2)(e), is guilty of an offence unless the disclosure is permitted by this section.
- (2) The disclosure is permitted if—
- (a) it is made with the consent of the person by or on behalf of whom the information was provided;
- (b) it is made under section 63 or for the purposes of any other function of the Secretary of State under this Chapter;
- (c) it is a disclosure of information obtained under section 63 by ^{F67}the Office for Nuclear Regulation] and it is made by ^{F68}the Office for Nuclear Regulation] for the purposes of its functions under the Nuclear Installations Act 1965 (c. 57);

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- (d) it is a disclosure of information obtained under that section by the Environment Agency or the Department of the Environment for Northern Ireland and it is made by the Agency or Department for the purposes of its functions under [F69the Radioactive Substances Act 1993 (c. 12)][F69the Environmental Permitting (England and Wales) Regulations 2010 in relation to radioactive material and radioactive waste within the meaning of those Regulations];
 - (e) it is required by or under an enactment.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

Textual Amendments

- F67** Words in s. 59(2)(c) substituted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 99(a)**; S.I. 2014/251, art. 4
- F68** Words in s. 59(2)(c) substituted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 99(b)**; S.I. 2014/251, art. 4
- F69** Words in s. 59(2)(d) substituted (E.W.) (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), **Sch. 26 para. 19** (with reg. 1(2), Sch. 4)

Commencement Information

- I65** S. 59 in force at 6.4.2009 by S.I. 2009/45, art. 4(b)(i)

60 Offence of supplying false information

- (1) It is an offence for a person, knowingly or recklessly, to supply information which is false or misleading in a material respect to the Secretary of State in response to a requirement under this Chapter.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

Commencement Information

- I66** S. 60 in force at 6.4.2009 by S.I. 2009/45, art. 4(b)(i)

61 Restriction on prosecutions under this Chapter

No proceedings for an offence under this Chapter (including an offence created by regulations under section 54) may be instituted except by the Secretary of State or—

- (a) in England and Wales, the Director of Public Prosecutions, or
- (b) in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
Changes to legislation: Energy Act 2008 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)

Commencement Information

I67 S. 61 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

Miscellaneous

62 Power to apply this Chapter to other nuclear installations

- (1) The Secretary of State may, by order, modify section 45 so that it also applies where, on or after the day on which the order comes into force, a person applies for a nuclear site licence in respect of a site of a description specified in the order.
- (2) The sites which fall within a description specified under subsection (1) must be—
 - (a) sites on which the person intends to construct a nuclear installation for a purpose connected with the generation of electricity, or
 - (b) sites in respect of which an obligation has previously arisen under section 45 by virtue of paragraph (a) and on which the person intends to operate a nuclear installation which was constructed for such a purpose.

Commencement Information

I68 S. 62 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

63 Co-operation with other public bodies

- (1) The Secretary of State may require a body within subsection (2) to provide the Secretary of State with such assistance as that body is reasonably able to give in connection with the performance by the Secretary of State of a function under this Chapter.
- (2) Those bodies are—
 - ^{F70}(a) the Office for Nuclear Regulation;
 - (b) the Environment Agency;
 - (c) the Department of the Environment for Northern Ireland.
- (3) A body within subsection (2) may provide information to the Secretary of State if—
 - (a) the information relates to a person within subsection (5), and
 - (b) the Secretary of State or the body thinks that the information is relevant to a function of the Secretary of State under this Chapter.
- (4) The Secretary of State may provide information to a body within subsection (2) if—
 - (a) the information relates to a person within subsection (5), and
 - (b) the Secretary of State or the body thinks that the information is relevant to a function of the body in relation to the programme.
- (5) The persons are—
 - (a) a site operator, or another person, who has obligations under a funded decommissioning programme (whether or not the programme is approved),
 - (b) a body corporate which is associated with a site operator who has submitted a funded decommissioning programme if—

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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- (i) the Secretary of State is considering making a modification under section 46 which, if made, would result in the body corporate having obligations under the programme, or
 - (ii) a proposal under section 48 has been made for a modification which, if made, would result in the body corporate having obligations under the programme, or
 - (c) in the case of subsection (3) only, a body corporate which is so associated and in relation to which the Secretary of State is considering whether to make a proposal of the kind mentioned in paragraph (b)(ii).
- (6) This section applies despite any statutory or other restriction on the disclosure of information.
- (7) Where a nuclear site licence has been applied for, but not yet granted, in respect of a site, references in this section to the site operator include references to the person who has applied for a nuclear site licence in respect of the site.

Textual Amendments

F70 S. 63(2)(a) substituted (1.4.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(1), [Sch. 12 para. 100](#); [S.I. 2014/251](#), art. 4

Commencement Information

I69 S. 63 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

64 Continuity of obligations

- (1) This section applies where a person (“the former site operator”) ceases to hold a nuclear site licence in respect of a site.
- (2) This Chapter continues to apply to the former site operator as if it were the site operator in relation to the site.
- (3) But the Secretary of State may give notice to the former site operator releasing it from its obligations under—
 - (a) this Chapter, and
 - (b) an approved funded decommissioning programme in respect of the site.
- (4) A notice under subsection (3)—
 - (a) may relate to all the former site operator's obligations or only to specified obligations;
 - (b) may relate to the whole or part of a site;
 - (c) may relate to all nuclear installations on a site or only to specified nuclear installations;
 - (d) may be unconditional or subject to conditions.
- (5) The power conferred by subsection (3) applies in relation to any other person with obligations under a programme within subsection (3)(b) as it applies in relation to the site operator.
- (6) This section is without prejudice to the operation of this Chapter in relation to another person who applies for or is granted a nuclear site licence in respect of the site.

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
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Commencement Information

I70 S. 64 in force at 6.4.2009 by S.I. 2009/45, art. 4(b)(i)

^{F71}65 Amendment of Nuclear Installations Act 1965

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Textual Amendments

F71 S. 65 repealed (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), Sch. 12 para. 30; S.I. 2014/251, art. 4

Commencement Information

I71 S. 65 in force at 6.4.2009 by S.I. 2009/45, art. 4(b)(i)

66 Disposal of hazardous material

- (1) Where the Secretary of State enters an agreement for, or in connection with, the disposal of relevant hazardous material by or on behalf of the Secretary of State, the agreement may provide for a fee to be paid to the Secretary of State.
- (2) The Secretary of State may not enter an agreement which provides for the payment of a fee unless the consent of the Treasury has been obtained in relation to the amount of the proposed fee.
- (3) The fee for which such an agreement provides may include—
 - (a) such amount as the Secretary of State considers prudent by reason of any uncertainty which exists about the relevant expenditure which will or may be incurred in connection with the Secretary of State's obligations under the agreement in relation to the relevant hazardous material;
 - (b) an amount in respect of such proportion as the Secretary of State considers appropriate of the aggregate of—
 - (i) the relevant expenditure which has been, will or may be, incurred in connection with the design and construction of a repository in which material (including any hazardous material to which the agreement relates) is to be disposed of, and
 - (ii) such amount as the Secretary of State considers it prudent to make allowance for by reason of any uncertainty which exists about the relevant expenditure which will or may be incurred as mentioned in sub-paragraph (i).

[^{F72}(3A) The Secretary of State may make regulations providing for a person who makes a proposal to the Secretary of State to enter an agreement of the kind mentioned in subsection (1), or proposes an amendment to such an agreement, to pay a fee to the Secretary of State in respect of the costs incurred in relation to the consideration of the proposal, including, in particular, the costs of obtaining advice in relation to it.

- (3B) The regulations may, in particular, make provision about—
- (a) when the fee is to be paid;
 - (b) how the amount of the fee is to be determined.]

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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(4) In this section—

“hazardous material” has the meaning given by section 37 of the Energy Act 2004 (c. 20);

“relevant expenditure” means expenditure incurred by the Secretary of State, the Nuclear Decommissioning Authority or any other person;

“relevant hazardous material” means hazardous material which is, or is required to be, the subject of a funded decommissioning programme.

Textual Amendments

F72 S. 66(3A)(3B) inserted (18.2.2014) by Energy Act 2013 (c. 32), ss. 149(5), 156(2)

Commencement Information

I72 S. 66 in force at 6.4.2009 by S.I. 2009/45, art. 4(b)(i)

General

67 Meaning of “associated”

- (1) For the purposes of this Chapter, one body corporate is associated with another if one of them has a significant interest in the other or a third body corporate has a significant interest in both of them; and subsections (2) to (5) set out the circumstances in which one body corporate (“A”) has a significant interest in another (“B”).
- (2) Where B is a company, A has a significant interest in B if A possesses or is entitled to acquire—
 - (a) 20% or more of the issued share capital of B,
 - (b) such rights as would entitle A to exercise 20% or more of the votes exercisable in general meetings of B,
 - (c) such part of the issued share capital of B as would entitle A to 20% or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
 - (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive 20% or more of the assets of B which would then be available for distribution among the shareholders.
- (3) Where B is a limited liability partnership, A has a significant interest in B if A—
 - (a) holds 20% or more of the voting rights in B,
 - (b) is a member of B and has a right to appoint or remove 20% or more of other members, or
 - (c) is a member of B and controls alone, or pursuant to an agreement with other members, 20% or more of the voting rights in B.
- (4) In subsection (3)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (5) In any case, A has a significant interest in B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
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- (6) In determining whether, by virtue of this section, A has a significant interest in B, A shall be taken to possess—
- (a) any rights and powers possessed by a person as nominee for A, and
 - (b) any rights and powers possessed by a body corporate which A controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).
- (7) In order to determine whether one body corporate controls another for the purposes of subsection (6)(b), subsections (2) to (5) and (6)(a) are to be applied, but as if—
- (a) for “has a significant interest in” in each place there were substituted “controls”, and
 - (b) for “20%” in each place there were substituted “50%”.

Commencement Information

I73 S. 67 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

68 Interpretation

In this Chapter—

“approved funded decommissioning programme” means a funded decommissioning programme approved under section 46;

“cleaning-up” and “decommissioning”, in relation to a site or installation, include the treatment, storage, transportation and disposal of hazardous material (within the meaning of section 37 of the Energy Act 2004) and of other matter and substances that need to be dealt with or removed in or towards making the site or installation suitable to be used for other purposes;

“the designated technical matters” has the meaning given by section 45;

“document” includes anything in which information is recorded in any form;

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament or Northern Ireland legislation;

“funded decommissioning programme” is to be construed in accordance with section 45;

“nuclear installation” has the meaning given by section 26 of the Nuclear Installations Act 1965 (c. 57);

“nuclear site licence” has the meaning given by that section;

“relevant nuclear installation”, in relation to a site, means a nuclear installation which is or is intended to be established on the site;

“site operator” means a person who holds a nuclear site licence in respect of a site;

“the technical matters” has the meaning given by section 45.

Commencement Information

I74 S. 68 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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CHAPTER 2

OFFSHORE RENEWABLES INSTALLATIONS

69 Decommissioning notices relating to offshore renewable energy installations

- (1) The Energy Act 2004 (c. 20) is amended as follows.
- (2) In section 105(2) (notices), for “that person” substitute “—
 - (a) a person falling within subsection (1)(a), (b) or (c), or
 - (b) if a person to whom paragraph (a) applies is a body corporate, a body corporate associated with that person (subject to section 105A).”.
- (3) In section 105(3) (consents) for the words from the beginning to “proposals—” substitute—
 - “(3) Before requiring a person to submit a decommissioning programme in respect of proposals made by a person within paragraph (a) or (b) of subsection (1), the Secretary of State must be satisfied that at least one of the statutory consents required for giving effect to those proposals—”.
- (4) After section 105 (requirement to prepare decommissioning programme) insert—

“105A Section 105 notices: supplemental

- (1) The Secretary of State may not give a notice under section 105(2)(b) to a body corporate associated with a person (“the responsible person”) within section 105(1)(a), (b) or (c) unless the Secretary of State—
 - (a) has given a notice to the responsible person under section 105(2)(a), and
 - (b) is not satisfied that adequate arrangements (including financial arrangements) have been made by the responsible person to ensure that a satisfactory decommissioning programme will be carried out.
- (2) Subsection (1) does not apply if—
 - (a) there has been a failure to comply with a notice under section 105(2), or
 - (b) the Secretary of State has rejected a programme submitted in compliance with such a notice.
- (3) For the purposes of this section and section 105, one body corporate is associated with another if one of them controls the other or a third body corporate controls both of them, and subsections (4) to (8) set out the circumstances in which one body corporate (“A”) controls another (“B”).
- (4) Where B is a company, A controls B if A possesses or is entitled to acquire—
 - (a) one half or more of the issued share capital of B,
 - (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,
 - (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or

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- (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.
- (5) Where B is a limited liability partnership, A controls B if A—
 - (a) holds a majority of the voting rights in B,
 - (b) is a member of B and has a right to appoint or remove a majority of other members, or
 - (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.
- (6) In subsection (5)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (7) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.
- (8) In determining whether, by virtue of subsections (4) to (7), A controls B, A is to be taken to possess—
 - (a) any rights and powers possessed by a person as nominee for it, and
 - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).”
- (5) In section 108 (reviews of decommissioning programmes), after subsection (3) insert—
 - “(3A) A proposal under subsection (3)(b) may, in particular, be made in relation to a body corporate associated with a person who has a duty under section 109(1) (and for this purpose “associated” is to be construed in accordance with section 105A(3) to (8)).”

Commencement Information

I75 S. 69 in force at 6.4.2009 by S.I. 2009/45, art. 4(b)(ii)

70 Security for decommissioning obligations

- (1) After section 110 of the Energy Act 2004 (c. 20) (failure to carry out decommissioning programme) insert—

“110A Protection of funds held for purposes of decommissioning

- (1) This section applies where any security in relation to the carrying out of an approved decommissioning programme, or for compliance with the conditions of its approval, has been provided by a person (“the security provider”) by way of a trust or other arrangements.
- (2) In this section a reference to “the protected assets” is a reference to the security and any property or rights in which it consists.

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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- (3) The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider's insolvency or otherwise) is to be determined in accordance with the trust or other arrangements.
- (4) For the purposes of subsection (3), no regard is to be had to so much of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would—
 - (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or
 - (b) prevent or restrict their enforcement for the purposes of being so applied.
- (5) In subsection (4) “enactment” includes an instrument made under an enactment.

110B Section 110A: supplemental

- (1) The Secretary of State may direct a security provider to publish specified information about the protected assets.
 - (2) A direction under this section may specify—
 - (a) the time when the information must be published, and
 - (b) the manner of publication.
 - (3) If a security provider fails to comply with a direction, the Secretary of State or a creditor of the security provider may make an application to the court under this section.
 - (4) If, on an application under this section, the court decides that the security provider has failed to comply with the direction, it may order the security provider to take such steps as the court directs for securing that the direction is complied with.
 - (5) In this section—

“the protected assets” has the same meaning as in section 110A;
 “security provider” means a person who has provided security in relation to which that section applies.
 - (6) In subsections (3) and (4) references to “the court” are references—
 - (a) to the High Court, in relation to an application in England and Wales or Northern Ireland, or
 - (b) to the Court of Session, in relation to an application in Scotland.”
- (2) In section 114(2) of that Act (interpretation), in the definition of “security” after paragraph (c) insert—
- “(ca) an insurance policy;”.

Commencement Information

I76 S. 70 in force at 6.4.2009 by S.I. 2009/45, art. 4(b)(ii)

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
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71 Provision of information to Secretary of State

After section 112 of the Energy Act 2004 (c. 20) (duty to inform Secretary of State) insert—

“112A Power of Secretary of State to require information and documents

- (1) The Secretary of State may by notice require a person within subsection (2) to provide the Secretary of State with such relevant information or documents as the Secretary of State may require in connection with the exercise of functions under this Chapter.
- (2) Those persons are—
 - (a) a person who has been, or may be, given a notice under section 105(2)(a) in relation to a relevant object,
 - (b) where a person falling within paragraph (a) is a body corporate, a body corporate associated with that person,
 - (c) a person not within paragraph (a) or (b) who by virtue of provision made under section 108(3)(b) is subject to the duty under section 109(1) in relation to a decommissioning programme relating to a relevant object.
- (3) Information or a document is “relevant” if it relates to—
 - (a) the place where the relevant object is or is to be situated,
 - (b) the relevant object,
 - (c) where the recipient of the notice is a body corporate falling within subsection (2)(c) or section 105(2)(a), details of an associated body corporate,
 - (d) the financial affairs of the recipient of the notice or, where the recipient is a body corporate falling within subsection (2)(c) or section 105(1)(a), (b) or (c), an associated body corporate,
 - (e) the security that the recipient proposes to provide in relation to the carrying out of a decommissioning programme relating to the relevant object or for the recipient's compliance with any conditions of the programme's approval, or
 - (f) where the recipient of the notice (“R”) is a body corporate falling within subsection (2)(c) or section 105(1)(a), (b) or (c), the name or address of any person whom R believes to be an associated body corporate.
- (4) But if a notice under subsection (1) requires information in connection with a function of the Secretary of State under section 107(1) or (4), the notice may require the provision of information or documents which the Secretary of State considers are necessary or expedient for the purpose of exercising those functions (whether or not they are of a kind specified in subsection (3)).
- (5) A notice under subsection (1) must specify the documents or information, or the description of documents or information, to which it relates.
- (6) Information or documents required to be provided under this section must be provided within such period as is specified in the notice under subsection (1).
- (7) In this section, “associated”, in relation to a body corporate, is to be construed in accordance with section 105A(3) to (8).

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- (8) A person who fails, without reasonable excuse, to comply with a notice under subsection (1) is guilty of an offence.
- (9) A person who discloses information obtained by virtue of a notice under this section is guilty of an offence unless the disclosure—
 - (a) is made with the consent of the person by or on behalf of whom the information was provided,
 - (b) is for the purpose of the exercise of the Secretary of State's functions under this Chapter, the Electricity Act 1989 or Part 4 of the Petroleum Act 1998, or
 - (c) is required by or under an enactment.”

Commencement Information

I77 S. 71 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(ii\)](#)

CHAPTER 3

OIL AND GAS INSTALLATIONS

72 Persons who may be required to submit abandonment programmes

- (1) Section 30 of the Petroleum Act 1998 (c. 17) (persons who may be required to submit programmes) is amended as follows.
- (2) In subsection (1)—
 - (a) after paragraph (b) insert—
 - “(ba) a person to whom subsection (5)(a) and (b) applied in relation to the installation, but who—
 - (i) transferred the right mentioned in that subsection to another person, and
 - (ii) has not obtained a consent required under the licence in relation to the transfer;”, and
 - (b) in paragraph (e) for “company” in each place substitute “ body corporate ”.
- (3) In subsection (2)(c) for “company” in each place substitute “ body corporate ”.
- (4) For subsection (5)(b) substitute—
 - “(b) either—
 - (i) any activity mentioned in subsection (6) is carried on from, by means of or on the installation, or
 - (ii) the person intends to carry on an activity mentioned in that subsection from, by means of or on the installation.”.
- (5) For subsection (8) substitute—
 - “(8) For the purposes of this section, one body corporate is associated with another if one of them controls the other or a third body corporate controls both of them; and subsections (8A) to (8D) set out the circumstances in which one body corporate (“A”) controls another (“B”).

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- (8A) Where B is a company, A controls B if A possesses or is entitled to acquire—
- (a) one half or more of the issued share capital of B,
 - (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,
 - (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
 - (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.
- (8B) Where B is a limited liability partnership, A controls B if A—
- (a) holds a majority of the voting rights in B,
 - (b) is a member of B and has a right to appoint or remove a majority of other members, or
 - (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.
- (8C) In subsection (8B)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (8D) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.”
- (6) In subsection (9)—
- (a) for “subsection (8)” substitute “ subsections (8) to (8D) ”, and
 - (b) for “company” in each place substitute “ body corporate ”.
- (7) In section 31 of that Act (notices: supplementary provision), before subsection (1) insert—
- “(A1) The Secretary of State may not give a notice under section 29(1) in relation to an offshore installation to a person (“P”) who, in relation to the installation, falls within paragraph (b) or (c) of section 30(1), if—
- (a) P is not entitled to derive, and never has been entitled to derive, any financial or other benefit from any activity within section 30(6)—
 - (i) which has been or is carried on (or is intended to be carried on) from, by means of or on the installation, and
 - (ii) is an activity to which subsection (B1) applies, and
 - (b) P is not, and never has been, a person within section 30(1)(a), (ba), (d) or (e) in relation to the installation.
- (B1) This subsection applies to an activity if—
- (a) where the activity is the exploitation or exploration of mineral resources, it relates to an oil field for which the installation is or is to be established or maintained;
 - (b) where the activity is the conveyance of minerals, the minerals are got, or to be got, from such an oil field;

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- (c) where the activity is the unloading, storage or recovery of gas, it relates to a controlled place (within the meaning of Chapter 2 or 3 of Part 1 of the Energy Act 2008) for which the installation is or is to be established or maintained;
- (d) where the activity is the conveyance of gas being stored or recovered, the storage or recovery of the gas relates to such a controlled place;
- (e) where the activity is within section 30(6)(c)—
 - (i) the installation is in an oil field in respect of which P has an interest, or
 - (ii) the installation is in a controlled place in respect of which P has a licence under Part 1 of the Energy Act 2008.

(C1) For the purposes of subsection (B1)—

- (a) “oil field” means an area which the appropriate authority (within the meaning of paragraph 1(2) of Schedule 1 to the Oil Taxation Act 1975) has determined to be an oil field for the purposes of Part 1 of that Act,
- (b) P has an interest in an oil field if P is entitled to derive, or has at any time been entitled to derive, any financial or other benefit from activities within section 30(6) (other than paragraph (c)) carried on in the field.

(D1) The Secretary of State may not give a notice under section 29(1) in relation to an offshore installation to a body corporate if—

- (a) the body corporate falls within paragraph (e) of section 30(1) (and no other paragraph of that section), and
- (b) the body corporate falls within that paragraph by reason only that it is associated (within the meaning given by section 30(8)) with a person to whom the Secretary of State may not give a notice in relation to the installation by virtue of subsection (A1).”

(8) In section 34 of that Act (revision of programmes), after subsection (3) insert—

“(3A) A proposal that a person who is or has been within paragraph (b) or (c) of section 30(1) is to have a duty to secure that a programme is carried out may not be made if the Secretary of State would be prevented from giving a notice under section 29(1) to the person by virtue of section 31(A1) if the programme had not already been approved under this section.”

Commencement Information

I78 S. 72 in force at 26.1.2009 by [S.I. 2009/45](#), **art. 2(b)(i)**

73 Financial resources etc

(1) Section 38 of the Petroleum Act 1998 (c. 17) (information and notices) is amended as follows.

(2) For subsection (1) substitute—

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
Changes to legislation: Energy Act 2008 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)

- “(1) The Secretary of State may, for a purpose specified in subsection (1A), give a notice to a person within subsection (1B) requiring the person, within a time specified in the notice—
- (a) to provide specified information relating to the person's financial affairs;
 - (b) to supply copies of specified documents, or documents of a specified description, relating to those affairs.
- (1A) Those purposes are—
- (a) determining whether to give a notice under section 29 to a person in respect of an installation or pipeline;
 - (b) determining whether to make a proposal under section 34(1) to impose a duty on a person under section 36;
 - (c) where a person has made such a proposal, determining whether to impose the duty on the person proposed.
- (1B) A person falls within this subsection if—
- (a) a notice under section 29(1) may be given to the person,
 - (b) the person falls within section 34(2)(a) or (b) and the Secretary of State is considering proposing, in accordance with section 34(1)(b), that the person should have a duty under section 36, or
 - (c) the person falls within section 34(2)(a) or (b) and the Secretary of State is considering whether to impose a duty on the person under section 36 in accordance with a proposal made under section 34(1)(b).”

(3) In subsection (2)—

 - (a) for the words from “who has” to “that duty” substitute “ falling within subsection (2A) will be capable of carrying out any abandonment programme which has been submitted (whether or not it is approved) or may be submitted in relation to an installation or pipeline ”, and
 - (b) in paragraph (a) after “information” insert “ (which may relate to the estimated costs of abandonment of the installation or pipeline or to any other financial or other matter) ”.

(4) After that subsection insert—

“(2A) A person falls within this subsection if—

 - (a) a notice under section 29(1) has been given to the person, or
 - (b) the person has a duty under section 36 to secure that an abandonment programme is carried out.”

(5) For subsection (4) substitute—

“(4) The Secretary of State may, after consulting the Treasury, give written notice to a person to whom subsection (4A) applies, requiring the person to take such action as may be specified in the notice within such time as may be so specified.

(4A) This subsection applies to a person if—

 - (a) the person falls within subsection (2A), and

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- (b) the Secretary of State is not satisfied that the person will be capable of carrying out any duty which has been, or is likely to be, imposed on the person by section 36.”

(6) After subsection (6) add—

“(7) It is an offence for a person to disclose information obtained by virtue of a notice under subsection (1) or (2) unless the disclosure—

- (a) is made with the consent of the person by or on behalf of whom the information was provided,
- (b) is for the purpose of the exercise of the Secretary of State's functions under this Part, Chapter 3 of Part 2 of the Energy Act 2004 or Part 1 of the Energy Act 2008, or
- (c) is required by or under an enactment.”

Commencement Information

I79 S. 73 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(b\)\(i\)](#)

74 Protection of abandonment funds from creditors

(1) After section 38 of the Petroleum Act 1998 (c. 17) insert—

“38A Protection of funds set aside for the purposes of abandonment programme

- (1) This section applies where any security for the performance of obligations under an approved abandonment programme has been provided by a person (“the security provider”) by way of a trust or other arrangements.
- (2) Subsection (1) applies whether the security is provided before or after the programme is approved.
- (3) In this section a reference to “the protected assets” is a reference to the security and any property or rights in which it consists.
- (4) In this section “security” includes—
 - (a) a charge over a bank account or any other asset;
 - (b) a deposit of money;
 - (c) a performance bond or guarantee;
 - (d) an insurance policy;
 - (e) a letter of credit.
- (5) The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider's insolvency or otherwise) is to be determined in accordance with the trust or other arrangements.
- (6) For the purposes of subsection (5), no regard is to be had to so much of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would—

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- (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or
 - (b) prevent or restrict their enforcement for the purposes of being so applied.
- (7) In subsection (6) “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament or Northern Ireland legislation.

38B Directions to provide information about protected assets

- (1) The Secretary of State may direct a security provider to publish specified information about the protected assets.
- (2) A direction under this section may specify—
- (a) the time when the information must be published, and
 - (b) the manner of publication.
- (3) If a security provider fails to comply with a direction, the Secretary of State, or a creditor of the security provider, may make an application to the court under this section.
- (4) If, on an application under this section, the court decides that the security provider has failed to comply with the direction, it may order the security provider to take such steps as the court directs for securing that the direction is complied with.
- (5) In this section—
- “court”—
 - (a) in relation to an application in England and Wales or Northern Ireland, means the High Court, and
 - (b) in relation to an application in Scotland, means the Court of Session;
- “security provider” means a person who has provided security in relation to which section 38A applies;
- “the protected assets”, in relation to a security provider, means the security, and any property or rights in which it consists.”
- (2) This section has effect in relation to a trust or other arrangements established on or after 1st December 2007.

Commencement Information

180 S. 74 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(b\)\(i\)](#)

*Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
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 been made appear in the content and are referenced with annotations. (See end of Document for details)*

CHAPTER 4

WELLS

75 Information about decommissioning of wells

- (1) In Part 5 of the Petroleum Act 1998 (c. 17), before section 46 (Northern Ireland and Isle of Man shares of petroleum revenue) insert—

“45A **Abandoned wells**

- (1) This section applies in relation to a person who has drilled, or commenced drilling, a well in pursuance of a petroleum licence or a licence under section 4 of the Energy Act 2008 (gas storage and unloading licences).
- (2) The Secretary of State may give a notice requiring the person—
 - (a) to provide specified information relating to the person's financial affairs, or
 - (b) to supply copies of specified documents, or documents of a specified description, relating to those affairs.
- (3) A notice under subsection (2) must specify the time within which the information or documents must be provided.
- (4) Subsection (5) applies if—
 - (a) the person fails to provide information or documents required by such a notice within the period specified in the notice, or
 - (b) on receiving information or documents required by a notice under subsection (2) the Secretary of State is not satisfied that the person will be capable of plugging and abandoning the well.
- (5) Where this subsection applies the Secretary of State may give the person a notice, after consulting the Treasury, requiring the person to take the action specified in the notice within the time so specified.
- (6) The Secretary of State may not give a notice to a person under subsection (5) without first giving the person an opportunity to make written representations as to whether the notice should be given.
- (7) It is an offence for a person to fail to comply with a notice under subsection (2) or (5) unless it is proved that the person exercised due diligence to avoid the failure.
- (8) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (9) Section 41 (other than subsection (5)) applies in relation to prosecutions for offences under this section as it applies in relation to prosecutions for offences under Part 4.
- (10) In this section—

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“petroleum licence” means a licence under section 2 of the Petroleum (Production) Act 1934 or section 3 above;

“well” includes a borehole.”

- (2) This section applies in relation to any well the drilling of which commences on or after the date on which this section comes into force.

Commencement Information

181 S. 75 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(b\)\(ii\)](#)

PART 4

PROVISIONS RELATING TO OIL AND GAS

Petroleum licences

76 Transfers without the consent of the Secretary of State

After section 5 of the Petroleum Act 1998 (c. 17) (existing licences) insert—

“5A Rights transferred without the consent of Secretary of State

- (1) This section applies if—
- (a) a person is (or two or more persons are) the licensee in respect of a licence under section 2 of the Petroleum (Production) Act 1934 or section 3 above (“the transferor”),
 - (b) the transferor transfers a right granted by the licence, or derived from a right so granted, to another person (“the transferee”) after commencement in circumstances where the consent of the Secretary of State is required for the transfer, and
 - (c) that consent is not obtained.
- (2) The Secretary of State may, by notice given to the transferor and the transferee, direct that the right is to revert to the transferor from a date specified in the notice.
- (3) The date specified must not be earlier than the date on which the notice is given.
- (4) Before giving a notice to a person under subsection (2), the Secretary of State must—
- (a) notify the person of the proposal to give the notice, and
 - (b) give the person a reasonable period within which to make written representations.
- (5) The Secretary of State may not give a notice under subsection (2) after the end of the period of 3 months beginning with the date on which the Secretary of State learns of the transfer.
- (6) In this section—

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“commencement” means the time when this section comes into force;

“transfer” does not include a transfer by way of security for a loan.

5B Information

- (1) The Commissioners for Her Majesty's Revenue and Customs may disclose to the Secretary of State information relating to the transfer of a right granted by a licence under section 2 of the Petroleum (Production) Act 1934 or section 3 above, or derived from a right so granted, for the purpose of enabling the Secretary of State to determine whether a transfer to which section 5A applies has taken place.
- (2) This section applies despite any statutory or other restriction on the disclosure of information.
- (3) Information disclosed under this section must not be further disclosed except—
 - (a) for the purpose mentioned in subsection (1), with the consent (which may be general or specific) of the Commissioners,
 - (b) in pursuance of an order of a court, or
 - (c) with the consent of each person to whom the information relates.
- (4) A person who discloses information contrary to subsection (3) commits an offence if the identity of the person to whom the information relates—
 - (a) is specified in the disclosure, or
 - (b) can be deduced from it.
- (5) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed that—
 - (a) the disclosure was lawful, or
 - (b) the information had already and lawfully been made available to the public.
- (6) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or both, and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

5C Offences under section 5B: supplemental

- (1) No proceedings for an offence under section 5B may be instituted in England and Wales except—
 - (a) by the Director of Revenue and Customs Prosecutions, or
 - (b) with the consent of the Director of Public Prosecutions.
- (2) No proceedings for an offence under section 5B may be instituted in Northern Ireland except—
 - (a) by the Commissioners for Her Majesty's Revenue and Customs, or
 - (b) with the consent of the Director of Public Prosecutions for Northern Ireland.

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
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- (3) In the application of section 5B to Northern Ireland the reference in section 5B(6)(a) to 12 months is to be read as a reference to 6 months.
- (4) In the application of section 5B to England and Wales in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (short sentences) the reference in section 5B(6)(a) to 12 months is to be read as a reference to 6 months.”

Commencement Information

I82 S. 76 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(c\)\(i\)](#)

77 Model clauses of petroleum licences

- (1) Schedule 3 amends the model clauses contained in the instruments specified in that Schedule.
- (2) Where a licence granted under the Petroleum (Production) Act 1934 (c. 36) or the Petroleum Act 1998 (c. 17), and in force immediately before commencement, incorporates model clauses amended by a paragraph of Schedule 3, the licence has effect with the amendments provided for by that paragraph of that Schedule.
- (3) The reference in subsection (2) to model clauses includes model clauses subject to any amendment or modification or with the omission of any model clause.
- (4) Where an amendment made by a paragraph of Schedule 3 confers a power to give a notice requiring the plugging and abandonment of a well, the power may not be exercised in relation to a well the drilling of which began before commencement.
- (5) Where an amendment made by a paragraph of Schedule 3 confers a power of revocation or partial revocation of a licence, that power may not be exercised by reason of an event which takes place before commencement.
- (6) A reference in any document to provisions of a licence which are amended by Schedule 3 is to be construed, unless the nature of the document or the context otherwise requires, as a reference to those provisions as amended.
- (7) A provision inserted in a licence by virtue of Schedule 3 may be altered or deleted by deed executed by the Secretary of State and the licensee or, as respects Scotland, by an instrument subscribed^[F73] or authenticated] by the Secretary of State and the licensee in accordance with the Requirements of Writing (Scotland) Act 1995 (c. 7).
- (8) In this section “commencement”, in relation to a paragraph of Schedule 3, means the time when that paragraph comes into force.

Textual Amendments

F73 Words in [s. 77\(7\)](#) inserted (S.) (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, [Sch. 5 para. 55](#) (with [s. 121](#), [Sch. 4 paras. 13, 16](#)); [S.S.I. 2014/127](#), [art. 2](#)

Commencement Information

I83 S. 77 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(c\)\(ii\)](#)

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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Third party access

78 Third party access to infrastructure

- (1) In section 66(1) of the Pipe-lines Act 1962 (c. 58) (interpretation)—
- (a) in the definition of “gas processing operation”, omit “and” after paragraph (b) and after paragraph (c) insert—
 - “(d) separating, purifying, blending, odourising or compressing gas, for the purpose of—
 - (i) converting it into a form in which a purchaser is willing to accept delivery from a seller, or
 - (ii) enabling it to be loaded for conveyance to another place (whether inside or outside Great Britain); and
 - (e) loading gas—
 - (i) at a facility which carries out operations of a kind mentioned in paragraph (d), or
 - (ii) piped from such a facility,
 for the purpose of enabling the gas to be conveyed to another place (whether inside or outside Great Britain);”,
 - (b) in the definition of “terminal”, omit “and” after paragraph (b) and after paragraph (c) insert “; and
 - (d) oil processing facilities (within the meaning given by section 81(8) of the Energy Act 2008);”, and
 - (c) in the definition of “upstream petroleum pipe-line” after paragraph (c) insert — “including all apparatus, works and services associated with the operation of such a pipe-line or network.”
- (2) In section 12 of the Gas Act 1995 (c. 45) (rights to use gas processing facilities)—
- (a) in subsection (6), in the definition of “gas processing operation”, omit “and” at the end of paragraph (b) and after paragraph (c) insert—
 - “(d) separating, purifying, blending, odourising or compressing gas for the purpose of—
 - (i) converting it into a form in which a purchaser is willing to accept delivery from a seller, or
 - (ii) enabling it to be loaded for conveyance to another place (whether inside or outside Great Britain); and
 - (e) loading gas—
 - (i) at a facility which carries out operations of a kind mentioned in paragraph (d), or
 - (ii) piped from such a facility,
 for the purpose of enabling the gas to be conveyed to another place (whether inside or outside Great Britain);”, and
 - (b) for subsection (7) substitute—
 - “(7) For the purposes of this section “associate”, in relation to the owner of a gas processing facility, is to be construed in accordance with section 82 of the Energy Act 2008 (and for this purpose the reference in subsection (1) of that section to the owner of an oil processing facility is to be read as a reference to the owner of a gas processing facility).”

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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- (3) In section 26 of the Petroleum Act 1998 (c. 17) (meaning of “pipeline”)—
- (a) in subsection (1) for “any apparatus and works associated with such a pipe or system” substitute “ all apparatus, works and services associated with the operation of such a pipe or system ”, and
 - (b) omit subsection (2).
- (4) In section 28 of that Act (interpretation of Part 3)—
- (a) in the definition of “gas processing operation”, omit “and” after paragraph (b) and after paragraph (c) insert—
 - “(d) separating, purifying, blending, odourising or compressing gas, for the purpose of—
 - (i) converting it into a form in which a purchaser is willing to accept delivery from a seller, or
 - (ii) enabling it to be loaded for conveyance to another place (whether inside or outside Great Britain); and
 - (e) loading gas—
 - (i) at a facility which carries out operations of a kind mentioned in paragraph (d), or
 - (ii) piped from such a facility,for the purpose of enabling the gas to be conveyed to another place (whether inside or outside Great Britain);”
 - (b) after the definition of “notice” insert—
 - ““oil processing facility” means any facility in Great Britain, the territorial sea adjacent to the United Kingdom or the sea in any area designated under section 1(7) of the Continental Shelf Act 1964 which carries out oil processing operations;
 - “oil processing operations” means any of the following operations—
 - (a) initial blending and such other treatment of petroleum as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;
 - (b) receiving stabilised crude oil and other hydrocarbon liquids piped from an oil processing facility carrying out operations of a kind mentioned in paragraph (a), or storing oil or other hydrocarbon liquids so received, prior to their conveyance to another place (whether inside or outside Great Britain);
 - (c) loading stabilised crude oil and other hydrocarbon liquids piped from a facility carrying out operations of a kind mentioned in paragraph (a) or (b) for conveyance to another place (whether inside or outside Great Britain);”
 - (c) in the definition of “terminal”, after paragraph (a) insert—
 - “(aa) oil processing facilities;”

Commencement Information

184 S. 78 in force at 6.4.2009 by S.I. 2009/45, art. 4(c)

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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79 Modification of pipelines

- (1) The Pipe-lines Act 1962 (c. 58) is amended as follows.
- (2) After section 10F (reducing necessity for constructing additional pipelines) insert—

“10G Compulsory modifications of pipe-lines

- (1) In the case of an upstream petroleum pipe-line, the Secretary of State may, on the application of a person other than the owner, give a notice (a “pipe-line modification notice”) to the applicant and the owner.
- (2) The Secretary of State may give a pipe-line modification notice only if the Secretary of State is satisfied—
 - (a) that the capacity of the pipe-line can and should be increased by modifying the apparatus and works associated with the pipe-line, or
 - (b) that the pipe-line can and should be modified by installing in it a junction through which another pipe-line may be connected to the pipe-line.
- (3) A pipe-line modification notice must—
 - (a) specify the modifications which the Secretary of State thinks should be made,
 - (b) specify the sums, or the method of determining the sums, which the Secretary of State thinks should be paid to the owner by the applicant for the purpose of defraying the cost of the modifications,
 - (c) require the applicant to make such arrangements as the Secretary of State thinks appropriate to secure that those sums will be paid to the owner if the owner carries out the modifications or satisfies the Secretary of State that they will be carried out,
 - (d) specify the period within which the applicant must make the arrangements mentioned in paragraph (c),
 - (e) require the owner, if the applicant makes the arrangements mentioned in paragraph (c) within the period specified under paragraph (d), to carry out the modifications within a period specified in the notice, and
 - (f) authorise the owner to recover the sums mentioned in paragraph (b) from the applicant if the works are carried out or the Secretary of State is satisfied that they will be carried out.
- (4) Before giving a pipe-line modification notice, the Secretary of State must give the owner of the pipe-line an opportunity to be heard.
- (5) References in this section to modifications include, in the case of apparatus and works, references to changes in, substitutions for and additions to the apparatus and works.
- (6) This section does not apply in relation to a pipe-line if and to the extent that section 14 of the Petroleum Act 1998 applies in relation to it.

10H Enforcement

- (1) It is an offence for the owner of a pipe-line to contravene any provision of a pipe-line modification notice under section 10G in respect of the pipe-line.

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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- (2) A person guilty of the offence is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.
 - (3) It is a defence, in any proceedings for the offence, to prove that the accused exercised due diligence to comply with the provisions of the pipe-line modification notice.
 - (4) Proceedings for the offence may not be instituted in England and Wales except—
 - (a) by the Secretary of State or by a person authorised to do so by the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions.
 - (5) Where the offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
 - (6) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of the body corporate.
 - (7) In this section “officer”, in relation to a body corporate, means—
 - (a) any director, secretary or other similar officer of the body corporate, or
 - (b) any person who was purporting to act in any such capacity.”
- (3) In section 10E (third party access to upstream petroleum pipelines), in subsection (1) after “pipe-lines” insert “ (but does not apply to a pipe-line if and to the extent that section 14 of the Petroleum Act 1998 applies in relation to it) ”.
- (4) In section 10F (supplemental provision relating to third party access), after subsection (4) add—
- “(5) Before giving a notice under section 10G(1), the Secretary of State must give the person who applied for that notice—
- (a) particulars of the modifications which it is proposed to specify in the notice, and
 - (b) an opportunity to make applications under section 10E in respect of the pipeline;
- and section 10E and subsections (1) to (4) of this section have effect for this purpose as if references to a pipe-line were references to the pipe-line as it would be with those modifications.”

Commencement Information

185 S. 79 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(c\)](#)

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
Changes to legislation: Energy Act 2008 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)

F7480 Third party access to oil processing facilities

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Textual Amendments

F74 S. 80-82 repealed (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), s. 121(1), **Sch. 2 para. 17**; S.I. 2012/873, art. 2(b)(i) (with art. 4)

F7481 Directions under section 80: supplemental

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Textual Amendments

F74 S. 80-82 repealed (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), s. 121(1), **Sch. 2 para. 17**; S.I. 2012/873, art. 2(b)(i) (with art. 4)

F7482 Meaning of “associate”

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Textual Amendments

F74 S. 80-82 repealed (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), s. 121(1), **Sch. 2 para. 17**; S.I. 2012/873, art. 2(b)(i) (with art. 4)

[F75]PART 4A

WORKS DETRIMENTAL TO NAVIGATION

Textual Amendments

F75 Pt. 4A inserted (12.11.2009 for specified purposes, 6.4.2011 in so far as not already in force) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 314(1)**, 324(1)(c), 324(1)(d); S.I. 2011/556, art. 3(2) (c)

Consent required for carrying out of certain operations

82A Restriction of works detrimental to navigation

- (1) A person must not, without the written consent of the Secretary of State, carry out in the regulated zone (see section 82Q) any operation to which this subsection applies (see subsections (2) and (3)).
- (2) Subsection (1) does not apply to an operation if a marine licence under Part 4 of the Marine and Coastal Access Act 2009 is needed to carry out the operation.

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
Changes to legislation: Energy Act 2008 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) Subject to that, subsection (1) applies to an operation if—
- (a) it causes, or is likely to result in, obstruction or danger to navigation (whether while the operation is being carried out or subsequently),
 - (b) it is of a description falling within subsection (4), and
 - (c) it may be carried out only with a permission falling within subsection (5).
- (4) The descriptions of operations are—
- (a) the construction, alteration, improvement, dismantlement or abandonment of any works;
 - (b) the deposit of any object or materials;
 - (c) the removal of any object or materials.
- (5) The permissions are—
- (a) a licence under section 3 of the Petroleum Act 1998 or section 2 of the Petroleum (Production) Act 1934,
 - (b) a licence under section 4 or 18 of this Act (gas storage and gas unloading, and carbon capture and storage licences),
 - (c) a works authorisation under Part 3 of the Petroleum Act 1998 (construction etc of submarine pipelines),
- and see also subsection (6).
- (6) For the purposes of this Part, the operations which may be carried out only with a permission falling within subsection (5) include operations which, by virtue of a permission falling within paragraph (a) or (b) of that subsection, may be carried out only with the consent of the Secretary of State or another person.
- (7) In the case of an authorised exploration or exploitation operation (see subsection (8))—
- (a) the reference in subsection (3) to an operation being likely to result in obstruction or danger to navigation, includes
 - (b) a reference to the operation being likely to result in obstruction or danger to navigation by reason of any use intended to be made of the works in question when constructed, altered or improved.
- (8) In this Part “ authorised exploration or exploitation operation ” means any operation—
- (a) which is of a description falling within subsection (4)(a), and
 - (b) which may be carried out only with a permission falling within subsection (5).

82B Applications for consent under section 82A

- (1) The Secretary of State may, as a condition of considering an application for consent under section 82A, require to be furnished with such plans and particulars of the proposed operation as the Secretary of State may consider necessary.
- (2) On receipt of any such application, the Secretary of State may cause to be published notice of—
 - (a) the application, and
 - (b) the time within which, and the manner in which, objections to the application may be made.
- (3) Any such notice is to be published in such a manner as to be likely to come to the attention of those likely to be interested in, or affected by, the application.

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- (4) The Secretary of State may cause an inquiry to be held in connection with the determination of an application for consent.

82C Determination of applications for consent under section 82A

- (1) If the Secretary of State is of the opinion that any operation in respect of which an application is made for consent under section 82A will cause, or is likely to result in, obstruction or danger to navigation, subsection (2) applies.
- (2) In any such case, the Secretary of State must either—
- (a) refuse to give consent, or
 - (b) give consent subject to such conditions as the Secretary of State considers appropriate.
- (3) In exercising functions under subsection (2), the Secretary of State must have regard to the nature and extent of the obstruction or danger which it appears to the Secretary of State would otherwise be caused or be likely to result.
- (4) In the case of an authorised exploration or exploitation operation—
- (a) any reference in subsection (1) or (3) to an operation being likely to result in obstruction or danger to navigation, includes
 - (b) a reference to the operation being likely to result in obstruction or danger to navigation by reason of any use intended to be made of the works in question when constructed, altered or improved.
- (5) A consent of the Secretary of State under section 82A may be given so as to continue in force, unless renewed, only if the operation for which the consent is given is begun or completed within such period as may be specified in the consent.
- (6) Subsection (5) applies in relation to the renewal of a consent as it applies in relation to the giving of consent.

82D Authorised exploration or exploitation operations: consent conditions

- (1) This section applies where the Secretary of State has given consent for an authorised exploration or exploitation operation, but subject to a condition (a “consent condition”).
- (2) A consent condition shall either—
- (a) remain in force for a specified period, or
 - (b) remain in force without limit of time,
- but this is subject to subsection (5).
- (3) A consent condition, in addition to binding the person to whom the consent is given, also binds, so far as is appropriate, any other person who for the time being owns, occupies, or enjoys any use of, the works in question.
- (4) Where—
- (a) a consent condition relates to the taking of navigational precautions, and
 - (b) the Secretary of State considers it appropriate to vary the condition in the interests of the safety of navigation (whether or not the operation has been completed),

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the Secretary of State may vary the condition for the purpose of enhancing the effectiveness of the aids to navigation which are to be provided or the other measures which are to be taken.

- (5) The Secretary of State may revoke any consent condition.
- (6) In this section “ taking of navigational precautions ” means any of the following—
 - (a) the provision of any lights, signals or other aids to navigation;
 - (b) the stationing of guard ships in the vicinity of the works in question;
 - (c) the taking of any other measures for the purpose of, or in connection with, controlling the movements of ships in the vicinity of those works.

Directions by the Secretary of State

82E Secretary of State's power of direction

- (1) This section applies if—
 - (a) the person to whom a consent under section 82A is given fails to comply with any provision of the consent, or
 - (b) a person who, by virtue of section 82D(3), is bound by a consent condition fails to comply with the condition.
- (2) The Secretary of State may direct that person (the “defaulter”) to take steps which the Secretary of State considers necessary or appropriate to comply with the provision or condition within a period specified in the direction.
- (3) The Secretary of State must consult the defaulter before giving a direction under subsection (2).
- (4) If the defaulter fails to comply with a direction under subsection (2), the Secretary of State may—
 - (a) comply with the direction on behalf of the defaulter, or
 - (b) make arrangements for another person to do so.
- (5) A person taking action by virtue of subsection (4) may—
 - (a) do anything which the defaulter could have done, and
 - (b) recover from the defaulter any reasonable costs incurred in taking the action.
- (6) A person (“P”) liable to pay any sum by virtue of subsection (5)(b) must also pay interest on that sum for the period beginning with the day on which the person taking action by virtue of subsection (4) notified P of the sum payable and ending with the date of payment.
- (7) The rate of interest payable in accordance with subsection (6) is a rate determined by the Secretary of State as comparable with commercial rates.
- (8) The defaulter must provide a person taking action by virtue of subsection (4) with such assistance as the Secretary of State may direct.
- (9) The power to give a direction under this section is without prejudice to any provision made—
 - (a) in the consent, with regard to the enforcement of any of its provisions, or
 - (b) in the condition, with regard to the enforcement of the condition.

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Emergency safety requirements

82F Damage to, or changes in, the works: emergency safety notices

- (1) This section applies in any case where—
 - (a) the Secretary of State has given consent (“the relevant consent”) for an authorised exploration or exploitation operation, and
 - (b) at any time after the giving of that consent, the condition in subsection (2) is met.
- (2) The condition is that it appears to the Secretary of State that any danger to navigation has arisen by reason of—
 - (a) any substantial damage to any works to which the relevant consent relates, or
 - (b) any other substantial and unforeseen change in the state or position of any such works.
- (3) If it appears to the Secretary of State necessary to do so in the interests of the safety of navigation, the Secretary of State may serve a notice (an “emergency safety notice”) on the consent holder.
- (4) By serving an emergency safety notice on the consent holder, the Secretary of State imposes on the consent holder such requirements as are prescribed in the notice with respect to any of the matters specified in subsection (5).
- (5) Those matters are—
 - (a) the provision on, or in the vicinity of, the works in question of any lights, signals or other aids to navigation, and
 - (b) the stationing of guard ships in the vicinity of those works.
- (6) An emergency safety notice may be served by the Secretary of State whether or not—
 - (a) the operation in question has been completed, or
 - (b) any condition was imposed by the Secretary of State, on giving the relevant consent, with respect to any of the matters referred to in subsection (5).

82G Emergency safety notices: supplementary provisions

- (1) If the consent holder fails to comply with an emergency safety notice within the time allowed, the Secretary of State may—
 - (a) comply with the notice on behalf of the consent holder, or
 - (b) make arrangements for another person to do so.
- (2) For the purposes of subsection (1) “the time allowed” is the period of 24 hours beginning with the time when the emergency safety notice is served on the consent holder or as soon after the end of that period as is reasonably practicable.
- (3) A person taking action by virtue of subsection (1) may—
 - (a) do anything which the consent holder could have done, and
 - (b) recover any reasonable costs incurred in taking the action from such one or more persons falling within subsection (4) as the Secretary of State considers appropriate.
- (4) The persons are—
 - (a) the consent holder;

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- (b) any other person or persons bound by a consent condition by virtue of section 82D(3).
- (5) A person (“P”) liable to pay any sum by virtue of subsection (3)(b) must also pay interest on that sum for the period beginning with the day on which the person taking action by virtue of subsection (1) notified P of the sum payable and ending with the date of payment.
- (6) The rate of interest payable in accordance with subsection (5) is a rate determined by the Secretary of State as comparable with commercial rates.
- (7) Once an emergency safety notice has been complied with (whether by the consent holder or otherwise)—
 - (a) the requirements of the notice are, subject to subsection (8), to be treated for the purposes of this Part as conditions subject to which the consent was given, but
 - (b) section 82D(2) and (5) are not to apply in the case of those requirements.
- (8) If it appears to the Secretary of State (whether on the application of any person or otherwise) that the circumstances giving rise to the urgent necessity for the imposition of the requirements no longer exist, the Secretary of State must revoke the requirements by notice served on the consent holder.
- (9) Where the Secretary of State has served an emergency safety notice in respect of any particular circumstances, subsection (7) does not preclude the Secretary of State from serving a further such notice in respect of those circumstances.

82H Failure to comply with condition: immediate action notice

- (1) This section applies where—
 - (a) a consent under section 82A(1) has been given subject to conditions,
 - (b) a person falling within subsection (2) fails to comply with a condition, and
 - (c) it appears to the Secretary of State that any danger to navigation has arisen by reason of the failure to comply with the condition.
- (2) The persons are—
 - (a) the consent holder;
 - (b) any person bound by the condition by virtue of section 82D(3).
- (3) If it appears to the Secretary of State necessary to do so in the interests of the safety of navigation, the Secretary of State may serve a notice (an “immediate action notice”) on the person, imposing on the person one or more specified requirements falling within subsection (4).
- (4) The requirements are—
 - (a) a requirement to comply with the condition;
 - (b) a requirement to take any specified action or actions to remedy the failure to comply with the condition.
- (5) Subsections (1) to (6) of section 82G apply in relation to a person and an immediate action notice as they apply in relation to the consent holder and an emergency safety notice.
- (6) In this section “specified” means specified in the immediate action notice.

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Enforcement

82I Carrying out operation without consent etc

- (1) It is an offence for a person—
 - (a) to carry out an operation to which subsection (1) of section 82A applies without the written consent of the Secretary of State under that subsection, or
 - (b) to fail to comply with a condition of such a consent.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to [^{F76}a fine not exceeding £50,000][^{F76}a fine], or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

Textual Amendments

F76 Words in s. 82I(2)(a) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 42\(5\)](#) (with reg. 5(1))

82J Offences relating to consents

- (1) It is an offence for a person to make a statement which the person knows to be false, or recklessly to make a statement which is false, in order to obtain the consent of the Secretary of State under section 82A(1).
- (2) It is an offence for a person to fail to disclose information which the person knows, or ought to know, to be relevant to an application for the consent of the Secretary of State under section 82A(1).
- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

82K Failure to comply with direction under section 82E

- (1) It is an offence for a person to fail to comply with a direction under section 82E, unless the person proves that due diligence was exercised in order to avoid the failure.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to [^{F77}a fine not exceeding £50,000][^{F77}a fine], or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

Textual Amendments

F77 Words in s. 82K(2)(a) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 42\(6\)](#) (with reg. 5(1))

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82L Failure to comply with notice under section 82F or 82H

- (1) It is an offence for a person to fail to comply with—
 - (a) an emergency safety notice, or
 - (b) an immediate action notice,within the time allowed (within the meaning of section 82G(1)).
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to [^{F78}a fine not exceeding £50,000][^{F78}a fine], or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

Textual Amendments

F78 Words in s. 82L(2)(a) substituted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 42\(7\)](#) (with reg. 5(1))

82M Injunctions restraining breaches of section 82A(1)

- (1) Where the Secretary of State considers it necessary or expedient to restrain any actual or apprehended breach of section 82A(1), the Secretary of State may apply to the court for an injunction or, in Scotland, an interdict.
- (2) An application may be made whether or not the Secretary of State has exercised, or is proposing to exercise, any of the other powers under this Part.
- (3) On an application under subsection (1), the court may grant such an injunction or interdict as the court considers appropriate for the purpose of restraining the breach.
- (4) Rules of court may provide for an injunction or interdict to be issued against a person whose identity is unknown.
- (5) In this section “ the court ” means—
 - (a) the High Court, or
 - (b) in Scotland, the Court of Session.

82N Inspectors

- (1) The Secretary of State may appoint persons to act as inspectors to assist in carrying out the functions of the Secretary of State under this Part.
- (2) The Secretary of State may make payments, by way of remuneration or otherwise, to inspectors appointed under this section.
- (3) The Secretary of State may make regulations about—
 - (a) the powers and duties of inspectors appointed under this section;
 - (b) the powers and duties of any other person acting on the directions of the Secretary of State in connection with a function under this Part;
 - (c) the facilities and assistance to be accorded to persons mentioned in paragraph (a) or (b).

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- (4) The powers conferred by virtue of subsection (3) may include powers of a kind specified in section 108(4) of the Environment Act 1995 (powers of entry, investigation, etc).
- (5) Any regulations under this section may provide for the creation of offences which are punishable—
 - (a) on summary conviction, by a fine not exceeding the statutory maximum or such lesser amount as is specified in the regulations, and
 - (b) on conviction on indictment, by a fine.

82O Criminal proceedings

- (1) Proceedings for a relevant offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (restriction on prosecutions) does not apply to any proceedings for a relevant offence.
- (3) In this section “ relevant offence ” means—
 - (a) an offence under this Part, or
 - (b) an offence created by regulations under section 82N.

Supplementary provisions

82P Power to extend the application of this Part

- (1) The Secretary of State may by order provide that specified provisions of this Part are to apply, subject to any specified modifications, in relation to the carrying out of specified operations, or operations of a specified description, in the Scottish inshore region.
- (2) The operations must be operations—
 - (a) which either fall within section 82A(4) or are carried on in the course of taking installation abandonment measures (or both),
 - (b) which cause, or are likely to result in, obstruction or danger to navigation (whether while the operation is being carried out or subsequently), and
 - (c) which the Scottish Ministers do not have power to control or regulate for the purpose of preventing such obstruction or danger.
- (3) The reference in subsection (1) to “ the Scottish inshore region ” includes a reference to—
 - (a) the shore adjoining that region, and
 - (b) any land in Scotland adjoining or adjacent to that shore.
- (4) If an order under this section makes provision in relation to the carrying out of an operation in the course of taking installation abandonment measures—
 - (a) section 82A(3)(c) does not apply in relation to the operation, but
 - (b) paragraph (a) is subject to any different modification or other provision to the contrary made by an order under this section.
- (5) For the purposes of this section “ installation abandonment measures ” are any measures taken in connection with the abandonment of—

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- (a) an offshore installation or submarine pipeline, within the meaning of Part 4 of the Petroleum Act 1998, or
 - (b) a carbon storage installation, within the meaning of section 30 of this Act, whether or not the measures are taken in pursuance of an abandonment programme.
- (6) In subsection (5) “abandonment programme” means—
- (a) an abandonment programme under Part 4 of the Petroleum Act 1998;
 - (b) an abandonment programme under that Part, as it applies by virtue of section 30 of this Act.
- (7) In this section “specified” means specified in the order.

82Q Interpretation of this Part

In this Part—

“authorised exploration or exploitation operation” has the meaning given by section 82A(8);

“consent holder” means the person to whom a consent under section 82A is given;

“emergency safety notice” is to be read in accordance with section 82F(3);

“immediate action notice” is to be read in accordance with section 82H(3);

“regulated zone” means the area that consists of—

- (a) the area of sea within the seaward limits of the territorial sea, other than the Scottish inshore region, and
- (b) the area of sea within the limits of the UK sector of the continental shelf,

and includes the bed and subsoil of the sea within those areas, the shore adjoining, and any land adjoining or adjacent to that shore, but does not include any land in Scotland;

“Scottish inshore region” has the same meaning as in the Marine and Coastal Access Act 2009 (see section 322 of that Act);

“sea” includes—

- (a) any tidal waters; and
- (b) any land covered with water at mean high water spring tide;

“UK sector of the continental shelf” means the areas for the time being designated by an Order in Council under section 1(7) of the Continental Shelf Act 1964.]

PART 5

MISCELLANEOUS

Duties of Gas and Electricity Markets Authority

83 Duties of the Gas and Electricity Markets Authority

- (1) In section 4AA of the Gas Act 1986 (c. 44) (duties of the Gas and Electricity Markets Authority)—
- (a) in subsection (1) after “interests of” insert “existing and future”,

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- (b) after subsection (2)(b) insert “; and
 - (c) the need to contribute to the achievement of sustainable development.”,
 - (c) omit subsection (5)(ba), and
 - (d) in subsection (6) for “this section “consumers” includes” substitute “subsections (3) and (4) references to consumers include”.
- (2) In section 3A of the Electricity Act 1989 (c. 29) (duties of the Gas and Electricity Markets Authority)—
- (a) in subsection (1) after “interests of” insert “ existing and future ”,
 - (b) after subsection (2)(b) insert “; and
 - (c) the need to contribute to the achievement of sustainable development.”,
 - (c) omit subsection (5)(ba), and
 - (d) in subsection (6) for “this section “consumers” includes” substitute “subsections (3) and (4) references to consumers include”.

Commencement Information

186 S. 83 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(d\)\(i\)](#)

Transmission systems

84 Power to amend licence conditions etc: transmission systems

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 6(1)(a) to (d) of the Electricity Act 1989 (generation, transmission, distribution and supply licences);
 - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
 - (c) a document maintained in accordance with the conditions of licences under section 6(1)(a) to (d) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power conferred by subsection (1) for the purpose only of facilitating—
- (a) access to a transmission system in Great Britain or offshore waters;
 - (b) efficient use of a transmission system in Great Britain or offshore waters.
- (3) The power conferred by subsection (1)—
- (a) may be exercised to make different provision in relation to different classes of customer;
 - (b) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
 - (c) may be exercised differently in different cases or circumstances;
 - (d) includes a power to make incidental, supplementary, consequential or transitional modifications.

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- (4) The power conferred by subsection (1) may not be exercised after the end of the period of 2 years beginning with the day on which that subsection comes into force.
- (5) Provision included in a licence by virtue of that power—
 - (a) need not relate to the activities authorised by the licence;
 - (b) may do any of the things authorised by section 7(2) to (4) of the Electricity Act 1989 (c. 29) (which apply to the Gas and Electricity Markets Authority's power with respect to licence conditions under section 7(1)(a)).
- (6) In this section—
 - “offshore waters” means—
 - (a) waters in or adjacent to Great Britain which are between the low water mark and the seaward limits of the territorial sea, and
 - (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29);
 - “transmission system” has the meaning given by section 4(4) of the Electricity Act 1989.

Commencement Information

187 S. 84 in force at 29.7.2010 by S.I. 2010/1888, art. 2(2)

85 Section 84: procedure

- (1) Before making a modification, the Secretary of State must consult—
 - (a) the holder of any licence being modified,
 - (b) the Gas and Electricity Markets Authority, and
 - (c) such other persons as the Secretary of State considers appropriate.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (4) In this section “modification” means a modification under section 84.

Commencement Information

188 S. 85 in force at 29.7.2010 by S.I. 2010/1888, art. 2(2)

86 Section 84: supplemental

- (1) A modification under section 84 of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Electricity Act 1989 (c. 29).
- (2) Where the Secretary of State makes modifications under section 84(1)(b) of the standard conditions of a licence of any type, the Gas and Electricity Markets Authority must—

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- (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
 - (b) publish the modification.
- (3) The Secretary of State may by order make such modifications of provisions made by or under an Act or an Act of the Scottish Parliament (whenever passed or made) as the Secretary of State considers appropriate in consequence of provision made under section 84.

Commencement Information

I89 S. 86 in force at 29.7.2010 by [S.I. 2010/1888](#), [art. 2\(2\)](#)

Energy reports

87 Energy reports

- (1) In section 1 of the Sustainable Energy Act 2003 (c. 30) (annual reports on progress towards sustainable energy aims)—
- (a) in subsection (1) for “in each calendar year, beginning with 2004,” substitute “, for each reporting period, ”,
 - (b) in subsection (1A) omit paragraphs (a), (b) and (c),
 - (c) omit subsections (1B) and (1C),
 - (d) for subsections (2) and (3) substitute—
 - “(2) “Reporting period”, for the purposes of subsections (1) to (1AA), means—
 - (a) the period beginning with 24 February 2008 and ending with 31 December 2008, and
 - (b) each successive calendar year.
 - (3) A sustainable energy report must be published during the period beginning with 1 January and ending with 31 October following the reporting period to which it relates (“the publication period”).”, and
 - (e) after subsection (4) insert—
 - “(4A) A report or part of a report published under this section must specify the period to which it relates.”

^{F79}(2)

Textual Amendments

F79 S. 87(2) omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), [ss. 57\(4\)\(c\)](#), [115\(3\)\(e\)](#)

Commencement Information

I90 S. 87 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(d\)\(ii\)](#)

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
Changes to legislation: Energy Act 2008 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)

Smart meters

88 Power to amend licence conditions etc: smart meters

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section [^{F80}6(1)(b), (c)] or (d) of the Electricity Act 1989 (c. 29) ([^{F81}transmission,]distribution and supply licences);
 - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
 - (c) a condition of a particular licence under section 7 or 7A of the Gas Act 1986 (c. 44) (transporter, supply and shipping licences);
 - (d) the standard conditions incorporated in licences under those provisions by virtue of section 8 of that Act;
 - [^{F82}(da) a condition of a particular licence under section 6(1)(f) of the Electricity Act 1989, or under section 7AB of the Gas Act 1986 (smart meter communication licences);]
 - (e) a document maintained in accordance with the conditions of licences under section 6(1) of the Electricity Act 1989 or section 7 [^{F83}, 7A or 7AB] of the Gas Act 1986, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) for the purpose only of—
- (a) requiring the holder of a licence to provide or install, or facilitate the provision, installation or operation of, meters of a particular kind, or
 - (b) requiring the holder of a licence to make arrangements related to the matters mentioned in paragraph (a).
- (3) Modifications made by virtue of subsection (1) may include—
- (a) technical specifications for meters (including specifications in respect of matters relevant to the ability to obtain remote access to meters);
 - (b) a prohibition on the supply of gas or electricity through a meter other than a meter which complies with a technical specification under paragraph (a);
 - (c) provision about the installation of meters which comply with a technical specification under paragraph (a) (including provision about the replacement of existing meters);
 - (d) provision about electricity generated by a customer;
 - (e) provision about the circumstances in which any pre-payment facilities of a meter may be utilised;
 - (f) provision about the use of a meter remotely to disconnect a customer's premises;
 - (g) provision about the protection of consumers;
 - (h) provision about access to, and the use of, an electricity distribution system or part of an electricity distribution system for communication in connection with a meter;
 - (i) provision about access to information from meters (including provision enabling a customer, or a person acting on a customer's behalf, to have access to information about the customer's consumption of gas or electricity);

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- (j) provision about communication of information by or to meters (including provision about its onward communication) and about the use of such information;
 - [^{F84}(ja) provision requiring the holder of a licence to supply information to the Secretary of State or the Authority (or both) so as to enable them to assess any matter relating to the provision, installation, or operation of meters;]
 - (k) provision requiring the holder of the licence to enter (or refrain from entering) into an agreement of a specified kind, or with a specified person;
 - (l) provision specifying, or enabling the determination of, a date from which a modification is to take effect.
- (4) The power conferred by subsection (1)—
- (a) may be exercised to make different provision in relation to [^{F85}different areas or]different classes of customer;
 - (b) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
 - (c) may be exercised differently in different cases or circumstances;
 - (d) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (5) The power conferred by subsection (1) may not be exercised after the end of [^{F86}1 November 2018].
- (6) Provision included in a licence by virtue of that power—
- (a) need not relate to the activities authorised by the licence;
 - (b) in the case of a licence under section 7[^{F87}, 7A or 7AB] of the Gas Act 1986 (c. 44), may do any of the things authorised by section 7B(5) of that Act (which apply to the Gas and Electricity Markets Authority's power with respect to licence conditions under section 7B(4)(a));
 - (c) in the case of a licence under section [^{F88}6(1)(b), (c)] [^{F89}, (d) or (f)] of the Electricity Act 1989 (c. 29), may do any of the things authorised by section 7(2) to (4) of that Act (which apply to that Authority's power with respect to licence conditions under section 7(1)(a)).
- (7) In this section a reference to a meter includes a reference to a visual display unit, or any other device, associated with or ancillary to a meter.

Textual Amendments

- F80** Words in s. 88(1)(a) substituted (18.12.2011) by [Energy Act 2011 \(c. 16\), ss. 73\(2\)\(a\)](#), 121(3)
- F81** Word in s. 88(1)(a) inserted (18.12.2011) by [Energy Act 2011 \(c. 16\), ss. 73\(2\)\(b\)](#), 121(3)
- F82** [S. 88\(1\)\(da\)](#) inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\), arts. 1, 33\(2\)\(a\)](#)
- F83** Words in s. 88(1)(e) substituted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\), arts. 1, 33\(2\)\(b\)](#)
- F84** [S. 88\(3\)\(ja\)](#) inserted (18.12.2011) by [Energy Act 2011 \(c. 16\), ss. 73\(3\)](#), 121(3)
- F85** Words in s. 88(4)(a) inserted (18.12.2011) by [Energy Act 2011 \(c. 16\), ss. 73\(4\)](#), 121(3)
- F86** Words in s. 88(5) substituted (18.12.2011) by [Energy Act 2011 \(c. 16\), ss. 73\(5\)](#), 121(3)
- F87** Words in s. 88(6)(b) substituted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\), arts. 1, 33\(3\)\(a\)](#)
- F88** Words in s. 88(6)(c) substituted (18.12.2011) by [Energy Act 2011 \(c. 16\), ss. 73\(6\)](#), 121(3)

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F89 Words in s. 88(6)(c) substituted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **33(3)(b)**

89 Power to amend licence conditions etc: procedure

- (1) Before making a modification, the Secretary of State must consult—
 - (a) the holder of any licence being modified,
 - (b) the Gas and Electricity Markets Authority, and
 - (c) such other persons as the Secretary of State considers appropriate.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) Before making modifications, the Secretary of State must lay a draft of the modifications before Parliament.
- (4) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (5) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (6) Subsection (4) does not prevent a new draft of proposed modifications being laid before Parliament.
- (7) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (8) In this section “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (9) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (10) In this section “modification” means a modification under section 88.

90 Smart meters: supplemental

- (1) A modification under section 88 of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986 (c. 44) or Part 1 of the Electricity Act 1989 (c. 29).
- (2) Where the Secretary of State makes modifications under section 88(1)(b) or (d) of the standard conditions of a licence of any type, the Gas and Electricity Markets Authority must—
 - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
 - (b) publish the modification.

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- (3) The Secretary of State may by order make such modifications of provision made by or under an Act or an Act of the Scottish Parliament (whenever passed or made) as the Secretary of State considers appropriate in consequence of provision made under section 88.

91 Licensing of activities relating to smart meters

Schedule 4 contains amendments to the Gas Act 1986 and the Electricity Act 1989.

Gas meters

92 Gas meters

- (1) The functions of the Gas and Electricity Markets Authority (“the Authority”) under gas meter legislation are transferred to the Secretary of State.
- (2) References in gas meter legislation to the Authority (including references in that legislation which, by virtue of section 3(2) of the Utilities Act 2000 (c. 27), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State.
- (3) Regulations made, or treated as made, by the Authority under section 17 of the Gas Act 1986 (gas meter testing and stamping) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State.
- (4) Anything else done by the Authority under gas meter legislation which has effect immediately before commencement has effect on and after commencement as if it had been done by the Secretary of State.
- (5) In this section—
- “commencement” means the day on which this section comes into force;
- “gas meter legislation” means—
- section 17 of the Gas Act 1986 (c. 44), and
 - gas meter regulations;
- “gas meter regulations” means—
- the Measuring Instruments (EEC Requirements) Regulations 1988 (S.I. 1988/186);
 - the Measuring Instruments (EEC Requirements) (Gas Volume Meters) Regulations 1988 (S.I. 1988/296);
 - the Measuring Instruments (Non-Prescribed Instruments) Regulations 2006 (S.I. 2006/1270);
 - the Measuring Instruments (Gas Meters) Regulations 2006 (S.I. 2006/2647);
 - any regulations made, or treated as made, under section 17 of the Gas Act 1986.

Commencement Information

I91 S. 92 in force at 1.4.2009 by S.I. 2009/45, art. 3(b)(i)

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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93 Section 92: consequential amendments

- (1) Section 17 of the Gas Act 1986 is amended as follows.
- (2) In subsection (2) for the words “a member of the Director's staff” (which, by virtue of section 3(2) of the Utilities Act 2000 (c. 27), are treated as a reference to a member of the staff of the Gas and Electricity Markets Authority) substitute “employed in the civil service of the State”.
- (3) In subsections (7), (8) and (10) for the words “members of the Director's staff” (which, by virtue of section 3(2) of the Utilities Act 2000, are treated as references to members of the Authority's staff) substitute “employed in the civil service of the State”.
- (4) After subsection (7) insert—
 - “(7A) The Secretary of State may pay, out of money provided by Parliament, to meter examiners who are not employed in the civil service of the State or to any employer of such examiners—
 - (a) sums in connection with the performance by such examiners of functions conferred by or under this section or gas meter regulations (within the meaning of section 92 of the Energy Act 2008), and
 - (b) sums in respect of any pension payable to or in respect of such examiners.”
- (5) In subsection (9) omit “with the consent of the Secretary of State”.

Commencement Information

192 S. 93 in force at 1.4.2009 by [S.I. 2009/45](#), [art. 3\(b\)\(i\)](#)

94 Power to amend licence conditions: gas

- (1) The Secretary of State may modify—
 - (a) the conditions of a particular licence under section 7 of the Gas Act 1986;
 - (b) the standard conditions incorporated in licences under that section by virtue of section 8 of that Act.
- (2) The Secretary of State may exercise the power in subsection (1) for the purpose only of enabling the Gas and Electricity Markets Authority (“the Authority”) to recover and pay into the Consolidated Fund amounts in respect of—
 - (a) payments made by the Secretary of State by virtue of section 17(7) or (7A) of the Gas Act 1986 (c. 44);
 - (b) other costs incurred by the Secretary of State in performing a function conferred by section 17 of the Gas Act 1986 or by gas meter regulations (within the meaning of section 92).
- (3) The power in subsection (1) includes a power to make incidental, consequential or transitional modifications.
- (4) Before making a modification under this section the Secretary of State must consult—
 - (a) the holder of any licence being modified,
 - (b) the Authority, and
 - (c) such other persons as the Secretary of State considers appropriate.

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- (5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the time when this section comes into force.
- (6) The Secretary of State must publish modifications under this section.
- (7) A modification under subsection (1)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986.
- (8) Where the Secretary of State modifies the standard conditions under subsection (1) (b), the Authority must—
 - (a) make the same modifications of those standard conditions for the purposes of their incorporation in licences granted after that time, and
 - (b) publish the modifications.
- (9) The power under subsection (1) may not be exercised after the end of the period of 6 months beginning with the day on which that subsection comes into force.

Commencement Information

193 S. 94 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(d\)\(iii\)](#)

Electricity meters

95 Electricity meters

- (1) The functions of the Gas and Electricity Markets Authority (“the Authority”) under electricity meter legislation are transferred to the Secretary of State.
- (2) References in electricity meter legislation to the Authority (including references in that legislation which, by virtue of section 3(2) of the Utilities Act 2000 (c. 27), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State.
- (3) Regulations made, or treated as made, by the Authority under Schedule 7 (other than paragraph 12 of that Schedule) to the Electricity Act 1989 (c. 29) (electricity meters) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State.
- (4) Anything else done by the Authority under electricity meter legislation which has effect immediately before commencement is treated on and after commencement as if it had been done by the Secretary of State.
- (5) In this section—
 - “commencement” means the day on which this section comes into force;
 - “electricity meter legislation” means—
 - (a) Schedule 7 (other than paragraph 12 of that Schedule) to the Electricity Act 1989 (c. 29), and
 - (b) electricity meter regulations;
 - “electricity meter regulations” means—
 - (a) the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995 (S.I. 1995/2607);

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- (b) the Electromagnetic Compatibility Regulations 2006 (S.I. 2006/3418);
- (c) the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006 (S.I. 2006/1679);
- (d) any regulations made under Schedule 7 (other than paragraph 12 of that Schedule) to the Electricity Act 1989.

Commencement Information

194 S. 95 in force at 1.4.2009 by [S.I. 2009/45](#), [art. 3\(b\)\(ii\)](#)

96 Section 95: consequential amendments

- (1) The Electricity Act 1989 is amended as follows.
- (2) In section 106 (regulations and orders), in subsection (1) after “conferred by” insert “section 23, ”.
- (3) In paragraph 1 of Schedule 7 (consumption to be monitored by appropriate meters)—
 - (a) for sub-paragraph (7) substitute—

“(7) In relation to a dispute arising under this paragraph between an electricity supplier and a customer, section 23 of this Act applies with the substitution, for references to the Authority (and references treated as references to the Authority) of references to the Secretary of State.”, and
 - (b) in sub-paragraphs (8) and (9), after “section 23 of this Act” insert “ (as modified by sub-paragraph (7)) ”.
- (4) In paragraph 4 of that Schedule (appointment of meter examiners)—
 - (a) in sub-paragraph (2) after “examiners” insert “ employed in the civil service of the State ”,
 - (b) after that sub-paragraph insert—

“(2A) The Secretary of State may pay, out of money provided by Parliament, to meter examiners who are not employed in the civil service of the State or to any employer of such examiners—

 - (a) sums in connection with the performance by such examiners of functions conferred by or under this Schedule or electricity meter regulations (within the meaning of section 95 of the Energy Act 2008), and
 - (b) sums in respect of any pension payable to or in respect of such examiners.”, and
 - (c) in sub-paragraph (3) after “examiners” insert “ employed in the civil service of the State ”.
- (5) In paragraph 5 of that Schedule (certification of meters), in sub-paragraph (4)(b) after “paid” (in the first place) insert “ to meter examiners employed in the civil service of the State ”.
- (6) In paragraph 6 of that Schedule (apparatus for testing etc of meters), in sub-paragraph (2) for “their functions under” substitute “ functions conferred by or under ”.
- (7) In paragraph 7 of that Schedule (testing etc of meters)—

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- (a) in sub-paragraph (1) after “examiner” insert “ employed in the civil service of the State ”, and
 - (b) in sub-paragraph (3) after “paid” (in the first place) insert “ to meter examiners employed in the civil service of the State ”.
- (8) For paragraph 10 of that Schedule (meters to be kept in proper order), for sub-paragraph (2A) substitute—
- “(2A) In relation to a dispute arising under this paragraph between an electricity supplier and a customer, section 23 of this Act applies, with the substitution for references to the Authority (and references treated as references to the Authority) of references to the Secretary of State.”
- (9) In paragraph 13 of that Schedule (interpretation) for the definition of “regulations” substitute—
- ““regulations” means—
- (a) in paragraph 12, regulations made by the Authority with the consent of the Secretary of State, and
 - (b) in every other case, regulations made by the Secretary of State.”

Commencement Information

I95 S. 96 in force at 1.4.2009 by [S.I. 2009/45](#), [art. 3\(b\)\(ii\)](#)

97 Power to amend licence conditions: electricity

- (1) The Secretary of State may modify—
 - (a) a condition of a particular licence under section 6(1)(b) or (c) of the Electricity Act 1989 (c. 29) (transmission and distribution licences);
 - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act.
- (2) The Secretary of State may exercise the power in subsection (1) for the purpose only of enabling the Gas and Electricity Markets Authority (“the Authority”) to recover and pay into the Consolidated Fund amounts in respect of—
 - (a) payments made by the Secretary of State by virtue of paragraph 4(2) or (2A) of Schedule 7 to the Electricity Act 1989 (payments relating to meter examiners);
 - (b) other costs incurred by the Secretary of State in performing a function conferred by Schedule 7 to the Electricity Act 1989 or by electricity meter regulations (within the meaning of section 95).
- (3) The power in subsection (1) includes a power to make incidental, consequential or transitional modifications.
- (4) Before making a modification under this section the Secretary of State must consult—
 - (a) the holder of any licence being modified,
 - (b) the Authority, and
 - (c) such other persons as the Secretary of State considers appropriate.
- (5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the time when this section comes into force.

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- (6) The Secretary of State must publish modifications under this section.
- (7) A modification under subsection (1)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Electricity Act 1989 (c. 29).
- (8) Where the Secretary of State modifies the standard conditions of licences of any type under subsection (1)(b), the Authority must—
 - (a) make the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
 - (b) publish the modifications.
- (9) The power under subsection (1) may not be exercised after the end of the period of 6 months beginning with the day on which that subsection comes into force.

Commencement Information

196 S. 97 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(d\)\(iv\)](#)

Connection offer expenses

98 Costs connected with making an offer of connection

- (1) Section 16A of the Electricity Act 1989 (procedure for requiring a connection) is amended as follows.
- (2) After subsection (4) insert—
 - “(4A) The Secretary of State may, after consulting the Authority, make provision by regulations for the purpose of entitling an electricity distributor to require a person requiring a connection in pursuance of section 16(1) to pay connection offer expenses to such extent as is reasonable in all the circumstances.
 - (4B) In this section “connection offer expenses” means expenses which—
 - (a) are of a kind specified by the regulations, and
 - (b) have been reasonably incurred by the electricity distributor.
 - (4C) Regulations under subsection (4A) may specify—
 - (a) circumstances in which an electricity distributor may not require the payment of connection offer expenses by virtue of the regulations;
 - (b) the manner in which expenses reasonably incurred by an electricity distributor are to be calculated for the purposes of subsection (4B) (b).”
- (3) In subsection (5) for “and any information” to “connection” substitute “, any information requested under subsection (3) and any amount payable by virtue of subsection (4A) to the distributor by the person requiring the connection, the distributor shall give to that person”.

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Commencement Information

I97 S. 98 in force at 26.1.2009 by **S.I. 2009/45**, **art. 2(d)(v)**

PROSPECTIVE

Electricity safety

99 Electricity safety

- (1) Part 1 of the Health and Safety at Work etc. Act 1974 (c. 37) has effect as if section 29 of the Electricity Act 1989 (c. 29) (security of supply, safety and inspections), and regulations made under that section, in so far as they relate to the protection of the public from dangers relating to electricity and to eliminating or reducing the risks of personal injury, were existing statutory provisions within the meaning of that Part.
- (2) Without prejudice to the generality of section 15(1) of the 1974 Act (health and safety regulations), regulations under that section may—
 - (a) repeal or modify a provision mentioned in subsection (1),
 - (b) make any provision which, but for a repeal or modification under paragraph (a), could be made by regulations made under section 29 of the Electricity Act 1989.

Renewable heat incentives

100 Renewable heat incentives

- (1) The Secretary of State may make regulations—
 - (a) establishing a scheme to facilitate and encourage renewable generation of heat, and
 - (b) about the administration and financing of the scheme.

[^{F90}(1A) Regulations under this section may confer any function on any person.

(1B) Regulations under this section may provide for a function conferred on a person to be exercisable on behalf of another person.]

- (2) Regulations under this section may, in particular—
 - (a) [^{F91}make provision giving any of the following persons entitlements to payments (“RHI payments”) in specified circumstances—]
 - (i) the owner of plant used or intended to be used for the renewable generation of heat, whether or not the owner is also operating or intending to operate the plant;
 - (ii) a producer of biogas or biomethane;
 - (iii) a producer of biofuel for generating heat;
 - (b) make provision about the calculation of [^{F92}RHI payments];
 - [^{F93}(ba) make provision about the circumstances in which, and descriptions of persons to whom, the whole or a part of an entitlement to an RHI payment may be

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- assigned (whether the person has the entitlement by virtue of regulations under paragraph (a) or regulations under this paragraph);
- (bb) authorise or require the Secretary of State, the Authority, designated fossil fuel suppliers, or any person with any other administration function, to make an RHI payment—
- (i) to the person who is entitled to the payment by virtue of regulations under paragraph (a), or
 - (ii) where that entitlement has been wholly or partly assigned in accordance with regulations under this section, to the person or persons for the time being enjoying the entitlement or any part of it;]
- (c) make provision about the circumstances in which [^{F94}RHI payments] may be recovered;
- ^{F95}(d) authorise or require a person to provide specified information;]
- (e) require the payment of a levy by designated fossil fuel suppliers ^{F96}...;
 - (f) make provision about the calculation of the levy;
 - (g) make provision for payments to fossil fuel suppliers in specified circumstances;
 - (h) make provision about the enforcement of obligations imposed by or by virtue of the regulations (which may include a power ^{F97}... to impose financial penalties);
- ^{F98}(i)
- ^{F99}(j) authorise the Secretary of State to make payments to a person in respect of the exercise by the person of functions under regulations under this section;
- (k) make provision about the resolution of disputes relating to the exercise of functions under regulations under this section, including provision about arbitration or appeals (which may, in particular, provide for the person conducting an arbitration or determining an appeal to order the payment of costs or compensation).]
- (3) In this section—
- “Authority” means the Gas and Electricity Markets Authority;
- “biofuel” means liquid or gaseous fuel which is produced wholly from biomass;
- ^{F100}“biogas” means gas produced by the anaerobic or thermal conversion of biomass];
- “biomass” means material, other than fossil fuel [^{F101}or peat], which is, or is derived directly or indirectly from, plant matter, animal matter, fungi or algae;
- “biomethane” means biogas which is suitable for conveyance through pipes to premises in accordance with a licence under section 7 of the Gas Act 1986 (c. 44) (gas transporter licences);
- “designated fossil fuel suppliers” means—
- (a) if the regulations so provide, a specified class of fossil fuel suppliers, and
 - (b) in any other case, all fossil fuel suppliers;
- “fossil fuel” means—
- (a) coal;
 - (b) lignite;
 - (c) natural gas (within the meaning of the Energy Act 1976 (c. 76));
 - (d) crude liquid petroleum;
 - (e) petroleum products (within the meaning of that Act);

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Changes to legislation: Energy Act 2008 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)

(f) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (e);

“fossil fuel supplier” means a person who supplies fossil fuel to consumers for the purpose of generating heat;

[^{F102} “ other administration function ” means a function relating to the administration of a scheme established under this section, other than a function conferred by regulations under subsection (2)(bb);]

“owner”, in relation to any plant which is the subject of a hire purchase agreement, a conditional sale agreement or any agreement of a similar nature, means the person in possession of the plant under that agreement;

“plant” includes any equipment, apparatus or appliance;

“renewable generation of heat” means the generation of heat by means of a source of energy or technology mentioned in subsection (4).

(4) The sources of energy and technologies are—

- (a) biomass;
- (b) biofuels;
- (c) fuel cells;
- (d) water (including waves and tides);
- (e) solar power;
- (f) geothermal sources;
- (g) heat from air, water or the ground;
- (h) combined heat and power systems (but only if the system's source of energy is a renewable source within the meaning given by section 32M of the Electricity Act 1989 (c. 29)).

[^{F103}(i) biogas.]

(5) Regulations may—

- (a) modify the list of sources of energy and technologies in subsection (4);
- (b) modify the definition of “biogas” or “biomass” in subsection (3).

(6) Regulations may make provision, for the purposes of subsection (2)(a)(iii) and the definition of “fossil fuel supplier”, specifying that particular activities do or do not constitute generating heat.

(7) Before making regulations under this section which extend to Scotland, the Secretary of State must—

- (a) if the regulations contain any provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, obtain the consent of the Scottish Ministers;
- (b) in any other case, consult the Scottish Ministers.

Textual Amendments

- F90** S. 100(1A)(1B) inserted (12.2.2015) by [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(2)**, 57(7)(d)
- F91** Words in s. 100(2)(a) substituted (12.2.2015) by [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(3)(a)**, 57(7)(d)
- F92** Words in s. 100(2)(b) substituted (12.2.2015) by [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(3)(b)**, 57(7)(d)
- F93** S. 100(2)(ba)(bb) inserted (12.2.2015) by [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(3)(c)**, 57(7)(d)
- F94** Words in s. 100(2)(c) substituted (12.2.2015) by [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(3)(d)**, 57(7)(d)
- F95** S. 100(2)(d) substituted (12.2.2015) by [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(3)(e)**, 57(7)(d)

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Changes to legislation: Energy Act 2008 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)

- F96** Words in s. 100(2)(e) omitted (12.2.2015) by virtue of [Infrastructure Act 2015 \(c. 7\), ss. 51\(3\)\(f\), 57\(7\)\(d\)](#)
- F97** Words in s. 100(2)(h) omitted (12.2.2015) by virtue of [Infrastructure Act 2015 \(c. 7\), ss. 51\(3\)\(g\), 57\(7\)\(d\)](#)
- F98** S. 100(2)(i) omitted (12.2.2015) by virtue of [Infrastructure Act 2015 \(c. 7\), ss. 51\(3\)\(h\), 57\(7\)\(d\)](#)
- F99** S. 100(2)(j)(k) inserted (12.2.2015) by [Infrastructure Act 2015 \(c. 7\), ss. 51\(3\)\(i\), 57\(7\)\(d\)](#)
- F100** Words in s. 100(3) substituted (6.9.2011) by [The Renewable Heat Incentive \(Amendment to the Energy Act 2008\) Regulations 2011 \(S.I. 2011/2195\), regs. 1, 2\(2\)\(a\)](#)
- F101** Words in s. 100(3) inserted (6.9.2011) by [The Renewable Heat Incentive \(Amendment to the Energy Act 2008\) Regulations 2011 \(S.I. 2011/2195\), regs. 1, 2\(2\)\(b\)](#)
- F102** Words in s. 100(3) inserted (12.2.2015) by [Infrastructure Act 2015 \(c. 7\), ss. 51\(4\), 57\(7\)\(d\)](#)
- F103** S. 100(4)(i) inserted (6.9.2011) by [The Renewable Heat Incentive \(Amendment to the Energy Act 2008\) Regulations 2011 \(S.I. 2011/2195\), regs. 1, 2\(3\)](#)

Commencement Information

- I98** S. 100 in force at 26.1.2009 by [S.I. 2009/45, art. 2\(d\)\(vi\)](#)

Nuclear information

101 Security of sensitive nuclear information

In Part 8 of the Anti-terrorism, Crime and Security Act 2001 (c. 24), after section 80 (prohibition on disclosure of uranium enrichment information) insert—

“80A Extension of Official Secrets Acts to certain places

- (1) A place to which subsection (2) applies is deemed to be a place belonging to or used for the purposes of Her Majesty for the purposes of section 3(c) of the Official Secrets Act 1911 (c. 28) (power of Secretary of State to declare a place belonging to or used for the purposes of Her Majesty a prohibited place).
- (2) This subsection applies to a place if—
 - (a) equipment or software which is designed or adapted for use in, or in connection with, the enrichment of uranium (or which is not so designed or adapted but is likely to be of exceptional use in that connection) is held at the place, or
 - (b) information relating to, or capable of use in connection with, the enrichment of uranium is held at the place.
- (3) In this section—

“enrichment of uranium” means a treatment of uranium which increases the proportion of isotope 235 contained in the uranium, and

“equipment” includes equipment which has not yet been assembled and a component of equipment.”

Commencement Information

- I99** S. 101 in force at 26.1.2009 by [S.I. 2009/45, art. 2\(d\)\(vii\)](#)

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

Changes to legislation: Energy Act 2008 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)

Application of general duties

102 Application of general duties to functions relating to licences

- (1) Sections 4AA to 4B of the Gas Act 1986 (c. 44) (principal objectives and general duties) apply to the carrying out, as respects the matters mentioned in subsection (2), of functions conferred on the Secretary of State or the Authority by or under—
 - (a) sections 88 to 90;
 - (b) section 94.
- (2) The matters are—
 - (a) activities required to be authorised by gas licences,
 - (b) such licences and the conditions of such licences,
 - (c) documents maintained in accordance with the conditions of such licences, or agreements that give effect to documents so maintained, and
 - (d) companies holding such licences.
- (3) In section 4AA(2)(b) of the Gas Act 1986 (c. 44) (duty to have regard to ability of licence holders to finance obligations) for “or the Utilities Act 2000” substitute “, the Utilities Act 2000 or Part 5 of the Energy Act 2008 ”.
- (4) Sections 3A to 3D of the Electricity Act 1989 (c. 29) (principal objectives and general duties) apply to the carrying out, as respects the matters mentioned in subsection (5), of functions conferred on the Secretary of State or the Authority by or under—
 - (a) sections 41 to 43;
 - (b) sections 84 to 86;
 - (c) sections 88 to 90;
 - (d) section 97.
- (5) The matters are—
 - (a) activities required to be authorised by electricity licences,
 - (b) such licences and the conditions of such licences,
 - (c) documents maintained in accordance with the conditions of such licences, or agreements that give effect to documents so maintained, and
 - (d) companies holding such licences.
- (6) In section 3A(2)(b) of the Electricity Act 1989 (duty to have regard to ability of licence holders to finance obligations) for “or Part 2 or 3 of the Energy Act 2004” substitute “, Part 2 or 3 of the Energy Act 2004 or Part 2 or 5 of the Energy Act 2008 ”.
- (7) In this section—

“the Authority” means the Gas and Electricity Markets Authority;

“electricity licence” means a licence for the purposes of section 4 of the Electricity Act 1989 (prohibition on unlicensed activities);

“gas licence” means a licence for the purposes of section 5 of the Gas Act 1986 (prohibition on unlicensed activities).

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
Changes to legislation: Energy Act 2008 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)

PART 6

GENERAL

103 Offences by bodies corporate etc

- (1) Where an offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of the body corporate.
- (3) Where an offence—
 - (a) is committed by a Scottish firm, and
 - (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm,the partner (as well as the firm) is guilty of the offence and liable to be proceeded with and dealt with accordingly.
- (4) In this section—
 - “offence” means an offence under this Act;
 - “officer”, in relation to a body corporate, means—
 - (a) any director, secretary or other similar officer of the body corporate, or
 - (b) any person who was purporting to act in any such capacity.

Commencement Information

I100 S. 103 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(e\)\(i\)](#)

104 Subordinate legislation

- (1) Orders and regulations made by the Secretary of State or the Scottish Ministers under this Act are to be made by statutory instrument.
- (2) An instrument to which this subsection applies may—
 - (a) provide for a person to exercise a discretion in dealing with any matter;
 - (b) include incidental, supplementary and consequential provision;
 - (c) make transitory or transitional provisions or savings;
 - (d) make provision generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as conditions specified in the instrument are satisfied);
 - (e) make different provision for different cases or circumstances or for different purposes.
- (3) Subsection (2) applies to—
 - (a) an Order in Council under this Act,

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- (b) an order or regulations made by the Secretary of State or the Scottish Ministers under this Act (other than an order which contains provision made under section 110 (commencement) only).
- (4) The provision which may be made by virtue of subsection (2)(b) or (c) includes provision modifying any provision made by or under an Act or an Act of the Scottish Parliament (whenever passed or made).

Commencement Information

I101 S. 104 partly in force; s. 104 in force for certain purposes at Royal Assent, see s. 110(1)(b)

I102 S. 104 in force at 26.1.2009 in so far as not already in force by [S.I. 2009/45](#), [art. 2\(e\)\(ii\)](#)

105 Parliamentary control of subordinate legislation

- (1) A statutory instrument containing an Order in Council, order or regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Subsection (1) does not apply to—
- (a) an order which contains, or regulations which contain, (whether alone or together with other provision) provision made under—
- (i) section 13 (importation and storage of combustible gas: inspectors),
 - (ii) section 27 (carbon dioxide storage: inspectors),
 - (iii) section 41(6) (feed-in tariffs for small-scale electricity generation),
 - (iv) section 45(6)(a) (power to specify matters as designated technical matters),
 - (v) section 62(1) (power to apply Chapter 1 of Part 3 to other nuclear installations), or
 - [^{F104}(va) section 82N (power to make regulations in relation to persons appointed as inspectors etc),
 - (vb) section 82P (power to extend application of Part 4A),]
 - ^{F105}(vi)
- [^{F106}(aa) an order which contains provision made under section 30A or 30B only (powers to designate installations and submarine pipelines as eligible CCS installations and eligible CCS pipelines);]
- [^{F107}(ab) regulations which contain (whether alone or together with other provision) affirmative resolution provision made under section 100 (renewable heat incentives);]
- (b) an order, regulations or Order in Council which contains (whether alone or together with other provision) provision which, by virtue of section 43(3)(b), 86(3), 90(3), 104(4), 107(2)(a) or 109(3)(a) modifies an Act or an Act of the Scottish Parliament;
- (c) an order which contains provision made under section 110 (commencement orders) only.
- (3) No order, regulations or recommendation to make an Order in Council, within subsection (2)(a) [^{F108}, (ab)] or (b), may be made unless a draft of the order, regulations or Order in Council has been laid before, and approved by a resolution of, each House of Parliament.

[^{F109}(3A) Provision made under section 100 is affirmative resolution provision if—

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- (a) the provision is made under any of the powers which always attract the affirmative resolution procedure, or
 - (b) the provision—
 - (i) is not made under any of those powers, and
 - (ii) meets condition A, B, C or D.
- (3B) The powers which always attract the affirmative resolution procedure are the powers conferred by—
- (a) section 100(2)(c), (e), (f), (g), (h) and (k),
 - (b) section 100(5), and
 - (c) section 100(6).
- (3C) Provision meets condition A if—
- (a) it is made under the power conferred by section 100(2)(bb), and
 - (b) it requires a designated fossil fuel supplier to make a payment under an RHI scheme.
- (3D) Provision meets condition B if—
- (a) it confers an administration function on a person who is not the Secretary of State or the Authority, and
 - (b) the time when the provision comes into force will be the first time that an administration function under the RHI scheme concerned is exercisable by a person who is not the Secretary of State or the Authority.
- (3E) Provision meets condition C if—
- (a) it is made under a power conferred by paragraph (ba) or (bb)(ii) of section 100(2),
 - (b) it is made in relation to an RHI scheme that was in existence immediately before the coming into force of this subsection, and
 - (c) it is the first provision to be made under that power in relation to that RHI scheme.
- (3F) Provision meets condition D if—
- (a) it is made under a power conferred by paragraph (a), (b), (ba), (bb), (d) or (j) of section 100(2),
 - (b) it is made in relation to an RHI scheme that was not in existence immediately before the coming into force of this subsection, and
 - (c) it is the first provision to be made under that power in relation to that RHI scheme.
- (3G) In deciding whether provision meets condition B, the following matters must be ignored—
- (a) for the purposes of subsection (3D)(a): any provision which confers a payment function on designated fossil fuel suppliers;
 - (b) for the purposes of subsection (3D)(b): any payment function under the RHI scheme concerned which (before the time when the provision comes into force) is, or has been, exercisable by designated fossil fuel suppliers.
- (3H) The fact that provision is to some extent made under a power conferred by section 100(1), (1A) or (1B) does not prevent that provision from being taken (for the purposes of subsections (3A) to (3F)) as being made under any other power conferred by section 100.

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(3I) In subsections (3B) to (3H) and this subsection—

“administration function” means a function relating to the administration of an RHI scheme;

“designated fossil fuel suppliers” has the same meaning as in section 100;

“payment function” means a function of making a payment under an RHI scheme (whether the function authorises or requires the making of the payment);

“RHI scheme” means a scheme under section 100 to facilitate and encourage renewable generation of heat.]

(4) In the case of a statutory instrument containing an order or regulations made by the Scottish Ministers, this section has effect as if—

- (a) in subsection (1) the reference to either House of Parliament were a reference to the Scottish Parliament,
- (b) in subsection (2)(b) for “107(2)(a)” there were substituted “107(3)(a)”, and
- (c) in subsection (3) the reference to each House of Parliament were a reference to the Scottish Parliament.

Textual Amendments

F104 S. 105(2)(a)(va)(vb) inserted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 314(2), 324(3)**; [S.I. 2011/556](#), **art. 3(2)(c)**

F105 S. 105(2)(a)(vi) omitted (12.2.2015) by virtue of [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(6)(a)**, 57(7)(d)

F106 S. 105(2)(aa) inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 107(5)**, 121(3)

F107 S. 105(2)(ab) inserted (E.W.S.) (12.2.2015) by [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(6)(b)**, 57(7)(d)

F108 Words in s. 105(3) inserted (E.W.S.) (12.2.2015) by [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(7)**, 57(7)(d)

F109 S. 105(3A)-(3I) inserted (E.W.S.) (12.2.2015) by [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(8)**, 57(7)(d)

Commencement Information

I103 S. 105 partly in force; s. 105 in force for certain purposes at Royal Assent, see s. 110(1)(b)

I104 S. 105 in force at 26.1.2009 in so far as not already in force by [S.I. 2009/45](#), **art. 2(e)(iii)**

106 Interpretation

In this Act—

“functions” includes powers and duties;

“modify” includes amend, add to, revoke or repeal (and references to “modifications” are to be construed accordingly);

“territorial sea” means the territorial sea adjacent to the United Kingdom.

107 Minor and consequential amendments

(1) Schedule 5 contains minor and consequential amendments.

(2) The Secretary of State may by order make such modifications of—

(a) an Act, or Act of the Scottish Parliament, passed before the end of the session in which this Act was passed, or

(b) an instrument made before the end of that session,

as the Secretary of State considers appropriate in consequence of this Act.

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.
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- (3) The Scottish Ministers may by order make such modifications of—
- (a) an Act, or Act of the Scottish Parliament, passed before the end of the session in which this Act was passed, or
 - (b) an instrument made before the end of that session,
- as the Scottish Ministers consider appropriate in consequence of Chapter 3 of Part 1 of this Act as that Chapter applies in relation to the territorial sea adjacent to Scotland (within the meaning of that Chapter) or in relation to functions of the Scottish Ministers.

Commencement Information

- I105** S. 107 partly in force; s. 107(1) in force for certain purposes at Royal Assent, see s. 110(1)(e)
I106 S. 107(1) in force at 26.1.2009 for specified purposes by [S.I. 2009/45](#), [art. 2\(e\)\(iv\)](#)
I107 S. 107(1) in force at 1.4.2009 for specified purposes by [S.I. 2009/45](#), [art. 3\(c\)\(i\)](#)
I108 S. 107(1) in force at 6.4.2009 for specified purposes by [S.I. 2009/45](#), [art. 4\(d\)\(i\)](#)
I109 S. 107(2)(3) in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(e\)\(v\)](#)

108 Repeals

Schedule 6 contains repeals (including repeals of spent provisions).

Commencement Information

- I110** S. 108 in force at 26.1.2009 for specified purposes by [S.I. 2009/45](#), [art. 2\(e\)\(vi\)](#)
I111 S. 108 in force at 1.4.2009 for specified purposes by [S.I. 2009/45](#), [art. 3\(c\)\(ii\)](#)
I112 S. 108 in force at 6.4.2009 for specified purposes by [S.I. 2009/45](#), [art. 4\(d\)\(ii\)](#)
I113 [S. 108](#) in force at 10.6.2014 for specified purposes by [S.I. 2014/1461](#), [art. 2\(b\)](#)

109 Transitional provision etc

- (1) The Secretary of State may by order make any transitional, transitory or saving provision which appears appropriate in consequence of, or otherwise in connection with, this Act.
- (2) The Scottish Ministers may by order make any transitional, transitory or saving provision which appears appropriate in consequence of, or otherwise in connection with, Chapter 3 of Part 1 of this Act as that Chapter applies in relation to the territorial sea adjacent to Scotland (within the meaning of that Chapter) or in relation to functions of the Scottish Ministers.
- (3) The provision which may be made by virtue of subsection (1) or (2) includes provision modifying any provision made by—
- (a) an Act, or Act of the Scottish Parliament, passed before the end of the session in which this Act was passed, or
 - (b) an instrument made before the end of that session.
- (4) Provision made under this section is additional, and without prejudice, to that made by or under any other provision of this Act.

Status: Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

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Commencement Information

I114 S. 109 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(e\)\(vii\)](#)

110 Commencement

- (1) The following provisions come into force on the day on which this Act is passed—
- (a) section 37, so far as is necessary for enabling the exercise on or after that day of any power to make an order that is conferred by virtue of that section, and section 38(1);
 - (b) sections 88 to 91 (and sections 104 and 105 in so far as those sections apply in relation to orders made under section 90(3)) and Schedule 4;
 - (c) section 102;
 - (d) this section and sections 106, 111, 112 and 113;
 - (e) paragraph 5 of Schedule 5 (and section 107(1) so far as it relates to that paragraph).
- (2) Subject to that, the provisions of this Act come into force on such day as may be appointed by order of the Secretary of State.
- (3) An order under this section may—
- (a) include incidental, supplementary and consequential provision;
 - (b) make transitory or transitional provisions or savings;
 - (c) make different provision for different cases or circumstances or for different purposes.

111 Financial provisions

The following are to be paid out of money provided by Parliament—

- (a) any expenditure incurred by the Secretary of State by virtue of this Act;
- (b) any expenditure incurred by the Gas and Electricity Markets Authority by virtue of this Act;
- (c) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

112 Extent

- (1) Subject to subsections (2) to (5), this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) The following provisions extend to England and Wales and Scotland only—
- (a) section 38 (renewables obligation: supplemental provision);
 - (b) sections 41 to 43 (feed-in tariffs for small-scale electricity generation);
 - ^{F110}(c)
 - (d) sections 84 to 86 (power to amend licence conditions: transmission systems);
 - (e) sections 88 to 90 (smart meters);
 - (f) sections 92 to 97 (gas and electricity meters);
 - (g) section 99 (electricity safety);
 - (h) section 100 (renewable heat incentives);

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- (i) section 102 (general duties of Authority and Secretary of State).
- (3) Chapter 1 of Part 3 ^{F111}...(nuclear decommissioning) extends to England and Wales and Northern Ireland only.
- (4) Section 40(2) to (4) (the Northern Ireland renewables obligation) extend to Northern Ireland only.
- (5) An amendment or repeal contained in this Act has the same extent as the enactment or relevant part of the enactment to which the amendment or repeal relates.

Textual Amendments

F110 S. 112(2)(c) omitted (21.3.2012) by virtue of [Energy Act 2011 \(c. 16\)](#), s. 121(1), [Sch. 2 para. 18](#); S.I. 2012/873, art. 2(b)(i) (with art. 4)

F111 Words in s. 112(3) repealed (1.4.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(1), [Sch. 12 para. 30](#); S.I. 2014/251, art. 4

113 Short title

This Act may be cited as the Energy Act 2008.

Status:

Point in time view as at 26/05/2015. This version of this Act contains provisions that are prospective.

Changes to legislation:

Energy Act 2008 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.