

ENERGY ACT 2008

EXPLANATORY NOTES

Chapter 4: General Provisions about Gas Importation and Storage

Section 36 and Schedule 1: Chapters 2 and 3: consequential amendments

95. *Paragraphs 1 to 3* of the Schedule amend section 7A of the Food and Environment Protection Act 1985 (“FEPA”), which excludes certain matters relating to offshore pipelines and installations from the requirements of Part 2 of FEPA (which regulates deposits in the sea and under the seabed), and make a consequential amendment to section 24. The effect of the amendments is to ensure that the exclusion extends to all activities for which a licence is required under Chapter 2 or Chapter 3 of this Part. In relation to Chapter 2, that exclusion applies to the territorial sea (i.e. up to 12 nautical miles) adjacent to England, and to waters beyond the territorial sea, other than waters within which the Scottish Ministers have functions under Part 2 of FEPA. In relation to Chapter 3, that exclusion applies to the territorial sea adjacent to England and Scotland, and to waters beyond the territorial sea.
96. *Paragraph 4* amends the provisions of the Petroleum Act 1987 relating to automatic establishment of safety zones, to ensure that such zones are also established around all installations used for the purposes of the activities under Chapter 2 of this Part. Such safety zones are areas extending 500 metres around the installation, from which vessels are prevented from entering or remaining except in accordance with regulations made by the Secretary of State or a consent given by the Health and Safety Executive. A similar extension is made, for the purposes of Chapter 3 of this Part, by section 32.
97. *Paragraphs 6 and 7* amend section 11 of the Petroleum Act 1998 to ensure that the power to apply civil law (such as the law of tort) to offshore installations extends to all installations used for the purposes of Chapter 2 or Chapter 3 of this Part.
98. The new subsections (4A) and (4B) of section 11, inserted by *paragraph 7(g)* of the Schedule, ensure that the power under that section cannot be used in relation to carbon dioxide storage activities in waters in or adjacent to Scotland up to the seaward limits of the territorial sea, with the exception of activities which involve injection of carbon as part of Enhanced Oil Recovery.
99. *Paragraph 8* amends section 13 of the Petroleum Act 1998 to provide that the boundary of internal waters or territorial sea adjacent to Scotland is determined in accordance with provision made by an Order in Council under section 126(2) of the Scotland Act 1998 (apportionment of sea areas). For example, if the Order in Council provides one set of boundaries of the Scottish territorial sea for a specific purpose (e.g. fisheries) and then a different set of boundaries for all "residual" purposes, then, for the purposes of Part 2 of the Petroleum Act 1998, the boundaries defined for the "residual" purposes would apply. Alternatively, if the Order in Council defines the boundaries specifically for the purposes of Part 2 of Petroleum Act 1998, or generally for all purposes of the Scotland Act 1998, that provision would apply.

*These notes refer to the Energy Act 2008 (c.32)
which received Royal Assent on 26 November 2008*

100. *Paragraph 9* amends the definition of “gas” for the purposes of Part 3 of that Act, in order to ensure consistency with the definition in section 2 of this Act (which defines the kinds of gases that are licensable for offshore gas storage and unloading).
101. *Paragraph 11* amends section 44 of the Petroleum Act 1998 to ensure that the provisions of Part 4 of that Act (which relate to the decommissioning of offshore installations including for example, obligations to remove the facilities completely after the permanent cessation of the facilities’ operations) apply to all installations used for the purposes of activities under Chapter 2 of this Part. *Paragraph 10* makes corresponding amendments to section 30 of the Petroleum Act 1998, which sets out who will be required to submit a programme for such decommissioning to the Secretary of State. Similar provision is made, for the purposes of Chapter 3 of this Part, by section 30 of this Act.
102. *Paragraph 12* amends section 47A of the Petroleum Act 1998, which was inserted by the Energy Act 2004. At present, that section enables the Secretary of State to have regard to matters connected with the offshore generation of electricity (for instance by means of wind farms) in exercising functions under the Petroleum Act 1998. The amendment made by this paragraph will permit the Secretary of State to have regard also to activities licensed under Chapter 2 or 3 of this Part. A corresponding provision is not needed in relation to the Secretary of State’s functions under Chapter 2 or 3 themselves, since in that case there are no existing licence holders who could claim to have a legitimate expectation that other offshore activities would not be taken into account in exercising the relevant functions.
103. *Paragraph 13* amends section 188 of the Energy Act 2004 to ensure that regulations made under that section (which are subject to negative resolution) can impose charges to fund the Secretary of State’s functions in connection with activities under Chapters 2 and 3 of this Part, or the functions of the Scottish Ministers in connection with activities under Chapter 3. The regulations would be able to fix amounts that appear to be appropriate having regard to the costs that are likely to be incurred in carrying out the relevant functions, to be paid by the persons (within *subsection (3)* of that section) who are specified in the regulations. Where any of the Secretary of State’s or the Scottish Ministers’ functions under Chapter 3 are transferred to another authority under section 34, an order under that section can modify the operation of section 188 of the 2004 Act (see section 34(4)(c) and (8)).