



# Energy Act 2004

## 2004 CHAPTER 20

### PART 2

#### SUSTAINABILITY AND RENEWABLE ENERGY SOURCES

### CHAPTER 2

#### OFFSHORE PRODUCTION OF ENERGY

##### *Application of 1989 Act offshore*

#### **89 Activities offshore requiring 1989 Act licences**

- (1) In subsection (4) of section 4 of the 1989 Act (definitions for the purposes of Part 1), after the definition of “distribute” insert—

““generate”, in relation to electricity, means generate at a relevant place;”.

- (2) After that subsection insert—

“(5) In this section—

“relevant place” means a place in Great Britain, in the territorial sea adjacent to Great Britain or in a Renewable Energy Zone; and

“system” means a system the whole or a part of which is at a relevant place;

and references in this section to premises are references to premises situated at a relevant place, or at a place that is not in a Renewable Energy Zone but is in an area designated under section 1(7) of the Continental Shelf Act 1964.”

- (3) In section 6 of that Act (licences authorising supply etc.), after subsection (9) insert—

“(10) In this section “premises” has the same meaning as in section 4.”

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- (4) In section 64(1) of that Act (interpretation of Part 1), after the definitions of “final order” and “provisional order” insert—

““generate”, in relation to electricity, has the meaning given by section 4(4) above, and cognate expressions shall be construed accordingly;”.

## **90 Modification of licence conditions for offshore transmission and distribution**

- (1) If the Secretary of State considers it appropriate to do so for purposes connected with offshore transmission or offshore distribution, he may—
- (a) modify the standard conditions of transmission licences or distribution licences;
  - (b) modify, for purposes that in relation to modifications made under paragraph (a) are incidental, consequential or transitional purposes, the conditions of a particular transmission licence or a particular distribution licence;
  - (c) modify a code maintained in accordance with the conditions of a transmission licence or a distribution licence; and
  - (d) modify an agreement that gives effect to a code so maintained.
- (2) Before making a modification under this section, the Secretary of State must consult—
- (a) the holder of any licence being modified; and
  - (b) such other persons as he considers appropriate.
- (3) Subsection (2) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (4) The Secretary of State must publish every modification made by him under this section.
- (5) The publication must be in such manner as the Secretary of State considers appropriate.
- (6) Where the Secretary of State makes modifications under subsection (1)(a) of the standard conditions of licences of any type, GEMA must—
- (a) make (as nearly as may be) 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 in such manner as it considers appropriate.
- (7) A modification under subsection (1)(b) 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 1989 Act.
- (8) The Secretary of State’s powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.
- (9) In this section—
- “offshore distribution” means distribution within an area of offshore waters of electricity generated by a generating station in such an area;
- “offshore transmission” means transmission within an area of offshore waters of electricity generated by a generating station in such an area; and
- “offshore waters” means—

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- (a) waters in or adjacent to Great Britain which are between the mean 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).
- (10) Expressions used in this section and in Part 1 of the 1989 Act have the same meanings in this section as in that Part.

## **91 Extension of transmission licences offshore**

- (1) This section applies where, at the commencement of this section, a transmission licence is in force that authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system by means of which electricity is transmitted within Great Britain, or within an area of Great Britain (the “co-ordination licence”).
- (2) The Secretary of State may make such modifications of the co-ordination licence as he considers appropriate for the purpose of applying the authorisation and conditions of the licence in relation to the transmission of electricity within one or both of the following—
- (a) an area of the territorial sea adjacent to Great Britain; and
  - (b) an area designated under section 1(7) of the Continental Shelf Act 1964.
- (3) The modifications that may be made by the Secretary of State under subsection (2) include such modifications of the co-ordination licence (including modifications of the conditions included in it) as the Secretary of State considers appropriate for incidental, consequential or transitional purposes.
- (4) Where the Secretary of State considers it appropriate to do so for purposes that in relation to modifications made under subsection (2) are incidental or consequential purposes, he may make—
- (a) modifications of the conditions of a particular licence (other than the co-ordination licence);
  - (b) modifications of the standard conditions of licences of any type.
- (5) Before making a modification under this section, the Secretary of State must consult—
- (a) the holder of any licence being modified; and
  - (b) such other persons as he considers appropriate.
- (6) Subsection (5) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (7) The Secretary of State must publish every modification made by him under this section.
- (8) The publication must be in such manner as the Secretary of State considers appropriate.
- (9) A modification under subsection (2) or (4)(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 1989 Act.
- (10) Where the Secretary of State makes modifications under subsection (4)(b) of the standard conditions of licences of any type, GEMA must—

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- (a) make (as nearly as may be) 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 in such manner as it considers appropriate.
- (11) The Secretary of State’s powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.
- (12) Expressions used in this section and in Part 1 of the 1989 Act have the same meanings in this section as in that Part.

## **92 Competitive tenders for offshore transmission licences**

After section 6B of the 1989 Act (applications for transmission licences) insert—

### **“6C Competitive tenders for offshore transmission licences**

- (1) The Authority may by regulations make such provision as appears to it to be appropriate for facilitating the making, in prescribed cases, of a determination on a competitive basis of the person to whom an offshore transmission licence is to be granted.
- (2) That provision may include—
  - (a) provision, in prescribed cases, for the publication of a proposal to grant an offshore transmission licence;
  - (b) provision for the inclusion in such a proposal of an invitation to apply for such a licence;
  - (c) provision restricting the making of applications for offshore transmission licences and imposing requirements as to the period within which they must be made;
  - (d) provision for regulating the manner in which applications are considered and determined.
- (3) Regulations under this section—
  - (a) may make provision by reference to a determination by the Authority or to the opinion of the Authority as to any matter; and
  - (b) may dispense with or supplement provision made in relation to applications for transmission licences by or under section 6A or 6B above.
- (4) The approval of the Secretary of State is required for the making of regulations under this section.
- (5) In this section—
  - “offshore transmission licence” means a transmission licence authorising anything that forms part of a transmission system to be used for purposes connected with offshore transmission; and
  - “prescribed” means prescribed in or determined under regulations made by the Authority.
- (6) In subsection (5) “offshore transmission” means the transmission within an area of offshore waters of electricity generated by a generating station in such an area.

- (7) In subsection (6) “offshore waters” means—
- (a) waters in or adjacent to Great Britain which are between the mean 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.”

### **93 Consents for generating stations offshore**

- (1) In section 36(1) of the 1989 Act (consent required for construction etc. of generating stations), after “constructed” insert “at a relevant place (within the meaning of section 4), and a generating station at such a place shall not be”.
- (2) Before paragraph 8 of Schedule 8 to that Act (procedure for consents under sections 36 and 37) insert—

#### *“Generating stations not within areas of relevant planning authorities*

- 7A (1) This paragraph applies to every case where an application for a consent under section 36 of this Act relates to—
- (a) the construction or operation of a generating station the whole or a part of which is to be, or is, at a place that is not within the area of a relevant planning authority; or
  - (b) the extension of a generating station at or to a place the whole or a part of which is not within such an area.
- (2) This Schedule shall have effect in relation to cases to which this paragraph applies with the following modifications.
- (3) In paragraph 1(1), for the words from “land to which” onwards substitute “place to which the application relates, that is, the place where it is proposed to construct the generating station, where the proposed extension will be or where the station proposed to be operated is situated.”
- (4) Paragraph 2 does not apply where no part of the place to which the application relates is within the area of a relevant planning authority.
- (5) In paragraph 4—
- (a) in sub-paragraph (1)—
    - (i) in paragraph (a), for “land” substitute “place”; and
    - (ii) in paragraph (b), for “in the locality” substitute “in the area specified in or determined in accordance with regulations made by the Secretary of State”;
  - (b) in sub-paragraph (2), for the words from “the locality” onwards substitute “the area specified in or determined in accordance with regulations made by the Secretary of State.”; and
  - (c) in sub-paragraph (3), for “in the locality” substitute “who are likely to be affected by the consent applied for if it is given”.
- (6) Paragraph 5 does not apply; but sub-paragraphs (7) to (10) apply where—
- (a) a public inquiry is to be held in accordance with paragraph 2(2) or 3(2); and

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- (b) the application for consent relates to a place a part of which is in the area of one or more relevant planning authorities.
- (7) Except in so far as the Secretary of State otherwise directs, an inquiry held in accordance with paragraph 2(2) must be confined to so much of the application as relates to land within the area of the authority by whom an objection has been made.
- (8) The Secretary of State must have regard to objections made otherwise than by the authority in question in determining whether to give a direction under sub-paragraph (7) and in determining (where he gives one) what direction to give.
- (9) The Secretary of State may direct that separate inquiries may be held in relation to any or each of the following—
  - (a) so much of the application as relates to land within the area of a particular relevant planning authority;
  - (b) so much of the application as relates to anywhere that is not within the area of a relevant planning authority.
- (10) For the purposes of sub-paragraph (7) a planning authority that has made an objection is to be treated as not having done so if the Secretary of State proposes to accede to the application subject to such modifications or conditions as meet that objection.”
- (3) In section 36(9) of that Act (definition of extension), after “land” insert “or area of waters”.
- (4) The functions conferred by virtue of this section on the Secretary of State are not to be exercisable by the Scottish Ministers, except in pursuance of an Order in Council made after the passing of this Act under section 63 of the Scotland Act 1998 (c. 46).

#### **94 Application of regulations under 1989 Act offshore**

- (1) In section 29 of the 1989 Act (regulations relating to supply and safety), after subsection (1) insert—
  - “(1A) Regulations under this section may include provision for securing the purposes mentioned in subsection (1) in relation to the territorial sea adjacent to Great Britain or any Renewable Energy Zone.”
- (2) In section 30 of that Act (electrical inspectors), after subsection (3) insert—
  - “(3A) The regulations that may be made under this section include regulations—
    - (a) imposing duties on electrical inspectors in relation to anything in the territorial sea adjacent to Great Britain or a Renewable Energy Zone; or
    - (b) making any other provision authorised by this section in relation to activities carried on there.”