



# Energy Act 2011

## 2011 CHAPTER 16

### PART 3

#### MEASURES FOR REDUCING CARBON EMISSIONS

##### *Offshore electricity*

#### **104 Offshore transmission and distribution of electricity: extension of time for licence modifications and property scheme applications**

- (1) In section 90 of the Energy Act 2004 (modification of licence conditions for offshore transmission and distribution of electricity), in each of subsections (3) and (8) (time periods for consulting on and making modifications) for “the commencement of this section” substitute “ the passing of the Energy Act 2011 ”.
- (2) In section 91 of the Energy Act 2004 (extension of electricity transmission licences offshore), in each of subsections (6) and (11) (time periods for consulting on and making modifications) for “the commencement of this section” substitute “ the passing of the Energy Act 2011 ”.
- (3) In Schedule 2A to the Electricity Act 1989 (property schemes in respect of licences for offshore transmission of electricity), in paragraph 5(5) (maximum possible period during which an application for a scheme may be made) for “7 years” substitute “ 16 years ”.

#### **Commencement Information**

- II** S. 104 wholly in force at 18.12.2011; s. 104(1)(2) in force at Royal Assent and s. 104(3) in force at 18.12.2011 see s. 121(3)(h)(4)(c)

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### *Security of nuclear construction sites*

#### **105 Regulation of security of nuclear construction sites**

- (1) Section 77 of the Anti-terrorism, Crime and Security Act 2001 (regulation of security of civil nuclear industry) is amended as follows.
- (2) In subsection (1) (list of matters that may be regulated) after paragraph (c) insert—
  - “(cza) nuclear construction sites and equipment used or stored on such sites;”.
- (3) In subsection (7) after the definition of “equipment” insert—
  - ““nuclear construction site” means a site—
    - (a) on which works are being carried out with a view to its becoming a nuclear site used wholly or mainly for purposes other than defence purposes; and
    - (b) which is situated within 5 kilometres of an existing nuclear site.”

### *Decommissioning*

#### **106 Agreement about modifying decommissioning programme**

- (1) Section 46 of the Energy Act 2008 (approval of a decommissioning programme) is amended as follows.
- (2) After subsection (3) insert—
  - “(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.
  - (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.

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(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.”

(3) In subsection (4) for “(3)” substitute “(3B)”.

## **107 Abandonment: infrastructure converted for CCS demonstration projects**

(1) The Energy Act 2008 is amended as follows.

(2) After section 30 insert—

### **“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—

- (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

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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);
  - “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).

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- (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.

### **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—
- “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;

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“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).”

- (3) In the cross heading before section 30, for “installations” substitute “ infrastructure ”.
- (4) In section 30 (abandonment of installations)—
- (a) in subsection (1) (application of Part 4 of Petroleum Act 1998 in relation to abandonment of carbon storage installations)—
    - (i) for “ “the 1998 Act”” substitute “ referred to in this section and sections 30A and 30B as “the 1998 Act” ”, and
    - (ii) at the end insert “ and section 30A ”,
  - (b) after subsection (4) (power to make regulations modifying Part 4 of the 1998 Act in its application to carbon storage installations) insert—
 

“(4A) The power in subsection (4) is subject to section 30A.”, and
  - (c) in subsection (5) (meaning of “carbon storage installation”) after “this section” insert “ and section 30A ”.
- (5) In section 105(2) (parliamentary control of subordinate legislation), after paragraph (a) insert—
- (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);”.

### *Carbon dioxide pipelines*

## **108 Carbon dioxide pipelines: powers of compulsory acquisition**

- (1) The Pipe-lines Act 1962 is amended as follows.
- (2) In section 12 (orders for compulsory acquisition of rights over land for pipe-line construction)—
- (a) in subsection (1), for “the next following section” substitute “ section 13 ”;
  - (b) in subsections (2), (4), (5)(a) and (b), (5A) (in both places), (6) and (7), after “a compulsory rights order” insert “ under this section ”;
  - (c) in subsection (3), after “compulsory rights orders” insert “ under this section ”.
- (3) After section 12 insert—

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*“Pipe-lines for Conveying Carbon Dioxide:  
Compulsory Acquisition of Rights over Land*

**12A Orders for compulsory acquisition of rights over land: pipe-lines for conveying carbon dioxide**

- (1) This section applies in relation to a pipe-line (or a length of a pipe-line) that is intended to be converted into a pipe-line (or length) used for conveying carbon dioxide.
- (2) The owner of the pipe-line may apply to the Secretary of State for an order under subsection (3) in relation to land in which the pipe-line (or a length of the pipe-line) is situated.
- (3) An order under this subsection is an order authorising the owner of the pipe-line to do one or more of the following—
  - (a) to use the pipe-line (or length of the pipe-line) in the land described in the order to convey carbon dioxide;
  - (b) to execute pipe-line works in the land which are necessary in consequence of the presence of the pipe-line (or length) in the land;
  - (c) to execute pipe-line works in the land to enable the pipe-line (or length) to be used to convey carbon dioxide or in consequence of its use to convey carbon dioxide;
  - (d) to exercise, in relation to the pipe-line (or length), such of the rights mentioned in Schedule 4 as may be specified in the order.

An order under this subsection is referred to in this Act as a “compulsory rights order”.

- (4) A compulsory rights order under this section may be made subject to conditions (see section 13).
- (5) On receiving an application under subsection (2), the Secretary of State may grant or refuse the application.
- (6) Part 1 of Schedule 2, as modified by Part 2 of that Schedule, has effect in relation to applications for compulsory rights orders under this section.
- (7) A compulsory rights order under this section enures for the benefit of the owner for the time being of the pipe-line.
- (8) The Secretary of State may by order revoke a compulsory rights order under this section, in whole or in part, if—
  - (a) the pipe-line (or length of the pipe-line) is diverted from the land described in the order,
  - (b) the pipe-line (or length) is abandoned,
  - (c) the pipe-line (or length) ceases to be used to convey carbon dioxide, or
  - (d) the owner of the pipe-line makes an application for the revocation of the order.
- (9) A compulsory rights order under this section does not affect any right over the land described in the order that would not have been affected had the land been compulsorily purchased by virtue of a compulsory purchase order.

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- (10) A compulsory rights order under this section does not authorise the disregard of any enactment or of any instrument having effect by virtue of any enactment.
- (11) A compulsory rights order under this section is not to be taken to confer a right of support for the pipeline (or length of pipeline).
- (12) A compulsory rights order under this section is to be subject to special parliamentary procedure.
- (13) For the purposes of this section, “carbon dioxide” includes any substance consisting primarily of carbon dioxide.

Compulsory Rights Orders under Sections 12 and 12A: Supplementary Provisions”.

- (4) In section 66 (general interpretation provisions), in subsection (1), in the definition of “compulsory rights order”, for “subsection (1) of section twelve” substitute “ sections 12(1) and 12A(3) ”.
- (5) In Schedule 2—
  - (a) in the shoulder reference, after “12,” insert “ 12A, ”;
  - (b) in paragraph 10(1), for “subsection (3) of section twelve of this Act” substitute “ sections 12(3) and 12A(6) ”.
- (6) In Schedule 4, in the shoulder reference, for “Section 12” substitute “ Sections 12 and 12A ”.

#### **Commencement Information**

**12** S. 108 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(iii)

PROSPECTIVE

### *Carbon emissions reduction*

#### **109 Contribution to carbon budgeting under the Climate Change Act 2008**

- (1) The Secretary of State must prepare and publish an annual report on the extent to which—
  - (a) green deal plans under Chapter 1 of Part 1, and
  - (b) the energy company obligations provisions,
 have contributed to the Secretary of State fulfilling the duty under section 4(1)(b) of the Climate Change Act 2008 (carbon budgeting).
- (2) The “energy company obligations provisions” means—
  - (a) sections 33BC and 33BD of the Gas Act 1986 and sections 41A and 41B of the Electricity Act 1989 (promotion of reductions in carbon emissions and home-heating costs),
  - (b) sections 103 and 103A of the Utilities Act 2000 (overall carbon emissions and home-heating cost reduction targets), and



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- (c) section 103B of the Utilities Act 2000 (Secretary of State's power to require information about carbon emissions and home-heating cost reduction targets).
- (3) The first report under this section must be published before the end of 2014.
- (4) The Secretary of State must lay before Parliament a copy of each report under this section.

#### **110 Energy efficiency aim**

- (1) The Secretary of State must take such action as he considers appropriate to improve the energy efficiency of residential accommodation in England so as to contribute to the Secretary of State fulfilling the duty under section 1(1) of the Climate Change Act 2008 (reduction of net UK carbon account by 2050).
- (2) In subsection (1) “residential accommodation” has the meaning given by section 1 of the Home Energy Conservation Act 1995.
- (3) Section 2 of the Sustainable Energy Act 2003 (energy efficiency of residential accommodation) ceases to have effect.
- (4) In section 9 of the Sustainable Energy Act 2003 (citation, extent and commencement), in subsections (3) and (5) leave out “2,”.

### *Electricity from renewable sources*

#### **111 Adjustment of electricity transmission charges**

In section 185(11) of the Energy Act 2004 (areas suitable for renewable electricity generation: end date for schemes adjusting transmission charges) for “2024” substitute “2034”.

#### **112 Electricity from renewable sources: National Park authorities and Broads Authority**

- (1) This section applies to a body which is a National Park authority or the Broads Authority.
- (2) The body may—
  - (a) produce electricity from a renewable source;
  - (b) establish and operate generating stations and other installations for the purpose of producing electricity from a renewable source;
  - (c) make grants or loans to enable other persons to do anything which the body may do by virtue of paragraph (a) or (b);
  - (d) use, sell or otherwise dispose of electricity produced by virtue of the powers conferred by this section.
- (3) A “renewable source” is—
  - (a) in England and Wales, a source listed in regulation 2 of the Sale of Electricity by Local Authorities (England and Wales) Regulations 2010 (S.I. 2010/1910);
  - (b) in Scotland, a source listed in regulation 2 of the Sale of Electricity by Local Authorities (Scotland) Regulations 2010 (S.I. 2010/1908).

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- (4) Any regulations which—
- (a) are made in exercise of the power conferred by section 11(3) of the Local Government (Miscellaneous Provisions) Act 1976 (power to prescribe the circumstances in which local authorities may sell electricity), and
  - (b) amend, revoke or re-enact regulation 2 of the Sale of Electricity by Local Authorities (England and Wales) Regulations 2010,
- may amend subsection (3)(a) for the purpose of providing what is a “renewable source” in England and Wales.
- (5) Any regulations which—
- (a) are made in exercise of the power conferred by section 170A(3) of the Local Government (Scotland) Act 1973 (power to prescribe the circumstances in which local authorities may sell electricity), and
  - (b) amend, revoke or re-enact regulation 2 of the Sale of Electricity by Local Authorities (Scotland) Regulations 2010,
- may amend subsection (3)(b) for the purpose of providing what is a “renewable source” in Scotland.
- (6) Nothing in this section—
- (a) exempts a body from the requirements of Part 1 of the Electricity Act 1989, or
  - (b) affects what a body has power to do apart from this section.

*Northern Ireland: renewable heat incentives*

### **113 Renewable heat incentives in Northern Ireland**

- (1) The Department of Enterprise, Trade and Investment may make regulations—
- (a) establishing a scheme to facilitate and encourage renewable generation of heat in Northern Ireland, and
  - (b) about the administration and financing of the scheme.
- (2) Regulations under this section may, in particular—
- (a) make provision for the Department or NIAUR to make payments, or to require designated fossil fuel suppliers to make payments, in specified circumstances, to—
    - (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 such payments;
  - (c) make provision about the circumstances in which such payments may be recovered;
  - (d) require designated fossil fuel suppliers to provide specified information to the Department or NIAUR;
  - (e) make provision for payments to fossil fuel suppliers in specified circumstances;

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- (f) make provision about the enforcement of obligations imposed by or by virtue of the regulations (which may include a power for the Department or NIAUR to impose financial penalties);
- (g) confer functions on the Department or NIAUR, or both.

(3) In this section—

“biofuel” means liquid or gaseous fuel which is produced wholly from biomass;

“biogas” means gas produced by the anaerobic or thermal conversion of biomass;

“biomass” means material, other than fossil fuel 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 Article 8(1)(a) of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)) (licences to convey gas);

“the Department” means the Department of Enterprise, Trade and Investment;

“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);
- (d) crude liquid petroleum;
- (e) petroleum products (within the meaning of that Act);
- (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;

“functions” includes powers and duties;

“modify” includes amend, add to or repeal;

“NIAUR” means the Northern Ireland Authority for Utility Regulation;

“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;

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- (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 Article 55F of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)));
  - (i) biogas.
- (5) The Department may by regulations—
- (a) modify the list of sources of energy and technologies in subsection (4);
  - (b) modify the definition of “biofuel”, “biogas” or “biomass” in subsection (3).
- (6) The Department may by regulations 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) Any power to make regulations under this section is to be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (8) Regulations under this section may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (9) Regulations under this section 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 regulations are satisfied);
  - (e) make different provision for different cases or circumstances or for different purposes.

**114 Power for Gas and Electricity Markets Authority to act on behalf of Northern Ireland authority in connection with scheme under section 113**

- (1) GEMA and a Northern Ireland authority may enter into arrangements for GEMA to act on behalf of the Northern Ireland authority for, or in connection with, the carrying out of any functions that may be conferred on the Northern Ireland authority under, or for the purposes of, any scheme that may be established, under section 113.
- (2) In this section—
- “GEMA” means the Gas and Electricity Markets Authority;
  - “Northern Ireland authority” means—
- (a) the Department of Enterprise, Trade and Investment, or
  - (b) the Northern Ireland Authority for Utility Regulation.

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