Electricity Act 1989

1989 CHAPTER 29

An Act to provide for the appointment and functions of a Director General of Electricity Supply and of consumers' committees for the electricity supply industry; to make new provision with respect to the supply of electricity through electric lines and the generation and transmission of electricity for such supply; to abolish the Electricity Consumers' Council and the Consultative Councils established under the Electricity Act 1947; to provide for the vesting of the property, rights and liabilities of the Electricity Boards and the Electricity Council in companies nominated by the Secretary of State and the subsequent dissolution of those Boards and that Council; to provide for the giving of financial assistance in connection with the storage and reprocessing of nuclear fuel, the treatment, storage and disposal of radioactive waste and the decommissioning of nuclear installations; to amend the Rights of Entry (Gas and Electricity Boards) Act 1954 and the Local Government (Scotland) Act 1973; and for connected purposes. [27th July 1989]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act: references to the Director General of Electricity Supply ("the Director") shall be read as references to the Gas and Electricity Markets Authority ("the Authority") (20.12.2000) by virtue of Utilities Act 2000 (c. 27), **s. 3(2)**; S.I. 2000/3343, art. 2, **Sch.**

C2 Act: references to a public gas transporter or to the holder of a licence under section 7 of the 1986 Act shall have effect as if they were references to a gas transporter (1.10.2001) by virtue of Utilities Act 2000 (c. 27), **s. 76(7)**; S.I. 2001/3266, art. 2, **Sch.** (with arts. 3-20)

C3 Act: power to modify conferred (E.W.S.) (8.5.2003) by Electricity (Miscellaneous Provisions) Act 2003 (c. 9), **s. 2(3)**

C4 Act: transfer of functions (1.10.2008) by Consumers, Estate Agents and Redress Act 2007 (c. 17), **ss. 30(3)(a)**, 66(2) (with s. 6(9), Sch. 3); S.I. 2008/2550, art. 2, Sch.

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PART I

ELECTRICITY SUPPLY

Modifications etc. (not altering text)

C5 Pt. I modified (5.10.2004) by Energy Act 2004 (c. 20), **ss. 184(12)**, 185(13), 198(2); S.I. 2004/2575, art. 2(1), **Sch. 1**

C6 Pt. I modified (S.) (30.11.2005) by The Electricity from Non-Fossil Fuel Sources (Scotland) Saving Arrangements Order 2005 (S.S.I. 2005/549), arts. 1(1), **9**

C7 Pt. 1 excluded (30.12.2015) by The Port Talbot Steelworks Generating Station Order 2015 (S.I. 2015/1984), arts. 1, **7(2)** (with art. 26)

C8 Pt. I (ss. 1-64) applied (1.10.2001) by S.I. 2001/3264, **regs. 4(2)**, 5(2)

C9 Pt. I (ss. 1-64) amended (E.W.) (27.10.2000) by S.I. 2000/2727, **art. 10**
Pt. I (ss. 1-64) amended (7.11.2000) by 2000 c. 27, **s. 105(1)(a)**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)
Pt. I (ss. 1-64) amended (E.W.) (1.10.2001) by S.I. 2000/2727, **art. 10** (as substituted (1.10.2001) by S.I. 2001/3268, **art. 2(13)**)

Introductory

Modifications etc. (not altering text)

C10 Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 136(2)**, 156(2)

F1 1 . . . . . .

Textual Amendments

F1 S. 1 repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

F2 2 . . . . . .

Textual Amendments

F2 S. 2 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

F3 3 General duties of Secretary of State and Director.

. . . . . .

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Textual Amendments

F3 S. 3A substituted for s. 3 (20.12.2000) by 2000 c. 27, **s. 13**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

[F4 3A The principal objective and general duties of the Secretary of State and the Authority.

(1) The principal objective of the Secretary of State and the Gas and Electricity Markets Authority (in this Act referred to as "the Authority") in carrying out their respective functions under this Part is to protect the interests of **[**F5existing and future**]** consumers in relation to electricity conveyed by distribution systems **[**F6or transmission systems**]**F7... .

[Those interests of existing and future consumers are their interests taken as a whole, F8(1A) including—

(a) their interests in the reduction of electricity-supply emissions of targeted greenhouse gases; F9...

(b) their interests in the security of the supply of electricity to them**[**F10; and

(c) their interests in the fulfilment by the Authority, when carrying out its functions as designated regulatory authority for Great Britain, of the objectives set out in Article 36(a) to (h) of the Electricity Directive.**]**

(1B) The Secretary of State and the Authority shall carry out their respective functions under this Part in the manner which the Secretary of State or the Authority (as the case may be) considers is best calculated to further the principal objective, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

(1C) Before deciding to carry out functions under this Part in a particular manner with a view to promoting competition as mentioned in subsection (1B), the Secretary of State or the Authority shall consider—

(a) to what extent the interests referred to in subsection (1) of consumers would be protected by that manner of carrying out those functions; and

(b) whether there is any other manner (whether or not it would promote competition as mentioned in subsection (1B)) in which the Secretary of State or the Authority (as the case may be) could carry out those functions which would better protect those interests.**]**

(2) **[**F11In performing the duties under subsections (1B) and (1C), the Secretary of State or the Authority shall have regard to**]** —

(a) the need to secure that all reasonable demands for electricity are met; and

(b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under this Part**[**F12, the Utilities Act 2000**[**F13, Part 2 or 3 of the Energy Act 2004**[**F14, Part 2 or 5 of the Energy Act 2008 or section 4, Part 2, **[**F15, sections 26 to 29 of the Energy Act 2010 or Part 2 of the Energy Act 2013**]]]]**[**F16; and

(c) the need to contribute to the achievement of sustainable development.**]**

(3) In performing **[**F17the duties under subsections (1B), (1C) and (2)**]**, the Secretary of State or the Authority shall have regard to the interests of—

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(a) individuals who are disabled or chronically sick;

(b) individuals of pensionable age;

(c) individuals with low incomes; and

(d) individuals residing in rural areas;

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

(4) The Secretary of State and the Authority may, in carrying out any function under this Part, have regard to—

(a) the interests of consumers in relation to gas conveyed through pipes (within the meaning of the [M1]Gas Act 1986); and

(b) any interests of consumers in relation to—

[[F18](i) communications services and electronic communications apparatus, or**]**

(ii) water services or sewerage services (within the meaning of the [M2]Water Industry Act 1991),

which are affected by the carrying out of that function.

(5) Subject to **[**[F19]subsections (1B) and**]** (2), **[**[F20]and to section 132(2) of the Energy Act 2013 (duty to carry out functions in manner best calculated to further delivery of policy outcomes)**]** the Secretary of State and the Authority shall carry out their respective functions under this Part in the manner which he or it considers is best calculated—

(a) to promote efficiency and economy on the part of persons authorised by licences or exemptions to **[**[F21]distribute, supply or participate in the transmission of**]** electricity**[**[F22],**]****[**[F23]to participate in the operation of electricity interconnectors**]****[**[F24]or to provide a smart meter communication service**]** and the efficient use of electricity conveyed by distribution systems **[**[F25]or transmission systems**]**;

(b) to protect the public from dangers arising from the generation, transmission, distribution or supply of electricity **[**[F26]or the provision of a smart meter communication service**]**;

[F27](ba) . . . . . .

(c) to secure a diverse and viable long-term energy supply,

[[F28]and [F29]... shall**]**, in carrying out those functions, have regard to the effect on the environment of activities connected with the generation, transmission, distribution or supply of electricity **[**[F26]or the provision of a smart meter communication service**]**.

[F30](5A) **[** In carrying out their respective functions under this Part in accordance with the preceding provisions of this section the Secretary of State and the Authority must each have regard to—

(a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and

(b) any other principles appearing to him or, as the case may be, it to represent the best regulatory practice.**]**

[F31](5B) **[** In subsection (1A)—

"emissions" has the same meaning as in the Climate Change Act 2008 (see section 97 of that Act);

"electricity-supply emissions" in relation to emissions of a targeted greenhouse gas, means any such emissions (wherever their source) that are

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wholly or partly attributable to, or to commercial activities connected with, the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors;

"targeted greenhouse gases" has the same meaning as in Part 1 of the Climate Change Act 2008 (see section 24 of that Act).**]**

(6) In **[**F32subsections **[**F33(1C),**]** (3) and (4) references to consumers include**]** both existing and future consumers.

(7) In this section and sections 3B and 3C, references to functions of the Secretary of State or the Authority under this Part include a reference to functions under the Utilities Act 2000 which relate to electricity conveyed by distribution systems **[**F34or transmission systems**]**.

(8) In this Part, unless the context otherwise requires—

"exemption" means an exemption granted under section 5;

"licence" means a licence under section 6 and "licence holder" shall be construed accordingly.**]**

Textual Amendments

F4 S. 3A substituted for s. 3 (20.12.2000) by 2000 c. 27, **s. 13**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

F5 Words in s. 3A(1) inserted (26.1.2009) by Energy Act 2008 (c. 32), **ss. 83(2)(a)**, 110(2); S.I. 2009/45, art. 2(d)(i)

F6 Words in s. 3A(1) inserted (1.4.2006 for specified purposes, 1.4.2010 in so far as not already in force) by Energy Act 2004 (c. 20), s. 179(2)(3)(a), 198(2); S.I. 2005/2965, **art. 3**

F7 Words in s. 3A(1) omitted (8.6.2010) by virtue of Energy Act 2010 (c. 27), **ss. 17(2)**, 38(3)

F8 Ss. 3A(1A)-(1C) inserted (8.6.2010) by Energy Act 2010 (c. 27), **ss. 17(3)**, 38(3)

F9 Word in s. 3A(1A)(a) omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **27(a)**

F10 S. 3A(1A)(c) and preceding word inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **27(b)**

F11 Words in s. 3A(2) substituted (8.6.2010) by Energy Act 2010 (c. 27), **ss. 17(4)(a)**, 38(3)

F12 Words in s. 3A(2)(b) substituted (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 190(3)**, 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1

F13 Words in s. 3A(2)(b) substituted (26.11.2008) by Energy Act 2008 (c. 32), **ss. 102(6)**, 110(2)

F14 Words in s. 3A(2)(b) substituted (8.6.2010) by Energy Act 2010 (c. 27), **ss. 17(4)(b)**, 38(3)

F15 Words in s. 3A(2)(b) substituted (18.12.2013) by Energy Act 2013 (c. 32), **ss. 65(1)**, 156(3)

F16 S. 3A(2)(c) and preceding word inserted (26.1.2009) by Energy Act 2008 (c. 32), **ss. 83(2)(b)**, 110(2); S.I. 2009/45, art. 2(d)(i)

F17 Words in s. 3A(3) substituted (8.6.2010) by Energy Act 2010 (c. 27), **ss. 17(5)**, 38(3)

F18 S. 3A(4)(b)(i) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 17 para. 98** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

F19 Words in s. 3A(5) substituted (8.6.2010) by Energy Act 2010 (c. 27), **ss. 17(6)(a)**, 38(3)

F20 Words in s. 3A(5) inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 138(3)**, 156(2)

F21 Words in s. 3A(5)(a) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 4**; S.I. 2004/2184, art. 2(2), Sch. 2

F22 Word in S. 3A(5)(a) substituted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **3(a)(i)**

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F23 Words in s. 3A(5)(a) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 147(2)(b)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
F24 Words in s. 3A(5)(a) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **3(a)(ii)**
F25 Words in s. 3A(5)(a) inserted (1.4.2006 for specified purposes, 1.4.2010 in so far as not already in force) by Energy Act 2004 (c. 20), **s. 179(2)(3)(a)**, 198(2); S.I. 2005/2965, **art. 3**
F26 Words in s. 3A(5) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **3(b)**
F27 S. 3A(5)(ba) repealed (26.1.2009) by Energy Act 2008 (c. 32), ss. 83(2)(c), 110(2), **Sch. 6**; S.I. 2009/45, art. 2(d)(bb)(e)(vi)(i)
F28 Words in s. 3A(5) substituted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 83(b)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
F29 Words in s. 3A(5) omitted (8.6.2010) by virtue of Energy Act 2010 (c. 27), **ss. 17(6)(b)**, 38(3)
F30 S. 3A(5A) inserted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 178**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
F31 S. 3A(5B) inserted (8.6.2010) by Energy Act 2010 (c. 27), **ss. 17(7)**, 38(3)
F32 Words in s. 3A(6) substituted (26.1.2009) by Energy Act 2008 (c. 32), **ss. 83(2)(d)**, 110(2); S.I. 2009/45, art. 2(d)(i)
F33 Word in s. 3A(6) inserted (8.6.2010) by Energy Act 2010 (c. 27), **ss. 17(8)**, 38(3)
F34 Words in s. 3A(7) inserted (1.4.2006 for specified purposes, 1.4.2010 in so far as not already in force) by Energy Act 2004 (c. 20), **s. 179(2)(3)(a)**, 198(2); S.I. 2005/2965, **art. 3**

Modifications etc. (not altering text)
C11 Ss. 3A-3D applied (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 190(2)**, 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1
C12 S. 3A: transfer of functions (23.3.2005) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849), art. 1, **Sch.** (with art. 6)
C13 Ss. 3A-3D applied (21.8.2006) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 8(6)**, 28(1)
C14 Ss. 3A-3D applied (26.11.2008) by Energy Act 2008 (c. 32), **ss. 102(4)**, 110(2)
C15 Ss. 3A-3D applied (8.4.2010) by Energy Act 2010 (c. 27), **ss. 30(2)**, 38(1)
C16 Ss. 3A-3D applied (18.12.2011) by Energy Act 2011 (c. 16), **ss. 78(2)**, 121(3)
C17 Ss. 3A-3D applied (18.12.2011) by Energy Act 2011 (c. 16), **ss. 98(14)**, 121(3)
C18 Ss. 3A-3D applied (21.3.2012) by Energy Act 2011 (c. 16), **ss. 22(10)**, 121(1); S.I. 2012/873, art. 2(a)(v)
C19 Ss. 3A-3D applied (18.12.2013) by Energy Act 2013 (c. 32), **ss. 39**, 156(3)
C20 Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 141(2)**, 156(2)
C21 Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 53**, 156(2)
C22 Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), ss. 136(2), 156(2)

Marginal Citations
M1 1986 c. 44.
M2 1991 c. 56.

[F35 3B Guidance on social and environmental matters.

(1) The Secretary of State shall from time to time issue guidance about the making by the Authority of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.

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(2) The Authority shall, in carrying out its functions under this Part, have regard to any guidance issued under this section.

(3) Before issuing guidance under this section the Secretary of State shall consult—

(a) the Authority;

[[F36](b) Citizens Advice;

(ba) Citizens Advice Scotland**]**;

(c) licence holders; and

(d) such other persons as the Secretary of State considers it appropriate to consult in relation to the guidance.

(4) A draft of any guidance proposed to be issued under this section shall be laid before each House of Parliament.

(5) Guidance shall not be issued under this section until after the period of forty days beginning with—

(a) the day on which the draft is laid before each House of Parliament; or

(b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days.

(6) If, before the end of that period, either House resolves that the guidance should not be issued, the Secretary of State must not issue it.

(7) In reckoning any period of forty days for the purposes of subsection (5) or (6), no account shall be taken of any time during which—

(a) Parliament is dissolved or prorogued; or

(b) both Houses are adjourned for more than four days.

(8) The Secretary of State shall arrange for any guidance issued under this section to be published in such manner as he considers appropriate.**]**

Textual Amendments

F35 S. 3B inserted (20.12.2000) by 2000 c. 27, **s. 14**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

F36 S. 3B(3)(b)(ba) substituted for s. 3B(3)(b) (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(2)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

Modifications etc. (not altering text)

C11 Ss. 3A-3D applied (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 190(2)**, 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1

C13 Ss. 3A-3D applied (21.8.2006) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 8(6)**, 28(1)

C14 Ss. 3A-3D applied (26.11.2008) by Energy Act 2008 (c. 32), **ss. 102(4)**, 110(2)

C15 Ss. 3A-3D applied (8.4.2010) by Energy Act 2010 (c. 27), **ss. 30(2)**, 38(1)

C16 Ss. 3A-3D applied (18.12.2011) by Energy Act 2011 (c. 16), **ss. 78(2)**, 121(3)

C17 Ss. 3A-3D applied (18.12.2011) by Energy Act 2011 (c. 16), **ss. 98(14)**, 121(3)

C18 Ss. 3A-3D applied (21.3.2012) by Energy Act 2011 (c. 16), **ss. 22(10)**, 121(1); S.I. 2012/873, art. 2(a)(v)

C19 Ss. 3A-3D applied (18.12.2013) by Energy Act 2013 (c. 32), **ss. 39**, 156(3)

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C20 Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 141(2)**, 156(2)
C21 Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 53**, 156(2)
C22 Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), ss. 136(2), 156(2)

[F37 3C Health and safety.

(1) The Secretary of State and the Authority shall consult [F38—

(a) the Health and Safety Executive about all electricity safety issues, and

(b) the Office for Nuclear Regulation about all electricity safety issues relating to nuclear sites (within the meaning of Part 3 of the Energy Act 2013),

which may be relevant to the carrying out of their respective functions under this Part.]

(2) The Secretary of State may require the Authority also to consult him about electricity safety issues of particular descriptions.

(3) The Secretary of State and the Authority shall, in carrying out their respective functions under this Part, take into account any advice given by [F39the Health and Safety Executive][F40or the Office for Nuclear Regulation] about any electricity safety issue (whether or not in response to consultation under subsection (1)).

(4) The Authority shall, in carrying out its functions under this Part, take into account any advice given by the Secretary of State about any electricity safety issue (whether or not in response to consultation under subsection (2)).

(5) For the purposes of this section an electricity safety issue is anything concerning the generation, transmission, distribution or supply of electricity which may affect the health and safety of—

(a) members of the public; or

(b) persons employed in connection with any of those activities.]

Textual Amendments

F37 S. 3C inserted (20.12.2000) by 2000 c. 27, **s. 15**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)
F38 Words in s. 3C(1) substituted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 61(2)**; S.I. 2014/251, art. 4
F39 Words in s. 3C(1)(3) substituted (1.4.2008) by The Legislative Reform (Health and Safety Executive) Order 2008 (S.I. 2008/960), art. 1, **Sch. 3** (with art. 21, Sch. 2)
F40 Words in s. 3C(3) inserted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 61(3)**; S.I. 2014/251, art. 4

Modifications etc. (not altering text)

C11 Ss. 3A-3D applied (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 190(2)**, 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1
C13 Ss. 3A-3D applied (21.8.2006) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 8(6)**, 28(1)
C14 Ss. 3A-3D applied (26.11.2008) by Energy Act 2008 (c. 32), **ss. 102(4)**, 110(2)
C15 Ss. 3A-3D applied (8.4.2010) by Energy Act 2010 (c. 27), **ss. 30(2)**, 38(1)
C16 Ss. 3A-3D applied (18.12.2011) by Energy Act 2011 (c. 16), **ss. 78(2)**, 121(3)
C17 Ss. 3A-3D applied (18.12.2011) by Energy Act 2011 (c. 16), **ss. 98(14)**, 121(3)

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C18 Ss. 3A-3D applied (21.3.2012) by Energy Act 2011 (c. 16), **ss. 22(10)**, 121(1); S.I. 2012/873, art. 2(a)(v)
C19 Ss. 3A-3D applied (18.12.2013) by Energy Act 2013 (c. 32), **ss. 39**, 156(3)
C20 Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 141(2)**, 156(2)
C21 Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 53**, 156(2)
C22 Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), ss. 136(2), 156(2)

[F41 3D Exceptions from sections 3A to 3C.

(1) Section 3A does not apply in relation to the issuing by the Secretary of State of guidance under section 3B.

(2) Sections 3A to 3C do not apply in relation to functions of the Secretary of State under **[**F42sections 36 to 37**]**.

(3) Sections 3A to 3C do not apply in relation to anything done by the Authority—
(a) in the exercise of functions relating to the determination of disputes;
(b) in the exercise of functions under section 43(3).

(4) The Authority may nevertheless, when exercising any function under section 43(3), have regard to any matter in respect of which a duty is imposed by sections 3A to 3C ("a general matter"), if it is a matter to which **[**F43the CMA**]** could have regard when exercising that function (but that is not to be taken as implying that, in relation to functions mentioned in subsection (2), regard may not be had to any general matter).

(5) The duties imposed by sections 3A to 3C do not affect the obligation of the Authority or the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment, by virtue of any **[**F44EU**]** obligation or otherwise).**]**

Textual Amendments

F41 S. 3D inserted (20.12.2000) by 2000 c. 27, **s. 16**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)
F42 Words in s. 3D substituted (1.3.2005) by Energy Act 2004 (c. 20), **ss. 99(3)**, 198(2); S.I. 2005/442, art. 2(1), Sch. 1
F43 Words in s. 3D(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 62** (with art. 3)
F44 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

Modifications etc. (not altering text)

C11 Ss. 3A-3D applied (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 190(2)**, 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1
C13 Ss. 3A-3D applied (21.8.2006) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 8(6)**, 28(1)
C14 Ss. 3A-3D applied (26.11.2008) by Energy Act 2008 (c. 32), **ss. 102(4)**, 110(2)
C15 Ss. 3A-3D applied (8.4.2010) by Energy Act 2010 (c. 27), **ss. 30(2)**, 38(1)
C16 Ss. 3A-3D applied (18.12.2011) by Energy Act 2011 (c. 16), **ss. 78(2)**, 121(3)
C17 Ss. 3A-3D applied (18.12.2011) by Energy Act 2011 (c. 16), **ss. 98(14)**, 121(3)

C18 Ss. 3A-3D applied (21.3.2012) by Energy Act 2011 (c. 16), **ss. 22(10)**, 121(1); S.I. 2012/873, art. 2(a)(v)
C19 Ss. 3A-3D applied (18.12.2013) by Energy Act 2013 (c. 32), **ss. 39**, 156(3)
C20 Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 141(2)**, 156(2)
C21 Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 53**, 156(2)
C22 Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), ss. 136(2), 156(2)
C23 S. 3D(4) excluded (20.12.2000) by S.I. 2000/3343, **art. 10(1)(b)** (subject to transitional provisions in arts. 3-15)

[F45 3E Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission

The Authority must carry out its functions under this Part in the manner that it considers is best calculated to implement, or to ensure compliance with, any binding decision of the Agency or the European Commission made under the Electricity Directive, the Electricity Regulation or the Agency Regulation in relation to electricity.**]**

Textual Amendments

F45 S. 3E inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **33**

[F46 3F Authority to consult and cooperate with other authorities

(1) When carrying out its functions as designated regulatory authority for Great Britain the Authority must, wherever it thinks fit—

(a) consult and cooperate with the Agency and designated regulatory authorities for Northern Ireland and other Member States;

(b) provide the Agency and the designated regulatory authorities for Northern Ireland and other Member States with information they may require in order to carry out their functions under the Electricity Directive, the Electricity Regulation or the Agency Regulation as it applies in relation to electricity; and

(c) consult relevant national authorities.

(2) In exercising functions in accordance with subsection (1) the Authority must, wherever it thinks fit, cooperate with the designated regulatory authorities for Northern Ireland and other Member States within a region which includes Great Britain with a view, within that region, to—

(a) the integration of national markets;

(b) the promotion and facilitation of cooperation between transmission system operators;

(c) the optimal management of electricity networks;

(d) the promotion of jointly managed cross-border trade in electricity and the allocation of cross-border capacity;

(e) enabling an adequate level of interconnection capacity;

(f) the coordination of the development of network codes; and

(g) the coordination of the regulation of electricity markets, including rules concerning the management of congestion of electricity networks.

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(3) In this section—

"network code" means a network code developed under Article 6 of the Electricity Regulation and adopted by the European Commission;

"region" includes a geographical area defined in accordance with Article 12(3) of the Electricity Regulation; and

"relevant national authority" means any of the following—

(a) F47...

(b) the Office of Communications;

(c) **[**F48the CMA**]** ;

(d) the Water Services Regulation Authority.**]**

Textual Amendments

F46 S. 3F inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **35**

F47 Words in s. 3F(3) omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 63(a)** (with art. 3)

F48 Words in s. 3F(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 63(b)** (with art. 3)

Licensing of supply etc.

4 Prohibition on unlicensed supply etc.

(1) A person who—

(a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;

[F49(b) participates in the transmission of electricity for that purpose;**]**

[F50(bb) distributes electricity for that purpose;**]**

(c) supplies electricity to any premises, F51...

[F52(d) participates in the operation of an electricity interconnector**][**F53; or

(e) provides a smart meter communication service,**]**

shall be guilty of an offence unless he is authorised to do so by a licence F54... .

(2) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State or the Director.

[F55(3A) In subsection (1)(b) above, the reference to a person who participates in the transmission of electricity is to a person who—

(a) co-ordinates, and directs, the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, or

(b) makes available for use for the purposes of such a transmission system anything which forms part of it.

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[Subsection (3A) is subject to section 6F (offshore transmission during commissioning [F56](3AA) period).**]**

(3B) For the purposes of subsection (3A)(b), a person shall not be regarded as making something available just because he consents to its being made available by another.**]**

[[F57](3C) A reference in this Part to participating in the operation of an electricity interconnector is a reference to—

(a) co-ordinating and directing the flow of electricity into or through an electricity interconnector; or

(b) making such an interconnector available for use for the conveyance of electricity;

and a person is not to be regarded as participating in the transmission of electricity by reason only of activities constituting participation in the operation of an electricity interconnector.

(3D) For the purposes of subsection (3C)(b), a person shall not be regarded as making something available just because he consents to its being made available by another.

(3E) In this Part "electricity interconnector" means so much of an electric line or other electrical plant as—

(a) is situated at a place within the jurisdiction of Great Britain; and

(b) subsists wholly or primarily for the purposes of the conveyance of electricity (whether in both directions or in only one) between Great Britain and a place within the jurisdiction of another country or territory.

(3F) For the purposes of this section—

(a) a place is within the jurisdiction of Great Britain if it is in Great Britain, in the territorial sea adjacent to Great Britain or in an area designated under section 1(7) of the Continental Shelf Act 1964; and

(b) a place is within the jurisdiction of another country or territory if it is in that country or territory or in waters in relation to which authorities of that country or territory exercise jurisdiction.**]**

[[F58](3G) A reference in this Part to providing a smart meter communication service is a reference to making arrangements with each domestic supplier to provide a service, for such suppliers, of communicating relevant information to and from smart meters through which electricity is supplied to domestic premises.**]**

(4) In this Part, unless the context otherwise requires—

[[F59]"distribute", in relation to electricity, means distribute by means of a distribution system, that is to say, a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system;**]**

[[F60]"generate", in relation to electricity, means generate at a relevant place;**]**

[[F61]"supply", in relation to electricity, means its supply to premises in cases where—

(a) it is conveyed to the premises wholly or partly by means of a distribution system, or

(b) (without being so conveyed) it is supplied to the premises from a substation to which it has been conveyed by means of a transmission system,

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but does not include its supply to premises occupied by a licence holder for the purpose of carrying on activities which he is authorised by his licence to carry on;**]**

[[F62]"transmission", in relation to electricity, means transmission by means of a transmission system;

"transmission system" means a system which—

(a) consists (wholly or mainly) of high voltage lines and electrical plant, and

(b) is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another.**]**

[[F63](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.**]**

[[F64](6) In this section—

"domestic supplier" means an electricity supplier—

(a) who is authorised, in accordance with the conditions of a licence, to supply electricity to domestic premises; and

(b) who supplies electricity to domestic premises in accordance with that licence;

"external electronic communications network" means a network which—

(a) is an electronic communications network, within the meaning of section 32 of the Communications Act 2003; and

(b) does not form part of a smart meter;

"relevant information" means information relating to the supply of electricity; and

"smart meter" means—

(a) an electricity meter which can send and receive information using an external electronic communications network; or

(b) an electricity meter and a device which is associated with or ancillary to that meter and which enables information to be sent to and received by the meter using an external electronic communications network.**]**

Textual Amendments

F49 S. 4(1)(b) substituted (24.8.2004 for specified purposes, 1.9.2004 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 135(2)**, 198(2); S.I. 2004/2184, art. 2(1)(2), Sch. 1, Sch. 2

F50 S. 4(1)(bb) inserted (1.10.2001) by 2000 c. 27, **s. 28(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F51 Word in s. 4(1) omitted (19.9.2012) by virtue of The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **4(2)(a)** (with art. 38(1)-(3))

F52 S. 4(1)(d) and preceding word inserted (14.8.2006) by Energy Act 2004 (c. 20), **ss. 145(2)**, 198(2); S.I. 2006/1964, art. 2, Sch.

F53 S. 4(1)(e) and preceding word inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **4(2)(b)** (with art. 38(1)-(3))

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F54 Words in s. 4(1) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
F55 S. 4(3A)(3B) inserted (24.8.2004 for specified purposes, 1.9.2004 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 135(3)**, 198(2); S.I. 2004/2184, art. 2(1)(2), Sch. 1, Sch. 2
F56 S. 4(3AA) inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 147(2)**, 156(2)
F57 S. 4(3C)-(3F) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 145(3)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
F58 S. 4(3G) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **4(3)**
F59 S. 4(4): definition of "distribute" inserted (7.11.2000 for specified purposes, 20.12.2000 for further specified purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 28(3)(a)**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12); S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
F60 Words in s. 4(4) inserted (1.3.2005 for specified purposes, 29.7.2010 for specified purposes, 10.6.2014 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 89(1)**, 198(2); S.I. 2005/442, art. 2(1), Sch. 1; S.I. 2010/1889, art. 2; S.I. 2014/1460, art. 2
F61 Words in s. 4(4) substituted (1.4.2006 for specified purposes, 1.4.2010 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 179(1)**, 198(2); S.I. 2005/2965, art. 3
F62 Words in s. 4(4) substituted (24.8.2004 for specified purposes, 1.9.2004 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 135(4)**, 198(2); S.I. 2004/2184, art. 2(1)(2), Sch. 1, Sch. 2
F63 S. 4(5) inserted (1.3.2005 for specified purposes, 29.7.2010 for specified purposes, 10.6.2014 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 89(2)**, 198(2); S.I. 2005/442, art. 2(1), Sch. 1; S.I. 2010/1889, art. 2; S.I. 2014/1460, art. 2
F64 S. 4(6) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **4(4)**

Modifications etc. (not altering text)
C24 S. 4(1)(a)(c) excluded by S.I. 1990/193, **art. 3(1)**
C25 S. 4(1)(a) excluded (1.10.2001) by S.I. 2001/3270, **art. 3(1)(a)** (with art. 4(1)(2), Sch. 2)
C26 S. 4(1)(bb) excluded (1.10.2001) by S.I. 2001/3270, **art. 3(1)(b)** (with art. 4(3)(4), Sch. 3)
C27 S. 4(1)(c) excluded (1.10.2001) by S.I. 2001/3270, **art. 3(1)(c)** (with art. 4(5)(8), Sch. 4)

[F65 5 Exemptions from prohibition.

(1) The Secretary of State may by order grant exemption from paragraph (a), (b), (bb), [F66(c), (d) or (e)] of section 4(1)—

(a) either to a person or to persons of a class;

(b) either generally or to such extent as may be specified in the order; and

(c) either unconditionally or subject to such conditions as may be so specified.

(2) Before making an order under subsection (1) the Secretary of State shall give notice—

(a) stating that he proposes to make such an order and setting out the terms of the proposed order;

(b) stating the reasons why he proposes to make the order in the terms proposed; and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made,

and shall consider any representations which are duly made in respect of the proposals and not withdrawn.

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(3) The notice required by subsection (2) shall be given—

(a) by serving a copy of it on the Authority **[**F67, Citizens Advice and Citizens Advice Scotland**]** ; and

(b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order.

(4) Notice of an exemption granted to a person shall be given—

(a) by serving a copy of the exemption on him; and

(b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.

(5) Notice of an exemption granted to persons of a class shall be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—

(a) persons of that class; and

(b) other persons who may be affected by it.

(6) An exemption may be granted—

(a) indefinitely; or

(b) for a period specified in, or determined by or under, the exemption.

(7) Conditions subject to which an exemption is granted may (in particular) require any person carrying on any activity in pursuance of the exemption—

(a) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;

(b) except in so far as the Secretary of State or the Authority consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and

(c) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.

(8) The Secretary of State may by order revoke an order by which an exemption was granted to a person or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—

(a) at the person's request;

(b) in accordance with any provision of the order by which the exemption was granted; or

(c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.

(9) The Secretary of State may by order revoke an order by which an exemption was granted to persons of a class or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—

(a) in accordance with any provision of the order by which the exemption was granted; or

(b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.

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(10) The Secretary of State may by direction withdraw an exemption granted to persons of a class from any person of that class—

(a) at the person's request;

(b) in accordance with any provision of the order by which the exemption was granted; or

(c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.

(11) Before—

(a) making an order under subsection (8)(b) or (c) or (9); or

(b) giving a direction under subsection (10)(b) or (c),

the Secretary of State shall consult the Authority and give notice of his proposal to do so (with reasons) and of a period within which representations may be made to him.

(12) The notice under subsection (11) shall be given—

(a) where the Secretary of State is proposing to make an order under subsection (8)(b) or (c), by serving a copy of it on the person to whom the exemption was granted;

(b) where he is proposing to make an order under subsection (9), by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and

(c) where he is proposing to give a direction under subsection (10)(b) or (c), by serving a copy of it on the person from whom he proposes to withdraw the exemption.**]**

Textual Amendments

F65 S. 5 substituted (1.10.2001) by 2000 c. 27, **s. 29**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F66 Words in s. 5(1) substituted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **5**

F67 Words in s. 5(3)(a) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(3)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

Modifications etc. (not altering text)

C28 S. 5: functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, **Sch.** (with art. 6)

[F68 5A Duties of distribution exemption holders

Schedule 2ZA (which relates to the duties of distribution exemption holders) has effect.

Textual Amendments

F68 Ss. 5A, 5B inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **21(2)**

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5B Duties of supply exemption holders

Schedule 2ZB (which relates to the duties of supply exemption holders) has effect.**]**

Textual Amendments

F68 Ss. 5A, 5B inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **21(2)**

[F69**6 Licences authorising supply, etc.**

(1) The Authority may grant any of the following licences—

(a) a licence authorising a person to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given ("a generation licence");

[F70(b) a licence authorising a person to participate in the transmission of electricity for that purpose ("a transmission licence");**]**

(c) a licence authorising a person to distribute electricity for that purpose ("a distribution licence"); F71...

(d) a licence authorising a person to supply electricity to premises ("a supply licence") F72...

[F73(e) a licence authorising a person to participate in the operation of an electricity interconnector ("an interconnector licence")**][**F74; or

(f) subject to subsection (1C), a licence authorising a person to provide a smart meter communication service ("a smart meter communication licence").**]**

[F75(1A) Subject to subsection (1B), the Secretary of State may grant a smart meter communication licence.

(1B) The Secretary of State may not grant a smart meter communication licence after 1 November 2018.

(1C) The first smart meter communication licence may only be granted by the Secretary of State.**]**

(2) The same person may not be the holder of both a distribution licence and **[**F76—

(a) a generation licence; or

(b) a supply licence.**]**

[F77(2A) The same person may not be the holder of an interconnector licence and the holder of a licence falling within any of paragraphs (a) to (d) of subsection (1).**]**

[F78(2B) A person may not be granted a smart meter communication licence unless the same person is at the same time granted a licence under section 7AB of the Gas Act 1986.**]**

(3) A supply licence may authorise the holder to supply electricity—

(a) to any premises;

(b) only to premises specified in the licence, or to premises of a description so specified; or

(c) only to any premises situated in a specified area, or to premises of a specified description which are so situated.

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(4) The Authority may, with the consent of the holder of a supply licence, modify terms included in the licence in pursuance of subsection (3) so as to extend or restrict the premises to which the licence holder may give a supply of electricity.

(5) A distribution licence may authorise the holder to distribute electricity in any area, or only in an area specified in the licence.

(6) The Authority may, with the consent of the holder of a distribution licence, modify terms included in the licence in pursuance of subsection (5) so as to extend or restrict the area within which the licence holder may distribute electricity.

[F79(6A) A transmission licence may authorise the holder to participate in the transmission of electricity in any area, or only in an area specified in the licence.

(6B) The Authority may, with the consent of the holder of a transmission licence, modify terms included in the licence in pursuance of subsection (6A) above.**]**

[F80(6C) An interconnector licence authorising participation in the operation of an electricity interconnector—

(a) must specify the interconnector or interconnectors in relation to which participation is authorised; and

(b) may limit the forms of participation in the operation of an interconnector which are authorised by the licence.**]**

[F81(7) A licence, and any modification of a licence under subsection (4), (6) or (6B), shall be in writing.**]**

(8) A licence shall, unless previously revoked in accordance with any term of the licence, continue in force for such period as may be specified in or determined by or under the licence.

(9) In this Part—

F82 . . . . . .

"electricity distributor" means any person who is authorised by a distribution licence to distribute electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence;

F83 ...

"electricity supplier" means any person who is authorised by a supply licence to supply electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.

[F84(10) In this section "premises" has the same meaning as in section 4.**]]**

Textual Amendments

F69 Ss. 6, 6A, 6B substituted for s. 6 (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 30**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F70 S. 6(1)(b) substituted (1.9.2004) by Energy Act 2004 (c. 20), **ss. 136(1)**, 198(2); S.I. 2004/2184, art. 2(2), Sch. 2

F71 Word in s. 6(1)(c) repealed (1.12.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 23 Pt. 1**; S.I. 2004/2575, art. 2(2), Sch. 2

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F72 Word in s. 6(1) omitted (19.9.2012) by virtue of The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **6(2)(a)**
F73 S. 6(1)(e) and preceding word inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 145(5)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
F74 S. 6(1)(f) and preceding word inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **6(2)(b)**
F75 S. 6(1A)-(1C) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **6(3)**
F76 Words in s. 6(2) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **19**
F77 S. 6(2A) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 145(6)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
F78 S. 6(2B) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **6(4)**
F79 S. 6(6A)(6B) inserted (1.9.2004) by Energy Act 2004 (c. 20), **ss. 136(2)**, 198(2); S.I. 2004/2184, art. 2(2), Sch. 2
F80 S. 6(6C) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 145(7)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
F81 S. 6(7) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 5**; S.I. 2004/2184, art. 2(2), Sch. 2
F82 Words in s. 6(9) repealed (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 23 Pt. 1**; S.I. 2004/2184, art. 2(2), Sch. 2
F83 Words in s. 6(9) omitted (6.4.2014) by virtue of Energy Act 2011 (c. 16), s. 121(5)(c), **Sch. 1 para. 3**
F84 S. 6(10) inserted (1.3.2005 for specified purposes, 29.7.2010 for specified purposes, 10.6.2014 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 89(3)**, 198(2); S.I. 2005/442, art. 2(1), Sch. 1; S.I. 2010/1889, art. 2; S.I. 2014/1460, art. 2

Modifications etc. (not altering text)
C29 S. 6 applied (1.10.2001) by S.I. 2001/3266, **art. 3(3)**
C30 S. 6 modified (1.12.2004) by Energy Act 2004 (c. 20), **ss. 148(2)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
C31 S. 6 applied (2.10.2014) by The Clocaenog Forest Wind Farm Order 2014 (S.I. 2014/2441), arts. 1, **4(2)** (with art. 33)
C32 S. 6(1) modified (16.5.2001) by 2000 c. 27, **s. 33(1)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10)
C33 S. 6(1)(f) applied (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **38(2)**

[F85 6A Procedure for licence applications.

(1) This section applies to any application—

(a) for a licence [F86(but this is subject to subsection (1A))]; or

[F87(b) for the modification of a licence under section 6(4), (6) or (6B).]

[F88(1A) At any time when regulations made under section 56FC are in force, this section does not apply to an application for a smart meter communication licence.]

(2) The application shall be made in such form and manner, and shall contain, or be accompanied by, such information and documents and such fee (if any), as may be prescribed.

(3) Within the prescribed period after the making of the application the applicant shall publish a notice of the application in the prescribed manner.

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(4) Where the Authority proposes to refuse the application, it shall give to the applicant a notice—

(a) stating that it proposes to refuse the application;

(b) stating the reasons why it proposes to refuse the application; and

(c) specifying the time within which representations with respect to the proposed refusal may be made,

and shall consider any representations which are duly made and not withdrawn.

(5) Where the Authority grants the licence, extension or restriction applied for, it shall as soon as practicable thereafter send a notice of the grant to any person who holds a licence and whose interests may, in the opinion of the Authority, be affected by the grant.

(6) In this section "prescribed" means prescribed in regulations made by the Authority.

(7) Any sums received by the Authority under this section shall be paid into the Consolidated Fund.**]**

Textual Amendments

F85 Ss. 6, 6A, 6B substituted for s. 6 (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 30**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F86 Words in s. 6A(1)(a) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **7(2)**

F87 S. 6A(1)(b) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 6**; S.I. 2004/2184, art. 2(2), Sch. 2

F88 S. 6A(1A) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **7(3)**

Modifications etc. (not altering text)

C34 S. 6A excluded (2.6.2009) by The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009 (S.I. 2009/1340), regs. 1, **28(2)**

C35 S. 6A disapplied (29.7.2010) by The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010 (S.I. 2010/1903), regs. 1, **30(2)** (with reg. 31)

C36 Ss. 6A, 6B excluded (22.2.2013) by The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2013 (S.I. 2013/175), regs. 1(1), **34(2)**

C37 Ss. 6A, 6B restricted (3.8.2015) by The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 (S.I. 2015/1555), regs. 1(1), **35(2)** (with reg. 2)

C38 S. 6A(5) applied (with modifications) (1.12.2004) by Energy Act 2004 (c. 20), **ss. 148(3)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

[F89 6B Applications for transmission licences.

(1) This section applies to applications for a transmission licence (in addition to the requirements of section 6A).

[F90(2) The applicant shall give notice of the application to any person who holds a transmission licence and whose interests may be affected if the licence applied for is granted.**]**

(3) Before granting the transmission licence applied for, the Authority shall give notice—

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(a) stating that it proposes to grant the licence;

(b) stating the reasons why it proposes to grant the licence; and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under subsection (3) shall be given by publication in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

(5) The Authority shall send a copy of a notice under subsection (3) to—

(a) the applicant;

(b) the Secretary of State; and

(c) any person who holds a transmission licence and whose **[**F91interests may be affected by the grant of the licence**]** to which the application relates.**]**

Textual Amendments

F89 Ss. 6, 6A, 6B substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) for s. 6 by 2000 c. 27, **s. 30**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F90 S. 6B(2) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 7(2)**; S.I. 2004/2184, art. 2(2), Sch. 2

F91 Words in s. 6B(5)(c) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 7(3)**; S.I. 2004/2184, art. 2(2), Sch. 2

Modifications etc. (not altering text)

C36 Ss. 6A, 6B excluded (22.2.2013) by The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2013 (S.I. 2013/175), regs. 1(1), **34(2)**

C37 Ss. 6A, 6B restricted (3.8.2015) by The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 (S.I. 2015/1555), regs. 1(1), **35(2)** (with reg. 2)

C39 S. 6B excluded (2.6.2009) by The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009 (S.I. 2009/1340), regs. 1, **28(2)**

C40 S. 6B disapplied (29.7.2010) by The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010 (S.I. 2010/1903), regs. 1, **30(2)** (with reg. 31)

[F92**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;

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(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.**]**

Textual Amendments

F92 S. 6C inserted (E.W.S.) (20.5.2009) by Energy Act 2004 (c. 20), **ss. 92**, 198(2); S.I. 2009/1269, art. 2

[F93 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

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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);

(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—

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(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),

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.

Textual Amendments

F93 Ss. 6D, 6E inserted (20.5.2009) by Energy Act 2008 (c. 32), **ss. 44(2)**, 110(2); S.I. 2009/1270, art. 2

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.**]**

Textual Amendments

F93 Ss. 6D, 6E inserted (20.5.2009) by Energy Act 2008 (c. 32), **ss. 44(2)**, 110(2); S.I. 2009/1270, art. 2

[F94 6F Offshore transmission during commissioning period

(1) For the purposes of this Part a person is not to be regarded as participating in the transmission of electricity if the following four conditions are met.

(2) The first condition is that the transmission takes place over an offshore transmission system ("the system") or anything forming part of it.

(3) The second condition is that the transmission takes place during a commissioning period (see section 6G).

(4) The third condition is that—

(a) a request has been made to the Authority in accordance with the tender regulations for a tender exercise to be held for the granting of an offshore transmission licence in respect of the system,

(b) the Authority has determined in accordance with those regulations that the request relates to a qualifying project, and

(c) the system, or anything forming part of it, has not been transferred as a result of the exercise to the successful bidder.

(5) The fourth condition is that—

(a) the person who is the developer in relation to the tender exercise is also the operator of a relevant generating station, and

(b) the construction or installation of the system is being or has been carried out by or on behalf of, or by or on behalf of a combination of, any of the following—

(i) the person mentioned in paragraph (a);

(ii) a body corporate associated with that person at any time during the period of construction or installation;

(iii) a previous developer;

(iv) a body corporate associated with a previous developer at any time during the period of construction or installation.

(6) For the purposes of subsection (1), it does not matter whether or not the person mentioned in that subsection is the developer in relation to the tender exercise.

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(7) For the purposes of subsection (5)(b)(iii) and (iv), a person is a "previous developer" in relation to the system if—

(a) the person does not fall within subsection (5)(a), but

(b) at any time during the period of construction or installation, the person was the developer in relation to the tender exercise.

(8) In this section—

"associated", in relation to a body corporate, is to be construed in accordance with paragraph 37 of Schedule 2A;

"developer", in relation to a tender exercise, means any person within section 6D(2)(a) (person who makes the connection request, including any person who is to be so treated by virtue of section 6D(4));

"offshore transmission" has the meaning given by section 6C(6);

"offshore transmission licence" has the meaning given by section 6C(5);

"offshore transmission system" means a transmission system used for purposes connected with offshore transmission;

"operator", in relation to a generating station, means the person who is authorised to generate electricity from that station—

(a) by a generation licence granted under section 6(1)(a), or

(b) in accordance with an exemption granted under section 5(1);

"qualifying project" is to be construed in accordance with the tender regulations;

"successful bidder" and "tender exercise" have the same meanings as in section 6D;

"relevant generating station", in relation to an offshore transmission system, means a generating station that generates electricity transmitted over the system;

"the tender regulations" means regulations made under section 6C.

Textual Amendments

F94 Ss. 6F-6H inserted (E.W.S.) (18.2.2014) by Energy Act 2013 (c. 32), **ss. 147(3)**, 156(2)

6G Section 6F: meaning of "commissioning period"

(1) For the purposes of section 6F(3), transmission over an offshore transmission system (or anything forming part of it) takes place during a "commissioning period" if it takes place at any time—

(a) before a completion notice is given in respect of the system, or

(b) during the period of 18 months beginning with the day on which such a notice is given.

(2) A "completion notice", in relation to a transmission system, is a notice which—

(a) is given to the Authority by the relevant co-ordination licence holder in accordance with the co-ordination licence, and

(b) states that it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use that system.

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(3) The Secretary of State may by order amend subsection (1) so as to specify a period of 12 months in place of the period of 18 months.

(4) An order under subsection (3) may be made only so as to come into force during the period—

(a) beginning 2 years after the day on which section 147 of the Energy Act 2013 comes into force, and

(b) ending 5 years after that day.

(5) An amendment made by an order under subsection (3) does not apply in relation to any transmission of electricity over a transmission system if—

(a) but for the making of the order, the person participating in the transmission would, by virtue of section 6F, have been regarded as not participating in the transmission, and

(b) the determination mentioned in subsection (4)(b) of that section in relation to the system was made on or before the day on which the order is made.

(6) In this section—

"co-ordination licence" has the same meaning as in Schedule 2A (see paragraph 38(1) of that Schedule);

"relevant co-ordination licence-holder" has the meaning given by paragraph 13(4) of Schedule 2A.

Textual Amendments

F94 Ss. 6F-6H inserted (E.W.S.) (18.2.2014) by Energy Act 2013 (c. 32), **ss. 147(3)**, 156(2)

6H Sections 6F and 6G: modification of codes or agreements

(1) The Authority may—

(a) modify a code maintained in accordance with the conditions of a transmission licence or a distribution licence;

(b) modify an agreement that gives effect to a code so maintained.

(2) The Authority may make a modification under subsection (1) only if it considers it necessary or desirable for the purpose of implementing or facilitating the operation of section 6F or 6G.

(3) The power to make modifications under subsection (1) includes a power to make incidental, supplemental, consequential or transitional modifications.

(4) The Authority must consult such persons as the Authority considers appropriate before making a modification under subsection (1).

(5) Subsection (4) may be satisfied by consultation before, as well as consultation after, the passing of the Energy Act 2013.

(6) As soon as reasonably practicable after making a modification under subsection (1), the Authority must publish a notice stating its reasons for making it.

(7) A notice under subsection (6) is to be published in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by it.

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(8) A modification under subsection (1) may not be made after the end of the period of 7 years beginning with the day on which section 147 of the Energy Act 2013 comes into force.**]**

Textual Amendments

F94 Ss. 6F-6H inserted (E.W.S.) (18.2.2014) by Energy Act 2013 (c. 32), **ss. 147(3)**, 156(2)

7 Conditions of licences: general.

(1) A licence may include—

(a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the **[**F95grantor**]** to be requisite or expedient having regard to the duties imposed by **[**F96section 3 above**]**; and

(b) conditions requiring the rendering to the **[**F97Authority**]** of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.

(2) Without prejudice to the generality of paragraph (a) of subsection (1) above, conditions included in **[**F98a transmission licence or distribution licence**]** by virtue of that paragraph—

(a) may require the licence holder to enter into agreements with other persons for the use of any electric lines and electrical plant of his (wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions; and

(b) may include provision for determining the terms on which such agreements are to be entered into.

[F99(2A) Without prejudice to the generality of paragraph (a) of subsection (1), conditions included in a transmission licence by virtue of that paragraph may—

(a) require the licence holder not to carry on an activity which he would otherwise be authorised by the licence to carry on, or

(b) restrict where he may carry on an activity which he is authorised by the licence to carry on.**]**

(3) **[**F100Without prejudice to the generality of paragraph (a) of subsection (1), conditions included in a licence by virtue of that paragraph**]** may require the licence holder—

(a) to comply with any direction given by the **[**F101Authority or Secretary of State**]** as to such matters as are specified in the licence or are of a description so specified;

(b) except in so far as the **[**F101Authority or Secretary of State**]** consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;

(c) to refer for determination by the **[**F101Authority or Secretary of State**]** such questions arising under the licence**[**F102, or under any document referred to in the licence,**]** as are specified in the licence or are of a description so specified; and

(d) to refer for approval by the **[**F101Authority or Secretary of State**]** such things falling to be done under the licence, and such contracts or agreements made

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before the grant of the licence, as are specified in the licence or are of a description so specified.

[[F103](3A) Conditions included in a transmission licence or a distribution licence by virtue of subsection (1)(a) may require the holder, in such circumstances as are specified in the licence—

(a) so to increase his charges for the transmission or distribution of electricity as to raise such amounts as may be determined by or under the conditions; and

(b) to pay the amounts so raised to such licence holders as may be so determined.**]**

[[F104](3B) Without prejudice to the generality of paragraph (a) of subsection (1), conditions which are described in subsection (3C) may be included in a smart meter communication licence by virtue of that paragraph, in respect of circumstances where a person holds such a licence (the "licence holder"), and another person has applied or is considering whether to apply for a smart meter communication licence ("the applicant").

(3C) The conditions in this subsection are conditions which require the licence holder to comply with a direction given by the Secretary of State or the Authority requiring the licence holder to provide to the applicant—

(a) information in relation to the activities authorised by the licence; or

(b) such other assistance as may be reasonably required by the applicant, including access to any facilities or equipment being used in connection with the activities authorised by the licence, in order that the applicant can—

(i) determine whether to apply for a licence; or

(ii) take part in a competition for a licence.

(3D) Subject to subsection (3F) and without prejudice to the generality of paragraph (a) of subsection (1), conditions which are described in subsection (3E) may be included in a smart meter communication licence by virtue of that paragraph, in respect of circumstances where such a licence held by a person (the "first licensee") will cease to have effect, and another such licence is to be granted or has been granted to a different person (the "second licensee").

(3E) The conditions in this subsection are conditions which require compliance with a direction given by the Secretary of State or the Authority requiring—

(a) the transfer of property, rights or liabilities from the first licensee to the second licensee;

(b) the creation of rights in relation to property, rights or liabilities in favour of the second licensee;

(c) the creation of other rights and liabilities as between the first and second licensee;

(d) the first or second licensee to enter into a written agreement with each other, or the first licensee to execute an instrument of another kind in favour of the second licensee;

(e) the first or second licensee to pay compensation to the other, or to any third party who is affected by any of the matters referred to in paragraphs (a) to (d).

(3F) Conditions included in a licence by virtue of subsection (3D) must provide that the licensee does not have a duty to comply with a direction of the kind referred to in subsection (3E) unless, in relation to that direction, the following conditions have been satisfied prior to it being given—

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(a) the Secretary of State or the Authority (as appropriate) has given written notice to the first licensee, the second licensee and any other person who would potentially be affected by the direction, including a copy of the proposed direction and inviting them to submit written representations, giving a minimum period of 21 days in which those representations can be made; and

(b) after the end of the period set out in the notice under paragraph (a), the Secretary of State or the Authority (as appropriate) has considered those representations and determined that—

(i) it is appropriate in all the circumstances that the proposed direction is given; and

(ii) the arrangements of a type referred to in paragraphs (a) to (d) of subsection (3E) in the direction are necessary or expedient for the operational purposes of the second licensee, or are agreed by the first licensee and the second licensee to be necessary or expedient for those purposes.

(3G) For the purposes of subsection (3F), the operational purposes of the second licensee are the purposes of performing any functions which the second licensee has, or will have—

(a) under or by virtue of the smart meter communication licence which has been, or is to be, granted; or

(b) under or by virtue of any enactment, in the second licensee's capacity as holder of that licence.**]**

(4) Conditions included in a licence by virtue of subsection (1)(a) above may—

(a) instead of specifying or describing any contracts or agreements to which they apply, refer to contracts or agreements designated (whether before or after the imposition of the conditions) by the Secretary of State or the Director; and

(b) instead of containing any provisions which fall to be made, refer to provisions set out in documents so designated and direct that those provisions shall have such effect as may be specified in the conditions.

[F105(5) Conditions included in a licence may contain provision for the conditions—

(a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or

(b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.**]**

(6) Any provision included by virtue of subsection (5) above in a licence shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.

[F106(6A) Conditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time.**]**

(7) Any sums received by the **[**F107Authority**]** in consequence of the provisions of any condition of a licence shall be paid into the Consolidated Fund.

Textual Amendments

F95 Word in s. 7(1)(a) substituted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **8(2)**

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F96 Words in s. 7(1)(a) substituted (20.12.2000) by 2000 c. 27, **s. 32(2)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

F97 Words in s. 7(1) substituted (20.12.2000) by 2000 c. 27, **s. 32(2)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

F98 Words in s. 7(2) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 32(3)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F99 S. 7(2A) inserted (1.9.2004) by Energy Act 2004 (c. 20), **ss. 136(3)**, 198(2); S.I. 2004/2184, art. 2(2), Sch. 2

F100 Words in s. 7(3) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 32(4)(a)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F101 Words in s. 7(3) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 32(4)(b)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F102 Words in s. 7(3)(c) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 32(4)(c)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F103 S. 7(3A) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 32(5)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F104 S. 7(3B)-(3G) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **8(3)**

F105 S. 7(5) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 32(6)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F106 S. 7(6A) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 32(7)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F107 Words in s. 7(7) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 32(8)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Modifications etc. (not altering text)

C41 S. 7 applied (1.10.2001) by S.I. 2001/3266, **art. 3(3)**

C42 S. 7 applied (with modifications) (1.12.2004) by Energy Act 2004 (c. 20), **ss. 148(3)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

[F108 7A Transfer of licences.

(1) A licence—

(a) is capable of being transferred by the licence holder, with the consent of the Authority, in accordance with this section but subject to any term as to transfer contained in the licence;

(b) may include conditions which must be complied with before the licence can be transferred.

(2) A transfer may relate to the whole or any part of the licence.

(3) The reference in subsection (2) to part of a licence is a reference to a part of the activities authorised by the licence (whether described by reference to activities being

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carried on by the licence holder or to activities which he is authorised by the licence to carry on).

(4) Such consent may be given subject to compliance with such modification or other conditions as the Authority considers appropriate.

(5) In the case of a partial transfer, conditions imposed under subsection (4) may make as respects so much of the licence as is proposed to be retained by the transferor provision different from that made as respects so much of the licence as is proposed to be transferred.

(6) In deciding whether to give its consent to a proposed transfer, the Authority shall apply the same criteria as it would apply if the Authority were deciding whether—

(a) in the case of a general transfer, to grant a corresponding licence to the transferee; or

(b) in the case of a partial transfer—

(i) to grant to the transferee a licence corresponding to so much of the licence as is proposed to be transferred; and

(ii) to grant to the transferor a licence corresponding to so much of the licence as is proposed to be retained.

(7) The Authority shall give the Secretary of State not less than 28 days' notice of any proposal to impose a modification condition.

(8) If, before the expiry of the time specified in a notice under subsection (7), the Secretary of State directs the Authority not to impose the condition, the Authority shall comply with the direction.

(9) Before giving consent to the transfer of a licence, the Authority shall give notice—

(a) stating that it proposes to grant consent to the transfer;

(b) stating the reasons why it proposes to give consent; and

(c) specifying the time from the date of publication of the notice (not being less than two months) within which representations or objections with respect to the transfer may be made,

and shall consider any representations or objections that are duly made and not withdrawn.

(10) A notice under subsection (9) shall be given by publishing the notice in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the transfer.

[F109(10A) Subject to subsection (10C), the Authority shall, following consideration of any representations or objections under subsection (9), give the Secretary of State not less than 28 days' notice of any proposal to give consent to the transfer of the whole or any part of a smart meter communication licence.

(10B) If, before the expiry of the time specified in a notice under subsection (10A), the Secretary of State directs the Authority not to give consent, the Authority shall comply with that direction.

(10C) Where the Secretary of State does not give a direction under subsection (10B), the Authority may give consent to the transfer of the licence after—

(a) the expiry of the time specified in the notice under subsection (10A); or

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(b) if earlier than the time in paragraph (a), the time at which the Secretary of State informs the Authority that no direction will be given under subsection (10B) in relation to the notice.

(10D) Subsections (10A) to (10C) do not apply after 1 November 2018.**]**

(11) A purported transfer of a licence shall be void—

(a) if the licence is not capable of transfer or the Authority has not given its consent;

(b) if the purported transfer is in breach of a condition of the licence; or

(c) if there has, before the purported transfer, been a contravention of a condition subject to compliance with which the Authority's consent is given.

F110 **[** (11A) A smart meter communication licence may not be transferred to a person unless a licence granted under section 7AB of the Gas Act 1986 is also transferred to the same person at the same time.**]**

(12) In this section—

"transfer" includes any form of transfer or assignment or, in Scotland, assignation;

"modification condition" means a condition requiring or otherwise providing for the making of modifications to the conditions of a licence.**]**

Textual Amendments

F108 S. 7A inserted (1.10.2001) by 2000 c. 27, **s. 41**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F109 Ss. 7A(10A)-(10D) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **9(2)**

F110 S. 7A(11A) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **9(3)**

[F111 7B Uniform prices etc. in certain areas of Scotland.

(1) The Secretary of State may, by an order made under this section, require the holder of—

(a) a transmission licence; or

(b) a distribution licence,

to apply in respect of the use of the transmission or, as the case may be, distribution system, or any part of the system, in a specified area charges which do not distinguish (whether directly or indirectly) between users in different parts of the area.

(2) The Secretary of State may, by such an order, require the holder of a supply licence—

(a) to charge prices; or

(b) to offer conditions of contract,

in respect of a comparable supply of electricity in a specified area which do not distinguish (whether directly or indirectly) between consumers in different parts of the area.

(3) The Secretary of State shall not specify in such an order any particular or maximum charge or price or any particular condition of contract.

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(4) Such an order may make different provision for different cases or descriptions of case.

(5) For the purposes of this section—

(a) a specified area is an area of Scotland specified in such an order; and

(b) supplies of electricity are comparable if they are—

(i) at the same or similar voltages; and

(ii) are in accordance with the same or similar demand characteristics.**]**

Textual Amendments

F111 S. 7B inserted (1.10.2001) by 2000 c. 27, **s. 72**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

8 Conditions for funding certain companies engaged in nuclear generation in Scotland.

(1) Without prejudice to section 7(1)(a) above, it may be a condition of a licence granted to a company ("the licence holder") that it shall from time to time provide any company to which subsection (2) below applies, comes to apply or has at any time applied with such funds as may be determined by or under the condition in respect of such of that company's liabilities as may be so determined.

(2) This subsection applies to any company engaging in the operation of a nuclear generating station in Scotland while—

(a) deemed for the purposes of the [M3]Companies Act 1985 to be a subsidiary of the licence holder; or

(b) a related company of the licence holder (as defined in paragraph 92 of Schedule 4 to that Act).

(3) Subsection (3) of section 7 above applies in respect of a condition included in a licence by virtue of this section as it applies in respect of a condition so included by virtue of subsection (1)(a) of that section.

Marginal Citations

M3 1985 c. 6.

[[F112]8A Standard conditions of licences.

(1) Subject to subsection (2), each condition which by virtue of section 33(1) of the Utilities Act 2000 is a standard condition for the purposes of any of the types of licence mentioned in **[**[F113]section 6(1)(a), (c) or (d) (that is to say, generation licences, distribution licences or supply licences)**]** shall be incorporated by reference in each licence of that type granted after the commencement of this section.

[F114](1A) **[** Subject to subsection (2), each condition which by virtue of section 137(3) of the Energy Act 2004 is a standard condition for the purposes of transmission licences shall be incorporated by reference in each transmission licence granted on or after the day on which section 137(6) of that Act comes into force.**]**

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[Subject to subsection (2), each condition which by virtue of section 146 of the Energy F115(1B) Act 2004 is a standard condition for the purposes of interconnector licences shall be incorporated, by reference, in each interconnector licence granted on or after the commencement of subsection (6) of that section.**]**

(2) Subject to the following provisions of this section, the Authority may, in granting a licence of any type, modify any of the standard conditions for licences of that type in its application to the licence to such extent as it considers requisite to meet the circumstances of the particular case.

(3) Before making any modifications under subsection (2), the Authority shall give notice—

(a) stating that it proposes to make the modifications and setting out their effect;

(b) stating the reasons why it proposes to make the modifications; and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under subsection (3) shall be given—

(a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and

(b) by sending a copy of the notice to the Secretary of State **[**F116, Citizens Advice and Citizens Advice Scotland**]**.

(5) If, within the time specified in the notice under subsection (3), the Secretary of State directs the Authority not to make any modification, the Authority shall comply with the direction.

(6) The Authority shall not under subsection (2) make any modifications of a condition of a licence of any type unless it is of the opinion that the modifications are such that—

(a) the licence holder would not be unduly disadvantaged in competing with other holders of licences of that type; and

(b) no other holder of a licence of the same type would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).

(7) The modification under subsection (2) of part of a condition of a licence shall not prevent any other part of the condition which is not so modified being regarded as a standard condition for the purposes of this Part.

(8) In this section "modify" includes fail to incorporate and "modification" shall be construed accordingly.**]**

Textual Amendments

F112 S. 8A inserted (1.10.2001) by 2000 c. 27, **s. 33(3)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F113 Words in s. 8A(1) substituted (1.9.2004) by Energy Act 2004 (c. 20), **ss. 137(5)**, 198(2); S.I. 2004/2184, art. 2(2), Sch. 2

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F114 S. 8A(1A) inserted (1.9.2004) by Energy Act 2004 (c. 20), **ss. 137(6)**, 198(2); S.I. 2004/2184, art. 2(2), Sch. 2

F115 S. 8A(1B) inserted (1.4.2005) by Energy Act 2004 (c. 20), **ss. 146(6)**, 198(2); S.I. 2005/877, art. 2(1), Sch. 1

F116 Words in s. 8A(4)(b) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(4)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

Modifications etc. (not altering text)

C43 S. 8A applied (with modifications) (1.12.2004) by Energy Act 2004 (c. 20), **ss. 148(3)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

9 General duties of licence holders.

[F117(1) It shall be the duty of an electricity distributor—

(a) to develop and maintain an efficient, co-ordinated and economical system of electricity distribution;

(b) to facilitate competition in the supply and generation of electricity.**]**

(2) It shall be the duty of the holder of a licence authorising him to **[**F118participate in the transmission of**]** electricity—

(a) to develop and maintain an efficient, co-ordinated and economical system of electricity transmission; and

(b) F119. . ., to facilitate competition in the supply and generation of electricity.

[F120(2A) Subsection (2)(a) shall not have effect to require the holder of a transmission licence which is subject to a condition of the kind mentioned in section 7(2A)(a) to carry on an activity which he would be authorised by the licence to carry on apart from the condition.**]**

F121(3) . . . . . .

F121(4) . . . . . .

Textual Amendments

F117 S. 9(1) substituted (1.10.2001) by 2000 c. 27, **s. 50**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F118 Words in s. 9(2) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 8(2)**; S.I. 2004/2184, art. 2(2), Sch. 2

F119 Words in s. 9(2)(b) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F120 S. 9(2A) inserted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 8(3)**; S.I. 2004/2184, art. 2(2), Sch. 2

F121 S. 9(3)(4) repealed (1.10.2001) by 2000 c. 27, ss. 71, 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Modifications etc. (not altering text)

C44 S. 9(1)(b): functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, **Sch.** (with art. 6)

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10 Powers etc. of licence holders.

(1) Subject to subsection (2) below, Schedule 3 to this Act (which provides for the compulsory acquisition of land) and Schedule 4 to this Act (which confers other powers and makes other provision) shall have effect—

(a) in relation to F122... **[**F123the holder of a transmission licence**]**; and

(b) to the extent that his licence so provides, in relation to **[**F124an electricity distributor or**]** any other licence holder;

and references in those Schedules to a licence holder shall be construed accordingly.

(2) Where any provision of either of the Schedules mentioned in subsection (1) above is applied to a licence holder by his licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it.

(3) **[**F125A generation licence**]** may provide that Schedule 4 to this Act shall have effect in relation to the licence holder as if—

(a) any reference to any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on included a reference to any purpose connected with the supply to any premises of heat produced in association with electricity and steam produced from and air and water heated by such heat; and

(b) any reference to electric lines or electrical plant included a reference to pipes and associated works used or intended to be used for conveying heat so produced, and steam produced from and air and water heated by such heat;

and in this subsection "associated works", in relation to pipes, means any of the following connected with the pipes, namely, any valve, filter, stopcock, pump, meter, inspection chamber and manhole and such other works as may be prescribed.

[F126(3A) Subsection (3) applies in relation to any purpose connected with the supply to any premises of any gas or liquid subjected to a cooling effect produced in association with electricity as it applies to a purpose mentioned in that subsection.**]**

[F127(4) A transmission licence may provide that, where the licence is modified under section 6(6B)F128... or 11A above so as to reduce in any respect the area in which the licence holder may carry on activities, Schedule 4 to this Act shall have effect in relation to him as if any reference to the activities which he is authorised by his licence to carry on included a reference to the activities which he was previously so authorised to carry on.**]**

(5) The provisions of Schedule 5 to this Act (which provide for the acquisition of water rights for hydro-electric stations in Scotland) shall have effect.

Textual Amendments

F122 Words in s. 10(1)(a) repealed (1.10.2001) by 2000 c. 27, **s. 53(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F123 Words in s. 10(1)(a) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 9(2)**; S.I. 2004/2184, art. 2(2), Sch. 2

F124 Words in s. 10(1)(b) inserted (1.10.2001) by 2000 c. 27, **s. 53(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

F125 Words in s. 10(3) substituted (1.10.2001) by 2000 c. 27, **s. 53(3)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F126 S. 10(3A) inserted (1.10.2001) by 2000 c. 27, **s. 53(4)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F127 S. 10(4) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 9(3)**; S.I. 2004/2184, art. 2(2), Sch. 2

F128 Word in s. 10(4) omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **45(1)**

Modifications etc. (not altering text)

C45 S. 10(1)(a)(2): functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, **Sch.** (with art. 6)

[F129 Electricity transmission and the operation of electricity interconnectors: independence

Textual Amendments

F129 Ss. 10A-10O and cross-heading inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **5**

10A Electricity transmission and the operation of electricity interconnectors: requirement for certain participants to be certified as independent

(1) A person who, for any period on or after the relevant date, holds a transmission licence and participates in the transmission of electricity for the purpose mentioned in subsection (2) must ensure that the person is certified by the Authority under section 10D throughout that period.

(2) That purpose is the purpose of—

(a) giving a supply to any premises; or

(b) enabling a supply to be so given.

(3) A person who, for any period on or after the relevant date, holds an interconnector licence and participates in the operation of an electricity interconnector must ensure that the person is certified by the Authority under section 10D throughout that period.

(4) In subsections (1) and (3) the "relevant date" in respect of a person is 3 March 2012 or any later date before 4 March 2013 which the Authority specifies under subsection (5) or (6) in respect of the person.

(5) The Authority may specify a later date in respect of a person if—

(a) the person has asked the Authority to specify a later date;

(b) the person is not, and is not part of, a vertically integrated undertaking; and

(c) no senior officer of the person is also a senior officer of a relevant producer or supplier.

(6) The Authority may also specify a later date in respect of a person if the Authority thinks that, for reasons beyond its and the person's control, the Authority will not reasonably be able to make a final decision before 3 March 2012 as to whether to certify the person.

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(7) In subsection (5)(b) "vertically integrated undertaking" has the meaning given by Article 2(21) of the Electricity Directive.

10B Application for certification

(1) Any person may apply for certification.

(2) An application for certification—

(a) must be made in writing to the Authority; and

(b) must be made in such form and contain such information as the Authority may specify.

(3) If the application is made on or after 3 March 2013 and the applicant is a person from a third country or a person controlled by a person from a third country, the Authority must, as soon as is reasonably practicable after receiving the application—

(a) notify the Secretary of State and the European Commission that an application has been made by such a person; and

(b) enclose with the notification to the Secretary of State any information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.

(4) The Authority may ask an applicant for certification for any further information the Authority thinks is relevant to the application, and the applicant must supply that information if—

(a) it is in the applicant's possession; or

(b) it is information which the applicant could reasonably be expected to obtain.

(5) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to an application for certification, and the relevant producer or supplier must supply that information if—

(a) it is in the relevant producer or supplier's possession; or

(b) it is information which the relevant producer or supplier could reasonably be expected to obtain.

(6) A person required to supply information under subsection (4) or (5) must do so by any deadline specified by the Authority.

10C Report where applicant connected with a country outside the European Economic Area

(1) This section applies if the Secretary of State is notified by the Authority under section 10B(3) that an application has been made by a person from a third country or a person controlled by a person from a third country.

(2) The Secretary of State must prepare a report on whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.

(3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.

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(4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 10B(4) or (5) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.

(5) In preparing the report, the Secretary of State must take into account—

(a) any relevant international law; and

(b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

10D Certification

(1) Where the Authority receives an application for certification, it must make a preliminary decision by the relevant deadline as to whether it should certify the applicant.

(2) The relevant deadline is the end of the 4 months beginning with the day on which the Authority receives the application; but this is subject to any extension under subsection (3).

(3) If, before the deadline mentioned in subsection (2) (or before that deadline as previously extended under this subsection), the Authority asks the applicant or a relevant producer or supplier for information under section 10B(4) or (5), the relevant deadline is the end of the 4 months beginning with the day on which the last of that information is received.

(4) As soon as is reasonably practicable after making the preliminary decision the Authority must notify the decision and the reasons for it to—

(a) the applicant;

(b) the Secretary of State; and

(c) the European Commission.

(5) The Authority must enclose with the notification under subsection (4)(c) a copy of any report—

(a) which the Secretary of State has prepared under section 10C in respect of the applicant; and

(b) which the Authority receives before giving the notification.

(6) Subsections (7) and (8) apply in relation to the Authority's final decision under Article 3 of the Electricity Regulation as to whether to certify the applicant.

(7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—

(a) the applicant;

(b) the Secretary of State; and

(c) the European Commission.

(8) If the final decision is to certify the applicant the applicant is to be taken as certified by the Authority under this section.

10E Grounds for certification

(1) This section applies to—

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(a) a preliminary decision under section 10D as to whether an applicant should be certified;

(b) a final decision under Article 3 of the Electricity Regulation as to whether to certify an applicant.

(2) The Authority may only decide that the applicant should be certified, or decide to certify the applicant, if one of the following five grounds ("the certification grounds") applies.

(3) The first certification ground is that the applicant meets the ownership unbundling requirement in section 10F.

(4) The second certification ground is that the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraph (9) of Article 9 of the Electricity Directive (alternative arrangements for independence), and the Authority thinks the requirements of that paragraph are met.

(5) The third certification ground is that—

(a) the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraphs (1) and (2) of Article 13 of the Electricity Directive (independent system operator);

(b) the applicant has nominated an independent system operator for designation in accordance with those paragraphs; and

(c) the Authority—

(i) thinks that the requirements of those paragraphs are met, and

(ii) is minded to designate the nominated independent system operator.

(6) The fourth certification ground is that—

(a) the applicant holds a licence under section 6(1)(e); and

(b) in accordance with the conditions of that licence, the applicant has been granted an exemption under Article 17 of the Electricity Regulation (new interconnectors) and remains entitled to the benefit of it.

(7) The fifth certification ground is that—

(a) the applicant holds a licence under section 6(1)(e); and

(b) in accordance with the conditions of that licence, the applicant has been granted an exemption under Article 7 of Regulation (EC) No. 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (new interconnectors) and remains entitled to the benefit of it.

(8) But, regardless of whether a certification ground applies, the Authority—

(a) may, in particular, decide that the applicant should not be certified, or decide not to certify the applicant, if, on the basis of an opinion expressed by the European Commission under Article 11 of the Electricity Directive (certification in relation to persons from countries outside the European Economic Area), the Authority thinks that the certification of the applicant would put at risk the security of electricity supplies in any EEA state;

(b) must not decide that the applicant should be certified, and must not decide to certify the applicant, if a report prepared by the Secretary of State under section 10C states that the certification of the applicant would put at risk the security of electricity supplies in the United Kingdom or any other EEA state;

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(c) must not decide to certify the applicant on the second certification ground if the European Commission has not verified, in accordance with paragraph (10) of Article 9 of the Electricity Directive (verification of independence under alternative arrangements), that the requirement in that paragraph as to arrangements for effective independence is met.

10F The ownership unbundling requirement

(1) In section 10E(3) the ownership unbundling requirement is met by an applicant for certification if **[**F130in relation to each of the five tests below—

(a) the Authority thinks that it is passed, or

(b) it is treated as passed by virtue of subsection (7), (9) or (9A).**]**

(2) The first test is that the applicant—

(a) does not control a relevant producer or supplier;

(b) does not have a majority shareholding in a relevant producer or supplier; and

(c) will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier.

(3) For the purposes of subsection (2)(c), the Authority is entitled to think that the applicant will not exercise shareholder rights if the applicant has given an undertaking not to exercise those shareholder rights.

(4) The second test is that, where the applicant is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who—

(a) controls an electricity undertaking which is a relevant producer or supplier; or

(b) has a majority shareholding in an electricity undertaking which is a relevant producer or supplier.

(5) The third test is that, where the applicant is a company, partnership or other business, none of its senior officers is also a senior officer of an electricity undertaking which is a relevant producer or supplier.

(6) The fourth test is that the applicant is not controlled by a person who controls a relevant producer or supplier.

(7) But even where the fourth test is not passed, the Authority may treat it as passed if—

(a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant's business; or

(b) the control over the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.

(8) The fifth test is that the applicant is not controlled by a person who has a majority shareholding in a relevant producer or supplier.

(9) But even where the fifth test is not passed, the Authority may treat it as passed if—

(a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant's business; or

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(b) the majority shareholding in the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.

F131 **[** (9A) Except where subsection (9B) applies, the Authority may treat one or more of the five tests in this section as passed if—

(a) the test or tests are not passed in relation to a relevant producer or supplier,

(b) the applicant has demonstrated to the Authority's satisfaction that the applicant does not have a relationship with the relevant producer or supplier which might lead the applicant to discriminate in favour of the relevant producer or supplier, and

(c) the Authority thinks it appropriate to treat the test or tests as passed.

(9B) This subsection applies where the applicant, or a person who controls or has a majority shareholding in the applicant, controls or has a majority shareholding in a person ("A") who operates a generating station and—

(a) A is a relevant producer or supplier; and

(b) the generating station is directly physically connected to anything that forms part of the applicant's transmission system or electricity interconnector.**]**

(10) In subsection (2)(c) "relevant date" means the relevant date for the purposes of section 10A(1) or (3).

Textual Amendments

F130 Words in s. 10F(1) substituted (15.1.2015) by The Electricity and Gas (Ownership Unbundling) Regulations 2014 (S.I. 2014/3333), regs. 1(1), **3(2)** (with reg. 4)

F131 S. 10F(9A)(9B) inserted (15.1.2015) by The Electricity and Gas (Ownership Unbundling) Regulations 2014 (S.I. 2014/3333), regs. 1(1), **3(3)** (with reg. 4)

10G The ownership unbundling requirement: supplementary

(1) Subsections (2) and (3) apply where—

(a) by virtue of subsection (7) or (9) of section 10F, the Authority treats the fourth or fifth test under section 10F as passed in relation to a person; and

(b) the person is certified in reliance on that treatment.

(2) The Authority must by notice to the certified person specify a period of time at the end of which the Authority will cease to treat that test as passed by virtue of that subsection.

(3) The Authority may by notice to the certified person extend that period if the Authority thinks it necessary or expedient to do so.

(4) In deciding whether to treat a test as passed by virtue of section 10F(7) or (9), and in determining any period or extension under subsection (2) or (3), the Authority—

(a) must take into account—

(i) the period of time for which the test is likely to continue not to be passed, and

(ii) whether the relationship (direct or indirect) between the applicant and the relevant producer or supplier has led or might lead the applicant to discriminate in favour of the relevant producer or supplier; and

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(b) may, in particular, take into account any information or undertaking given to the Authority by the applicant, the relevant producer or supplier or the person who controls the applicant and controls or has a majority shareholding in the relevant producer or supplier.

(5) The information and undertakings that may be taken into account under subsection (4)(b) include information and undertakings regarding any measures that have been or will be put in place to ensure the effective separation of the business of the applicant and the business of the relevant producer or supplier.

10H Designation for the purposes of EU electricity legislation

(1) This section applies in relation to any period for which a person—
(a) holds a transmission licence or an interconnector licence; and
(b) is certified.

(2) If the person is certified on the first, second, fourth or fifth certification ground in section 10E, the person is designated as an electricity transmission system operator for the purposes of Article 10(2) of the Electricity Directive (designation of transmission system operators).

(3) If the person is certified on the third certification ground in section 10E, the independent system operator nominated in the application for certification is designated as an electricity transmission system operator for the purposes of that Article.

(4) As soon as is reasonably practicable after a person is designated by virtue of this section, the Authority must notify the designation to—
(a) the person designated;
(b) the Secretary of State; and
(c) the European Commission.

10I Monitoring and review of certification

(1) The Authority must monitor, in respect of each certified person, whether the basis on which the Authority decided to certify the person, including the certification ground on which the person was certified, (the "certification basis") continues to apply.

(2) If, on or after 3 March 2013, as result of information it has received or obtained, the Authority thinks that a person from a third country has taken or may take control of a certified person, the Authority must, as soon as is reasonably practicable—
(a) notify the information to the Secretary of State and the European Commission; and
(b) enclose with the notification to the Secretary of State any further information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the continued certification of the person.

(3) The Authority must review whether the certification basis in respect of a certified person continues to apply if the European Commission asks it to do so.

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(4) A review under subsection (3) is to be carried out within the 4 months beginning with the day on which the Authority receives the request from the European Commission.

(5) The Authority may also review whether the certification basis in respect of a certified person continues to apply if—

(a) the certified person notifies it of any event or circumstance which may affect that basis; or

(b) the Authority thinks that the basis may no longer apply.

(6) A review under subsection (5) is to be carried out within the 4 months beginning with—

(a) if paragraph (a) of subsection (5) applies, the day on which the Authority receives the notification under that paragraph;

(b) otherwise, the first day on which the Authority thinks that the certification basis may no longer apply.

(7) Subsection (8) applies where—

(a) by virtue of section 10F(7) or (9), the Authority has treated the fourth or fifth test under section 10F as passed in relation to a person;

(b) the person is certified in reliance on that treatment; and

(c) the period specified under section 10G as the period at the end of which that treatment will cease comes to an end.

(8) Where this subsection applies, the Authority must review whether that test is now passed.

(9) A review under subsection (8) is to be carried out within the 4 months beginning with the end of the period mentioned in subsection (7)(c).

[[F132](10) If, before any of the deadlines mentioned in subsection (4), (6) or (9) (or before such deadline as previously extended under this subsection), the Authority asks the certified person or a relevant producer or supplier for information under section 10J(2) or (3), the relevant deadline is the end of the 4 months beginning with the day on which the last of that information is received.**]**

Textual Amendments

F132 S. 10I(10) inserted (15.1.2015) by The Electricity and Gas (Ownership Unbundling) Regulations 2014 (S.I. 2014/3333), regs. 1(1), **3(4)** (with reg. 4)

10J Review of certification: requirement to provide information etc

(1) As soon as is reasonably practicable after beginning a review under section 10I, the Authority must notify the certified person that the review is being carried out and of the reasons for it.

(2) The Authority may ask that person for any information the Authority thinks is relevant to the review, and the person must supply the information if—

(a) it is in the person's possession; or

(b) it is information which the person could reasonably be expected to obtain.

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(3) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to a review under section 10I, and the relevant producer or supplier must supply that information if—

(a) it is in the relevant producer or supplier's possession; or

(b) it is information which the relevant producer or supplier could reasonably be expected to obtain.

(4) A person required to supply information under subsection (2) or (3) must do so by any deadline specified by the Authority.

10K Report as to any connection of certified person with a country outside the European Economic Area

(1) This section applies if the Authority notifies information to the Secretary of State under section 10I(2) in respect of a certified person.

(2) The Secretary of State must prepare a report on whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the continued certification of the person.

(3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.

(4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 10J(2) or (3) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.

(5) In preparing the report, the Secretary of State must take into account—

(a) any relevant international law; and

(b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

10L Continuation or withdrawal of certification

(1) Where the Authority reviews under section 10I(3) or (5) whether the certification basis in respect of a certified person continues to apply, it may, within the 4 months mentioned in section 10I(4) or (6) **[**[F133]or where relevant the 4 months mentioned in section 10I(10)**]**, either—

(a) make a preliminary decision that the certification should be continued on the certification ground mentioned in section 10I(1); or

(b) make a preliminary decision that the certification should be withdrawn.

(2) If the Authority does not make a decision under subsection (1) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the certification ground mentioned in section 10I(1).

(3) Where the Authority reviews under section 10I(8) whether the fourth or fifth test under section 10F is now passed, it may, within the 4 months mentioned in section 10I(9) **[**[F134]or where relevant the 4 months mentioned in section 10I(10)**]**, either—

(a) make a preliminary decision that the certification should be continued on the basis that the test is now passed; or

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(b) make a preliminary decision that the certification should be withdrawn.

(4) If the Authority does not make a decision under subsection (3) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the basis that the test is now passed.

(5) As soon as is reasonably practicable after a preliminary decision is made (or taken to be made) under this section, the Authority must—

(a) notify the decision to the certified person and the Secretary of State; and

(b) notify the decision to the European Commission, enclosing the information it considers relevant to the decision.

(6) Subsections (7) to (9) apply in relation to the Authority's final decision under Article 3 of the Electricity Regulation whether to confirm the certification.

(7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—

(a) the person in relation to whom the review was carried out;

(b) the Secretary of State; and

(c) the European Commission.

(8) If the final decision is to continue the certification the person is to be taken as continuing to be certified by the Authority under section 10D.

(9) Otherwise, the person is to be taken as no longer certified.

(10) Section 10E(8)(a) and (b) applies in relation to a decision mentioned in this section as it applies in relation to a decision mentioned in section 10E(1), but as if—

(a) the references in section 10E(8)(a) and (b) to the certification of the applicant were references to the continued certification of the person certified; and

(b) the reference in section 10E(8)(b) to a report prepared under section 10C were a reference to a report prepared under section 10K.

Textual Amendments

F133 Words in s. 10L(1) inserted (15.1.2015) by The Electricity and Gas (Ownership Unbundling) Regulations 2014 (S.I. 2014/3333), regs. 1(1), **3(5)** (with reg. 4)

F134 Words in s. 10L(3) inserted (15.1.2015) by The Electricity and Gas (Ownership Unbundling) Regulations 2014 (S.I. 2014/3333), regs. 1(1), **3(6)** (with reg. 4)

10M Prohibition on the exercise of certain shareholder rights and rights of appointment

(1) A person must not exercise a shareholder right or a right of appointment if—

(a) the right falls within subsection (2), (3), (4) or (5);

(b) the relevant date in respect of the certified person mentioned in that subsection has been reached;

(c) the exercise of the right would or might lead the certified person to discriminate in favour of the relevant producer or supplier mentioned in that subsection; and

(d) the relevant producer or supplier is a person to whom subsection (6) applies.

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(2) A right falls within this subsection if—

(a) it is a shareholder right;

(b) it is held by a person who controls a person certified on the certification ground in section 10E(3); and

(c) it is exercisable in relation to a relevant producer or supplier.

(3) A right falls within this subsection if—

(a) it is a shareholder right;

(b) it is exercisable in relation to a person certified on the certification ground in section 10E(3); and

(c) it is held by a person who controls a relevant producer or supplier.

(4) A right falls within this subsection if—

(a) it is a shareholder right;

(b) the person who holds it appointed a senior officer of a person certified on the certification ground in section 10E(3);

(c) the person appointed continues to hold that office; and

(d) the right is exercisable in relation to an electricity undertaking which is a relevant producer or supplier.

(5) A right falls within this subsection if—

(a) it is a right to appoint a senior officer of a person certified on the certification ground in section 10E(3); and

(b) the person who holds it has, within the immediately preceding period of 3 years, exercised a shareholder right in relation to an electricity undertaking which is a relevant producer or supplier.

(6) This subsection applies to a person if, in order to carry out of some or all of the activity by virtue of which the person is a relevant producer or supplier, the person—

(a) requires a licence under section 6 of this Act, section 7A of the Gas Act 1986 (licensing of gas suppliers and gas shippers) or section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum); or

(b) would require such a licence if carrying out the activity in Great Britain.

(7) In this section—

(a) "exercise" means exercise directly or indirectly, and "exercisable" is to be interpreted accordingly; and

(b) "relevant date" means the relevant date for the purposes of section 10A(1) or (3).

10N Validity of acts infringing section 10M

(1) The following are voidable on an application to the court—

(a) the exercise of a shareholder right in breach of section 10M;

(b) the appointment of a senior officer in breach of that section.

(2) Any person may make an application under subsection (1).

(3) Such an application may not be made after the end of the 5 years beginning with the day on which the shareholder right was exercised or the appointment made.

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(4) If, by virtue of this section, the court declares the exercise of a shareholder right or an appointment to be void, it may make an order as to the consequences of its declaration.

(5) In this section, "the court" means—

(a) in relation to England and Wales, the High Court, and

(b) in relation to Scotland, the Court of Session.

10O Interpretation

(1) In sections 10A to 10N and this section—

"control", in relation to one person having control over another, has the meaning given by Article 2(34) of the Electricity Directive (but in determining whether one person ("person A") has control over another ("person B") no account is to be taken of any unexercised contractual or other right which would, if exercised, give person A control over person B and which was conferred as a condition of the provision of either financial support or a guarantee (or both), by person A in relation to the business of person B); and references to one person controlling another are to be interpreted accordingly;

"certified" means taken in accordance with section 10D(8) or 10L(8) to be certified (or as continuing to be certified) by the Authority under section 10D; and "certify" and "certification" are to be interpreted accordingly;

"certification grounds" has the meaning given by section 10E(2);

"majority shareholding" means a simple majority of shares;

"person from a third country" means a person the Authority thinks is from a third country;

"shareholder right" means a right, conferred by the holding of a share in a company's share capital—

(a) to vote at general meetings of the company; or

(b) to appoint or remove a member of the company's board of directors;

"third country" means a country that is not, and is not part of, an EEA state.

(2) In this Part "electricity undertaking" means a person who—

(a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;

(b) supplies electricity to any premises; or

(c) otherwise generates or sells electricity.

(3) In this Part "relevant producer or supplier", in relation to an applicant for certification or a certified person, means a person who falls within each of subsections (4) and (5).

(4) A person falls within this section if the person—

(a) is an electricity undertaking;

(b) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain;

(c) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7 of the Gas Act 1986;

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(d) supplies to any premises gas which has been conveyed to those premises through pipes;

(e) arranges with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter; or

(f) otherwise sells gas,

and terms used in paragraphs (b) to (f) of this subsection have the same meanings in those paragraphs as in Part 1 of the Gas Act 1986.

(5) A person falls within this subsection if the person carries out in an EEA state some or all of the activity by virtue of which the person falls within subsection (4) and—

(a) requires a licence under section 7A of the Gas Act 1986 (licensing of gas suppliers and gas shippers) or section 6 of this Act to do so;

(b) would, in the Authority's opinion, require such a licence if carrying out the activity in Great Britain; or

(c) has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of the person.**]**

Modification of licences

[F135]11 Modification by agreement.

. . . . . .

Textual Amendments

F135 S. 11 omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **43(2)** (with reg. 44)

[[F136][F137]11A Modification of conditions of licences

(1) The Authority may make modifications of—

(a) the conditions of a particular licence;

(b) the standard conditions of licences of any type mentioned in section 6(1).

(2) Before making any modifications under this section, the Authority must give notice—

(a) stating that it proposes to make modifications;

(b) setting out the proposed modifications and their effect;

(c) stating the reasons why it proposes to make the modifications; and

(d) specifying the time within which representations with respect to the proposed modifications may be made.

(3) The time specified by virtue of subsection (2)(d) may not be less than 28 days from the date of the publication of the notice.

(4) A notice under subsection (2) must be given—

(a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and

(b) by sending a copy of the notice to—

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(i) each relevant licence holder,
(ii) the Secretary of State, [F138]...
(iii) **[**[F139]Citizens Advice, and
(iv) Citizens Advice Scotland.**]**

(4A) The Authority must consider any representations which are duly made.**]**

(5) If, within the time specified **[**[F140]by virtue of subsection (2)(d)**]**, the Secretary of State directs the Authority not to make any modification, the Authority shall comply with the direction.

[[F141](6) Subsections (7) to (9) apply where, having complied with subsections (2) to (4A), the Authority decides to proceed with the making of modifications of the conditions of any licence under this section.

(7) The Authority must—
(a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications,
(b) state the effect of the modifications,
(c) state how it has taken account of any representations duly made, and
(d) state the reason for any differences between the modifications and those set out in the notice by virtue of subsection (2)(b).

(8) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 5A).

(9) The date specified by virtue of subsection (8) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this section.

(10) In this section "relevant licence holder"—
(a) in relation to the modification of standard conditions of licences of any type, means the holder of a licence of that type—
(i) which is to be modified by the inclusion of any new standard condition, or
(ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of subsection (2)(d); or
(b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.**]]**

Textual Amendments

F136 S. 11A inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 35**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F137 S. 11A(1)-(4A) and heading substituted for s. 11A(1)-(4) and heading (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **43(4)** (with reg. 44)

F138 Word in s. 11A(4)(b)(ii) omitted (1.4.2014) by virtue of The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(5)(a)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

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F139 S. 11A(4)(b)(iii)(iv) substituted for s. 11A(4)(b)(iii) (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(5)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F140 Words in s. 11A(5) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **43(5)** (with reg. 44)

F141 S. 11A(6)-(10) substituted for s. 11A(6)-(11) (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **43(6)** (with reg. 44)

[F142 11B Modification of conditions under section 11A: supplementary

(1) Subsections (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under section 11A.

(2) If the conditions modified are standard conditions, the Authority must—

(a) also make (as nearly as may be) the same modifications of those 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 for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.

(3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.

(4) The modification of part of a standard condition of a particular licence under section 11A does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

(5) The modification of a condition of a licence under this section has effect subject to the giving of a direction under paragraph 2 of Schedule 5A in relation to the decision to which the modification relates.**]**

Textual Amendments

F142 S. 11B inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **43(7)** (with reg. 44)

[F143 Appeal from decisions of the Authority

Textual Amendments

F143 Ss. 11C-11H and cross-heading inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **43(8)** (with reg. 44)

11C Appeal to the [F144 CMA]

(1) An appeal lies to the **[**F145 CMA**]** against a decision by the Authority to proceed with the modification of a condition of a licence under section 11A.

(2) An appeal may be brought under this section only by—

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(a) a relevant licence holder (within the meaning of section 11A);

(b) any other person who holds a licence of any type under section 6(1) whose interests are materially affected by the decision;

(c) a qualifying body or association in the capacity of representing a person falling within paragraph (a) or (b);

(d) **[**[F146]Citizens Advice or Citizens Advice Scotland or those bodies acting jointly**]** in the capacity of representing consumers whose interests are materially affected by the decision.

(3) The permission of the **[**[F147]CMA**]** is required for the bringing of an appeal under this section.

(4) The **[**[F147]CMA**]** may refuse permission to bring an appeal only on one of the following grounds—

(a) in relation to an appeal brought by a person falling within subsection (2)(b), that the interests of the person are not materially affected by the decision;

(b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;

(c) in relation to an appeal brought by **[**[F148]Citizens Advice or Citizens Advice Scotland or those bodies acting jointly**]** , that the interests of the consumers represented are not materially affected by the decision;

(d) in relation to any appeal—

(i) that the appeal is brought for reasons that are trivial or vexatious;

(ii) that the appeal has no reasonable prospect of success.

(5) References in this section to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

Textual Amendments

F144 Word in s. 11C heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 31(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F145 Word in s. 11C(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 31(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F146 Words in s. 11C(2)(d) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(6)(a)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F147 Word in s. 11C(3)(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 31(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F148 Words in s. 11C(4)(c) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(6)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

11D Procedure on appeal to [F149CMA]

F150(1) . . . . . .

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(2) [F151]... Schedule 5A to this Act has effect.

[F152](2A) **[** Except where specified otherwise in Schedule 5A, the functions of the CMA with respect to an appeal under section 11C are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.**]**

Textual Amendments

F149 Word in s. 11D heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 32(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F150 S. 11D(1) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 32(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F151 Word in s. 11D(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 32(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F152 S. 11D(2A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 32(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

11E Determination by [F153CMA] of appeal

(1) This section applies to every appeal brought under section 11C.

(2) In determining an appeal the **[**F154CMA**]** must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—

(a) in the carrying out of its principal objective under section 3A;

(b) in the performance of its duties under that section; and

(c) in the performance of its duties under sections 3B and 3C.

(3) In determining the appeal the **[**F154CMA**]**—

(a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but

(b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

(4) The **[**F154CMA**]** may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

(a) that the Authority failed properly to have regard to any matter mentioned in subsection (2);

(b) that the Authority failed to give the appropriate weight to any matter mentioned in subsection (2);

(c) that the decision was based, wholly or partly, on an error of fact;

(d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 11A(7)(b);

(e) that the decision was wrong in law.

(5) To the extent that the **[**F154CMA**]** does not allow the appeal, it must confirm the decision appealed against.

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Textual Amendments

F153 Word in s. 11E heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 33(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F154 Word in s. 11E(2)-(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 33(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

11F [F155CMA's] powers on allowing appeal

(1) This section applies where the **[**F156CMA**]** allows an appeal to any extent.

(2) If the appeal is in relation to a price control decision, the **[**F157CMA**]** must do one or more of the following—

(a) quash the decision (to the extent that the appeal is allowed);

(b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the **[**F157CMA**]**;

(c) substitute the **[**F158CMA's**]** decision for that of the Authority (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.

(3) If the appeal is in relation to any other decision, the **[**F159 CMA**]** must do one or both of the following—

(a) quash the decision (to the extent that the appeal is allowed);

(b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the **[**F159 CMA**]**.

(4) A direction under subsection (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).

(5) A person to whom a direction is given under that subsection must comply with it.

(6) A direction given under that subsection to a person other than the Authority is enforceable as if it were an order of the High Court or (in Scotland) an order of the Court of Session.

(7) For the purposes of this section a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the **[**F160CMA's**]** opinion, to limit or control the charges on, or the revenue of, the holder of the licence.

(8) In determining for the purposes of subsection (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.

(9) In this section and sections 11G and 11H any reference to a party to an appeal is to be read in accordance with Schedule 5A.

Textual Amendments

F155 Word in s. 11F heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 34(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F156 Word in s. 11F(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 34(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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F157 Word in s. 11F(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 34(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
F158 Word in s. 11F(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 34(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
F159 Word in s. 11F(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 34(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
F160 Word in s. 11F(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 34(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

11G Time limits for [F161CMA] to determine an appeal

(1) The [F162CMA] must—

(a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;

(b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.

(2) Subsection (1)(a) or (b) does not apply if subsection (3) applies.

(3) This subsection applies where—

(a) the [F163CMA] has received representations on the timing of the determination from a party to the appeal; and

(b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1)(a) or (b).

(4) Where subsection (3) applies, the [F163CMA] must—

(a) determine an appeal against a price control decision within the period specified by it, not being longer than the period of 7 months beginning with the permission date;

(b) determine an appeal against any other decision within the period specified by it, not being longer than the period of 5 months beginning with the permission date.

(5) Where subsection (3) applies, the [F163CMA] must also—

(a) inform the parties to the appeal of the time limit for determining the appeal, and

(b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.

(6) In this section "price control decision" is to be read in accordance with section 11F.

(7) References in this section to the permission date are to the date on which the [F164CMA] gave permission to bring the appeal in accordance with section 11C(3).

Textual Amendments

F161 Word in s. 11G heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 35(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
F162 Word in s. 11G(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 35(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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F163 Word in ss. 11G(3)-(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 35(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F164 Word in s. 11G(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 35(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

11H Determination of appeal by [F165CMA] : supplementary

(1) A determination by the **[**F166CMA**]** on an appeal—

(a) must be contained in an order made by the **[**F166CMA**]**;

(b) must set out the reasons for the determination;

(c) takes effect at the time specified in the order or determined in accordance with provision made in the order;

(d) must be notified by the **[**F166CMA**]** to the parties to the appeal;

(e) must be published by the **[**F166CMA**]**—

(i) as soon as reasonably practicable after the determination is made;

(ii) in such manner as the **[**F166CMA**]** considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).

(2) The **[**F167CMA**]** may exclude from publication under subsection (1)(e) any information which it is satisfied is—

(a) commercial information, the disclosure of which would, or might in **[**F168CMA's**]** opinion, significantly harm the legitimate business interests of an undertaking to which it relates; or

(b) information relating to the private affairs of an individual, the disclosure of which would, or might in the **[**F168CMA's**]** opinion, significantly harm the individual's interests.

(3) The Authority must take such steps as it considers requisite for it to comply with an order of the **[**F169CMA**]** made by virtue of subsection (1)(a).

(4) The steps must be taken—

(a) if a time is specified in (or is to be determined in accordance with) the order, within that time;

(b) in any other case, within a reasonable time.

(5) Subsections (2) to (4) of section 11B apply where a condition of a licence is modified in accordance with section 11F as they apply where a condition of a licence is modified under section 11A.**]**

Textual Amendments

F165 Word in s. 11H heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 36(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F166 Word in s. 11H(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 36(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F167 Word in s. 11H(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 36(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F168 Word in s. 11H(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 36(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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F169 Word in s. 11H(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 36(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F170 12 Modification references to Monopolies Commission.

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Textual Amendments

F170 Ss. 12-14A omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **43(10)** (with reg. 44)

F170 12A References under section 12: time limits

. . . . . .

Textual Amendments

F170 Ss. 12-14A omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **43(10)** (with reg. 44)

F170 12B References under section 12: powers of investigation

. . . . . .

Textual Amendments

F170 Ss. 12-14A omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **43(10)** (with reg. 44)

F170 13 Reports on modification references.

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Textual Amendments

F170 Ss. 12-14A omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **43(10)** (with reg. 44)

F170 14 Modification following report.

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Textual Amendments

F170 Ss. 12-14A omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **43(10)** (with reg. 44)

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[F170]14A Competition Commission's power to veto modifications following report.

. . . . . .

Textual Amendments

F170 Ss. 12-14A omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **43(10)** (with reg. 44)

15 Modification by order under other enactments.

[[F171](1) Where the **[**[F172]CMA**]** or (as the case may be) the Secretary of State (in this section "the relevant authority") makes a relevant order, the order may also provide for the modification of the conditions of a particular licence, or the standard conditions of licences of any type mentioned in section 6(1), to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.**]**

[[F171](2) In subsection (1) above "relevant order" means—

(a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—

(i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or

(ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or

(b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market **[**[F173]or markets**]** in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the generation, transmission, distribution or supply of electricity.**]**

[[F174](2A) The modification under subsection (1) of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

[[F175](2B) Where the relevant authority modifies under subsection (1) the standard conditions of licences of any type, the relevant authority—

(a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and

(b) may, after consultation with the Authority, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of any licence of that type granted before that time.**]**

(2C) Where at any time the **[**[F176]relevant authority**]** modifies standard conditions under subsection (2B)(a) for the purposes of their incorporation in licences granted after that time, **[**[F177]the relevant authority**]** shall publish those modifications in such manner as **[**[F177]the relevant authority**]** considers appropriate.**]**

[[F178](3) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.**]**

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Textual Amendments

F171 S. 15(1)(2) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 5(2)**; S.I. 2003/1397, art. 2(1), Sch.

F172 Word in s. 15(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 37**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F173 Words in s. 15(2)(b) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 64** (with art. 3)

F174 S. 15(2A)-(2C) inserted (1.10.2001) by 2000 c. 27, **s. 40(3)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F175 S. 15(2B) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 5(3)**; S.I. 2003/1397, art. 2(1), Sch.

F176 Words in s. 15(2C) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 5(4)(a)**; S.I. 2003/1397, art. 2(1), Sch.

F177 Words in s. 15(2C) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 5(4)(b)**; S.I. 2003/1397, art. 2(1), Sch.

F178 S. 15(3) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 5(5)**; S.I. 2003/1397, art. 2(1), Sch.

Modifications etc. (not altering text)

C46 S. 15(1): functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, **Sch.** (with art. 6)

[F179 15A Licence modifications relating to new electricity trading arrangements.

(1) The Secretary of State may, in accordance with this section, modify—

(a) the conditions of a particular licence; or

(b) the standard conditions of licences of any type mentioned in section 6(1),

where he considers it necessary or expedient to do so for the purpose of implementing, or facilitating the operation of, new arrangements relating to the trading of electricity.

(2) The power to modify licence conditions under paragraph (a) or (b) of subsection (1) includes power—

(a) to make modifications relating to the operation of transmission systems and distribution systems; and

(b) to make incidental or consequential, or transitional, modifications.

(3) Before making modifications under this section the Secretary of State shall consult the holder of any licence being modified and such other persons as he considers appropriate.

(4) Any consultation undertaken by the Secretary of State before the commencement of this section shall be as effective, for the purposes of subsection (3), as if undertaken after that commencement.

(5) Any modification of part of a standard condition of a licence under subsection (1)(a) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

(6) Where the standard conditions of licences of any type are modified under subsection (1)(b), the Secretary of State shall make (as nearly as may be) the same

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modifications of the standard conditions for the purposes of their incorporation in licences of that type granted after that time.

(7) The Secretary of State shall publish any modifications under this section in such manner as he considers appropriate.

(8) The power of the Secretary of State under this section may not be exercised after the end of the period of two years beginning with the passing of the Utilities Act 2000.**]**

Textual Amendments

F179 S. 15A inserted (28.7.2000) by 2000 c. 27, **s. 68(1)(2)**

[F180 Duties of electricity distributors]

Textual Amendments

F180 Ss. 16, 16A, 17 and cross-heading substituted for ss. 16, 17 (1.10.2001) by 2000 c. 27, **s. 44**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F181[16 Duty to connect on request.

(1) An electricity distributor is under a duty—

(a) to make a connection between a distribution system of his and any premises, when required to do so by—

(i) the owner or occupier of the premises; or

(ii) an authorised supplier acting with the consent of the owner or occupier of the premises,

for the purpose of enabling electricity to be conveyed to or from the premises;

(b) to make a connection between a distribution system of his and any distribution system of another authorised distributor, when required to do so by that authorised distributor for the purpose of enabling electricity to be conveyed to or from that other system.

(2) Any duty under subsection (1) includes a duty to provide such electric lines or electrical plant as may be necessary to enable the connection to be used for the purpose for which it is required.

(3) The duties under this section shall be performed subject to such terms as may be agreed under section 16A for so long as the connection is required.

(4) In this section and sections 16A to 23—

(a) any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant);

(b) any reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines and electrical plant); and

(c) any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical plant either by the installation of a new one or by the modification of an existing one.

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(5) The duties under this section are subject to the following provisions of this Part and any regulations made under those provisions.**]**

Textual Amendments

F181 Ss. 16, 16A, 17 and cross-heading substituted for ss. 16, 17 (1.10.2001) by 2000 c. 27, **s. 44**; S.I. 2001/3266, art. 2, **Sch.**(subject to transitional provisions in art. 3-20)

Modifications etc. (not altering text)

C47 S. 16 applied (1.10.2001) by S.I. 2001/3264, **reg. 4(2)**

[F182 16A Procedure for requiring a connection.

(1) Where a person requires a connection to be made by an electricity distributor in pursuance of section 16(1), he shall give the distributor a notice requiring him to offer terms for making the connection.

(2) That notice must specify—

(a) the premises or distribution system to which a connection to the distributor's system is required;

(b) the date on or by which the connection is to be made; and

(c) the maximum power at which electricity may be required to be conveyed through the connection.

(3) The person requiring a connection shall also give the distributor such other information in relation to the required connection as the distributor may reasonably request.

(4) A request under subsection (3) shall be made as soon as practicable after the notice under subsection (1) is given (if not made before that time).

[F183 (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).**]**

(5) As soon as practicable after receiving the notice under subsection (1)**[**F184, 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**]** a notice—

(a) stating the extent (if any) to which his proposals are acceptable to the distributor and specifying any counter proposals made by him;

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(b) specifying any payment which that person will be required to make under section 19(1) or regulations under section 19(2);

(c) specifying any security which that person will be required to give under section 20; and

(d) stating any other terms which that person will be required to accept under section 21.

(6) A notice under subsection (5) shall also contain a statement of the effect of section 23.**]**

Textual Amendments

F182 Ss. 16, 16A, 17 and cross-heading substituted for ss. 16, 17 (1.10.2001) by 2000 c. 27, **s. 44**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F183 Ss. 16A(4A)-(4C) inserted (26.1.2009) by Energy Act 2008 (c. 32), **ss. 98(2)**, 110(2); S.I. 2009/45, art. 2(d)(v)

F184 Words in s. 16A(5) substituted (26.1.2009) by Energy Act 2008 (c. 32), **ss. 98(3)**, 110(2); S.I. 2009/45, art. 2(d)(v)

[F185 17 Exceptions from duty to connect.

(1) Nothing in section 16(1) requires an electricity distributor to make a connection if and to the extent that—

(a) he is prevented from doing so by circumstances not within his control;

(b) circumstances exist by reason of which his doing so would or might involve his being in breach of regulations under section 29, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or

(c) it is not reasonable in all the circumstances for him to be required to do so.

(2) Without prejudice to the generality of subsection (1) an electricity distributor is not required to make a connection if—

(a) making the connection involves the distributor doing something which, without the consent of another person, would require the exercise of a power conferred by any provision of Schedule 3 or 4;

(b) the distributor's licence does not provide for that provision to have effect in relation to him; and

(c) any necessary consent has not, at the time the request is made, been given.

(3) Subsection (1)(c) does not permit an electricity distributor to disconnect any premises or distribution system to which a connection is being maintained by him unless the distributor gives—

(a) where the connection is to premises, to the occupier or to the owner if the premises are not occupied;

(b) where the connection is to another distribution system, to the person who is authorised by a licence or exemption to run that system,

not less than seven working days' notice of his intention to disconnect the premises or distribution system.**]**

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Textual Amendments

F185 Ss. 16, 16A, 17 and cross-heading substituted for ss. 16, 17 (1.10.2001) by 2000 c. 27, **s. 44**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

[F186]18 . . . . . .

Textual Amendments

F186 S. 18 repealed (1.10.2001) by 2000 c. 27, ss. 45, 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

19 Power to recover expenditure.

(1) Where any electric line or electrical plant is provided by **[**[F187]an electricity distributor**]** in pursuance of section 16(1) above, the **[**[F187]distributor**]** may require any expenses reasonably incurred in providing it to be defrayed by the person requiring the **[**[F187]connection**]** to such extent as is reasonable in all the circumstances.

[[F188](2) The Secretary of State may, after consultation with the Authority, make provision by regulations for entitling an electricity distributor to require a person requiring a connection in pursuance of section 16(1) to pay to the distributor, in respect of any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of making the connection, such amount as may be reasonable in all the circumstances if—

(a) the connection is required within the prescribed period after the provision of the line or plant; and

(b) a person ("the initial contributor") has made a payment to the distributor in respect of those expenses, the line or plant having been provided for the purpose of making a connection to any premises or distribution system as required by that person.**]**

(3) Regulations under subsection (2) above may require **[**[F189]an electricity distributor**]** who, in pursuance of this section or the regulations, has recovered any amount in respect of expenses reasonably incurred in providing any electric line or electrical plant—

(a) to exercise his rights under the regulations in respect of those expenses; and

(b) to apply any payments received by him in the exercise of those rights in making such payments as may be appropriate towards reimbursing the initial contributor and any persons previously required to make payments under the regulations.

(4) Any reference in this section to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in **[**[F190]continuing to provide it**]**

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Textual Amendments

F187 Words in s. 19(1) substituted (1.10.2001) by 2000 c. 27, **s. 46(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F188 S. 19(2) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 46(3)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F189 Words in s. 19(3) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 46(4)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F190 Words in s. 19(4) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 46(5)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

20 Power to require security.

[F191(1) Subject to the following provisions of this section, an electricity distributor may require any person who requires a connection in pursuance of section 16(1) to give him reasonable security for the payment to him under section 19 in respect of the provision of any electric line or electrical plant.

(1A) If a person fails to give any security required under subsection (1), or the security given has become invalid or insufficient, and he fails to provide alternative or additional security, the electricity distributor may if he thinks fit—

(a) if the connection has not been made, refuse to provide the line or plant for so long as the failure continues; or

(b) if the connection is being maintained, disconnect the premises or distribution system in question.**]**

F192(2) . . . . . .

(3) Where any money is deposited with **[**F193an electricity distributor**]** by way of security in pursuance of this section, the **[**F193distributor**]** shall pay interest, at such rate as may from time to time be fixed by the **[**F193distributor**]** with the approval of the Director, on every sum of 50p so deposited for every three months during which it remains in the hands of the **[**F193distributor**]**.

F192(4) . . . . . .

Textual Amendments

F191 S. 20(1)(1A) substituted for s. 20(1) (1.10.2001) by 2000 c. 27, **s. 47(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F192 S. 20(2)(4) repealed (1.10.2001) by 2000 c. 27, ss. 47(4), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F193 Words in s. 20(3) substituted (1.10.2001) by 2000 c. 27, **s. 47(3)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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[F194 21 Additional terms of connection.

An electricity distributor may require any person who requires a connection in pursuance of section 16(1) above to accept in respect of the making of the connection—

(a) any restrictions which must be imposed for the purpose of enabling the distributor to comply with regulations under section 29;

(b) any terms which it is reasonable in all the circumstances for that person to be required to accept; and

(c) without prejudice to the generality of paragraph (b), any terms restricting any liability of the distributor for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept.**]**

Textual Amendments

F194 S. 21 substituted (1.10.2001) by 2000 c. 27, **s. 48**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F195 [22 Special agreements with respect to connection.

(1) Notwithstanding anything in sections 16 to 21, a person who requires a connection in pursuance of section 16(1) may enter into an agreement with the electricity distributor (referred to in this Part as a "special connection agreement") for the making of the connection on such terms as may be agreed by the parties.

(2) So long as a special connection agreement is effective, the rights and liabilities of the parties shall be those arising under the agreement and not those provided for by sections 16 to 21.

(3) Nothing in subsection (2) prevents the giving of a notice under section 16A(1) requiring a connection to be made as from the time when a special connection agreement ceases to be effective.**]**

Textual Amendments

F195 S. 22 substituted (1.10.2001) by 2000 c. 27, **s. 49**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Modifications etc. (not altering text)

C48 S. 22 applied (1.10.2001) by S.I. 2001/3264, **reg. 5(2)**

23 Determination of disputes.

[F196(1) This section applies (in addition to any disputes to which it applies by virtue of any other provision of this Act) to any dispute arising under sections 16 to 21 between an electricity distributor and a person requiring a connection.

(1A) A dispute to which this section applies—

(a) may be referred to the **[**F197Authority—

(i) by either party, or

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(ii) with the consent of either party, by Citizens Advice or Citizens Advice Scotland or Citizens Advice and Citizens Advice Scotland acting jointly;**]** and

(b) on such a reference, shall be determined by order made either by the Authority or, if the Authority thinks fit, by an arbitrator (or in Scotland an arbiter) appointed by the Authority.

(1B) The practice and procedure to be followed in connection with any such determination shall be such as the Authority may consider appropriate. .

(1C) No dispute arising under sections 16 to 21 which relates to the making of a connection between any premises and a distribution system may be referred to the Authority after the end of the period of 12 months beginning with the time when the connection is made..

(2) Where a dispute arising under sections 16 to 21 between an electricity distributor and a person requiring a connection falls to be determined under this section, the Authority may give directions as to the circumstances in which, and the terms on which, the distributor is to make or (as the case may be) to maintain a connection pending the determination of the dispute.**]**

(3) Where any dispute arising under section 20(1) above falls to be determined under this section, the Director may give directions as to the security (if any) to be given pending the determination of the dispute.

(4) Directions under subsection (2) or (3) above may apply either in cases of particular descriptions or in particular cases.

[F198(4A) A person making an order under this section shall include in the order his reasons for reaching his decision with respect to the dispute.**]**

(5) An order under this section—

(a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order) as that person considers appropriate; and

(b) shall be final and—

(i) in England and Wales, shall be enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of the county court;

(ii) in Scotland, shall be enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.

(6) In including in an order under this section any such provision as to costs or expenses as is mentioned in subsection (5) above, the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

[F199(7) Section 16(4)(a) does not apply to the references in this section to making a connection.**]**

Textual Amendments

F196 S. 23(1)(1A)-(1C)(2) substituted for s. 23(1)(2) (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 26(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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F197 Words in s. 23(1A)(a) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(7)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
F198 S. 23(4A) inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 26(3)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
F199 S. 23(7) inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 26(4)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Modifications etc. (not altering text)
C49 S. 23 applied (with modifications) (1.10.2001) by S.I. 2001/3266, **arts. 1(2)**, 6(3)
C50 S. 23 applied (1.10.2001) by S.I. 2001/3266, **arts. 1(2)**, 11(3)

24 The public electricity supply code.

The provisions of Schedule 6 to this Act (which relate to the **[**[F200]distribution and supply of electricity**]**) shall have effect.

Textual Amendments
F200 Words in s. 24 substituted (1.10.2001) by 2000 c. 27, **s. 51(1)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

[F201 Enforcement of obligations of regulated persons]

Textual Amendments
F201 S. 25 cross-heading substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(2)**

25 Orders for securing compliance.

(1) Subject to subsections (2)**[**[F202], **[**[F203](4A) to**]** (5A)**]** and section 26 below, where **[**[F204]the Authority**]** is satisfied that a **[**[F205]regulated person**]** is contravening, or is likely to contravene, any relevant condition or requirement, **[**[F206]it**]** shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

(2) Subject to **[**[F207]subsections **[**[F203](4A) to**]** (5A)**]** below, where it appears to **[**[F204]the Authority**]**—

(a) that a **[**[F205]regulated person**]** is contravening, or is likely to contravene, any relevant condition or requirement; and

(b) that it is requisite that a provisional order be made,

[[F206]it**]** shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with that condition or requirement.

(3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional order be made, **[**[F204]the Authority**]** shall have regard, in particular—

(a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or

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requirement, is likely to be done, or omitted to be done, before a final order may be made; and

(b) to the fact that the effect of the provisions of this section and section 27 below is to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition or requirement.

(4) Subject to **[**F207subsections **[**F208(4A) to**]** (5A)**]** and section 26 below, **[**F204the Authority**]** shall confirm a provisional order, with or without modifications, if—

(a) **[**F206it**]** is satisfied that the **[**F205regulated person**]** to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement; and

(b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.

[F209(4A) Before making a final order or making or confirming a provisional order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(4B) The Authority shall not make a final order or make or confirm a provisional order if it considers that it would be more appropriate to proceed under the Competition Act 1998.**]**

(5) **[**F204the Authority**]** shall not make a final order or make or confirm a provisional order in relation to a **[**F205regulated person**]** if **[**F206it**]** is satisfied—

(a) that the duties imposed on him by section **[**F210**]**3A to 3C**]** preclude the making or, as the case may be, the confirmation of the order;

F211(b) . . . . . .

F211(c) . . . . . .

F212(d) . . . . . .

[F213(5A) The Authority is not required to make a final order or make or confirm a provisional order if it is satisfied—

(a) that the **[**F205regulated person**]** has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the **[**F205regulated person**]** to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or

(b) that the contraventions were or the apprehended contraventions are of a trivial nature.**]**

(6) Where **[**F204the Authority**][**F214decides that it would be more appropriate to proceed under the Competition Act 1998 or **]** is satisfied as mentioned in **[**F207subsections (5) **[**F215or**]** (5A)**]** above, **[**F206it**]** shall—

(a) serve notice that **[**F206it**][**F216has so decided or**]** is so satisfied on the **[**F205regulated person**]**; and

(b) publish the notice in such manner as **[**F206it**]** considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

(7) A final or provisional order—

(a) shall require the **[**F205regulated person**]** to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;

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(b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and

(c) may be revoked at any time by **[**F204the Authority**]**.

(8) In this Part—

"final order" means an order under this section other than a provisional order;

"provisional order" means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order;

[F217"regulated person" means a person who is one or more of the following—

(a) a licence holder;

(b) a distribution exemption holder;

(c) a supply exemption holder;

(d) an electricity undertaking which is a relevant producer or supplier;**]**

"relevant condition", in relation to a **[**F205regulated person**]**, means any condition of **[**F218any licence held by that person**]**;

"relevant requirement", in relation to a **[**F205regulated person**]**, means any duty or other requirement imposed on **[**F219that person under a provision specified in Schedule 6A as a relevant provision in respect of that person**]**.

Textual Amendments

F202 Words in s. 25(1) substituted (1.10.2001) by 2000 c. 27, **s. 60(2)(7)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F203 Words in s. 25(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 5(2)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)

F204 Words substituted (20.12.2000) by virtue of Utilities Act 2000 (c. 27), **s 3(2)**; S.I. 2000/3343, art. 2, **Sch.**

F205 Words in s. 25 substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(3)(a)**

F206 Word substituted (20.12.2000) by virtue of Utilities Act 2000 (c. 27), **s 3(2)**; S.I. 2000/3343, art. 2, **Sch.**

F207 Words in s. 25(2)(4)(6) substituted (1.10.2001) by 2000 c. 27, **s. 60(3)(7)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F208 Words in s. 25(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 5(2)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)

F209 S. 25(4A)(4B) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 5(3)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)

F210 Words in s. 25(5)(a) substituted (20.12.2000) by 2000 c. 27, ss. 108, 110(2), **Sch. 6 Pt. II para. 27**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

F211 S. 25(5)(b)(c) repealed (1.10.2001) by 2000 c. 27, ss. 60(4)(7), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F212 S. 25(5)(d) and word omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 5(4)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)

F213 S. 25(5A) inserted (1.10.2001) by 2000 c. 27, **s. 60(5)(7)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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F214 Words in s. 25(6) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 5(5)(a)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
F215 Word in s. 25(6) substituted (1.10.2008) by Consumers, Estate Agents and Redress Act 2007 (c. 17), s. 66(2), **Sch. 7 para. 9**; S.I. 2008/2550, art. 2, Sch.
F216 Words in s. 25(6)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 5(5)(b)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
F217 Words in s. 25(8) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(4)(a)**
F218 Words in s. 25(8) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(4)(b)**
F219 Words in s. 25(8) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(4)(c)**

Modifications etc. (not altering text)
C51 Ss. 25-28 applied (1.4.2005) by The Renewables Obligation (Scotland) Order 2005 (S.S.I. 2005/185), arts. 1(1), **18(22)**
C52 Ss. 25-28 applied (1.4.2006) by The Renewables Obligation (Scotland) Order 2006 (S.S.I. 2006/173), arts. 1(1), **24(8)**
C53 Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by The Renewables Obligation (Scotland) Order 2007 (S.S.I. 2007/267), arts. 1(1), **31**
C54 S. 25: power to amend conferred (18.12.2013) by Energy Act 2013 (c. 32), **ss. 38(c)**, 156(3)
C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

26 Procedural requirements.

(1) Before he makes a final order or confirms a provisional order, the Director shall give notice—

(a) stating that he proposes to make or confirm the order and setting out its effect;

(b) setting out—

(i) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;

(ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and

(iii) the other facts which, in his opinion, justify the making or confirmation of the order; and

(c) specifying the period (not being less than **[**F220**]**21**]** days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(2) A notice under subsection (1) above shall be given—

(a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

(b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the **[**F221**]**regulated person**]** to whom the order relates.

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(3) The Director shall not make a final order with modifications, or confirm a provisional order with modifications, except—

(a) with the consent to the modifications of the **[**F221regulated person**]** to whom the order relates; or

(b) after complying with the requirements of subsection (4) below.

(4) The requirements mentioned in subsection (3) above are that the Director shall—

(a) serve on the **[**F221regulated person**]** to whom the order relates such notice as appears to him requisite of his proposal to make or confirm the order with modifications;

(b) in that notice specify the period (not being less than **[**F22021**]** days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and

(c) consider any representations or objections which are duly made and not withdrawn.

(5) As soon as practicable after making a final order or making or confirming a provisional order, the Director shall—

(a) serve a copy of the order on the **[**F221regulated person**]** to whom the order relates; and

(b) publish the order in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(6) Before revoking a final order or a provisional order which has been confirmed, the Director shall give notice—

(a) stating that he proposes to revoke the order and setting out its effect; and

(b) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(7) If, after giving a notice under subsection (6) above, the Director decides not to revoke the order to which the notice relates, he shall give notice of his decision.

(8) A notice under subsection (6) or (7) above shall be given—

(a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

(b) by serving a copy of the notice on the **[**F221regulated person**]** to whom the order relates.

Textual Amendments

F220 Words in s. 26(1)(c)(4)(b) substituted (1.10.2001) by 2000 c. 27, **s. 60(6)(7)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F221 Words in s. 26 substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(3)(b)**

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Modifications etc. (not altering text)

C51 Ss. 25-28 applied (1.4.2005) by The Renewables Obligation (Scotland) Order 2005 (S.S.I. 2005/185), arts. 1(1), **18(22)**

C52 Ss. 25-28 applied (1.4.2006) by The Renewables Obligation (Scotland) Order 2006 (S.S.I. 2006/173), arts. 1(1), **24(8)**

C53 Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by The Renewables Obligation (Scotland) Order 2007 (S.S.I. 2007/267), arts. 1(1), **31**

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

27 Validity and effect of orders.

(1) If the **[**[F222]regulated person**]** to whom a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—

(a) that its making or confirmation was not within the powers of section 25 above; or

(b) that any of the requirements of section 26 above have not been complied with in relation to it,

he may, within 42 days from the date of service on him of a copy of the order, make an application to the court under this section.

(2) On any such application the court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the **[**[F222]regulated person**]** have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.

(3) Except as provided by this section, the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.

(4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order.

(5) Where a duty is owed by virtue of subsection (4) above to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.

(6) In any proceedings brought against a **[**[F222]regulated person**]** in pursuance of subsection (5) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(7) Without prejudice to any right which any person may have by virtue of subsection (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the Director for an injunction or for interdict or for any other appropriate relief.

(8) In this section and section 28 below "the court" means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

[[F223](9) Subsections (1) to (3) do not apply in the case of a final or provisional order that relates to a relevant condition imposed by the exercise of the power in section 18(1) of the Energy Act 2010 (prevention of exploitation of electricity trading and transmission arrangements).

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(10) For provision about appeals relating to such orders, see section 20 of the Energy Act 2010.**]**

Textual Amendments

F222 Words in s. 27 substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(3)(c)**

F223 S. 27(9)(10) inserted (16.7.2012) by Energy Act 2010 (c. 27), s. 38(2)(b), **Sch. para. 7**; S.I. 2012/1841, art. 2(b)

Modifications etc. (not altering text)

C51 Ss. 25-28 applied (1.4.2005) by The Renewables Obligation (Scotland) Order 2005 (S.S.I. 2005/185), arts. 1(1), **18(22)**

C52 Ss. 25-28 applied (1.4.2006) by The Renewables Obligation (Scotland) Order 2006 (S.S.I. 2006/173), arts. 1(1), **24(8)**

C53 Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by The Renewables Obligation (Scotland) Order 2007 (S.S.I. 2007/267), arts. 1(1), **31**

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

[F224 27A Penalties.

(1) Where the Authority is satisfied that a **[F225** regulated person**]**—

(a) has contravened or is contravening any relevant condition or requirement; or

(b) has failed or is failing to achieve any standard of performance prescribed under section 39 or 39A,

the Authority may, subject to section 27C, impose on the **[F225** regulated person**]** a penalty of such amount as is reasonable in all the circumstances of the case.

[F226 (2) Before imposing a penalty on a regulated person under subsection (1), the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(2A) The Authority shall not impose a penalty on a regulated person under subsection (1) if it considers that it would be more appropriate to proceed under the Competition Act 1998.**]**

(3) Before imposing a penalty on a **[F225** regulated person**]** under subsection (1) the Authority shall give notice—

(a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;

(b) setting out the relevant condition or requirement or the standard of performance in question;

(c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and

(d) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,

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and shall consider any representations or objections which are duly made and not withdrawn.

(4) Before varying any proposal stated in a notice under subsection (3)(a) the Authority shall give notice—

(a) setting out the proposed variation and the reasons for it; and

(b) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) As soon as practicable after imposing a penalty, the Authority shall give notice—

(a) stating that it has imposed a penalty on the **[**F225regulated person**]** and its amount;

(b) setting out the relevant condition or requirement or the standard of performance in question;

(c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of the penalty and its amount; and

(d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the **[**F225regulated person**]**, by which the penalty is required to be paid.

(6) The **[**F225regulated person**]** may, within 21 days of the date of service on him of a notice under subsection (5), make an application to the Authority for it to specify different dates by which different portions of the penalty are to be paid.

(7) Any notice required to be given under this section shall be given—

(a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;

(b) by serving a copy of the notice on the **[**F225regulated person**]**; F227...

[F228(c) by serving a copy of the notice on Citizens Advice; and

(d) by serving a copy of the notice on Citizens Advice Scotland.**]**

[F229(8A) This section is subject to section 27O (maximum amount of penalty or compensation that may be imposed).**]**

(10) Any sums received by the Authority by way of penalty under this section shall be paid into the Consolidated Fund.

(11) The power of the Authority under subsection (1) is not exercisable in respect of any contravention or failure before the commencement of section 59 of the Utilities Act 2000.**]**

Textual Amendments

F224 Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 59(1)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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F225 Words in s. 27A substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(3)(d)**

F226 S. 27A(2)(2A) substituted for s. 27A(2) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 6**; S.I. 2014/416, art. 2(1)(e) (with Sch.)

F227 Word in s. 27A(7)(b) omitted (1.4.2014) by virtue of The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(8)(a)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F228 S. 27A(7)(c)(d) substituted for s. 27A(7)(c) (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(8)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F229 S. 27A(8A) substituted for s. 27A(8)(9) (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 2(3)** (with Sch. 14 para. 2(7))

Modifications etc. (not altering text)

C51 Ss. 25-28 applied (1.4.2005) by The Renewables Obligation (Scotland) Order 2005 (S.S.I. 2005/185), arts. 1(1), **18(22)**

C52 Ss. 25-28 applied (1.4.2006) by The Renewables Obligation (Scotland) Order 2006 (S.S.I. 2006/173), arts. 1(1), **24(8)**

C53 Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by The Renewables Obligation (Scotland) Order 2007 (S.S.I. 2007/267), arts. 1(1), **31**

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

C56 S. 27A(10) applied (16.7.2012) by Energy Act 2010 (c. 27), **ss. 21(7)(b)**, 38(2)(a); S.I. 2012/1841, art. 2(a)

[F230 27B Statement of policy with respect to penalties.

(1) The Authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.

(2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure the Authority shall have regard to its statement of policy most recently published at the time when the contravention or failure occurred.

(3) The Authority may revise its statement of policy and where it does so shall publish the revised statement.

(4) Publication under this section shall be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.

(5) The Authority shall undertake such consultation as it considers appropriate when preparing or revising its statement of policy.]

Textual Amendments

F230 Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 59(1)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

Modifications etc. (not altering text)

C51 Ss. 25-28 applied (1.4.2005) by The Renewables Obligation (Scotland) Order 2005 (S.S.I. 2005/185), arts. 1(1), **18(22)**

C52 Ss. 25-28 applied (1.4.2006) by The Renewables Obligation (Scotland) Order 2006 (S.S.I. 2006/173), arts. 1(1), **24(8)**

C53 Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by The Renewables Obligation (Scotland) Order 2007 (S.S.I. 2007/267), arts. 1(1), **31**

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

[F231 27C Time limits on the imposition of financial penalties.

(1) Where no final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure later than the end of the period of **[**F232five years**]** from the time of the contravention or failure, unless before the end of that period—

(a) the notice under section 27A(3) relating to the penalty is served on the **[**F233regulated person**]** under section 27A(7), or

(b) a notice relating to the contravention or failure is served on the **[**F233regulated person**]** under section 28(2).

(2) Where a final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under section 27A(3) was served on the **[**F233regulated person**]** under section 27A(7)—

(a) within three months from the confirmation of the provisional order or the making of the final order, or

(b) where the provisional order is not confirmed, within six months from the making of the provisional order.**]**

Textual Amendments

F231 Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 59(1)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F232 Words in s. 27C(1) substituted (8.6.2010) by Energy Act 2010 (c. 27), **ss. 24(2)**, 38(3) (with s. 24(3))

F233 Words in s. 27C substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(3)(e)**

Modifications etc. (not altering text)

C51 Ss. 25-28 applied (1.4.2005) by The Renewables Obligation (Scotland) Order 2005 (S.S.I. 2005/185), arts. 1(1), **18(22)**

C52 Ss. 25-28 applied (1.4.2006) by The Renewables Obligation (Scotland) Order 2006 (S.S.I. 2006/173), arts. 1(1), **24(8)**

C53 Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by The Renewables Obligation (Scotland) Order 2007 (S.S.I. 2007/267), arts. 1(1), **31**

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

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[F234 27D Interest and payment of instalments.

(1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the M4 Judgments Act 1838.

(2) If an application is made under subsection (6) of section 27A in relation to a penalty, the penalty is not required to be paid until the application has been determined.

(3) If the Authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the Authority under that subsection, the Authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.]

Textual Amendments

F234 Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 59(1)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Modifications etc. (not altering text)

C51 Ss. 25-28 applied (1.4.2005) by The Renewables Obligation (Scotland) Order 2005 (S.S.I. 2005/185), arts. 1(1), **18(22)**

C52 Ss. 25-28 applied (1.4.2006) by The Renewables Obligation (Scotland) Order 2006 (S.S.I. 2006/173), arts. 1(1), **24(8)**

C53 Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by The Renewables Obligation (Scotland) Order 2007 (S.S.I. 2007/267), arts. 1(1), **31**

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

Marginal Citations

M4 1838 c. 110.

[F236 27E Appeals [F235 against penalties].

(1) If the [F237 regulated person] on whom a penalty is imposed is aggrieved by—

(a) the imposition of the penalty;

(b) the amount of the penalty; or

(c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,

the [F237 regulated person] may make an application to the court under this section.

(2) An application under subsection (1) must be made—

(a) within 42 days from the date of service on the [F237 regulated person] of a notice under section 27A(5), or

(b) where the application relates to a decision of the Authority on an application by the [F237 regulated person] under section 27A(6), within 42 days from the date the [F237 regulated person] is notified of the decision.

(3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within subsection (4), the court—

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(a) may quash the penalty;

(b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or

(c) in the case of an application under subsection (1)(c), may substitute for the date or dates imposed by the Authority an alternative date or dates.

(4) The grounds falling within this subsection are—

(a) that the imposition of the penalty was not within the power of the Authority under section 27A;

(b) that any of the requirements of subsections (3) to (5) or (7) of section 27A have not been complied with in relation to the imposition of the penalty and the interests of the **[**[F237]regulated person**]** have been substantially prejudiced by the non-compliance; or

(c) that it was unreasonable of the Authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.

(5) If an application is made under this section in relation to a penalty, the penalty is not required to be paid until the application has been determined.

(6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.

(7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.

(8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.

(9) In this section "the court" means—

(a) in relation to England and Wales, the High Court; and

(b) in relation to Scotland, the Court of Session.

[F238](10) **[** This section does not apply in the case of a penalty that relates to a relevant condition imposed by the exercise of the power in section 18(1) of the Energy Act 2010 (prevention of exploitation of electricity trading and transmission arrangements).

(11) For provision about appeals relating to such penalties, see section 21 of the Energy Act 2010.**]]**

Textual Amendments

F235 Words in s. 27E heading inserted (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 2(4)**

F236 Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 59(1)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F237 Words in s. 27E substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(3)(f)**

F238 S. 27E(10)(11) inserted (16.7.2012) by Energy Act 2010 (c. 27), s. 38(2)(b), **Sch. para. 8**; S.I. 2012/1841, art. 2(b)

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Modifications etc. (not altering text)

C51 Ss. 25-28 applied (1.4.2005) by The Renewables Obligation (Scotland) Order 2005 (S.S.I. 2005/185), arts. 1(1), **18(22)**

C52 Ss. 25-28 applied (1.4.2006) by The Renewables Obligation (Scotland) Order 2006 (S.S.I. 2006/173), arts. 1(1), **24(8)**

C53 Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by The Renewables Obligation (Scotland) Order 2007 (S.S.I. 2007/267), arts. 1(1), **31**

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

[F239 27F Recovery of penalties.

Where a penalty imposed under section 27A(1), or any portion of it, has not been paid by the date on which it is required to be paid and—

(a) no application relating to the penalty has been made under section 27E during the period within which such an application can be made, or

(b) an application has been made under that section and determined,

the Authority may recover from the **[**F240regulated person**]**, as a civil debt due to it, any of the penalty and any interest which has not been paid.**]**

Textual Amendments

F239 Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 59(1)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F240 Words in s. 27F substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(3)(g)**

Modifications etc. (not altering text)

C51 Ss. 25-28 applied (1.4.2005) by The Renewables Obligation (Scotland) Order 2005 (S.S.I. 2005/185), arts. 1(1), **18(22)**

C52 Ss. 25-28 applied (1.4.2006) by The Renewables Obligation (Scotland) Order 2006 (S.S.I. 2006/173), arts. 1(1), **24(8)**

C53 Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by The Renewables Obligation (Scotland) Order 2007 (S.S.I. 2007/267), arts. 1(1), **31**

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

[F241 27G Consumer redress orders

(1) This section applies where the Authority is satisfied that—

(a) a regulated person has contravened, or is contravening, any relevant condition or requirement, and

(b) as a result of the contravention, one or more consumers have suffered loss or damage or been caused inconvenience.

(2) The Authority may make an order (a "consumer redress order") requiring the regulated person to do such things as appear to the Authority necessary for the purposes of—

(a) remedying the consequences of the contravention, or

(b) preventing a contravention of the same or a similar kind from being repeated.

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(3) A consumer redress order must specify the following—

(a) the regulated person to whom the order applies;

(b) the contravention in respect of which the order is made;

(c) the affected consumers, or a description of such consumers;

(d) the requirements imposed by the order;

(e) the date by which the regulated person must comply with such requirements.

(4) As soon as practicable after making a consumer redress order, the Authority must—

(a) serve a copy of the order on the regulated person to whom the order applies, and

(b) either—

(i) serve a copy of the order on each affected consumer, or

(ii) publish the order in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of affected consumers.

(5) The date specified in a consumer redress order under subsection (3)(e) may not be earlier than the end of the period of 7 days from the date of the service of a copy of the order on the regulated person.

(6) Different dates may be specified under subsection (3)(e) in relation to different requirements imposed by the order.

(7) This section is subject to sections 27H to 27O.

(8) In this section and in sections 27H to 27O—

"affected consumers", in relation to a consumer redress order (or proposed order), are those consumers that the Authority is satisfied have suffered loss or damage, or been caused inconvenience, as a result of the contravention in respect of which the order is (or would be) made;

"consumers" means consumers in relation to electricity conveyed by distribution systems or transmission systems;

"consumer redress order" means an order under subsection (2).

Textual Amendments

F241 Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 2(2)** (with Sch. 14 para. 2(7))

Modifications etc. (not altering text)

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

27H Remedial action under a consumer redress order

(1) The things mentioned in section 27G(2) that a regulated person may be required to do under a consumer redress order ("the required remedial action") include, in particular—

(a) paying an amount to each affected consumer by way of compensation for the loss or damage suffered, or for the inconvenience caused, as a result of the contravention;

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(b) preparing and distributing a written statement setting out the contravention and its consequences;

(c) terminating or varying any contracts entered into between the regulated person and affected consumers.

(2) Where the required remedial action includes the payment of compensation, the order must specify—

(a) the amount of compensation to be paid, and

(b) the affected consumers, or a description of such consumers, to whom it is to be paid.

(3) Where the required remedial action includes the preparation and distribution of a statement, the order may specify the information to be contained in the statement and the form and manner in which it is to be distributed.

(4) The manner so specified may in particular include—

(a) sending a copy of the statement to each affected consumer;

(b) publishing the statement in such manner as the Authority considers appropriate for the purpose of bringing the statement to the attention of those consumers.

(5) Where the required remedial action includes the termination or variation of a contract with an affected consumer—

(a) the order may specify the terms on which the contract is to be terminated or the way in which it is to be varied,

(b) the requirement has effect only if, and to the extent that, the affected consumer consents to the termination of the contract on those terms or to its variation in that way, and

(c) the order may specify the steps to be taken by the regulated person for the purpose of enabling the affected consumer to give such consent.

Textual Amendments

F241 Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 2(2)** (with Sch. 14 para. 2(7))

Modifications etc. (not altering text)

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

27I Other procedural requirements in relation to consumer redress orders

(1) Before making a consumer redress order the Authority must give notice stating that it proposes to make the order.

(2) A notice under subsection (1) must specify—

(a) the regulated person to whom the order will apply,

(b) the contravention in respect of which the order is to be made,

(c) the affected consumers, or a description of such consumers,

(d) the requirements to be imposed by the order and the period within which such requirements are to be complied with, and

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(e) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed order may be made,

and the Authority must consider any representations or objections which are duly made and not withdrawn.

(3) Before varying any proposal stated in a notice under subsection (1) the Authority must give notice specifying—

(a) the proposed variation and the reasons for it, and

(b) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed variation may be made,

and the Authority must consider any representations or objections which are duly made and not withdrawn.

(4) Before revoking a consumer redress order the Authority must give notice—

(a) stating that it proposes to revoke the order and the reasons for doing so, and

(b) specifying the time (not being less than 21 days from the relevant date) within which representations or objections to the proposed revocation may be made,

and the Authority must consider any representations or objections which are duly made and not withdrawn.

(5) A notice required to be given under this section is to be given—

(a) by serving a copy of the notice on the regulated person, and

(b) either—

(i) by serving a copy of the notice on each affected consumer, or

(ii) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of affected consumers.

(6) The "relevant date", in relation to a notice under this section, is—

(a) in a case where the notice is published in accordance with subsection (5)(b)(ii), the date on which it is published;

(b) in any other case, the latest date on which a copy of the notice is served in accordance with subsection (5)(a) and (b)(i).

Textual Amendments

F241 Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 2(2)** (with Sch. 14 para. 2(7))

Modifications etc. (not altering text)

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

27J Statement of policy with respect to consumer redress orders

(1) The Authority must prepare and publish a statement of policy with respect to—

(a) the making of consumer redress orders, and

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(b) the determination of the requirements to be imposed by such orders (including, in particular, the considerations the Authority will have regard to in determining such requirements).

(2) The Authority must have regard to its current statement of policy—

(a) in deciding whether to make a consumer redress order in respect of a contravention, and

(b) in determining the requirements to be imposed by any such order.

(3) The Authority may revise its statement of policy and, where it does so, must publish the revised statement.

(4) Publication under this section is to be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.

(5) The Authority must consult such persons as it considers appropriate when preparing or revising its statement of policy.

Textual Amendments

F241 Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 2(2)** (with Sch. 14 para. 2(7))

Modifications etc. (not altering text)

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

27K Time limits for making consumer redress orders

(1) Where no final or provisional order has been made in relation to a contravention, the Authority may not give a consumer redress order in respect of the contravention later than the end of the period of 5 years from the time of the contravention.

(2) Subsection (1) does not apply if before the end of that period—

(a) the notice under section 27I(1) relating to the order is served on the regulated person, or

(b) a notice relating to the contravention is served on the regulated person under section 28(2).

(3) Where a final or provisional order has been made in relation to a contravention, the Authority may give a consumer redress order in respect of the contravention only if the notice relating to the consumer redress order under section 27I(1) is served on the regulated person—

(a) within 3 months from the confirmation of the provisional order or the making of the final order, or

(b) where the provisional order is not confirmed, within 6 months from the making of the provisional order.

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Textual Amendments

F241 Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 2(2)** (with Sch. 14 para. 2(7))

Modifications etc. (not altering text)

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

27L Enforcement of consumer redress orders

(1) Compliance with a consumer redress order is enforceable by civil proceedings by the Authority—

(a) for an injunction or interdict,

(b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or

(c) for any other appropriate remedy or relief.

(2) Proceedings under subsection (1) are to be brought—

(a) in England and Wales, in the High Court, or

(b) in Scotland, in the Court of Session.

(3) The obligation of a regulated person to comply with a consumer redress order is a duty owed to any person who may be affected by a contravention of the order.

(4) Without limiting the Authority's right to bring civil proceedings under subsection (1), a duty owed to any person ("P") by virtue of subsection (3) may be enforced by civil proceedings by P for any appropriate remedy or relief.

(5) For the purposes of subsection (4), the duty owed to P may in particular be enforced by P as if it were contained in a contract between P and the regulated person who owes the duty.

Textual Amendments

F241 Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 2(2)** (with Sch. 14 para. 2(7))

Modifications etc. (not altering text)

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

27M Appeals against consumer redress orders

(1) A regulated person in respect of whom a consumer redress order is made may make an application to the court under this section if the person is aggrieved by—

(a) the making of the order, or

(b) any requirement imposed by the order.

(2) An application under subsection (1) must be made within 42 days from the date of service on the regulated person of a copy of the order under section 27G(4)(a).

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(3) On an application under subsection (1) the court may—

(a) quash the order or any provision of the order, or

(b) vary any such provision in such manner as the court considers appropriate.

(4) The court may exercise the powers under subsection (3) only if it considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the following grounds—

(a) that the making of the order was not within the power of the Authority under section 27G;

(b) that any of the requirements under sections 27G(4) and 27I have not been complied with in relation to the making of the order and the interests of the regulated person have been substantially prejudiced by the non-compliance;

(c) that it was unreasonable of the Authority to require something to be done under the order (whether at all or in accordance with the provisions of the order).

(5) If an application is made under this section in relation to a consumer redress order, a requirement imposed by the order does not need to be carried out in accordance with the order until the application has been determined.

(6) Where the court substitutes a lesser amount of compensation for an amount required by the Authority in a consumer redress order, it may require the payment of interest on the substituted amount at such rate, and from such date, as it considers just and equitable.

(7) Where the court specifies as a date by which any compensation under a consumer redress order is to be paid a date before the determination of the application under this section, it may require the payment of interest on the amount from that date at such rate as it considers just and equitable.

(8) Except as provided by this section, the validity of a consumer redress order is not to be questioned by any legal proceedings whatever.

(9) In this section "the court" means—

(a) in relation to England and Wales, the High Court;

(b) in relation to Scotland, the Court of Session.

Textual Amendments

F241 Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 2(2)** (with Sch. 14 para. 2(7))

Modifications etc. (not altering text)

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

27N Consumer redress orders: miscellaneous

(1) If—

(a) compensation is required to be paid under a consumer redress order, and

(b) it is not paid by the date by which it is required to be paid in accordance with the order,

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the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838.

(2) The Authority may not make a consumer redress order where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.

(3) The Authority's power to make a consumer redress order as a result of a contravention of a relevant condition or requirement is not to be taken as limiting the Authority's power to impose a penalty under section 27A in relation to the same contravention (whether instead of, or in addition to, making a consumer redress order).

(4) The power of the Authority to make a consumer redress order is not exercisable in respect of any contravention before the coming into force of Schedule 14 to the Energy Act 2013.

Textual Amendments

F241 Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 2(2)** (with Sch. 14 para. 2(7))

Modifications etc. (not altering text)

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

27O Maximum amount of penalty or compensation

(1) The maximum amount of penalty that may be imposed on a regulated person in respect of a contravention may not exceed 10 per cent of the person's turnover.

(2) The maximum amount of compensation that a regulated person may be required to pay in respect of a contravention may not exceed 10 per cent of the person's turnover.

(3) Subsections (1) and (2) are subject to subsection (4) if, in respect of a contravention, both a penalty is imposed and compensation is required to be paid.

(4) The maximum amount in total of the penalty and compensation combined in respect of the contravention may not exceed 10 per cent of the turnover of the regulated person.

(5) The Secretary of State may by order provide for how a person's turnover is to be determined for the purposes of this section.

(6) An order under subsection (5) may make different provision for penalties and compensation.

(7) An order under subsection (5) shall not be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.

(8) In this section—

"compensation" means compensation that a regulated person is required to pay by a consumer redress order;

"penalty" means a penalty imposed on a regulated person under section 27A.**]**

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Textual Amendments

F241 Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 2(2)** (with Sch. 14 para. 2(7))

Modifications etc. (not altering text)

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

28 Power to require information etc.

(1) Where it appears to **[**F242the Authority that a **[**F243regulated person**]** —

(a) may be contravening, or may have contravened, any relevant condition or requirement; or

(b) may be failing, or may have failed, to achieve any standard of performance prescribed under section 39 or 39A,

the Authority may, for any purpose connected with such of its functions under section 25 or 27A to **[**F24427O**]]** as are exercisable in relation to that matter, serve a notice under subsection (2) below on any person.

(2) A notice under this subsection is a notice signed by the Director and—

(a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Director or to any person appointed by the Director for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or

(b) requiring that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Director such information as may be specified or described in the notice.

[F245(2A) Where a licence has been or is to be revoked or suspended, or has expired or is about to expire by effluxion of time, and it appears to the Authority, having regard to the duties imposed by section 3A, 3B or 3C, to be requisite or expedient to do so for any purpose connected with the revocation, suspension or expiry, the Authority may, with the consent of the Secretary of State, by notice in writing—

(a) require the licence holder to produce, at a time and place specified in the notice, to the Authority, or to any person so specified, any records which are specified or described in the notice and are in the licence holder's custody or under his control; or

(b) require the licence holder to furnish to the Authority, or to any person specified in the notice, such information as may be specified or described in the notice, and specify the time, the manner and the form in which any such information is to be furnished.**]**

(3) No person shall be required under this section to produce any documents **[**F246or records**]** which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

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(4) A person who without reasonable excuse fails to do anything required of him by notice under subsection (2) **[**[F247]or (2A)**]** above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who intentionally alters, suppresses or destroys any document **[**[F248]or record**]** which he has been required by any notice under subsection (2) **[**[F249]or (2A)**]** above to produce shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(6) If a person makes default in complying with a notice under subsection (2) **[**[F250]or (2A)**]** above, the court may, on the application of the Director, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

Textual Amendments

F242 Words and s. 28(1)(a)(b) substituted for words in s. 28(1) (1.10.2001) by 2000 c. 27, **s. 59(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F243 Words in s. 28(1) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(3)(h)**

F244 Word in s. 28(1) substituted (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 2(5)**

F245 S. 28(2A) inserted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 29(2)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

F246 Words in s. 28(3) inserted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 29(3)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

F247 Words in s. 28(4) inserted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 29(4)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

F248 Words in s. 28(5) inserted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 29(5)(a)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

F249 Words in s. 28(5) inserted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 29(5)(b)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

F250 Words in s. 28(6) inserted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 29(6)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

Modifications etc. (not altering text)

C51 Ss. 25-28 applied (1.4.2005) by The Renewables Obligation (Scotland) Order 2005 (S.S.I. 2005/185), arts. 1(1), **18(22)**

C52 Ss. 25-28 applied (1.4.2006) by The Renewables Obligation (Scotland) Order 2006 (S.S.I. 2006/173), arts. 1(1), **24(8)**

C53 Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by The Renewables Obligation (Scotland) Order 2007 (S.S.I. 2007/267), arts. 1(1), **31**

C55 Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

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Provisions with respect to supply generally

29 Regulations relating to supply and safety.

(1) The Secretary of State may make such regulations as he thinks fit for the purpose of—

(a) securing that supplies of electricity are regular and efficient;

(b) protecting the public from dangers arising from the generation, transmission**[**F251, distribution**]** or supply of electricity, **[**F252from the use of electricity interconnectors,**]** from the use of electricity supplied or from the installation, maintenance or use of any electric line or electrical plant; and

(c) without prejudice to the generality of paragraph (b) above, eliminating or reducing the risks of personal injury, or damage to property or interference with its use, arising as mentioned in that paragraph.

[F253(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) Without prejudice to the generality of subsection (1) above, regulations under this section may—

(a) prohibit the **[**F254distribution**]** or transmission of electricity except by means of a system approved by the Secretary of State;

(b) make provision requiring notice in the prescribed form to be given to the Secretary of State, in such cases as may be specified in the regulations, of accidents and of failures **[**F255in the distribution or transmission**]** of electricity **[**F256or in the use of electricity interconnectors**]**;

(c) make provision as to the keeping, by persons authorised by a licence or exemption to **[**F257distribute**]** or **[**F258participate in the transmission of**]** electricity **[**F259or to participate in the operation of an electricity interconnector**]**, of maps, plans and sections and as to their production (on payment, if so required, of a reasonable fee) for inspection or copying;

(d) make provision for relieving **[**F260electricity distributors from any duty under section 16 or authorising them to disconnect any premises or distribution system**]** in such cases as may be prescribed;

(e) make provision requiring compliance with notices given by the Secretary of State specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer, for the purpose of—

(i) preventing or ending a breach of regulations under this section; or

(ii) eliminating or reducing a risk of personal injury or damage to property or interference with its use;

(f) provide for particular requirements of the regulations to be deemed to be complied with in the case of any electric line or electrical plant complying with specified standards or requirements;

(g) provide for the granting of exemptions from any requirement of the regulations for such periods as may be determined by or under the regulations.

(3) Regulations under this section may provide that any person—

(a) who contravenes any specified provision of the regulations; or

(b) who does so in specified circumstances,

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shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; but nothing in this subsection shall affect any liability of any such person to pay compensation in respect of any damage or injury which may have been caused by the contravention.

(4) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State or the Director of Public Prosecutions.

Textual Amendments

F251 Words in s. 29(1)(b) inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F252 Words in s. 29(1)(b) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 147(3)(a)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

F253 S. 29(1A) inserted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 94(1)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

F254 Words in s. 29(2)(a) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(3)(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F255 Words in s. 29(2)(b) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(3)(b)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F256 Words in s. 29(2)(b) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 147(3)(b)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

F257 Words in s. 29(2)(c) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(3)(c)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F258 Words in s. 29(2)(c) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 10**; S.I. 2004/2184, art. 2(2), Sch. 2

F259 Words in s. 29(2)(c) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 147(3)(c)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

F260 Words in s. 29(2)(d) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(3)(d)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

30 Electrical inspectors.

(1) The Secretary of State may appoint competent and impartial persons to be electrical inspectors under this Part.

(2) The duties of an electrical inspector under this Part shall be as follows—

(a) to inspect and test, periodically and in special cases, electric lines and electrical plant belonging to persons authorised by a licence or exemption to generate, **[**F261distribute or participate in the transmission of**]** electricity **[**F262or to participate in the operation of electricity interconnectors**]**;

(b) to examine, periodically and in special cases, the generation, transmission**[**F263, distribution**]** or supply of electricity by such persons;

(c) to inspect and test, if and when required by any consumer, any such lines and plant on the consumer's premises, for the purpose of determining whether any requirement imposed by or under this Part in respect of the lines or plant or the **[**F264conveyance of electricity through**]** them has been complied with; and

(d) such other duties as may be imposed by regulations under this section or as the Secretary of State may determine.

(3) The Secretary of State may by regulations—

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(a) prescribe the manner in which and the times at which any duties are to be performed by electrical inspectors;

(b) require persons authorised by a licence or exemption to **[**F265carry on licensable activities**]**—

(i) to furnish electrical inspectors with records or other information; and

(ii) to allow such inspectors access to premises and the use of electrical plant and other facilities;

(c) make provision for relieving **[**F266electricity distributors from any duty under section 16 or authorising them to disconnect any premises or distribution system**]** in such cases as may be prescribed; and

(d) prescribe the amount of the fees which are to be payable to such inspectors.

[F267(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.**]**

(4) Any fees received by electrical inspectors shall be paid to the Secretary of State; and any sums received by him under this subsection shall be paid into the Consolidated Fund.

Textual Amendments

F261 Words in s. 30(2)(a) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 11**; S.I. 2004/2184, art. 2(2), Sch. 2

F262 Words in s. 30(2)(a) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 147(4)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

F263 Words in s. 30(2)(b) inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 31(2)(b)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F264 Words in s. 30(2)(c) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 31(2)(c)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F265 Words in s. 30(3)(b) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 31(3)(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F266 Words in s. 30(3)(c) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 31(3)(b)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F267 S. 30(3A) inserted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 94(2)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

31 Use etc. of meters.

The provisions of Schedule 7 to this Act (which relate to the use, certification, testing and maintenance of electricity meters) shall have effect.

Protection of public interest

[F268**32 The renewables obligation**

(1) The relevant minister may make a renewables obligation order.

(2) "The relevant minister" means—

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(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").

(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.

Textual Amendments

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

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;

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(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.

(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.

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Textual Amendments

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

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—

(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.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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) 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

(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;

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(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).

Textual Amendments

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

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

(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.

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Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(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.

Textual Amendments

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

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;

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(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, **[**[F44]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).

(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.

Textual Amendments

F44 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

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.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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) 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)—

(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).

Textual Amendments

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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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 **[**F269Articles 54 to 54D**]** of the Energy (Northern Ireland) Order 2003, in an order under Article 52 of that Order (renewables obligations for Northern Ireland suppliers).

Textual Amendments

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

F269 Words in s. 32F(2) substituted (1.4.2009) by The Energy Act 2008 (Consequential Amendments) Order 2009 (S.I. 2009/556), arts. 1, **2(2)**

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;

(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—

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(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

(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

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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.

Textual Amendments

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

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.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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(5) The references in this section to electricity suppliers include references to Northern Ireland suppliers.

Textual Amendments

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

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 **[**F270**]**55F**]** 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.

Textual Amendments

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

F270 Word in s. 32I(1)(b) substituted (1.4.2009) by The Energy Act 2008 (Consequential Amendments) Order 2009 (S.I. 2009/556), arts. 1, **2(3)**

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.

(2) That information must be given to the Authority in whatever form it requires.

(3) A renewables obligation order may—

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(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.

Textual Amendments

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

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 **[**F271or certificates referred to in section 38(2)(b) of the Energy Act 2008 (Northern Ireland certificates issued under the Energy (Northern Ireland) Order 2003 before 1st April 2009)**]**.

(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.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

F271 Words in s. 32K(2) inserted (1.4.2009) by The Energy Act 2008 (Consequential Amendments) Order 2009 (S.I. 2009/556), arts. 1, **2(4)**

32L Renewables obligation orders: procedure

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

(a) the Authority,

(b) **[**[F272]Citizens Advice,

(ba) Citizens Advice Scotland,**]**

(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.**]**

Textual Amendments

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

F272 S. 32L(1)(b)(ba) substituted for s. 32L(1)(b) (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(9)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

[[F273]32LA Renewables obligation closure order

(1) The Secretary of State may make a renewables obligation closure order.

(2) A renewables obligation closure order is an order which provides that no renewables obligation certificates are to be issued under a renewables obligation order in respect of electricity generated after a specified date.

(3) Provision made under subsection (2) may specify different dates in relation to different cases or circumstances.

(4) The cases or circumstances mentioned in subsection (2) may in particular be described by reference to—

(a) accreditation of a generating station, or

(b) the addition of generating capacity to a generating station.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(5) A renewables obligation closure order may include provision about—

(a) the meaning of "accreditation" and "generating capacity" in subsection (4);

(b) when generating capacity is to be treated as added to a generating station for the purposes of that subsection.

(6) References in this section to a renewables obligation order are references to any renewables obligation order made under section 32 (whenever made, and whether or not made by the Secretary of State).

(7) Power to make provision in a renewables obligation order (and any provision contained in such an order) is subject to provision contained in a renewables obligation closure order; but this section is not otherwise to be taken as affecting power to make provision in a renewables obligation order of the kind mentioned in subsection (2).

(8) Section 32K applies in relation to a renewables obligation closure order as it applies in relation to a renewables obligation order (and subsection (3) above is not to be taken as limiting the application of that section).

Textual Amendments

F273 Ss. 32LA, 32LB inserted (E.W.S.) (18.12.2013) by Energy Act 2013 (c. 32), **ss. 55(1)**, 156(3)

32LB Renewables obligation closure orders: procedure

(1) Before making a renewables obligation closure order, the Secretary of State must consult—

(a) the Authority,

(b) the Council,

(c) such generators of electricity from renewable sources as the Secretary of State considers appropriate, and

(d) such other persons, if any, as the Secretary of State considers appropriate.

(2) The requirement to consult may be satisfied by consultation before, as well as consultation after, the passing of the Energy Act 2013.

(3) A renewables obligation closure order is not to be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.**]**

Textual Amendments

F273 Ss. 32LA, 32LB inserted (E.W.S.) (18.12.2013) by Energy Act 2013 (c. 32), **ss. 55(1)**, 156(3)

[F274 32LC Onshore wind generating stations: closure of renewables obligation

(1) No renewables obligation certificates are to be issued under a renewables obligation order in respect of electricity generated after the onshore wind closure date by an onshore wind generating station.

(2) Subsection (1) does not apply to electricity generated in the circumstances set out in any one or more of sections 32LD to 32LL.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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) In this section and sections 32LD to 32LL—

"the onshore wind closure date" means the date on which the Energy Act 2016 is passed;

"onshore wind generating station" means a generating station that—

(a) generates electricity from wind, and

(b) is situated in England, Wales or Scotland, but not in waters in or adjacent to England, Wales or Scotland up to the seaward limits of the territorial sea.

(4) The reference in subsection (1) to a renewables obligation order is to any renewables obligation order made under section 32 (whenever made, and whether or not made by the Secretary of State).

(5) Power to make provision in a renewables obligation order or a renewables obligation closure order (and any provision contained in such an order) is subject to subsection (1) and sections 32LD to 32LL.

(6) This section is not otherwise to be taken as affecting power to make provision in a renewables obligation order or renewables obligation closure order.**]**

Textual Amendments

F274 S. 32LC inserted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 79(1)**, 84(1)

[F275 32LD Onshore wind generating stations accredited, or additional capacity added, on or before the onshore wind closure date

The circumstances set out in this section are where the electricity is—

(a) generated by an onshore wind generating station which was accredited on or before the onshore wind closure date, and

(b) generated using—

(i) the original capacity of the station, or

(ii) additional capacity which in the Authority's view first formed part of the station on or before the onshore wind closure date.

Textual Amendments

F275 Ss. 32LD-32LL inserted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 80(2)**, 84(1)

32LE Onshore wind generating stations accredited, or additional capacity added, in the year after the onshore wind closure date: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning immediately after the onshore wind closure date and ending with the first anniversary of the onshore wind closure date, and

(ii) in respect of which the grid or radar delay condition is met, or

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before the onshore wind closure date,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning immediately after the onshore wind closure date and ending with the first anniversary of the onshore wind closure date, and

(iii) the grid or radar delay condition is met in respect of the additional capacity.

Textual Amendments

F275 Ss. 32LD-32LL inserted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 80(2)**, 84(1)

32LF Onshore wind generating stations accredited, or additional capacity added, on or before 31 March 2017: approved development condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited on or before 31 March 2017, and

(ii) in respect of which the approved development condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before the onshore wind closure date,

(ii) in the Authority's view, the additional capacity first formed part of the station on or before 31 March 2017, and

(iii) the approved development condition is met in respect of the additional capacity.

Textual Amendments

F275 Ss. 32LD-32LL inserted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 80(2)**, 84(1)

32LG Onshore wind generating stations accredited, or additional capacity added, between 1 April 2017 and 31 March 2018: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 April 2017 and ending with 31 March 2018,

(ii) in respect of which the approved development condition is met, and

(iii) in respect of which the grid or radar delay condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before the onshore wind closure date,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2017 and ending with 31 March 2018,

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(iii) the approved development condition is met in respect of the additional capacity, and

(iv) the grid or radar delay condition is met in respect of the additional capacity.

Textual Amendments

F275 Ss. 32LD-32LL inserted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 80(2)**, 84(1)

32LH Onshore wind generating stations accredited, or additional capacity added, between 1 April 2017 and 31 January 2018: investment freezing condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 April 2017 and ending with 31 January 2018, and

(ii) in respect of which both the approved development condition and the investment freezing condition are met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before the onshore wind closure date,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2017 and ending with 31 January 2018, and

(iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity.

Textual Amendments

F275 Ss. 32LD-32LL inserted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 80(2)**, 84(1)

32LI Onshore wind generating stations accredited, or additional capacity added, between 1 February 2018 and 31 January 2019: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

(a) generated using the original capacity of an onshore wind generating station—

(i) which was accredited during the period beginning with 1 February 2018 and ending with 31 January 2019,

(ii) in respect of which both the approved development condition and the investment freezing condition are met, and

(iii) in respect of which the grid or radar delay condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before the onshore wind closure date,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 February 2018 and ending with 31 January 2019,

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity, and

(iv) the grid or radar delay condition is met in respect of the additional capacity.

Textual Amendments

F275 Ss. 32LD-32LL inserted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 80(2)**, 84(1)

32LJ The approved development condition

(1) This section applies for the purposes of sections 32LF to 32LI.

(2) The approved development condition is met in respect of an onshore wind generating station if the documents specified in subsections (4), (5) and (6) were provided to the Authority with the application for accreditation of the station.

(3) The approved development condition is met in respect of additional capacity if the documents specified in subsections (4), (5) and (6) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station.

(4) The documents specified in this subsection are—

(a) evidence that—

(i) planning permission for the station or additional capacity was granted on or before 18 June 2015, and

(ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached,

(b) evidence that—

(i) planning permission for the station or additional capacity was refused on or before 18 June 2015, but granted after that date following an appeal or judicial review, and

(ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached,

(c) evidence that—

(i) an application for 1990 Act permission or 1997 Act permission was made on or before 18 June 2015 for the station or additional capacity,

(ii) the period allowed under section 78(2) of the 1990 Act or (as the case may be) section 47(2) of the 1997 Act ended on or before 18 June 2015 without any of the things mentioned in section 78(2)(a) to (b) of the 1990 Act or section 47(2)(a) to (c) of the 1997 Act being done in respect of the application,

(iii) the application was not referred to the Secretary of State, Welsh Ministers or Scottish Ministers in accordance with directions given under section 77 of the 1990 Act or section 46 of the 1997 Act,

(iv) 1990 Act permission or 1997 Act permission was granted after 18 June 2015 following an appeal, and

(v) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached, or

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Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, planning permission is not required for the station or additional capacity.

(5) The documents specified in this subsection are—

(a) a copy of an offer from a licensed network operator made on or before 18 June 2015 to carry out grid works in relation to the station or additional capacity, and evidence that the offer was accepted on or before that date (whether or not the acceptance was subject to any conditions or other terms), or

(b) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, no grid works were required to be carried out by a licensed network operator in order to enable the station to be commissioned or the additional capacity to form part of the station.

(6) The documents specified in this subsection are a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at 18 June 2015 a relevant developer of the station or additional capacity (or a person connected, within the meaning of section 1122 of the Corporation Tax Act 2010, with a relevant developer of the station or additional capacity)—

(a) was an owner or lessee of the land on which the station or additional capacity is situated,

(b) had entered into an agreement to purchase or lease the land on which the station or additional capacity is situated,

(c) had an option to purchase or to lease the land on which the station or additional capacity is situated, or

(d) was a party to an exclusivity agreement in relation to the land on which the station or additional capacity is situated.

(7) In this section—

"the 1990 Act" means the Town and Country Planning Act 1990;

"1990 Act permission" means planning permission under the 1990 Act (except outline planning permission, within the meaning of section 92 of that Act);

"the 1997 Act" means the Town and Country Planning (Scotland) Act 1997;

"1997 Act permission" means planning permission under the 1997 Act (except planning permission in principle, within the meaning of section 59 of that Act);

"exclusivity agreement", in relation to land, means an agreement by the owner or a lessee of the land not to permit any person (other than the persons identified in the agreement) to construct an onshore wind generating station on the land;

"planning permission" means—

(a) consent under section 36 of this Act,

(b) 1990 Act permission,

(c) 1997 Act permission, or

(d) development consent under the Planning Act 2008.

Textual Amendments

F275 Ss. 32LD-32LL inserted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 80(2)**, 84(1)

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

32LK The investment freezing condition

(1) This section applies for the purposes of sections 32LH and 32LI.

(2) The investment freezing condition is met in respect of an onshore wind generating station if the documents specified in subsection (4) were provided to the Authority with the application for accreditation of the station.

(3) The investment freezing condition is met in respect of additional capacity if the documents specified in subsection (4) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station.

(4) The documents specified in this subsection are—

(a) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at the Royal Assent date—

(i) the relevant developer required funding from a recognised lender before the station could be commissioned or additional capacity could form part of the station,

(ii) a recognised lender was not prepared to provide that funding until enactment of the Energy Act 2016, because of uncertainty over whether the Act would be enacted or its wording if enacted, and

(iii) the station would have been commissioned, or the additional capacity would have formed part of the station, on or before 31 March 2017 if the funding had been provided before the Royal Assent date, and

(b) a letter or other document, dated on or before the date which is 28 days after the Royal Assent date, from a recognised lender confirming (whether or not the confirmation is subject to any conditions or other terms) that the lender was not prepared to provide funding in respect of the station or additional capacity until enactment of the Energy Act 2016, because of uncertainty over whether the Act would be enacted or its wording if enacted.

(5) In this section—

"recognised lender" means a provider of debt finance which has been issued with an investment grade credit rating by a registered credit rating agency;

"the Royal Assent date" means the date on which the Energy Act 2016 is passed.

(6) For the purposes of the definition of "recognised lender" in subsection (5)—

"investment grade credit rating" means a credit rating commonly understood by registered credit rating agencies to be investment grade;

"registered credit rating agency" means a credit rating agency registered in accordance with Regulation (EC) No 1060/2009 of the European Parliament and the Council of 16 September 2009 on credit rating agencies.

Textual Amendments

F275 Ss. 32LD-32LL inserted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 80(2)**, 84(1)

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

32LL The grid or radar delay condition

(1) This section applies for the purposes of sections 32LE, 32LG and 32LI.

(2) The grid or radar delay condition is met in respect of an onshore wind generating station if, on or before the date on which the Authority made its decision to accredit the station, the documents specified in subsection (4), (5) or (6) were—

(a) submitted by the operator of the station, and

(b) received by the Authority.

(3) The grid or radar delay condition is met in respect of additional capacity if, on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station, the documents specified in subsection (4), (5) or (6) were—

(a) submitted by the operator of the station, and

(b) received by the Authority.

(4) The documents specified in this subsection are—

(a) evidence of an agreement with a network operator ("the relevant network operator") to carry out grid works in relation to the station or additional capacity ("the relevant grid works");

(b) a copy of a document written by, or on behalf of, the relevant network operator which estimated or set a date for completion of the relevant grid works ("the planned grid works completion date") which was no later than the primary date;

(c) a letter from the relevant network operator confirming (whether or not such confirmation is subject to any conditions or other terms) that—

(i) the relevant grid works were completed after the planned grid works completion date, and

(ii) in the relevant network operator's opinion, the failure to complete the relevant grid works on or before the planned grid works completion date was not due to any breach by a generating station developer of any agreement with the relevant network operator; and

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant grid works had been completed on or before the planned grid works completion date.

(5) The documents specified in this subsection are—

(a) evidence of an agreement between a generating station developer and a person who is not a generating station developer ("the radar works agreement") for the carrying out of radar works ("the relevant radar works");

(b) a copy of a document written by, or on behalf of, a party to the radar works agreement (other than a generating station developer) which estimated or set a date for completion of the relevant radar works ("the planned radar works completion date") which was no later than the primary date;

(c) a letter from a party to the radar works agreement (other than a generating station developer) confirming, whether or not such confirmation is subject to any conditions or other terms, that—

(i) the relevant radar works were completed after the planned radar works completion date, and

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Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(ii) in that party's opinion, the failure to complete the relevant radar works on or before the planned radar works completion date was not due to any breach of the radar works agreement by a generating station developer; and

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant radar works had been completed on or before the planned radar works completion date.

(6) The documents specified in this subsection are—

(a) the documents specified in subsection (4)(a), (b) and (c);

(b) the documents specified in subsection (5)(a), (b) and (c); and

(c) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if—

(i) the relevant grid works had been completed on or before the planned grid works completion date, and

(ii) the relevant radar works had been completed on or before the planned radar works completion date.

(7) In this section "the primary date" means—

(a) in a case within section 32LE(a)(i) or (b)(i) and (ii), the onshore wind closure date;

(b) in a case within section 32LG(a)(i) and (ii) or (b)(i) to (iii), 31 March 2017;

(c) in a case within section 32LI(a)(i) and (ii) or (b)(i) to (iii), 31 January 2018.**]**

Textual Amendments

F275 Ss. 32LD-32LL inserted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 80(2)**, 84(1)

[F276 32LM Use of Northern Ireland certificates: onshore wind power

(1) The Secretary of State may make regulations providing that an electricity supplier may not discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a relevant Northern Ireland certificate, except in the circumstances, and to the extent, specified in the regulations.

(2) A "relevant Northern Ireland certificate" is a Northern Ireland certificate issued in respect of electricity generated after the onshore wind closure date (or any later date specified in the regulations)—

(a) using the original capacity of a Northern Ireland onshore wind generating station accredited after the onshore wind closure date (or any later date so specified), or

(b) using additional capacity of a Northern Ireland onshore wind generating station, where in the Authority's view the additional capacity first formed part of the station after the onshore wind closure date (or any later date so specified).

(3) In this section—

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Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

"NIRO Order" means any order made under Articles 52 to 55F of the Energy (Northern Ireland) Order 2003;

"Northern Ireland certificate" means a renewables obligation certificate issued by the Northern Ireland authority under the Energy (Northern Ireland) Order 2003 and pursuant to a NIRO Order;

"Northern Ireland onshore wind generating station" means a generating station that—

(a) generates electricity from wind, and

(b) is situated in Northern Ireland, but not in waters in or adjacent to Northern Ireland up to the seaward limits of the territorial sea.

(4) Power to make provision in a renewables obligation order by virtue of section 32F (and any provision contained in such an order) is subject to provision contained in regulations under this section.

(5) This section is not otherwise to be taken as affecting power to make provision in a renewables obligation order.

(6) Regulations under this section may amend a renewables obligation order.

(7) Section 32K applies in relation to regulations under this section as it applies in relation to a renewables obligation order.**]**

Textual Amendments

F276 S. 32LM inserted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 81(2)**, 84(1)

[F268**32MInterpretation of sections 32 to 32M**

(1) In this section and sections 32 to **[**F277**32LM]**—

[F278**]**"accredited", in relation to an onshore wind generating station, means accredited by the Authority as a generating station which is capable of generating electricity from renewable sources; and "accredit" and "accreditation" are to be construed accordingly;**]**

[F278**]**"additional capacity", in relation to an onshore wind generating station, means any generating capacity which does not form part of the original capacity of the station;**]**

"banding provision" is to be construed in accordance with section 32D(3);

[F279**]**"bioliquid" has the meaning given by Article 2(h) of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources;**]**

[F278**]**"commissioned", in relation to an onshore wind generating station, means having completed such procedures and tests in relation to the station as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of generating station in order to demonstrate that it is capable of commercial operation**]**

"fossil fuel" means—

(a) coal,

(b) lignite,

(c) natural gas (within the meaning of the Energy Act 1976),

(d) crude liquid petroleum,

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(e) petroleum products (within the meaning of that Act), or

(f) any substance**[**F279, other than bioliquid,**]** 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;

[F278"generating station developer", in relation to an onshore wind generating station or additional capacity, means—

(a) the operator of the station, or

(b) a person who arranged for the construction of the station or additional capacity;**]**

[F278"grid works", in relation to an onshore wind generating station, means—

(a) the construction of a connection between the station and a transmission or distribution system for the purpose of enabling electricity to be conveyed from the station to the system, or

(b) the carrying out of modifications to a connection between the station and a transmission or distribution system for the purpose of enabling an increase in the amount of electricity that can be conveyed over that connection from the station to the system;**]**

[F278"licensed network operator" means a distribution licence holder or a transmission licence holder;**]**

[F278"network operator" means a distribution exemption holder, a distribution licence holder or a transmission licence holder;**]**

"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;

[F278"the onshore wind closure date" has the meaning given by section 32LC(3);**]**

[F278"onshore wind generating station" has the meaning given by section 32LC(3);**]**

[F278"original capacity", in relation to an onshore wind generating station, means the generating capacity of the station as accredited;**]**

[F278"radar works" means—

(a) the construction of a radar station,

(b) the installation of radar equipment,

(c) the carrying out of modifications to a radar station or radar equipment, or

(d) the testing of a radar station or radar equipment;**]**

[F278"relevant developer", in relation to an onshore wind generating station or additional capacity, means a person who—

(a) applied for planning permission for the station or additional capacity,

(b) arranged for grid works to be carried out in relation to the station or additional capacity,

(c) arranged for the construction of any part of the station or additional capacity,

(d) constructed any part of the station or additional capacity, or

(e) operates, or proposes to operate, the station;**]**

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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"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;

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

[[F280]"renewables obligation closure order" is to be construed in accordance with section 32LA;**]**

"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 **[**[F281] or a renewables obligation closure 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

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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.

(7) A renewables obligation order may make provision, for the purposes of sections 32 to **[**[F282]32LM**]**, 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

F268 Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 37**, 110(1)(a) (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

F277 Word in s. 32M(1) substituted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 81(3)(a)**, 84(1)

F278 Words in s. 32M inserted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 80(3)(b)**, 84(1)

F279 S. 32M(1) words inserted (1.4.2011) by The Renewables Obligation (Amendment) Order 2011 (S.I. 2011/984), arts. 1(1), **2**

F280 Words in s. 32M(1) inserted (18.12.2013) by Energy Act 2013 (c. 32), **ss. 55(2)(b)**, 156(3)

F281 Words in s. 32M(1) inserted (18.12.2013) by Energy Act 2013 (c. 32), **ss. 55(2)(c)**, 156(3)

F282 Word in s. 32M(7) substituted (12.5.2016) by Energy Act 2016 (c. 20), **ss. 81(3)(b)**, 84(1)

[[F283]32N The certificate purchase obligation

(1) The Secretary of State may make a certificate purchase order.

(2) A certificate purchase order is an order which imposes the certificate purchase obligation on—

(a) the purchasing body of GB certificates;

(b) the purchasing body of NI certificates.

(3) The certificate purchase obligation is that—

(a) the purchasing body of GB certificates must pay the redemption value of a GB certificate to the person presenting it;

(b) the purchasing body of NI certificates must pay the redemption value of a NI certificate to the person presenting it.

(4) The purchasing body of GB certificates is—

(a) the Authority, or

(b) such other eligible person as may be designated by the order as the purchasing body of GB certificates.

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(5) The purchasing body of NI certificates is—

(a) the Northern Ireland authority, or

(b) such other eligible person as may be designated by the order as the purchasing body of NI certificates.

(6) A person is an "eligible person" for the purposes of designation under subsection (4)(b) if the person is—

(a) a CFD counterparty at the time when the designation is made, or

(b) the Secretary of State.

(7) A person is an "eligible person" for the purposes of designation under subsection (5)(b) if the person is a CFD counterparty at the time when the designation is made.

(8) Subsection (3) is subject to sections 32O to 32Z2.

Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32O Further provision about the certificate purchase obligation

(1) A certificate purchase order may make provision generally in relation to the certificate purchase obligation.

(2) A certificate purchase order may, in particular—

(a) specify the redemption value of certificates or provide for how the redemption value is to be calculated;

(b) provide for different redemption values for successive periods of time;

(c) authorise the adjustment of redemption values from time to time for inflation by a method specified in the order (including by reference to a specified scale or index, as it has effect from time to time, or to other specified data of any description);

(d) require the relevant purchasing body or the Secretary of State (if not the relevant purchasing body) to publish the redemption value of certificates by a specified deadline;

(e) provide for the manner in which a certificate is to be presented to the relevant purchasing body;

(f) provide for the certificate purchase obligation in relation to 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,

to apply only up to a specified number of the certificates that are presented for payment in any specified period;

(g) provide that certificates in respect of electricity generated—

(i) using specified descriptions of renewable sources,

(ii) by specified descriptions of generating stations,

(iii) in specified ways, or

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(iv) in other specified cases or circumstances,

are to be issued only up to such number of certificates in any specified period as may be specified or determined in accordance with the order;

(h) provide that the certificate purchase obligation is not to apply on presentation of a certificate unless—

(i) the certificate is presented by such a deadline as may be specified or determined in accordance with the order, and

(ii) any other specified conditions are met (whether in relation to the certificate, the person presenting it or other matters);

(i) provide for how the relevant purchasing body is to determine whether specified conditions are met;

(j) provide that the certificate purchase obligation in relation to a certificate is to be discharged by such a deadline as may be specified or determined in accordance with the order;

(k) authorise the relevant purchasing body to determine the manner in which payments under the certificate purchase obligation are to be made;

(l) authorise the relevant purchasing body to deduct from payments specified descriptions of fees or charges incurred in making the payments;

(m) provide for a certificate purchase levy (see section 32P);

(n) authorise the Secretary of State to make payments for the purpose of enabling the certificate purchase obligation to be discharged;

(o) impose such other obligations, or confer such other functions, on the relevant purchasing body as the Secretary of State considers appropriate.

(3) Once the redemption value in relation to a certificate is paid (less any deductions permitted under the order by virtue of subsection (2)(l)), the certificate purchase obligation in relation to that certificate is discharged (and the certificate is not to be presented for payment again).

(4) For the purposes of carrying out its functions under a certificate purchase order, the relevant purchasing body may—

(a) require a person presenting a certificate to provide such information or documentation as the body may reasonably need for such purposes, and

(b) determine the form in which, and the time by which, such information or documentation is to be supplied.

(5) The certificate purchase obligation does not apply in relation to a certificate unless the person presenting the certificate has complied with any requirements imposed under subsection (4).

Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32P Certificate purchase levy

(1) A certificate purchase order may provide for a certificate purchase levy to be charged in connection with the provision of payments to the relevant purchasing body.

(2) A certificate purchase levy is a levy—

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(a) charged in respect of supplies of electricity that have been, or are expected to be, made in each specified period, and

(b) payable in respect of each such period by persons who make, or are expected to make, the supplies.

(3) The order may (without limiting the generality of section 32Z(1)(d)) provide for different rates or different amounts of levy to be charged—

(a) in different cases or circumstances;

(b) in relation to different specified periods.

(4) The order may secure that the levy is not to be charged in respect of particular descriptions of supplies of electricity.

(5) The order may provide for amounts of the levy received in respect of any period to be applied for the purpose of discharging the certificate purchase obligation in another period.

(6) The order may, in particular, make provision about any of the following matters—

(a) what is a supply of electricity for the purposes of the levy;

(b) when a supply of electricity is, or is expected to be, made for those purposes;

(c) who makes, or is expected to make, a supply of electricity for those purposes;

(d) the rates or amounts of the levy, or how such rates or amounts are to be determined;

(e) payment of the levy, including deadlines for payment in respect of each period and interest in respect of late payment;

(f) administration of the levy;

(g) audit of information (whether by the administrator of the levy or a third party) including requirements for audits to be paid by the person whose information is subject to the audit;

(h) provision of information, including its provision to third parties in specified circumstances;

(i) enforcement of the levy;

(j) insolvency of persons liable to pay the levy;

(k) reviews and appeals;

(l) the functions of the administrator in connection with the levy.

(7) The administrator of the levy, in the case of persons who make, or are expected to make, supplies of electricity in Great Britain, is—

(a) the Authority, or

(b) such other eligible person as may be designated by the order as the administrator in the case of such persons.

(8) The administrator of the levy, in the case of persons who make, or are expected to make, supplies of electricity in Northern Ireland, is—

(a) the Northern Ireland authority, or

(b) such other eligible person as may be designated by the order as the administrator in the case of such persons.

(9) A person is an "eligible person" for the purposes of designation under subsection (7)(b) if the person is—

(a) a CFD counterparty at the time when the designation is made, or

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(b) the Secretary of State.

(10) A person is an "eligible person" for the purposes of designation under subsection (8)(b) if the person is—

(a) a CFD counterparty at the time when the designation is made, or

(b) the Northern Ireland department.

(11) In a case where a person liable to pay the levy has made any overpayment or underpayment (whether arising because an estimate turns out to be wrong or otherwise), provision under subsection (6)(e) may require the amount of the overpayment or underpayment (including interest) to be set off against, or added to, any subsequent liability of the person to pay the levy.

(12) In a case where the amount received in respect of levy payments for a period falls short of the amount due for that period, provision under subsection (6)(e) or (j) may include a requirement on persons liable to pay the levy to make further payments, by the time and in the circumstances specified, of an amount calculated in the manner specified or determined in accordance with the order.

(13) Provision under subsection (6)(h) may provide for the administrator to determine the form in which any information that a person is required to give is to be given and the time by which it is to be given.

(14) Provision under subsection (6)(i) may—

(a) if the Authority is the administrator, apply sections 25 to 28 in relation to a requirement in respect of the levy imposed under the order on a person who is not a licence holder as if the person were a licence holder;

(b) in any other case, include provision for the imposition of penalties if a requirement in respect of the levy is breached (whether financial or not, but not including the creation of criminal offences).

Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32Q Use of levy payments

(1) Amounts payable in respect of the certificate purchase levy are to be paid to the administrator of the levy.

(2) Amounts received by the administrator under subsection (1) must be paid to—

(a) the purchasing body of GB certificates, or

(b) the purchasing body of NI certificates,

in accordance with such provision as may be contained in the order.

(3) Amounts paid to a purchasing body under subsection (2) may be used by that body only for the purpose of discharging the certificate purchase obligation.

(4) The order may contain further provision about—

(a) the calculation of amounts received by the administrator that are to be paid to a relevant purchasing body;

(b) the time by which the administrator must make payments of such amounts to a relevant purchasing body;

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(c) the manner in which any such payments are to be made;

(d) how amounts are to be dealt with for the purposes of subsection (2) where the administrator and a relevant purchasing body to whom they are to be paid are the same person.

(5) Subsections (2) to (4) are subject to subsections (6) to (10).

(6) The order may provide for amounts received by the administrator under subsection (1) to be used by the administrator to make payments—

(a) into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred—

(i) by the Authority,

(ii) by the Secretary of State, or

(iii) by a relevant designated person,

in connection with the performance of functions conferred by or under sections 32N to 32Z2;

(b) into the Consolidated Fund of Northern Ireland in respect of costs (or a proportion of costs) which have been or are expected to be incurred—

(i) by the Northern Ireland authority, or

(ii) by the Northern Ireland department,

in connection with the performance of functions conferred by or under sections 32N to 32Z2.

(7) For the purposes of subsection (6)(a), "relevant designated person" means a person who is designated—

(a) as the purchasing body of GB certificates by virtue of being an eligible person within section 32N(6)(a) (CFD counterparty);

(b) as the purchasing body of NI certificates by virtue of being an eligible person within section 32N(7) (CFD counterparty);

(c) as an administrator of the levy by virtue of being an eligible person within section 32P(9)(a) or (10)(a) (CFD counterparty).

(8) The order—

(a) may exclude amounts of a specified description from being used as mentioned in subsection (6);

(b) may prevent the administrator using amounts to make payments in respect of costs of a specified description.

(9) The purchasing body of GB certificates must, if directed to do so by the Secretary of State, pay into the Consolidated Fund any amounts received under subsection (2) that it would (but for the direction) be able to use under subsection (3) for the purpose of discharging the purchase obligation in respect of GB certificates.

(10) The purchasing body of NI certificates must, if directed to do so by the Secretary of State, pay into the Consolidated Fund of Northern Ireland any amounts received under subsection (2) that it would (but for the direction) be able to use under subsection (3) for the purpose of discharging the purchase obligation in respect of NI certificates.

(11) In this section "the order", in relation to the certificate purchase levy, means the certificate purchase order that imposes the levy.

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Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32R Designation of a CFD counterparty as purchasing body or administrator

(1) This section applies in relation to the designation of a person who is a CFD counterparty—

(a) as a relevant purchasing body under section 32N(4)(b) or (5)(b), or

(b) as the administrator of the levy under section 32P(7)(b) or (8)(b).

(2) A designation may be made only with the consent of the person designated.

(3) A designation does not cease to have effect if the person's designation as a CFD counterparty ceases to have effect by virtue of section 7(6)(a) or (b) of the Energy Act 2013.

(4) A designation ceases to have effect if—

(a) the Secretary of State by order revokes the designation, or

(b) the person withdraws consent to the designation by giving not less than 3 months' notice in writing to the Secretary of State.

(5) The Secretary of State may by order make transitional provision in connection with a designation ceasing to have effect.

(6) An order under subsection (5) may in particular make provision about how obligations, imposed by virtue of a certificate purchase order on a person whose designation ceases to have effect, are to be discharged in any period before or after the time when the designation ceases to have effect.

(7) Subsection (5) is not to be taken as limiting the power to make transitional provision in a certificate purchase order by virtue of section 32Z(1)(b).

Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32S GB certificates

(1) A certificate purchase order may (subject to subsection (3)) 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 GB certificate") to—

(a) the operator of a generating station, or

(b) if the order so provides, a person of any other description specified in the order.

(2) A GB certificate is to certify—

(a) the matters within subsection (4) or (5), or

(b) if the order provides that a certificate may certify the matters within subsection (6), (7), (8) or (9), the matters within that subsection.

(3) A GB certificate certifying that an amount of electricity has been generated from renewable sources in any period may not be issued if—

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(a) a renewables obligation order is in force, and

(b) a renewables obligation certificate has been, or could be, issued under the order in respect of the generation in that period of the same electricity.

(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, and

(b) that the electricity has been supplied by an electricity supplier to customers in Great Britain.

(5) 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 in Northern Ireland, and

(c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.

(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, and

(b) that the electricity has been supplied by an electricity supplier to customers in Great Britain.

(7) 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 in Northern Ireland, and

(c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.

(8) 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.

(9) 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.

(10) For the purposes of subsections (8) and (9), 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 (11), and

(b) that way is specified in the order as a permitted way—

(i) in relation to all generating stations, or

(ii) in relation to generating stations of that description.

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(11) 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 paragraphs (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.

(12) Subsection (11) of section 32B (meaning of supply of electricity through a private wire network) applies for the purposes of subsection (11)(b) as it applies for the purposes of subsection (10)(b) of that section.

Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32T NI certificates

(1) A certificate purchase order may (subject to subsection (3)) provide for the Northern Ireland authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate ("a NI certificate") to—

(a) the operator of a generating station in Northern Ireland, or

(b) if the order so provides, a person of any other description.

(2) A NI certificate is to certify—

(a) the matters within subsection (4), or

(b) if the order provides that a certificate may certify the matters within subsection (5), (6) or (7), the matters within that subsection.

(3) A NI certificate certifying that an amount of electricity has been generated from renewable sources in any period may not be issued if—

(a) an order under Article 52 of the Energy (Northern Ireland) Order 2003 is in force, and

(b) a Northern Ireland RO certificate has been, or could be, issued under that order in respect of the same electricity.

(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 in Northern Ireland specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and

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(b) that it 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 in Northern Ireland have, between them, generated from renewable sources the amount of electricity stated in the certificate, and

(b) that it has been supplied by a Northern Ireland supplier to customers in Northern Ireland.

(6) 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 in Northern Ireland 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.

(7) The matters within this subsection are—

(a) that two or more generating stations in Northern Ireland 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.

(8) For the purposes of subsections (6) and (7), 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 (9), and

(b) that way is specified in the order as a permitted way—

(i) in relation to all generating stations, or

(ii) in relation to generating stations of that description.

(9) 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 Northern Ireland through a private wire network;

(c) being provided to a distribution system located in Northern Ireland, or to transmission system located in Northern Ireland, in circumstances in which its supply to customers in Northern Ireland cannot be demonstrated;

(d) being used, as respects part, as mentioned in one of paragraphs (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 a Northern Ireland supplier to customers in Northern Ireland.

(10) Paragraph (9) of Article 54 of the Energy (Northern Ireland) Order 2003 (meaning of supply of electricity through a private wire network) applies for the purposes of subsection (9)(b) as it applies for the purposes of paragraph (8)(b) of that Article.

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Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32U Sections 32S and 32T: supplemental provision

(1) A certificate purchase order may provide—

(a) that no certificates are to be issued in respect of electricity generated in specified cases or circumstances, or

(b) that 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

(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 relevant 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 relevant authority, and

(ii) for the results of that analysis to be made available to the relevant 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 certificate purchase order may specify—

(a) how the proportion referred to in subsection (4) is to be determined, and

(b) the consequences for the issuing of 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 consequences that no certificates are to be issued in respect of any electricity generated by that generating station during that period.

(7) A certificate purchase order may provide that ownership of a certificate may be transferred—

(a) only to persons of a specified description;

(b) only if other specified conditions are met.

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(8) A certificate purchase order may specify circumstances in which the relevant authority may revoke a certificate before the certificate purchase obligation in respect of the certificate is discharged (whether before or after the certificate is presented for payment).

(9) A certificate purchase order must—

(a) prohibit the issue of GB certificates certifying that electricity has been supplied to customers in Northern Ireland by virtue of section 32S(5) or (7) 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 presentation for payment for the purposes of the certificate purchase obligation.

(10) A certificate purchase order may make provision requiring a person to whom a certificate is issued to pay to the relevant authority an amount equal to any amount that has been paid in respect of the certificate under the certificate purchase obligation if it appears to the authority that—

(a) the certificate should not have been issued to that person, and

(b) it is not possible to secure the recovery of such an amount by refusing to issue another certificate to the person.

(11) Provision under subsection (10) may include provision about enforcement and appeals.

(12) The Authority must pay any amounts it receives by virtue of subsection (10) into the Consolidated Fund.

(13) The Northern Ireland authority must pay any amounts it receives by virtue of subsection (10) into the Consolidated Fund of Northern Ireland.

Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32V Certificate purchase orders: amounts of electricity stated in certificates

(1) A certificate purchase order may specify the amount of electricity to be stated in each 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 certificate purchase order by virtue of subsection (1).

(4) Before making any banding provision, the Secretary of State must have regard to the following matters—

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(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 (supplies of electricity from renewable sources exempted from the 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 certificate issued by the relevant authority, and the impact this will have 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, 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 Secretary of State, no subsequent order containing such provision may be made by the Secretary of State except following a review held by virtue of subsection (8).

(8) A certificate purchase order may authorise the Secretary of State to review the whole or any part of the banding provision at any time when the Secretary of State is satisfied that one or more of the specified conditions is satisfied.

Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32W Section 32V: transitional provision and savings

(1) This section applies where a certificate purchase order contains banding provision.

(2) The order may provide for the effect of any banding provision made in an earlier such order to continue, in such circumstances as may be specified, in relation to—

(a) the electricity generated by generating stations of such descriptions as may be specified, or

(b) so much of the electricity as may be determined in accordance with the order.

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(3) The order may provide for—

(a) the effect of any banding provision made in a renewables obligation order by virtue of section 32D(1) to apply, in such circumstances as may be specified, in relation to GB certificates as it applied in relation to renewables obligation certificates;

(b) the effect of any banding provision made in an order under Article 52 of the Energy (Northern Ireland) Order 2003, by virtue of Article 54B(1) of the Order, to apply, in such circumstances as may be specified, in relation to NI certificates as it applied in relation to Northern Ireland RO certificates.

(4) Section 32V(4) and (7) do not apply in relation to provision of the kind mentioned in subsection (2) or (3) above.

(5) Subsection (7) 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.

(6) The requirements specified under subsection (5)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this section).

(7) A certificate purchase 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 person who made the grant ("the payer") the whole or a specified part of the grant or part before the repayment date,

(b) to pay to the payer interest on an amount repayable under paragraph (a) for such period, and at such rate, as may be determined in accordance with the order (which may confer the function of making the determination on a person), 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.

(8) For the purposes of subsection (7)—

(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.

(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 or other statutory provision (as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954).

(10) This section is without prejudice to section 32Z(1)(b).

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Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32X Certificate purchase orders: information

(1) A certificate purchase order may provide for—

(a) the Authority to require a person to provide it with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether a GB certificate is, or was or will in future be, required to be issued to the person;

(b) the Northern Ireland authority to require a person to provide it with information, or with information of a particular kind, which in the authority's opinion is relevant to the question whether a NI certificate is, or was or will in future be, required to be issued to the person.

(2) That information must be given to the relevant authority in whatever form it requires.

(3) A certificate purchase 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 relevant 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 relevant authority to postpone the issue of certificates 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 relevant authority to refuse to issue certificates to such a person or to refuse to issue them unless the failure is remedied within a specified period.

(4) The relevant 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.

Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32Y Certificate purchase orders: corresponding provision

(1) This section applies where the Secretary of State exercises a listed power in the making of a certificate purchase order.

(2) The Secretary of State must—

(a) so far as the order is made for a GB purpose, exercise the listed power in the way that the Secretary of State considers will replicate the effect of provision

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contained in a renewables obligation order (whenever made, and whether or not made by the Secretary of State) by virtue of the equivalent GB power;

(b) so far as the order is made for a NI purpose, exercise the listed power in the way that the Secretary of State considers will replicate the effect of provision contained in an order under Article 52 of the 2003 NI Order (whenever made) by virtue of the equivalent NI power.

(3) The duty in subsection (2) to exercise any listed power in the way mentioned in that subsection applies only to the extent that it appears to the Secretary of State that—

(a) it is reasonably practicable to exercise the listed power in that way, and

(b) exercising the power in that way is not inconsistent with other duties or requirements of the Secretary of State (whether arising under this Act or another enactment, by virtue of any EU obligation or otherwise).

(4) In the Table—

(a) a "listed power" is any power specified in the first column;

(b) the "equivalent GB power", in relation to a listed power, is the power specified in the corresponding entry in the second column;

(c) the "equivalent NI power", in relation to a listed power, is the power specified in the corresponding entry in the third column, and in that column references to an Article are to an Article of the 2003 NI Order.

Listed power	***Equivalent GB power***	***Equivalent NI power***
Section 32O(2)(a)	Sections 32A(2)(a) and 32G(2)(a)	Articles 53(2)(a) and 55(2)(a)
Section 32O(2)(b)	Sections 32A(2)(b) and 32G(2)(c)	Articles 53(2)(b) and 55(2)(c)
Section 32O(2)(c)	Section 32G(2)(e)	Article 55(2)(e)
Section 32O(2)(f)	Section 32A(2)(c)	Article 53(2)(c)
Section 32S	Section 32B	---
Section 32T	---	Article 54
Section 32U(5) and (6)	Section 32C(5) and (6)	Article 54A(5) and (6)
Section 32V(1)	Section 32D(1)	Article 54B(1)
Section 32W(5) to (8)	Section 32E(4) to (6) and (8)	Article 54C(4) to (7)
Section 32X	Section 32J	Article 55C
Section 32Z2(2) (so far as relating to definition of "renewable sources") and (3)	Section 32M (so far as relating to that definition) and (2)	Article 55F(1) (so far as relating to that definition) and (2)
Section 32Z2(9)	Section 32M(7)	Article 55F(3)

(5) The duty in subsection (2), so far as it has effect in relation to the exercise of the listed power under section 32V(1) to specify different amounts of electricity in relation to different cases or circumstances, applies only to the first exercise of that listed power.

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(6) The relevant part of Great Britain to which a renewables obligation order relates may be ignored for the purposes of subsection (2)(a).

(7) It does not matter for the purposes of subsection (2) whether or not a renewables obligation order, or an order made under Article 52 of the 2003 NI Order, is in force at the time when the listed powers in question are being exercised.

(8) In this section—

"2003 NI Order" means the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));

"GB purpose" means the purpose of imposing the certificate purchase obligation on the purchasing body of GB certificates;

"NI purpose" means the purpose of imposing the certificate purchase obligation on the purchasing body of NI certificates.

Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32Z Certificate purchase orders: general provision

(1) A certificate purchase order may—

(a) make further provision as to the functions of the relevant authority in relation to 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 for—

(a) renewables obligation certificates issued in respect of a period before the imposition of the certificate purchase obligation to be treated as if they were GB certificates issued in respect of a subsequent period for which the order is in force;

(b) Northern Ireland RO certificates issued in respect of a period before the imposition of the certificate purchase obligation to be treated as if they were NI certificates issued in respect of a subsequent period for which the order is in force.

(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 or different parts of the United Kingdom.

(4) In subsection (3) "supplier" means an electricity supplier or a Northern Ireland supplier.

(5) The Authority and the Northern Ireland authority may enter into arrangements for the Authority to act on behalf of the Northern Ireland authority for, or in connection with, the carrying out of any functions conferred on the Northern Ireland authority under, or for the purposes of, a certificate purchase order.

(6) The duties imposed on the Secretary of State—

(a) by section 3A (principal objective and general duties in carrying out functions under this Part), and

(b) by section 132(2) of the Energy Act 2013 (duties in relation to strategy and policy statement),

do not apply in relation to the exercise of a power under section 32N to make a certificate purchase order so far as it is made for or in connection with imposing the certificate purchase obligation on the purchasing body of NI certificates.

Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32Z1 Certificate purchase orders: procedure

(1) Before making a certificate purchase order, the Secretary of State must consult—

(a) the Authority,

(b) the Northern Ireland authority,

(c) the Council,

(d) the General Consumer Council for Northern Ireland,

(e) such electricity suppliers and Northern Ireland suppliers that may be required to pay the certificate purchase levy as the Secretary of State considers appropriate,

(f) such generators of electricity from renewable sources as the Secretary of State considers appropriate, and

(g) such other persons, if any, as the Secretary of State considers appropriate.

(2) A certificate purchase order is not to be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.

(3) The Secretary of State must, subject to subsection (5), consult the Scottish Ministers before making a certificate purchase order that extends to Scotland.

(4) The Secretary of State must, subject to subsection (5), obtain the consent of the Northern Ireland department before making a certificate purchase order that extends to Northern Ireland.

(5) Except as provided by subsection (6), the Secretary of State is not required to—

(a) consult the Scottish Ministers under subsection (3), or

(b) obtain the consent of the Northern Ireland department under subsection (4),

in respect of any provision of a certificate purchase order that is made by virtue of section 32O(2)(m), 32P or 32Q (which together confer power to make provision about the certificate purchase levy).

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(6) Designation of the Northern Ireland department as the administrator of the certificate purchase levy by virtue of section 32P(8)(b) requires the consent of that department.

Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

32Z2 Interpretation of sections 32N to 32Z2

(1) In this section and sections 32N to 32Z1 ("the relevant sections"), the following terms have the meanings given in section 32M(1)—

"fossil fuel" (but see subsection (4));

"generated";

"Northern Ireland authority";

"Northern Ireland supplier";

"renewables obligation certificate";

"renewables obligation order".

(2) In the relevant sections—

"administrator", in relation to the certificate purchase levy, is to be construed in accordance with section 32P(7) to (10);

"banding provision" is to be construed in accordance with section 32V(3);

"CFD counterparty" has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2013 (see section 7 of that Act);

"certificate purchase levy" is to be construed in accordance with section 32P;

"certificate purchase order" is to be construed in accordance with section 32N;

"the certificate purchase obligation" is to be construed in accordance with section 32N(3);

"distribution system" includes a distribution system within the meaning of Part 2 of the Electricity (Northern Ireland) Order 1992, and "distributing" is to be construed accordingly;

"GB certificate" is to be construed in accordance with section 32S;

"NI certificate" is to be construed in accordance with section 32T;

"the Northern Ireland department" means the Department of Enterprise, Trade and Investment;

"Northern Ireland RO certificate" means a certificate issued by the Northern Ireland authority in accordance with provision included in an order under Article 52 of the Energy (Northern Ireland) Order 2003;

"the purchasing body of GB certificates" is to be construed in accordance with section 32N(4);

"the purchasing body of NI certificates" is to be construed in accordance with section 32N(5);

"relevant authority" means—

(a) in relation to GB certificates, the Authority;

(b) in relation to NI certificates, the Northern Ireland authority;

"relevant purchasing body" means—

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(a) in relation to GB certificates, the purchasing body of GB certificates;

(b) in relation to NI certificates, the purchasing body of NI certificates;

"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 certificate purchase order, means specified in the order;

"transmission system" includes a transmission system within the meaning of Part 2 of the Electricity (Northern Ireland) Order 1992, and "transmitting" is to be construed accordingly.

(3) For the purposes of the definition of "renewable sources", a certificate purchase 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 relevant 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 relevant authority;

(ii) for the results of that analysis to be made available to the relevant authority.

(4) In the application of the relevant sections to Northern Ireland, "fossil fuel" includes peat.

(5) In the relevant sections "Northern Ireland" does not include any part of the territorial sea of the United Kingdom, but this is subject to subsection (6).

(6) A certificate purchase order may provide that "Northern Ireland" includes the territorial sea adjacent to Northern Ireland.

(7) An Order in Council under section 98(8) of the Northern Ireland Act 1998 (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.

(8) References in the relevant sections 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.

(9) A certificate purchase order may make provision, for the purposes of the relevant sections, about the circumstances in which electricity is to be regarded as having been supplied—

(a) to customers in Great Britain;

(b) to customers in Northern Ireland.**]**

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Textual Amendments

F283 Ss. 32N-32Z2 inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(2)**, 156(2)

F284 33 . . . . . .

Textual Amendments

F284 S. 33 ceased to have effect (21.11.2000) by virtue of 2000 c. 27, **s. 66**; S.I. 2000/2414, **art. 2** (subject to saving in art. 3(2)) and s. 33 repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Modifications etc. (not altering text)

C57 S. 33 saved (with modifications) (27.10.2000 with effect on 21.11.2000) by S.I. 2000/2727, art. 11; and, as so saved, further modified (E.W.) (1.10.2001) by S.I. 2001/3268, art. 3 and (S.) (1.10.2001) by S.I. 2001/3269, art. 9; and, as so saved, further modified (E.W.) (30.12.2001) by S.I. 2001/3914, art. 2; and, as so saved, further modified (S.) (31.3.2002) by S.S.I. 2002/92, **art. 2(2)**

C58 S. 33 applied (2.10.2001) by S.I. 1990/266, **reg. 2(1)** (as inserted (2.10.2001) by S.I. 2001/3286, **reg. 3(4)**)

C59 S. 33 as saved modified (S.) (30.11.2005) by The Electricity from Non-Fossil Fuel Sources (Scotland) Saving Arrangements Order 2005 (S.S.I. 2005/549), arts. 1(1), **10**

34 Fuel stocks etc. at generating stations.

(1) This section applies to any generating station which—

(a) is of a capacity not less than 50 megawatts; and

(b) is fuelled otherwise than by waste or manufactured gases;

and in this subsection "waste" has the same meaning as in the [M5]Control of Pollution Act 1974.

(2) The Secretary of State may by order provide that subsection (1) above shall have effect as if for the capacity mentioned in paragraph (a) there were substituted such other capacity (not exceeding 100 megawatts) as may be specified in the order.

(3) In respect of any generating station to which this section applies, the Secretary of State may give a direction requiring the person who operates it—

(a) to make such arrangements with respect to stocks of fuel and other materials held at or near that generating station for the purposes of its operation as will—

(i) enable those stocks to be brought within a specified time to, and thereafter maintained at, a specified level; and

(ii) ensure that they do not fall below that level, except as may be permitted by the terms of the direction or by a direction under subsection (4) below;

(b) to create such stocks and make such arrangements with respect to them;

and the amount of any stocks may be specified by reference to the period for which it would enable the generating station to be maintained in operation.

(4) In respect of any generating station to which this section applies, the Secretary of State may give a direction—

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(a) authorising or requiring the person who operates it to make such use as may be specified of any stocks held at or near that generating station; and

(b) requiring that person to operate, or not to operate, that generating station for specified periods, at specified levels of capacity or using specified fuels.

(5) In subsections (3) and (4) above "specified" means specified by or under the Secretary of State's direction; and a direction may—

(a) specify the cases and circumstances in which any stocks are to be treated as held at or near any generating station;

(b) specify the extent to which the direction may be treated as complied with where, under arrangements made or approved by the Secretary of State, access can be had to stocks held for the use of a number of consumers;

(c) specify the manner in which any period mentioned in subsection (3) or (4) above is to be determined;

(d) require anything falling to be specified under the direction to be specified by such persons and by reference to such matters as may be specified.

(6) A direction under subsection (3) or (4) above which confers on any person the function of specifying anything falling to be specified under the direction may require that person to exercise that function in such manner as may be specified by the direction.

Modifications etc. (not altering text)

C60 S. 34: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

C61 By S.I. 1990/1066, **art. 2** it is provided that s. 34(1) shall have effect as if for the capacity of 50 megawatts mentioned in para. (a), there were substituted the capacity of 10 megawatts

Marginal Citations

M5 1974 c. 40.

35 Provisions supplementary to section 34.

(1) The Secretary of State may give a direction requiring **[**F285the holder of a transmission licence**]** to give to the Secretary of State, after consultation with specified persons, any information or advice which the Secretary of State may reasonably require for purposes connected with the exercise of his functions under section 34 above.

[F286(2) The Secretary of State may give a direction requiring any person who is authorised by a licence to participate in the transmission of electricity to carry on the activities which the licence authorises (or any of them), at any time when a direction under section 34(4) above is in force, either in a specified manner or with a view to achieving specified objectives.**]**

(3) In subsections (1) and (2) above "specified" means specified by or under the Secretary of State's direction; **[**F287and a person subject to a direction under subsection (2) above shall give effect to it notwithstanding any other duty imposed on him by or under this Part.**]**

(4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under section 34 above or this section unless he is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(5) A person who, without reasonable excuse, contravenes or fails to comply with a direction of the Secretary of State under section 34 above or this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(6) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.

(7) Paragraphs 1 to 4, 7 and 8 of Schedule 2 to the [M6]Energy Act 1976 (administration of Act and other matters) shall have effect as if—

(a) section 34 above were contained in that Act;

(b) the powers of paragraph 1 were exercisable for any purpose connected with securing compliance with a direction under that section;

(c) information obtained by virtue of that paragraph could lawfully be disclosed to any person by whom anything falls to be specified under such a direction; and

(d) the powers conferred by sub-paragraph (1)(c) of that paragraph included power to direct that information and forecasts be furnished to any such person.

Textual Amendments

F285 Words in s. 35(1) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 12(2)**; S.I. 2004/2184, art. 2(2), Sch. 2

F286 S. 35(2) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 12(3)**; S.I. 2004/2184, art. 2(2), Sch. 2

F287 Words in s. 35(3) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 12(4)**; S.I. 2004/2184, art. 2(2), Sch. 2

Modifications etc. (not altering text)

C62 S. 35: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

Marginal Citations

M6 1976 c. 76.

36 Consent required for construction etc. of generating stations.

(1) Subject to subsections **[**[F288](1A) to**]** (2) and (4) below, a generating station shall not be constructed **[**[F289]at a relevant place (within the meaning of section 4), and a generating station at such a place shall not be**]**, extended or operated except in accordance with a consent granted by the Secretary of State.

[[F290](1A) So far as relating to the construction or extension of a generating station, subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).

(1B) So far as relating to the operation of a generating station, subsection (1) does not apply if the operation is authorised by an order granting development consent under the Planning Act 2008.**]**

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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[F291(1C) This section is subject to section 12 of the Marine and Coastal Access Act 2009 (which transfers certain functions of the Secretary of State to the Marine Management Organisation).**]**

[F292(1D) Subsection (1) does not apply to an English or Welsh onshore wind generating station.

(1E) "English or Welsh onshore wind generating station" means a generating station that—

(a) generates electricity from wind, and

(b) is situated in England or Wales, but not in waters in or adjacent to England or Wales up to the seaward limits of the territorial sea.**]**

(2) Subsection (1) above shall not apply to a generating station whose capacity—

(a) does not exceed the permitted capacity, that is to say, 50 megawatts; and

(b) in the case of a generating station which is to be constructed or extended, will not exceed the permitted capacity when it is constructed or extended;

and an order under this subsection may make different provision for generating stations of different classes or descriptions.

(3) The Secretary of State may by order provide that subsection (2) above shall have effect as if for the permitted capacity mentioned in paragraph (a) there were substituted such other capacity as may be specified in the order.

(4) The Secretary of State may by order direct that subsection (1) above shall not apply to generating stations of a particular class or description, either generally or for such purposes as may be specified in the order.

(5) **[**F293Subject to subsections (5A) and (5B),**]** A consent under this section—

(a) may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Secretary of State to be appropriate; and

(b) shall continue in force for such period as may be specified in or determined by or under the consent.

[F294(5A) In the case of a generating station in respect of which a controlled activity, within the meaning of the Water Environment (Controlled Activities) (Scotland) Regulations 2005, will be carried on, the Secretary of State shall, before granting a consent under subsection (1), obtain and have regard to the advice of the Scottish Environment Protection Agency on matters relating to the protection of the water environment and have regard to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.

(5B) In the event that the conditions of a consent granted under subsection (1) on matters relating to the protection of the water environment, and the conditions of an authorisation granted under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 differ, and cannot reasonably be reconciled, the relevant conditions of that consent shall be treated as modified to the extent necessary to be consistent with the conditions of that authorisation.**]**

(6) Any person who without reasonable excuse contravenes the provisions of this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(8) The provisions of Schedule 8 to this Act (which relate to consents under this section and section 37 below) shall have effect.

(9) In this Part "extension", in relation to a generating station, includes the use by the person operating the station of any land **[**F295or area of waters**]** (wherever situated) for a purpose directly related to the generation of electricity by that station and "extend" shall be construed accordingly.

Textual Amendments

F288 Words in s. 36(1) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 32(2)** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)

F289 Words in s. 36(1) inserted (1.3.2005) by Energy Act 2004 (c. 20), **s. 93(1)**(4), 198(2); S.I. 2005/442, art. 2(1), Sch. 1

F290 S. 36(1A)(1B) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 32(3)** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)

F291 S. 36(1C) inserted (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **s. 12(7)(a)**(8), 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

F292 S. 36(1D)(1E) inserted (12.7.2016) by Energy Act 2016 (c. 20), **ss. 78**, 84(3); S.I. 2016/602, reg. 3(g) (with reg. 4) (as substituted by S.I. 2016/710, reg. 2)

F293 Words in s. 36(5) inserted (S.) (1.4.2006) by The Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054), art. 1(1), **Sch. 1 para. 1(2)(a)**

F294 S. 36(5A)(5B) inserted (1.4.2006) by The Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054), art. 1(1), **Sch. 1 para. 1(2)(b)**

F295 Words in s. 36(9) inserted (1.3.2005) by Energy Act 2004 (c. 20), **s. 93(3)**(4), 198(2); S.I. 2005/442, art. 2(1), Sch. 1

Modifications etc. (not altering text)

C63 S. 36 restricted by S.I. 1990/442, **art. 3(1)(a)**

C64 S. 36 modified (S.) (27.5.1997) by 1997 c. 8, **ss. 57(2)**, 278(2) (with ss. 64, 219)
S. 36 modified (S.) (27.5.1997) by 1997 c. 10, **ss. 10(2)**, 31, 40(2) (with ss. 9(3), 10(5), 38(6))

C65 S. 36: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, art. 2, **Sch. 1** (with art. 7)

C66 S. 36 restricted (21.11.2003) by The Norfolk Offshore Wind Farm Order 2003 (S.I. 2003/2830), arts. 1, **16** (with art. 23)

C67 S. 36 excluded (16.4.2004) by The Gunfleet Sands Offshore Wind Farm Order 2004 (S.I. 2004/933), arts. 1, **16**

C68 S. 36 excluded (19.11.2004) by The Scarweather Sands Offshore Wind Farm Order 2004 (S.I. 2004/3054), arts. 1, **26** (with art. 38)

C69 S. 36 functions modified (12.4.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 (S.I. 2006/1040), arts. 1(2), **2** (with art. 6)

C70 S. 36: transfer of functions (13.4.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 (S.I. 2006/1040), arts. 1(1), **3** (with art. 6)

C71 S. 36(1): transfer of functions (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12**, 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

C72 S. 36(1) excluded (E.W.) (1.3.2016) by The Onshore Wind Generating Stations (Exemption) (England and Wales) Order 2016 (S.I. 2016/21), arts. 1(1), **3** (with art. 4)

C73 S. 36(2) modified (S.) by S.I. 1990/392, **art. 2**

C74 S. 36(2) modified (E.W.) (1.12.2001) by S.I. 2001/3642, **art. 2**

C75 S. 36(2) modified (S.) (26.9.2002) by The Electricity Act 1989 (Requirement of Consent for Offshore Generating Stations) (Scotland) Order 2002 (S.S.I. 2002/407), **art. 3**

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

C76 S. 36(5): transfer of functions (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12**, 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

C77 S. 36(7): transfer of functions (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12**, 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

[F296 36A Declarations extinguishing etc. public rights of navigation

(1) Where a consent is granted by the Secretary of State or the Scottish Ministers in relation to—

(a) the construction or operation of a generating station that comprises or is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters, or

(b) an extension of a generating station that is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters or an extension of such an installation,

he or (as the case may be) they may, at the same time, make a declaration under this section as respects rights of navigation so far as they pass through some or all of those places.

[F297 (1A) This section is subject to section 12 of the Marine and Coastal Access Act 2009 (which transfers certain functions of the Secretary of State to the Marine Management Organisation).**]**

(2) The Secretary of State or the Scottish Ministers may make such a declaration only if the applicant for the consent made an application for such a declaration when making his application for the consent.

(3) A declaration under this section is one declaring that the rights of navigation specified or described in it—

(a) are extinguished;

(b) are suspended for the period that is specified in the declaration;

(c) are suspended until such time as may be determined in accordance with provision contained in the declaration; or

(d) are to be exercisable subject to such restrictions or conditions, or both, as are set out in the declaration.

(4) A declaration under this section—

(a) has effect, in relation to the rights specified or described in it, from the time at which it comes into force; and

(b) continues in force for such period as may be specified in the declaration or as may be determined in accordance with provision contained in it.

(5) A declaration under this section—

(a) must identify the renewable energy installations, or proposed renewable energy installations, by reference to which it is made;

(b) must specify the date on which it is to come into force, or the means by which that date is to be determined;

(c) may modify or revoke a previous such declaration, or a declaration under section 100 of the Energy Act 2004; and

(d) may make different provision in relation to different means of exercising a right of navigation.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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(6) Where a declaration is made under this section by the Secretary of State or the Scottish Ministers, or a determination is made by him or them for the purposes of a provision contained in such a declaration, he or (as the case may be) they must either—

(a) publish the declaration or determination in such manner as appears to him or them to be appropriate for bringing it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; or

(b) secure that it is published in that manner by the applicant for the declaration.

(7) In this section—

"consent" means a consent under section 36 above;

"extension", in relation to a renewable energy installation, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004;

"relevant 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.

Textual Amendments

F296 Ss. 36A, 36B inserted (1.3.2005 for specified purposes, 1.9.2005 for specified purposes, 1.10.2005 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 99(1)**, 198(2); S.I. 2005/442, art. 2(1)(3), Sch. 1, Sch. 3; S.I. 2005/877, art. 2(2), Sch. 2

F297 S. 36A(1A) inserted (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **s. 12(7)(b)**(8), 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

Modifications etc. (not altering text)

C78 S. 36A: transfer of functions (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12**, 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

C79 Ss. 36A(4)-(6) applied (1.9.2005) by Energy Act 2004 (c. 20), **ss. 100(5)**, 198(2); S.I. 2005/442, art. 2(3), Sch. 3

36B Duties in relation to navigation

(1) Neither the Secretary of State nor the Scottish Ministers may grant a consent in relation to any particular offshore generating activities if he considers, or (as the case may be) they consider, that interference with the use of recognised sea lanes essential to international navigation—

(a) is likely to be caused by the carrying on of those activities; or

(b) is likely to result from their having been carried on.

[F298(1A) This section is subject to section 12 of the Marine and Coastal Access Act 2009 (which transfers certain functions of the Secretary of State to the Marine Management Organisation).**]**

(2) It shall be the duty both of the Secretary of State and of the Scottish Ministers, in determining—

(a) whether to give a consent for any particular offshore generating activities, and

(b) what conditions to include in such a consent,

to have regard to the extent and nature of any obstruction of or danger to navigation which (without amounting to interference with the use of such sea lanes) is likely to be caused by the carrying on of the activities, or is likely to result from their having been carried on.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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) In determining for the purposes of this section what interference, obstruction or danger is likely and its extent and nature, the Secretary of State or (as the case may be) the Scottish Ministers must have regard to the likely overall effect (both while being carried on and subsequently) of—

(a) the activities in question; and

(b) such other offshore generating activities as are either already the subject of consents or are activities in respect of which it appears likely that consents will be granted.

(4) For the purposes of this section the effects of offshore generating activities include—

(a) how, in relation to those activities, the Secretary of State and the Scottish Ministers have exercised or will exercise their powers under section 36A above and section 100 of the Energy Act 2004 (extinguishment of public rights of navigation); and

(b) how, in relation to those activities, the Secretary of State has exercised or will exercise his powers under sections 95 and 96 and Chapter 3 of Part 2 of that Act (safety zones and decommissioning).

(5) If the person who has granted a consent in relation to any offshore generating activities thinks it appropriate to do so in the interests of the safety of navigation, he may at any time vary conditions of the consent so as to modify in relation to any of the following matters the obligations imposed by those conditions—

(a) the provision of aids to navigation (including, in particular, lights and signals);

(b) the stationing of guard ships in the vicinity of the place where the activities are being or are to be carried on; or

(c) the taking of other measures for the purposes of, or in connection with, the control of the movement of vessels in that vicinity.

(6) A modification in exercise of the power under subsection (5) must be set out in a notice given by the person who granted the consent to the person whose obligations are modified.

(7) In this section—

"consent" means a consent under section 36 above;

"offshore generating activities" means—

(a) the construction or operation of a generating station that is to comprise or comprises (in whole or in part) renewable energy installations; or

(b) an extension of a generating station that is to comprise (in whole or in part) renewable energy installations or an extension of such an installation;

"the use of recognised sea lanes essential to international navigation" means—

(a) anything that constitutes the use of such a sea lane for the purposes of Article 60(7) of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941); or

(b) any use of waters in the territorial sea adjacent to Great Britain that would fall within paragraph (a) if the waters were in a Renewable Energy Zone.

(8) In subsection (7) "extension", in relation to a renewable energy installation, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004.**]**

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F296 Ss. 36A, 36B inserted (1.3.2005 for specified purposes, 1.9.2005 for specified purposes, 1.10.2005 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 99(1)**, 198(2); S.I. 2005/442, art. 2(1)(3), Sch. 1, Sch. 3; S.I. 2005/877, art. 2(2), Sch. 2

F298 S. 36B(1A) inserted (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **s. 12(7)(b)**(8), 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

Modifications etc. (not altering text)

C80 S. 36B: transfer of functions (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12**, 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

[F299 36C Variation of consents under section 36

(1) The person for the time being entitled to the benefit of a section 36 consent may make an application to the appropriate authority for the consent to be varied.

(2) Regulations may make provision about the variation of a section 36 consent, including in particular provision about—

(a) the making and withdrawal of applications;
(b) fees;
(c) publicity and consultation requirements;
(d) rights to make representations;
(e) public inquiries;
(f) consideration of applications.

(3) Regulations under subsection (2) may provide for any statutory provision applicable to the grant of a section 36 consent to apply with specified modifications to the variation of a section 36 consent.

(4) On an application for a section 36 consent to be varied, the appropriate authority may make such variations to the consent as appear to the authority to be appropriate, having regard (in particular) to—

(a) the applicant's reasons for seeking the variation;
(b) the variations proposed;
(c) any objections made to the proposed variations, the views of consultees and the outcome of any public inquiry.

(5) Regulations may make provision treating, for prescribed purposes, a section 36 consent varied under this section as granted in its varied form when the original consent was granted (rather than when the variation was made).

(6) In this section—

"the appropriate authority" means—

(a) the Scottish Ministers, in a case where the section 36 consent relates to a generating station (or proposed generating station) in Scotland;
(b) the Marine Management Organisation, in a case where the section 36 consent was granted by it;
(c) the Secretary of State, in any other case;

"regulations" means regulations made by—

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(a) the Scottish Ministers, in the case of section 36 consents relating to generating stations (or proposed generating stations) in Scotland;

(b) the Secretary of State, in any other case;

"Scotland" has the same meaning as in section 32(2) (see section 32(3));

"section 36 consent" means a consent granted under section 36 (construction, extension or operation of generating station), whenever granted;

"statutory provision" means a provision of or made under an Act, whenever passed or made; and for this purpose "Act" includes an Act of the Scottish Parliament.**]**

Textual Amendments

F299 S. 36C inserted (19.6.2013 for specified purposes, 31.7.2013 in relation to E.W. so far as it is not already in force, 1.12.2013 in relation to S. so far as it is not already in force) by Growth and Infrastructure Act 2013 (c. 27), **ss. 20(2)**, 35(1); S.I. 2013/1488, arts. 2, 5(a), 7

[F300 36D Proceedings for questioning certain decisions under section 36

(1) If a person is aggrieved by a decision of the Scottish Ministers to which this section applies, and wishes to question the validity of the decision on either of the grounds mentioned in subsection (2), the person (the "aggrieved person") may make an application to the Inner House of the Court of Session under this section.

(2) The grounds are that—

(a) the decision is not within the powers of the Scottish Ministers under this Part,

(b) one or more of the relevant requirements have not been complied with in relation to the decision.

(3) This section applies to a decision under section 36 in relation to an application for consent to construct, extend or operate a generating station that comprises or is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters.

(4) An application under this section must be made within the period of 6 weeks beginning with the date on which the decision to which the application relates is taken.

(5) On an application under this section, the Inner House of the Court of Session—

(a) may suspend the decision until the final determination of the proceedings,

(b) may quash the decision either in whole or in part if satisfied that—

(i) the decision in question is not within the powers of the Scottish Ministers under this Part, or

(ii) the interests of the aggrieved person have been substantially prejudiced by failure to comply with any of the relevant requirements in relation to the decision.

(6) In this section—

"relevant waters" has the same meaning as in section 36A(7);

"the relevant requirements", in relation to a decision to which this section applies, means the requirements of this Act, or of any order or regulations made under this Part, which are applicable to that decision.

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Textual Amendments

F300 Ss. 36D, 36E inserted (26.2.2015) by The Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015 (S.I. 2015/374), arts. 1(1), **4(2)** (with art. 4(4))

36E Applications under section 36D: requirement for permission

(1) No proceedings may be taken in respect of an application under section 36D(1) unless the Inner House of the Court of Session has granted permission for the application to proceed.

(2) The Court may grant permission under subsection (1) for an application to proceed only if it is satisfied that—

(a) the applicant can demonstrate a sufficient interest in the subject matter of the application, and

(b) the application has a real prospect of success.

(3) The Court may grant permission under subsection (1) for an application to proceed—

(a) subject to such conditions as the Court thinks fit, or

(b) only on such of the grounds specified in the application as the Court thinks fit.**]**

Textual Amendments

F300 Ss. 36D, 36E inserted (26.2.2015) by The Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015 (S.I. 2015/374), arts. 1(1), **4(2)** (with art. 4(4))

37 Consent required for overhead lines.

(1) Subject to **[**F301subsections (1A) to (2)**]** below, an electric line shall not be installed or kept installed above ground except in accordance with a consent granted by the Secretary of State.

[F302(1A) So far as relating to the installation of an electric line, subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).

(1B) So far as relating to keeping an electric line installed, subsection (1) does not apply if keeping the line installed is authorised by an order granting development consent under the Planning Act 2008.**]**

(2) Subsection (1) above shall not apply—

(a) in relation to an electric line which has a nominal voltage not exceeding 20 kilovolts and is used or intended to be used for supplying a single consumer;

(b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

(c) in such other cases as may be prescribed.

(3) A consent under this section—

(a) may include such conditions (including conditions as to the ownership and operation of the line) as appear to the Secretary of State to be appropriate;

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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(b) may be varied or revoked by the Secretary of State at any time after the end of such period as may be specified in the consent; and

(c) subject to paragraph (b) above, shall continue in force for such period as may be specified in or determined by or under the consent.

(4) Any person who without reasonable excuse contravenes the provisions of this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.

Textual Amendments

F301 Words in s. 37(1) substituted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 33(2)** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)

F302 S. 37(1A)(1B) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 33(3)** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)

Modifications etc. (not altering text)

C81 S. 37 restricted by S.I. 1990/442, **art. 3(1)(b)**

C82 S. 37 excluded (16.3.1992) by Midland Metro Act 1992 (c. vii), **s. 10(3)**

C83 S. 37 modified (S.) (27.5.1997) by 1997 c. 8, **ss. 57(2)**, 278(2) (with ss. 64, 219)

C84 S. 37: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, art. 2, **Sch. 1** (with art. 7)

C85 S. 37 excluded (19.11.2004) by The Scarweather Sands Offshore Wind Farm Order 2004 (S.I. 2004/3054), arts. 1, **26** (with art. 38)

C86 S. 37(1) excluded (1.1.1993) by S.I. 1992/3074, **reg.3**

C87 S. 37(1) excluded (18.12.1996) by 1996 c. 61, **s. 50(1)**

C88 S. 37(1) excluded (22.7.2008) by Crossrail Act 2008 (c. 18), **s. 4(1)**

C89 S. 37(1) excluded (E.W.) (6.4.2009) by The Overhead Lines (Exemption) (England and Wales) Regulations 2009 (S.I. 2009/640), regs. 1(3), **3-5**

C90 S. 37(1) excluded (S.) (1.11.2013) by The Overhead Lines (Exemption) (Scotland) Regulations 2013 (S.S.I. 2013/264), regs. 1, **3(1)** (with regs. 3(3), 4, 5, 6(2))

38 Preservation of amenity and fisheries.

The provisions of Schedule 9 to this Act (which relate to the preservation of amenity and fisheries) shall have effect.

Consumer protection: standards of performance

39 Electricity supply: performance in individual cases.

[F303(1) The Authority may, with the consent of the Secretary of State, make regulations prescribing such standards of performance in connection with the activities of electricity suppliers, so far as affecting customers or potential customers of theirs, as in the Authority's opinion ought to be achieved in individual cases.**]**

(2) Regulations under this section may—

(a) prescribe circumstances in which **[**F304electricity suppliers**]** are to inform persons of their rights under this section **[**F305or their rights under section 39A**]**;

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(b) prescribe such standards of Performance in relation to any duty arising under paragraph (a) above as, in the Director's opinion, ought to be achieved in all cases; and

(c) prescribe circumstances in which **[**F304electricity suppliers**]** are to be exempted from any requirements of the regulations or this section,

[F306and, if the Authority is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers, may make different provision for different electricity suppliers.**]**

(3) If **[**F307an electricity supplier**]** fails to meet a prescribed standard, he shall make to any person who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.

(4) The making of compensation under this section in respect of any failure by **[**F307an electricity supplier**]** to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.

F308(5) . . . . . .

F308(5A) . . . . . .

F308(6) . . . . . .

(7) In this section "prescribed" means prescribed by regulations under this section.

Textual Amendments

F303 S. 39(1) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 para. 32(a)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F304 Words in s. 39(2)(a)(c) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 para. 32(c)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F305 Words in s. 39(2)(a) inserted (1.10.2001) by 2000 c. 27, **s. 54(1)(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F306 Words in s. 39(2) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 para. 32(b)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F307 Words in s. 39(3)(4) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 para. 32(d)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F308 S. 39(5)(5A)(6) repealed (1.10.2001) by 2000 c. 27, ss. 54(1)(b), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

[F309**39A Standards of performance in individual cases: electricity distributors.**

(1) The Authority may with the consent of the Secretary of State make regulations prescribing such standards of performance in connection with the activities of electricity distributors, so far as affecting customers or potential customers of electricity suppliers, as in the Authority's opinion ought to be achieved in individual cases.

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(2) If an electricity distributor fails to meet a prescribed standard, he shall make to any person who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.

(3) The regulations may—

(a) prescribe circumstances in which electricity distributors are to inform customers or potential customers of electricity suppliers of their rights under this section;

(b) prescribe such standards of performance in relation to any duty arising under paragraph (a) as, in the Authority's opinion, ought to be achieved in all cases;

(c) make provision as to the manner in which compensation under this section is to be made;

(d) prescribe circumstances in which electricity distributors are to be exempted from any requirements of the regulations or this section; and

(e) if the Authority is of the opinion that the differences are such that no electricity distributor would be unduly disadvantaged in competing with other electricity distributors, make different provision with respect to different electricity distributors.

(4) Provision made under subsection (3)(c) may—

(a) require or permit compensation to be made on behalf of electricity distributors by electricity suppliers to customers or potential customers; and

(b) require electricity suppliers to provide services to electricity distributors in connection with the making of compensation under this section.

(5) The making of compensation under this section in respect of any failure to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.

(6) In this section "prescribed" means prescribed by regulations under this section.**]**

Textual Amendments

F309 Ss. 39A, 39B inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 54(2)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

[F310 39B Standards of performance in individual cases: disputes.

(1) Any dispute arising under section 39 or 39A or regulations made under either of those sections—

(a) may be referred to **[**F311 Authority—

(i) by either party, or

(ii) with the consent of either party, by Citizens Advice or Citizens Advice Scotland or Citizens Advice and Citizens Advice Scotland acting jointly;**]** and

(b) on such a reference, shall be determined by order made by the Authority or, if it thinks fit, by such person (other than **[**F312 Citizens Advice or Citizens Advice Scotland**]**) as may be prescribed.

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(2) A person making an order under subsection (1) shall include in the order his reasons for reaching his decision with respect to the dispute.

(3) The practice and procedure to be followed in connection with any such determination shall be such as may be prescribed.

(4) An order under subsection (1) shall be final and shall be enforceable—

(a) in England and Wales, as if it were a judgment of **[**F313the county court**]**; and

(b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.

(5) In this section "prescribed" means prescribed by regulations made by the Authority with the consent of the Secretary of State.**]**

Textual Amendments

F310 Ss. 39A, 39B inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 54(2)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F311 Words in s. 39B(1)(a) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(10)(a)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F312 Words in s. 39B(1)(b) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(10)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F313 Words in s. 39B(4)(a) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

40 Electricity supply: overall performance.

(1) The Director may, F314. . . from time to time—

(a) determine such standards of overall performance in connection with the provision of electricity supply services as, in his opinion, ought to be achieved by **[**F315electricity**]** suppliers; and

(b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.

F316(1A) . . . . . .

(2) Different standards may be determined under this section for different **[**F317electricity suppliers**][**F318if the Authority is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers**]**.

F319**[**(3) It shall be the duty of every **[**F320electricity supplier**]** to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under this section.**]**

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Textual Amendments

F314 Words in s. 40(1) repealed (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), ss. 20(2), 56(7), **Sch. 2**; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.

F315 Words in s. 40(1)(a) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 33(a)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F316 S. 40(1A) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F317 Words in s. 40(2) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 33(c)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F318 Words in s. 40(2) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 33(b)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F319 S. 40(3) added (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 24**; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I

F320 Words in s. 40(3) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 33(d)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

[F321 40A Overall standards of performance: electricity distributors.

(1) The Authority may from time to time—

(a) determine such standards of overall performance in connection with the activities of electricity distributors as, in its opinion, ought to be achieved by them; and

(b) arrange for the publication, in such form and in such manner as it considers appropriate, of the standards so determined.

(2) Different standards may be determined for different electricity distributors if the Authority is of the opinion that the differences are such that no electricity distributor would be unduly disadvantaged in competing with other electricity distributors.

(3) It shall be the duty of every electricity distributor to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under this section.**]**

Textual Amendments

F321 S. 40A inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 55**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

[F322 40B Procedures for prescribing or determining standards of performance.

(1) Before prescribing standards of performance in regulations under section 39 or 39A, or determining standards of performance under section 40 or 40A, the Authority shall—

(a) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results;

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(b) publish a notice of its proposals in accordance with subsections (2) and (3) and consider any representations which are duly made in respect of those proposals; and

(c) consult **[**F323Citizens Advice and Citizens Advice Scotland**]** and other persons or bodies mentioned in subsection (4).

(2) The notice required by subsection (1)(b) is a notice—

(a) stating that the Authority proposes to prescribe or determine standards of performance and setting out the standards of performance proposed;

(b) stating the reasons why it proposes to prescribe or determine those standards of performance; and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made.

(3) A notice required by subsection (1)(b) shall be published in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of those likely to be affected by the proposals.

(4) The persons or bodies to be consulted by the Authority under subsection (1)(c) are—

(a) electricity suppliers (in the case of standards of performance under section 39 or 40) or electricity distributors and electricity suppliers (in the case of standards of performance under section 39A or 40A); and

(b) persons or bodies appearing to the Authority to be representative of persons likely to be affected by the regulations or determination.

(5) The Authority shall make arrangements for securing that notices under subsection (1)(b), regulations under section 39 or 39A and determinations under section 40 or 40A are made available to the public by whatever means it considers appropriate.**]**

Textual Amendments

F322 S. 40B inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 56**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F323 Words in s. 40B(1)(c) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(11)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

[F326**41A [**F324**Promotion of reductions in carbon emissions:** F325**... electricity distributors and electricity suppliers]**

(1) The Secretary of State may by order impose—

F327(za) . . . . . .

(a) on each electricity distributor (or each electricity distributor of a specified description); and

(b) on each electricity supplier (or each electricity supplier of a specified description),

an obligation to achieve, within a specified period and in accordance with the order, the **[**F328carbon emissions reduction target**]** to be determined by **[**F329the Administrator**]**

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under the order for that [F330]... distributor or supplier (and that obligation is referred to in this section as **[**[F331]a "carbon emissions reduction obligation"**]**).

[The power to make orders under this section may be exercised so as to impose more [F332](1A) than one carbon emissions reduction obligation on a person in relation to the same period or to periods that overlap to any extent.**]**

[[F333](2) In this section "carbon emissions reduction target" means a target for the promotion of any of the following—

(a) measures for improving energy efficiency, that is to say, efficiency in the use by consumers of electricity, gas conveyed through pipes or any other source of energy which is specified in the order;

(b) if the order so provides—

(i) measures for increasing the amount of electricity generated, or heat produced, by microgeneration;

(ii) any other measures of a description specified in the order for increasing the amount of electricity generated, or heat produced, using low-emissions sources or technologies;

(iii) measures for reducing the consumption of such energy as is mentioned in paragraph (a).**]**

[In this section "the Administrator" means—

[F334](2A) (a) the Authority; or

(b) if the order so provides, the Secretary of State or a specified body other than the Authority.**]**

(3) An order under this section may specify criteria by reference to which **[**[F335]the Administrator**]** is to determine **[**[F336]carbon emissions reduction targets**]** for the [F337]... electricity distributors or electricity suppliers on whom obligations are imposed by the order.

(4) The Secretary of State and **[**[F338](subject to any directions given under subsection (9B)) the Administrator**]** shall carry out their respective functions under this section in the manner he or it considers is best calculated to ensure that **[**[F339]—

[F340](a) . . . . . .

(b) no electricity distributor is unduly disadvantaged in competing with other electricity distributors, and

(c) no electricity supplier is unduly disadvantaged in competing with other electricity suppliers.**]**

(5) The order may make provision generally in relation to the **[**[F341]carbon emissions reduction obligations**]** which it imposes, including in particular provision—

(a) as to the treatment of persons who become [F342]... electricity distributors or electricity suppliers after the beginning of the period to which the order relates;

(b) as to the action which qualifies for the purpose of meeting the whole or any part of **[**[F343]a carbon emissions reduction target**]**;

[[F344](ba) requiring part of a carbon emissions reduction target to be met by action of a specified description;

(bb) requiring the whole or any part of a carbon emissions reduction target to be met by action relating to—

(i) individuals of a specified description,

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(ii) property of a specified description,

(iii) specified areas or areas of a specified description, or

(iv) individuals or property of a specified description in specified areas or areas of a specified description;

(bc) enabling the Administrator to direct a distributor or supplier to meet part of a carbon emissions reduction target by action relating to an individual named in the direction;

(bd) preventing action from qualifying for the purpose of meeting the whole or any part of a carbon emissions reduction target unless such persons as are specified in, or determined in accordance with, the order—

(i) have been consulted about the action;

(ii) have consented to the action;

(be) requiring action which qualifies for the purpose of meeting both a carbon emissions reduction target and a home-heating cost reduction target to be treated as qualifying only for the purpose of meeting such one of those targets as the distributor or supplier concerned elects;

(c) determining, or specifying the method for determining, the contribution that any action makes towards meeting a carbon emissions reduction target;**]**

(d) requiring [F345]... distributors and suppliers to give to **[**[F346]the Administrator**]** specified information, or information of a specified nature, about their proposals for complying with their **[**[F347]carbon emissions reduction obligations**]**;

(e) requiring **[**[F348]the Administrator**]** to determine—

(i) whether any proposed action qualifies for the purpose of achieving the whole or any part of a person's **[**[F349]carbon emissions reduction target**]**; and

[[F350](ii) if so, what contribution the proposed action (or any result of that action specified in the determination) is to make towards achieving the carbon emissions reduction target;**]**

(f) requiring [F351]... distributors or suppliers to produce to **[**[F352]the Administrator**]** evidence of a specified kind demonstrating that they have complied with their **[**[F353]carbon emissions reduction obligations**]****[**[F354]; and

(g) requiring the Administrator or a specified body to offer services of a specified kind and authorising a specified fee to be charged to those who take up the offer.**]**

[[F355](5A) If the order makes provision by virtue of subsection (5)(bc) enabling the Administrator to direct a distributor or supplier to meet part of a carbon emissions reduction target by action relating to an individual named in the direction the order may also make provision—

(a) authorising the Administrator to require specified persons to provide it with information for the purpose of enabling it to identify and select individuals who are to be the subject of a direction;

(b) specifying criteria in accordance with which the Administrator is to select individuals who are to be the subject of a direction;

(c) determining, or specifying the method for determining, which distributor or supplier is to be given a direction in relation to any particular individual selected in accordance with provision made under paragraph (b);

(d) authorising the Administrator, if it gives a direction to a distributor or supplier, to provide the distributor or supplier with information relating to the

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individual concerned for the purpose of assisting the distributor or supplier to comply with the direction;

(e) as to the times at which a direction may be given;

(f) as to the circumstances in which a direction need not be complied with.

(5B) Provision made by virtue of subsection (5)(c) may in particular provide for an action to be treated as making a greater contribution than it would otherwise do if the action relates to—

(a) an individual of a specified description,

(b) a property of a specified description, or

(c) both an individual of a specified description and a property of a specified description.**]**

(6) The order may make provision authorising the **[**F356the Administrator**]** to require a F357... distributor or supplier to provide it with specified information, or information of a specified nature, relating to—

(a) his proposals for complying with his **[**F358carbon emissions reduction obligation**]**; or

(b) the question whether he has complied with that obligation.

(7) The order may make provision as to circumstances in which—

(a) a person's **[**F359carbon emissions reduction target**]** may be altered during the period to which the order relates;

(b) the whole or any part of a person's **[**F359carbon emissions reduction target**]** may be treated as having been achieved by action taken otherwise than by or on behalf of that person;

(c) any action taken before the period to which the order relates may be treated as qualifying action taken during that period;

(d) the whole or any part of a person's **[**F360carbon emissions reduction target**]** may be transferred to another F361... electricity distributor or electricity supplier or to a gas transporter or gas supplier (within the meaning of Part I of the M7Gas Act 1986); or

(e) a person may carry forward the whole or any part of his **[**F360carbon emissions reduction target**]** for the period to which the order relates to a subsequent period.

F362**[**(7A) The order may—

(a) make provision for any specified requirement contained in it to be treated as a relevant requirement for the purposes of this Part; or

(b) if it provides for the Administrator to be a person other than the Authority, make provision for and in connection with enabling the Administrator to enforce any requirement imposed by the order.

(7B) Provision made by virtue of paragraph (b) of subsection (7A) may, in particular, include provision corresponding to or applying (with or without modifications) any of sections 25 to 28.**]**

(8) The order may—

(a) provide for exceptions from any requirement of the order;

F363(b) . . . . . .

(c) make supplementary, incidental and transitional provision; and

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(d) subject to subsection (4), make different provision for different cases (including different provision in relation to different F364... distributors or suppliers).

(9) The order may include provision for treating the promotion of the supply to premises of—

(a) electricity generated by a generating station which is operated for the purposes of producing heat, or a cooling effect, in association with electricity;

(b) heat produced in association with electricity or steam produced from (or air or water heated by) such heat;

(c) any gas or liquid subjected to a cooling effect produced in association with electricity,

as promotion of energy efficiency.

[F365(9A) The order may make provision requiring the Administrator to give guidance to distributors or suppliers concerning such matters relating to the order as are specified.

(9B) The Administrator shall carry out its functions under this section in accordance with any general or specific directions given to it by the Secretary of State.**]**

(10) No person shall be required by virtue of this section to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.

[F366(10A) The Secretary of State must obtain the consent of the Scottish Ministers before making an order under this section which contains provision that—

(a) is included by virtue of subsection (2)(b),

(b) extends to Scotland, and

(c) would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.**]**

(11) Before making an order under this section the Secretary of State shall consult the Authority, **[**F367Citizens Advice, Citizens Advice Scotland**]**, F368... electricity distributors and electricity suppliers and such other persons as he considers appropriate.

(12) An order under this section shall not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

[F369(12A) Subsection (12) does not apply to an order under this section made only for the purpose of amending an earlier order under this section so as to alter the provision included in the earlier order by virtue of any of paragraphs (b), (ba) or (c) of subsection (5). But such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(12B) If an order under this section provides for the Administrator to be a body other than the Authority, the Secretary of State may make payments to the body of such amounts as the Secretary of State considers appropriate.**]**

[F370(13) In this section—

[F371"home-heating cost reduction target" has the meaning given by section 41B(2)(a);**]**

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"microgeneration" has the same meaning as in the Climate Change and Sustainable Energy Act 2006;

"plant" includes any equipment, apparatus or appliance.

[[F372]"specified" means specified in the order.**]**

(14) For the purposes of subsection (2)(b)(ii), electricity is generated, or heat is produced, using low-emissions sources or technologies if it is generated, or produced, by plant which relies wholly or mainly on a source of energy or a technology mentioned in section 26(2) of the Climate Change and Sustainable Energy Act 2006.**]]**

Textual Amendments

F324 S. 41A heading substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 5(2)**; S.I. 2007/538, art. 2

F325 Words in s. 41A heading omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(2)**

F326 S. 41A inserted (1.10.2001) by 2000 c. 27, ss. 70, 198(2); S.I. 2001/3266, art. 2, **Sch.** (with arts. 3-20)

F327 S. 41A(1)(za) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(3)(a)**

F328 Words in s. 41A(1) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 16(2)(a)**, 28(3); S.I. 2007/538, art. 2

F329 Words in s. 41A(1) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(2)**, 121(3) (with s. 67(16))

F330 Word in s. 41A(1) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(3)(b)**

F331 Words in s. 41A(1) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 16(2)(b)**, 28(3); S.I. 2007/538, art. 2

F332 S. 41A(1A) inserted (26.1.2009) by Climate Change Act 2008 (c. 27), s. 100(5), **Sch. 8 para. 3(3)**

F333 S. 41A(2) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 16(3)**, 28(3); S.I. 2007/538, art. 2

F334 S. 41A(2A) inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(3)**, 121(3) (with s. 67(16))

F335 Words in s. 41A(3) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(4)**, 121(3) (with s. 67(16))

F336 Words in s. 41A(3) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 5(3)**; S.I. 2007/538, art. 2

F337 Words in s. 41A(3) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(4)**

F338 Words in s. 41A(4) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(5)**, 121(3) (with s. 67(16))

F339 Words in s. 41A(4) substituted (26.1.2009) by Climate Change Act 2008 (c. 27), s. 100(5), **Sch. 8 para. 3(5)**

F340 S. 41A(4)(a) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(5)**

F341 Words in s. 41A(5) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 5(4)(a)**; S.I. 2007/538, art. 2

F342 Words in s. 41A(5)(a) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(6)(a)**

F343 Words in s. 41A(5)(b) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 5(4)(b)**; S.I. 2007/538, art. 2

F344 Ss. 41A(5)(ba)-(be) (c) substituted for (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(6)(a)**, 121(3) (with s. 67(16))

F345 Word in s. 41A(5)(d) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(6)(b)**

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F346 Words in s. 41A(5)(d) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(6)(b)**, 121(3) (with s. 67(16))

F347 Words in s. 41A(5)(d) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 5(4)(d)**; S.I. 2007/538, art. 2

F348 Words in s. 41A(5)(e) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(6)(c)(i)**, 121(3) (with s. 67(16))

F349 Words in s. 41A(5)(e)(i) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 5(4)(e)(i)**; S.I. 2007/538, art. 2

F350 S. 41A(5)(e)(ii) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(6)(c)(ii)**, 121(3) (with s. 67(16))

F351 Word in s. 41A(5)(f) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(6)(c)**

F352 Words in s. 41A(5)(f) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(6)(d)**, 121(3) (with s. 67(16))

F353 Words in s. 41A(5)(f) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 5(4)(d)**; S.I. 2007/538, art. 2

F354 S. 41A(5)(g) and preceding word inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(6)(e)**, 121(3) (with s. 67(16))

F355 S. 41A(5A)(5B) inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(7)**, 121(3) (with s. 67(16))

F356 Words in s. 41A(6) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(8)**, 121(3) (with s. 67(16))

F357 Word in s. 41A(6) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(7)**

F358 Words in s. 41A(6) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 5(5)**; S.I. 2007/538, art. 2

F359 Words in s. 41A(7)(a)(b) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 5(6)**; S.I. 2007/538, art. 2

F360 Words in s. 41A(7)(d)(e) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 5(6)**; S.I. 2007/538, art. 2; S.I. 2007/538, art. 2

F361 Words in s. 41A(7)(d) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(8)**

F362 S. 41A(7A)(7B) inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(9)**, 121(3) (with s. 67(16))

F363 S. 41A(8)(b) omitted (18.12.2011) by virtue of Energy Act 2011 (c. 16), **ss. 67(10)**, 121(3) (with s. 67(16))

F364 Word in s. 41A(8)(d) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(9)**

F365 S. 41A(9A)(9B) inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(11)**, 121(3) (with s. 67(16))

F366 S. 41A(10A) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(12)**, 121(3) (with s. 67(16))

F367 Words in s. 41A(11) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(12)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F368 Words in s. 41A(11) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(10)**

F369 S. 41A(12A)(12B) inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(13)**, 121(3) (with s. 67(15)(16))

F370 S. 41A(13)(14) added (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 16(5)**, 28(3); S.I. 2007/538, art. 2

F371 Words in s. 41A(13) inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(14)**, 121(3) (with s. 67(16))

F372 Words in s. 41A(13) inserted (26.1.2009) by Climate Change Act 2008 (c. 27), s. 100(5), **Sch. 8 para. 3(11)**

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Modifications etc. (not altering text)
C91 S. 41A(2) modified (15.12.2001) by S.I. 2001/4011, **art. 5**

Marginal Citations
M7 1986 c. 44.

[F373 41B Promotion of reductions in home-heating costs: electricity distributors and electricity suppliers

(1) The Secretary of State may by order impose—

(a) on each electricity distributor (or each electricity distributor of a specified description); and

(b) on each electricity supplier (or each electricity supplier of a specified description),

an obligation to achieve, within a specified period and in accordance with the order, the home-heating cost reduction target to be determined by the Administrator under the order for that distributor or supplier (and that obligation is referred to in this section as a "home-heating cost reduction obligation").

(2) In this section—

(a) "the Administrator" means—

(i) the Authority; or

(ii) if the order so provides, the Secretary of State or a specified body other than the Authority;

(b) "home-heating cost reduction target" means a target for the promotion of measures for reducing the cost to individuals of heating their homes;

(c) "specified" means specified in the order.

(3) The power to make orders under this section may be exercised so as to impose more than one home-heating cost reduction obligation on a person in relation to the same period or to periods that overlap to any extent.

(4) Subsections (3), (5) to (8), (9A) and (10A) to (12B) of section 41A apply to an order under this section as they apply to an order under that section, with the following modifications—

(a) for "carbon emissions reduction obligation" (in each place) substitute "home-heating cost reduction obligation";

(b) for "carbon emissions reduction obligations" (in each place) substitute "home-heating cost reduction obligations";

(c) for "carbon emissions reduction target" (in each place other than in paragraph (be) of subsection (5)) substitute "home-heating cost reduction target";

(d) for "carbon emissions reduction targets" (in each place) substitute "home-heating cost reduction targets"; and

(e) omit paragraph (a) of subsection (10A).

(5) Subsections (4) and (9B) of section 41A apply to the carrying out by the Secretary of State and the Administrator of their respective functions under this section as they apply to the carrying out by those persons of their functions under that section.

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(6) No person shall be required by virtue of this section to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.**]**

Textual Amendments

F373 S. 41B inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 69**, 121(3)

42 Information with respect to levels of performance.

(1) The Director shall from time to time collect information with respect to—

(a) the compensation made by **[**F374electricity suppliers**]** under section 39 above;

(b) the levels of overall performance achieved by such suppliers in connection with the provision of electricity supply services; F375. . .

(c) . . . . . .

[F376(1A) The Authority shall from time to time collect information with respect to—

(a) the compensation made by electricity distributors under section 39A above;

(b) the levels of overall performance achieved by electricity distributors.**]**

(2) **[**F377At such times**]** as may be specified in a direction given by the Director, each **[**F378electricity supplier**]** shall furnish to the Director the following information, namely—

(a) as repects each standard prescribed by regulations under section 39 above, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and

(b) as repects each standard determined under section 40 F379. . ., such information with respect to the level of performance achieved by the supplier as may be so specified.

[F380(2A) At such times as may be specified in a direction given by the Authority, each electricity distributor shall furnish to the Authority the following information, namely—

(a) as respects each standard prescribed by regulations under section 39A, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and

(b) as respects each standard determined under section 40A, such information with respect to the level of performance achieved by the distributor as may be so specified.**]**

F381(3) . . . . . .

F382(4) . . . . . .

F382(5) . . . . . .

Textual Amendments

F374 Words in s. 42(1)(a) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 34(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F375 S. 42(1)(c) and the word "and" immediately preceding it repealed (1.10.2001) by 2000 c. 27, ss. 57(2), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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F376 S. 42(1A) inserted (1.10.2001) by 2000 c. 27, **s. 57(3)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
F377 Words in s. 42(2) substituted (1.10.2001) by 2000 c. 27, **s. 57(4)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
F378 Words in s. 42(2) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 34(b)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
F379 Words in s. 42(2)(b) repealed (1.10.2001) by 2000 c. 27, ss. 57(4), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
F380 S. 42(2A) inserted (1.10.2001) by 2000 c. 27, **s. 57(5)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
F381 S. 42(3) repealed (1.10.2001) by 2000 c. 27, ss. 57(6), 108, Sch. 8; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
F382 S. 42(4)(5) repealed (1.10.2001) by 2000 c. 27, ss. 20(7), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Modifications etc. (not altering text)
C92 S. 42: functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, **Sch.** (with art. 6)

[F383 42A Information to be given to customers about overall performance.

(1) The Authority may make regulations requiring such information as may be specified or described in the regulations about—

(a) the standards of overall performance determined under section 40 or 40A; and

(b) the levels of performance achieved as respects those standards,

to be given by electricity suppliers or electricity distributors to customers or potential customers of electricity suppliers.

(2) Regulations under this section may include provision—

(a) specifying the form and manner in which and the frequency with which information is to be given; and

(b) requiring information about the matters mentioned in subsection (1)(a) or (b) and relating to electricity distributors to be given by electricity distributors to electricity suppliers and by electricity suppliers to their customers or potential customers.**]**

Textual Amendments
F383 S. 42A substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 58**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Modifications etc. (not altering text)
C93 S. 42A continued (with modifications) (1.10.2001) by S.I. 2001/3266, **arts. 1(2)**, 9(1)

[F384 42AA Publication of statistical information about standards of performance.

(1) **[**F385It shall be the duty of both Citizens Advice and Citizens Advice Scotland to secure the publication, in such form and manner and with such frequency as the particular

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body thinks appropriate, of such statistical information as the particular body considers appropriate**]** relating to—

(a) the levels of performance achieved by [F386]... electricity suppliers and electricity distributors in respect of—

(i) standards of performance prescribed or determined under sections 39, 39A, 40 and 40A; and

(ii) **[**[F387]carbon emissions reduction obligations**]** imposed by order under section 41A; and

[[F388](iii) home-heating cost reduction obligations imposed by order under section 41B; and**]**

(b) complaints made by consumers about any matter relating to the activities of such [F389]... suppliers or distributors and the handling of such complaints.

[[F390](1A) Citizens Advice and Citizens Advice Scotland may comply with the duty in subsection (1) by publishing information jointly or by securing that information is published on behalf of both of them.**]**

(2) In subsection (1)(b) "complaints" includes complaints made directly to [F391]... electricity suppliers and electricity distributors (or anyone carrying on activities on their behalf) and complaints to the Authority **[**[F392], Citizens Advice or Citizens Advice Scotland**]**.**]**

Textual Amendments

F384 S. 42AA inserted (7.11.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 20(6)**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F385 Words in s. 42AA(1) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(13)(a)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F386 Words in s. 42AA(1)(a) omitted (6.4.2014) by virtue of Energy Act 2011 (c. 16), s. 121(5)(c), **Sch. 1 para. 5(2)(a)**

F387 Words in s. 42AA(1)(a)(ii) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 6**; S.I. 2007/538, art. 2

F388 S. 42AA(1)(a)(iii) inserted (6.4.2014) by Energy Act 2011 (c. 16), s. 121(5)(c), **Sch. 1 para. 5(2)(b)**

F389 Word in s. 42AA(1)(b) omitted (6.4.2014) by virtue of Energy Act 2011 (c. 16), s. 121(5)(c), **Sch. 1 para. 5(3)**

F390 S. 42AA(1A) inserted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(13)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F391 Words in s. 42AA(2) omitted (6.4.2014) by virtue of Energy Act 2011 (c. 16), s. 121(5)(c), **Sch. 1 para. 5(4)**

F392 Words in s. 42AA(2) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(13)(c)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

[[F393]**42AB Information relating to complaints handling standards**

(1) This section applies in relation to standards prescribed by the Authority by regulations under section 43 of the Consumers, Estate Agents and Redress Act 2007 (standards for complaints handling) in relation to licence holders (or some of them).

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(2) The Authority must from time to time collect information with respect to the levels of compliance with the standards which those licence holders have achieved.

(3) At such times as the Authority may direct, each of those licence holders must give the Authority such information as the Authority may direct with respect to the levels of compliance with the standards which the licence holder has achieved.**]**

Textual Amendments

F393 S. 42AB inserted (1.10.2008) by Consumers, Estate Agents and Redress Act 2007 (c. 17), s. 66(2), **Sch. 5 para. 2(3)** (with s. 48(3)); S.I. 2008/2550, art. 2, Sch.

F394[F395 42B Procedures for dealing with complaints.

(1) Each public electricity supplier shall establish a procedure for dealing with complaints made by his customers or potential customers in connection with the provision of electricity supply services.

(2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—

F396(a) . . . . . .

(b) the proposed procedure or modification has been approved by the Director.

(3) The supplier shall—

(a) publicise the procedure in such manner as may be approved by the Director; and

(b) send a description of the procedure, free of charge, to any person who asks for one.

(4) The Director may give a direction to any public electricity supplier requiring the supplier to review his procedure or the manner in which it operates.

(5) A direction under subsection (4) above—

(a) may specify the manner in which the review is to be conducted; and

(b) shall require a written report of the review to be made to the Director.

(6) Where the Director receives a report under subsection (5)(b) above, he may, after consulting the supplier, direct him to make such modifications of—

(a) the procedure; or

(b) the manner in which the procedure operates,

as may be specified in the direction.

(7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.**]**

Textual Amendments

F394 S. 42B inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 22**; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I

F395 S. 42B ceased to have effect (7.11.2000) by virtue of 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 35**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

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F396 S. 42B(2)(a) repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

[F397 42C Remuneration and service standards.

(1) This section applies to any company which is authorised by a licence to carry on activities subject to price regulation.

(2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—

(a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3); and

(b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.

(3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors of the company to levels of performance as respects service standards in connection with activities subject to price regulation.

(4) A description under subsection (2)(b) must include in particular—

(a) a statement of when the arrangements were made;

(b) a description of the service standards in question;

(c) an explanation of the means by which the levels of performance as respects those service standards are assessed; and

(d) an explanation of how the remuneration was calculated.

(5) The statement required by subsection (2) must also state—

(a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3); or

(b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,

and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.

(6) A description under subsection (5) must—

(a) include in particular the matters listed in subsection (4)(a), (b) and (c); and

(b) where the arrangements described are different from any arrangements described under subsection (2)(b), state the likely effect of those differences on the remuneration of each director of the company.

(7) The statement required by subsection (2) must be made to the Authority in such manner as may be required by the Authority.

(8) The statement required by subsection (2)—

(a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and

(b) may be published by the Authority in such manner as it may consider appropriate.

(9) The duty of a company under this section applies in respect of any person who has at any time been a director of the company.

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(10) In this section—

"activities subject to price regulation", in relation to any company, are activities for which—

(a) a maximum price which may be charged by the company, or a method for calculating such a maximum price; or

(b) a maximum revenue which may be received by the company, or a method for calculating such a maximum revenue,

is determined by or under the licence granted under this Part;

[F398"company" means a company (as defined in section 1(1) of the Companies Act 2006) that—

(a) is limited by shares, and

(b) has its registered office in Great Britain.**]**

"remuneration" in relation to a director of a company—

(a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and

(b) includes remuneration in respect of any of his services while a director of the company;

"service standards" in relation to any company, means standards relating to the quality of service received by customers or potential customers of the company, including any such standards which are—

(a) set by or under any conditions included in a licence granted under this Part;

(b) prescribed by the Authority in regulations made under section 39 or 39A;

(c) determined by the Authority under section 40 or 40A; or

(d) set or agreed to by the company.**]**

Textual Amendments

F397 S. 42C inserted (1.10.2001) by 2000 c. 27, **s. 61**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F398 Words in s. 42C(10) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 102(2)** (with art. 10)

Consumer protection: miscellaneous

43 Functions with respect to competition.

F399(1) . . . . . .

[F400(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Authority and the **[**F401CMA**]** .

(2A) This subsection applies to the functions of the **[**F402CMA**]** under Part 4 of the Enterprise Act 2002 (other than sections 166 **[**F403, 171 and 174E**]**) so far as **[**F404those functions—

(a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and

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(b) relate to**]** commercial activities connected with the generation, transmission or supply of electricity **[**F405or the use of electricity interconnectors**]**

(2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) **[**F406above—

(a) references**]** in Part 4 of the Act of 2002 to the **[**F407CMA**]** (including references in provisions of that Act applied by that Part) shall be construed as including references to the Authority (except in sections 166 **[**F408, 171 and 174E**]** of that Act and in any other provision of that Act where the context otherwise **[**F409requires);

(b) references in that Part to section 5 of the Act of 2002 are to be construed as including references to section 47(1) of this Act.**]]**

[F410(2C) Section 130A of the Enterprise Act 2002 is to have effect in its application in relation to the Authority by virtue of subsections (2) and (2A)—

(a) as if for subsection (1) of that section there were substituted—

"(1) Where the Gas and Electricity Markets Authority—

(a) is proposing to carry out its functions under section 47(1) of the Electricity Act 1989 in relation to a matter for the purposes mentioned in subsection (2), and

(b) considers that the matter is one in respect of which it would be appropriate for the Authority to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,

the Authority must publish a notice under this section (referred to in this Part as a "market study notice").", and

(b) as if in subsection (2)(a) of that section, for "the acquisition or supply of goods or services of one or more than one description in the United Kingdom" there were substituted "commercial activities connected with the generation, transmission or supply of electricity or the use of electricity interconnectors".**]**

[F411(3) The Authority shall be entitled to exercise, concurrently with the **[**F412CMA**]** , the functions of the Office of Fair Trading under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) **[**F413 , 40B(1) to (4)**]** and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,

(b) conduct of the kind mentioned in section 18(1) of that Act,

(c) agreements, decisions or concerted practices of the kind mentioned in **[**F414Article 101(1) of the Treaty on the Functioning of the European Union**]**, or

(d) conduct which amounts to abuse of the kind mentioned in **[**F415Article 102 of the Treaty on the Functioning of the European Union**]**,

which relate to commercial activities connected with the generation, transmission or supply of electricity **[**F405or the use of electricity interconnectors**]**.**]**

[F416(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to **[**F417CMA**]** are to be read as including a reference to **[**F418the Authority**]** (**[**F419except in sections 31D(1) to (6), 38(1) to (6) **[**F413 , 40B(1) to (4)**]]** , 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).**]**

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[F420(4) Before the **[**F421CMA**]** or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, it shall consult the other.

(4A) Neither the **[**F421CMA**]** nor the Authority shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.**]**

(5) It shall be the duty of **[**F418the Authority**]**, for the purpose of assisting **[**F422a CMA group**]** in carrying out an investigation on **[**F423market investigation reference made by the Authority (under section 131 of the Act of 2002)**]** by virtue of subsection (2) F424... above, to give to the **[**F425group**]** —

(a) any information which is in **[**F426its**]** possession and which relates to matters falling within the scope of the investigation and—

(i) is requested by the **[**F425group**]** for that purpose; or

(ii) is information which in **[**F426its**]** opinion it would be appropriate for that purpose to give to the **[**F425group**]** without any such request; and

(b) any other assistance which the **[**F425group**]** may require and which it is within **[**F426its**]** power to give, in relation to any such matters,

and the **[**F425group**]** shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

[F427(5A) In subsection (5) "CMA group" has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.**]**

(6) **[**F428If any question arises as to whether subsection (2) or (3) above applies to any particular case**]**F429... F430... , that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—

(a) **[**F431Part 4 of the Enterprise Act 2002**]**; or

F432**[**(b) Part I of the Competition Act 1998 (**[**F433other than sections 31D(1) to (6), 38(1) to (6) **[**F434 , 40B(1) to (4)**]]** and 51),**]**

by or in relation to **[**F418the Authority**]** on the ground that it should have been done by or in relation to **[**F435the CMA**]** .

[F436(6A) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Authority by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the **[**F437CMA**]** included references to the Authority.**]**

F438(7) . . . . . .

Textual Amendments

F399 S. 43(1) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(7)(a), **Sch. 26**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

F400 S. 43(2)-(2B) substituted for s. 43(2) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 18(2)**; S.I. 2003/1397, art. 2(1), Sch.

F401 Word in s. 43(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(2)** (with art. 3)

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F402 Word in s. 43(2A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(3)(a)** (with art. 3)

F403 Words in s. 43(2A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(3)(b)** (with art. 3)

F404 Words in s. 43(2A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(3)(c)** (with art. 3)

F405 Words in s. 43(2A)(3) inserted (14.8.2006) by Energy Act 2004 (c. 20), **ss. 147(5)**, 198(2); S.I. 2006/1964, art. 2, Sch.

F406 Words in s. 43(2B) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(4)(a)** (with art. 3)

F407 Word in s. 43(2B) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(4)(b)** (with art. 3)

F408 Words in s. 43(2B) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(4)(c)** (with art. 3)

F409 Words in s. 43(2B) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(4)(d)** (with art. 3)

F410 S. 43(2C) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(5)** (with art. 3)

F411 S. 43(3) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 3(2)(a)**

F412 Word in s. 43(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(6)** (with art. 3)

F413 Words in s. 43(3)(3A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 3**; S.I. 2014/416, art. 2(1)(f) (with Sch.); S.I. 2014/416, art. 2(1)(f) (with Sch.)

F414 Words in s. 43(3)(c) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

F415 Words in s. 43(3)(d) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

F416 S. 43(3)(3A) substituted for s. 43(3) (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 4(4)(5)** (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2)); S.I. 2000/344, art. 2, **Sch.**

F417 Words in s. 43(3A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(7)** (with art. 3)

F418 Words substituted (20.12.2000) by virtue of Utilities Act 2000 (c. 27), **s 3(2)**; S.I. 2000/3343, art. 2, **Sch.**

F419 Words in s. 43(3A) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 3(2)(b)**

F420 S. 43(4)(4A) substituted for s. 43(4) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 18(3)**; S.I. 2003/1397, art. 2(1), Sch.

F421 Word in s. 43(4)(4A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(8)** (with art. 3)

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F422 Words in s. 43(5) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(9)(a)(i)** (with art. 3)

F423 Words in s. 43(5) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(9)(a)(ii)** (with art. 3)

F424 Words in s. 43(5) repealed (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, ss. 66(5), 74(3), Sch. 10 Pt. II para. 4(7), **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2)); S.I. 2000/344, art. 2, **Sch.**

F425 Word in s. 43(5) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(9)(b)** (with art. 3)

F426 Word substituted (20.12.2000) by virtue of Utilities Act 2000 (c. 27), **s 3(2)**; S.I. 2000/3343, art. 2, **Sch.**

F427 S. 43(5A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(10)** (with art. 3)

F428 Words in s. 43(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 7**; S.I. 2014/416, art. 2(1)(e) (with Sch.)

F429 Words in s. 43(6) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 18(4)(b)**; S.I. 2003/1397, art. 2(1), Sch.

F430 Words in s. 43(6) omitted by virtue of Deregulation and Contracting Out Act 1994 (c. 40), s.81, **Sch. 17**

F431 Words in s. 43(6)(a) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 18(4)(c)**; S.I. 2003/1397, art. 2(1), Sch.

F432 S. 43(6)(b) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10**, Pt. II para. 4(8) (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2)); S.I. 2000/344, art. 2, **Sch.**

F433 Words in s. 43(6)(b) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 3(2)(c)**

F434 Words in s. 43(6)(b) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 3**; S.I. 2014/416, art. 2(1)(f) (with Sch.)

F435 Words in s. 43(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(11)** (with art. 3)

F436 S. 43(6A) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 18(5)**; S.I. 2003/1397, art. 2(1), Sch.

F437 Word in s. 43(6A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(12)** (with art. 3)

F438 S. 43(7) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 18(6), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch.

Modifications etc. (not altering text)

C94 S. 43(2) applied (3.1.1995) by 1994 c. 40, ss. 7(2), 82(2)(a)(b), **Sch. 2 para. 4(2)**

C95 S. 43(3) restricted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 4(1)** (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2)); S.I. 2000/344, art. 2, **Sch.**

F439 43A Adjustment of charges to help disadvantaged groups of customers.

. . . . . .

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Textual Amendments

F439 S. 43B omitted (8.6.2010) by virtue of Energy Act 2010 (c. 27), s. 38(3), **Sch. para. 9**

F439 43B Orders: supplementary.

. . . . . .

Textual Amendments

F439 S. 43B omitted (8.6.2010) by virtue of Energy Act 2010 (c. 27), s. 38(3), **Sch. para. 9**

[F440 44 Maximum prices for reselling electricity.

(1) The Authority may from time to time direct that the maximum prices at which electricity supplied by authorised suppliers may be resold—

(a) shall be such as may be specified in the direction; or

(b) shall be calculated by such method and by reference to such matters as may be so specified;

and shall publish directions under this section in such manner as in its opinion will secure adequate publicity for them.

(2) A direction under this section may—

(a) require any person who resells electricity supplied by an authorised supplier to furnish the purchaser with such information as may be specified or described in the direction; and

(b) provide that, in the event of his failing to do so, the maximum price applicable to the resale shall be such as may be specified in the direction, or shall be reduced by such amount or such percentage as may be so specified.

(3) Different directions may be given under this section as respects different classes of cases, which may be defined by reference to areas or any other relevant circumstances.

(4) If any person resells electricity supplied by an authorised supplier at a price exceeding the maximum price determined by or under a direction under this section and applicable to the resale—

(a) the amount of the excess; and

(b) if the direction so provides, interest on that amount at a rate specified or described in the direction,

shall be recoverable by the person to whom the electricity was resold.**]**

Textual Amendments

F440 S. 44 substituted (1.10.2001) by 2000 c. 27, **s. 73(1)** (with s. 73(2)); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Modifications etc. (not altering text)

C96 S. 44(1)(2)(b): functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, **Sch.** (with art. 6)

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[F441[F442]Article 37] Disputes

Textual Amendments

F441 Ss. 44B-44D and cross-heading inserted (E.W.S.) (29.6.2009) by The Gas and Electricity (Dispute Resolution) Regulations 2009 (S.I. 2009/1349), regs. 1(1), **3**

F442 Words in s. 44B cross heading substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(2)(a)**

44B Meaning of "[F443Article 37]dispute"

[F444(1) For the purposes of sections 44C and 44D a dispute is an "Article 37 dispute" if—

(a) it arises from a written complaint—

(i) made against the holder of a transmission licence,

(ii) made against the holder of a distribution licence,

(iii) made against the holder of an interconnector licence,

(iv) made against a distribution exemption holder, or

(v) made by a person falling within paragraph (a) of subsection (1A) against a person falling within paragraph (b) of that subsection;

(b) it is wholly or mainly a dispute regarding an obligation of the person complained against under any relevant condition or relevant requirement in relation to that person imposed for the purpose of implementing the Electricity Directive; and

(c) it is a dispute between the complainant and the person complained against.

(1A) For the purposes of subsection (1)(a)(v)—

(a) a person falls within this paragraph if the person is certified on the ground mentioned in section 10E(5) in respect of a transmission system or electricity interconnector;

(b) a person falls within this paragraph if the person is designated under section 10H(3) in respect of the transmission system or electricity interconnector mentioned in paragraph (a).**]**

(2) The reference in subsection **[**F445(1)(a)**]** to a complaint does not include a reference to—

(a) a complaint about a modification (or failure to make a modification) of—

(i) a term or condition of **[**F446a licence**]** held by the person complained against, or

(ii) an obligation or right contained in any code or other document and having effect by virtue of such a term or condition; or

(b) a complaint made by a person as a household customer or potential household customer.

[F447(3) In this section, "household customer" means a customer who purchases electricity for consumption by the customer's own household.**]**

Textual Amendments

F443 Words in s. 44B heading substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(2)(b)**

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F444 S. 44B(1)(1A) substituted for s. 44B(1) (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(3)(a)**

F445 Words in s. 44B(2) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(3)(b)(i)**

F446 Words in s. 44B(2)(a)(i) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(3)(b)(ii)**

F447 S. 44B(3) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(3)(c)**

44C Determination of disputes

(1) An **[**F448Article 37**]** dispute (other than one which may be referred to the Authority under or by virtue of any other provision of this Act) may be referred to the Authority under this section by the person who is the complainant in relation to the dispute.

(2) An **[**F449Article 37**]** dispute referred to the Authority under this section shall be determined by order made either by the Authority or, if the Authority thinks fit, by an arbitrator (or in Scotland an arbiter) appointed by the Authority.

(3) The practice and procedure to be followed in connection with an **[**F450Article 37**]** dispute referred to the Authority under this section shall be such as the Authority may consider appropriate.

(4) An order under this section—

(a) may include such incidental, supplemental and consequential provision as the person making the order considers appropriate; and

(b) shall be final.

(5) The provision that may be included in an order under this section by virtue of subsection (4)(a) above includes provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order ("costs provision").

(6) In including costs provision in an order under this section, the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

(7) Costs provision included in an order under this section shall be enforceable—

(a) in England and Wales, as if it were a judgment of the county court;

(b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.

[F451(8) Sections 25 to 28 have effect in relation to a person against whom a complaint is made as mentioned in section 44B(1)(a), and on whom a duty or other requirement is imposed by an order under this section—

(a) as if references in those sections to a relevant requirement (other than the reference in section 25(8)) included references to that duty or requirement;

(b) if the complaint is made against the person as mentioned in sub-paragraph (v) of section 44B(1)(a), also as if references in those sections to a regulated person included references to that person.**]**

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Textual Amendments

F448 Words in s. 44C(1) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(4)(a)**

F449 Words in s. 44C(2) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(4)(a)**

F450 Words in s. 44C(3) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(4)(a)**

F451 S. 44C(8) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(4)(b)**

44D Time limit for determinations

(1) An order determining an **[**F452Article 37**]** dispute (whether made under section 44C or made under or by virtue of any other provision of this Act) shall be made within the permitted period.

(2) Subject to subsection (3) F453..., the permitted period is the period of two months beginning with the day on which the dispute is referred to the Authority.

(3) Where the person determining the dispute requests further information from anyone for the purposes of determining the dispute, the person may, by giving notice to the parties, extend the permitted period—

(a) by two months, or

(b) with the agreement of the complainant, by a longer period.

F454(4) . . . . . .

F455(5) . . . . . .

(6) If a person refers a dispute to the Authority, or purports to do so, and the Authority gives to that person a notice—

(a) specifying information which it requires in order to assess whether the dispute is an **[**F456Article 37**]** dispute, or whether there is a dispute at all, and

(b) requesting the person to provide that information,

the dispute shall be treated for the purposes of subsection (2) as not referred to the Authority until the information is provided.**]**

Textual Amendments

F452 Words in s. 44D(1) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(5)(a)**

F453 Words in s. 44D(2) omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(5)(b)**

F454 S. 44D(4) omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(5)(c)**

F455 S. 44D(5) omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(5)(c)**

F456 Words in s. 44D(6)(a) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **29(5)(a)**

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Investigation of complaints

F457 45 . . . . . .

Textual Amendments

F457 S. 45 repealed (7.11.2000) by 2000 c. 27, ss. 22(3), 108, **Sch. 8** (with Sch. 7 para. 32); S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

F458 46 Consumer complaints.

. . . . . .

Textual Amendments

F458 S. 46 repealed (1.10.2008) by Consumers, Estate Agents and Redress Act 2007 (c. 17), s. 66(2), **Sch. 8**; S.I. 2008/2550, art. 2, Sch.

F459 46A Power of Council to investigate other matters.

. . . . . .

Textual Amendments

F459 S. 46A repealed (1.10.2008) by Consumers, Estate Agents and Redress Act 2007 (c. 17), s. 66(2), **Sch. 8**; S.I. 2008/2550, art. 2, Sch.

Other functions of Director

F460 47ZA Annual report by Authority on security of electricity supply

. . . . . .

Textual Amendments

F460 S. 47ZA repealed (1.1.2015) by The Electricity Capacity Regulations 2014 (S.I. 2014/2043), regs. 1(4), **88**

47 General functions.

(1) It shall be the duty of the Director, so far as it appears to him practicable from time to time to do so—

(a) to keep under review the carrying on both in Great Britain and elsewhere of activities to which this subsection applies; and

(b) to collect information with respect to those activities, and the persons by whom they are carried on, with a view to facilitating the exercise of his functions under this Part;

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and this subsection applies to any activities connected with the generation, transmission and supply of electricity, including in particular activities connected with the supply to any premises of heat produced in association with electricity and steam produced from and air and water heated by such heat**[**F461, and to the provision of smart meter communication services**]**.

[F462(1A) The activities to which subsection (1) applies also include, in particular, activities connected with the generation of electricity by microgeneration **[**F463or small-scale low-carbon generation**]** or with the transmission and supply of electricity so generated.

[F464(1B) In subsection (1A)—

"microgeneration" has the same meaning as in the Climate Change and Sustainable Energy Act 2006;

"small-scale low-carbon generation" has the same meaning as in section 41 of the Energy Act 2008.**]**

[F465(1C) The activities to which subsection (1) applies also include, in particular, the matters specified in the following provisions of the Electricity Directive as matters to be monitored—

(a) Article 26(3);

(b) Article 37(1)(g) to (k), (m) and (q) to (t); and

(c) where a person is certified on the ground mentioned in subsection (5) of section 10E, Article 37(3)(a), (b) and (f).**]**

(2) The Secretary of State may give general directions indicating—

(a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under subsection (1)(a) or (b) above; and

(b) considerations to which, in cases where it appears to the Director that any of his functions under this Part are exercisable, he should have particular regard in determining whether to exercise those functions.

(3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or **[**F466the CMA**]** to do so, to give information, advice and assistance to the Secretary of State or **[**F466the CMA**]** with respect to any matter in respect of which any function of the Director under this Part is exercisable.

F467(4) . . . . . .**]**

Textual Amendments

F461 Words in s. 47(1) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **10**

F462 S. 47(1A)(1B) inserted (21.8.2006) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 9**, 28(1)

F463 Words in s. 47(1A) inserted (26.1.2009) by Energy Act 2008 (c. 32), s. 110(2), **Sch. 5 para. 4(a)**; S.I. 2009/45, art. 2(e)(iv)

F464 S. 47(1B) substituted (26.1.2009) by Energy Act 2008 (c. 32), s. 110(2), **Sch. 5 para. 4(b)**; S.I. 2009/45, art. 2(e)(iv)

F465 S. 47(1C) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **31(2)**

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F466 Words in s. 47(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 66** (with art. 3)

F467 S. 47(4) repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

[F468 47A Power to require information etc for the purpose of monitoring

(1) The Authority may, for the purpose of performing its duty under subsection (1)(a) or (b) of section 47 in relation to activities falling within subsection (1C) of that section, serve a notice under subsection (2) on any regulated person.

(2) A notice under this subsection is a notice signed by the Authority which—

(a) requires the person on whom it is served to produce, at a time and place specified in the notice, to the Authority any documents which are specified or described in the notice and are in that person's custody or under that person's control; or

(b) requires that person, if that person is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Authority such information as may be specified or described in the notice.

(3) In paragraphs (a) and (b) of subsection (2) the reference to the Authority includes a reference to a person appointed by the Authority for the purpose of exercising the power in question.

(4) Sections 25 to 27 have effect in relation to a person on whom a notice is served under subsection (2) as if references in those sections to a relevant requirement (other than the reference in section 25(8)) included references to a requirement of that notice.

(5) A person who intentionally alters, suppresses or destroys any document or record of information which that person has been required to produce by a notice under subsection (2) is liable—

(a) on summary conviction—

(i) in England and Wales, to a fine not exceeding the statutory maximum, and

(ii) in Scotland, to a fine not exceeding £5,000; or

(b) on conviction on indictment, to a fine.**]**

Textual Amendments

F468 S. 47A inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **31(3)**

48 Publication of information and advice.

[F469(1) If it appears to the Authority that the publication of any advice and information would promote the interests of consumers in relation to electricity conveyed by distribution systems **[**F470or transmission systems**]**, the Authority may publish that advice or information in such manner as it thinks fit.

(2) In publishing advice or information under this section the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the

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affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.

(2A) Before deciding to publish under this section any advice or information relating to a particular individual or body of persons the Authority shall consult that individual or body.**]**

(3) **[**F471The CMA**]** shall consult the Director before publishing under **[**F472section 6 of the Enterprise Act 2002**]** any information or advice which may be published by the Director under this section.

[F473(4) In this section "consumers" includes both existing and future consumers.**]**

Textual Amendments

F469 S. 48(1)(2)(2A) substituted for s. 48(1)(2) (20.12.2000) by 2000 c. 27, **s. 6(2)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

F470 Words in s. 48(1) inserted (1.4.2006 for specified purposes, 1.4.2010 in so far as not already in force) by Energy Act 2004 (c. 20), **s. 179(2)**(3)(c), 198(2); S.I. 2005/2965, art. 3

F471 Words in s. 48(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 67** (with art. 3)

F472 Words in s. 48(3) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(10)(b)**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

F473 S. 48(4) inserted (20.12.2000) by 2000 c. 27, **s. 6(2)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

49 Keeping of register.

(1) The Director shall, F474... in such form as he may determine, maintain a register for the purposes of this Part.

(2) Subject to subsection (3) and to any direction given under subsection (4) below, the Director shall cause to be entered in the register the provisions of—

(a) every licence and every exemption granted to a particular person;

(b) every modification or revocation of a licence;

(c) every direction or consent given or determination made under a licence; F475...

(d) every final or provisional order, every revocation of such an order and every notice under section 25(6) above **[**F476; and

(e) every penalty imposed under section 27A(1) and every notice under section 27A(5)**]**.

[F477(3) The Authority may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as it considers it appropriate to exclude for the purpose of maintaining the confidentiality of—

(a) matters relating to the affairs of an individual the publication of which would or might, in its opinion, seriously and prejudicially affect the interests of that individual; and

(b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Authority's opinion, seriously and prejudicially affect the interests of that body.**]**

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(4) If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest or the commercial interests of any person, he may direct the Director not to enter that provision in the register.

[F478(5) The contents of the register must be shown on the Authority's website.**]**

(6) Any person may, on the payment of such fee as may be specified in an order **[**F479made by the Secretary of State**]**, require the Director to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the Director to be a true copy or extract.

(7) Any sums received by the Director under this section shall be paid into the Consolidated Fund.

Textual Amendments

F474 Words in s. 49(1) omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), **ss. 97(6)**, 115(3)(k)

F475 Word in s. 49(2)(c) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F476 S. 49(2)(e) and the word "; and" immediately preceding it inserted (1.10.2001) by 2000 c. 27, **s. 59(3)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F477 S. 49(3) substituted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 183(3)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

F478 S. 49(5) substituted (26.5.2015) by Deregulation Act 2015 (c. 20), **ss. 97(7)**, 115(3)(k)

F479 Words in s. 49(6) substituted (26.5.2015) by Deregulation Act 2015 (c. 20), **ss. 97(8)**, 115(3)(k)

[F480**49A Reasons for decisions.**

(1) This section applies to the following decisions of the Authority or the Secretary of State, namely—

(a) the revocation of a licence;

(b) the modification of the conditions of a licence;

(c) the giving of any directions or consent in pursuance of a condition included in a licence by virtue of section 7(3)(a) or (b);

(d) the determination of a question referred in pursuance of a condition included in a licence by virtue of section 7(3)(c);

(e) the determination of a dispute referred under section 23(1);

(f) the making of a final order, the making or confirmation of a provisional order or the revocation of a final order or of a provisional order which has been confirmed.

(2) As soon as reasonably practicable after making such a decision the Authority or the Secretary of State shall publish a notice stating the reasons for the decision in such manner as it or he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.

(3) The Authority shall send a copy of a notice published in respect of a decision mentioned in paragraph (a), (b), (c), (d) or (f) of subsection (1) to the licence holder to whose licence, or to whom, the decision relates.

(4) In preparing a notice under subsection (2) the Authority or the Secretary of State shall have regard to the need for excluding, so far as that is practicable, any matter

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which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where it or he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

(5) This section does not apply to a decision resulting in any provision which the Secretary of State has under section 49(4) directed the Authority not to enter in the register required to be kept under that section.**]**

Textual Amendments

F480 S. 49A inserted (1.10.2001) by 2000 c. 27, **s. 42**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F481 50 . . . . . .

Textual Amendments

F481 S. 50 repealed (20.12.2000 subject to saving in Sch. of commencing S.I.) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/3343, **art. 2** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**) and subject to an amendment (1.10.2001) by 2000 c. 27, s. 108, **Sch. 7 Pt. IV para. 29(5)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Provisions with respect to committees

F482 51 . . . . . .

Textual Amendments

F482 S. 51 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

F483 52 . . . . . .

Textual Amendments

F483 S. 52 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

F484 53 . . . . . .

Textual Amendments

F484 S. 53 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

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Provisions with respect to Consumers' etc. Councils

F485 54 . . . . . .

Textual Amendments

F485 S. 54 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

F486 55 . . . . . .

Textual Amendments

F486 S. 55 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

56 Continuity of employment of officers of abolished Councils.

(1) This section applies to any person who—

(a) immediately before the date on which section 54 above comes into force is an officer of one of the Councils ceasing to exist by virtue of that section (in this section referred to as his "former employer"); and

(b) within four weeks after that date, is employed by one of the successor companies or the Director (in this section referred to as his "new employer") in pursuance of an offer made before that date;

and in this subsection "successor company" has the same meaning as in Part II.

F487(2) . . . . . .

(3) **[**F488Chapter I of Part XIV of the Employment Rights Act 1996**]** (computation of period of employment) shall have effect in relation to a person to whom this section applies as if it included the following provisions, that is to say—

(a) the period of his employment with his former employer shall count as a period of employment with his new employer; and

(b) the change of employer shall not break the continuity of the period of employment.

(4) Where this section applies to a person, the period of his employment with his former employer shall count as a period of employment with his new employer for the purposes of any provision of his contract of employment with his new employer which depends on his length of service with that employer.

Textual Amendments

F487 S. 56(2) repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

F488 Words in s. 56(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 43(2)** (with ss. 191-195, 202)

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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[F489 Alteration of activities requiring licence

Textual Amendments

F489 Ss. 56A-56F and cross-heading inserted (1.10.2001) by 2000 c. 27, **s. 43**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

56A Power to alter activities requiring licence.

(1) The Secretary of State may by order provide—

(a) that specified activities are to become licensable activities; or

(b) that specified activities are to cease to be licensable activities.

(2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 4(1).

(3) An order under this section may make consequential, transitional, incidental or supplementary provision including—

(a) amendments (or repeals) in any provision of this Act or any other enactment; and

(b) provision modifying any standard conditions of licences or (in the case of an order under subsection (1)(a)) provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities.

(4) An order under this section may only provide for activities to become licensable activities if they are activities connected with the generation, transmission, distribution or supply of electricity**[**F490, or with providing a smart meter communication service**]**.

F491 **[** (4A) For the purposes of subsection (4), activities connected with the supply of electricity include the following activities, whether or not carried on by a person supplying electricity—

(a) giving advice, information or assistance in relation to contracts for the supply of electricity to persons who are or may become customers under such contracts, and

(b) providing any other services to such persons in connection with such contracts.**]**

(5) An order under this section providing for activities to become licensable activities may only be made on the application of the Authority made in accordance with section 56B.

(6) An order under this section providing for activities to cease to be licensable activities may be made either—

(a) on the application of the Authority made in accordance with section 56E; or

(b) following consultation by the Secretary of State in accordance with section 56F.

(7) An order under this section may provide that it is to remain in force only for a period specified in the order.

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(8) An order shall not be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

Textual Amendments

F490 Words in s. 56A(4) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **11**

F491 S. 56A(4A) inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 143(2)**, 156(2)

56B Application by Authority for order including new activities.

(1) If the Authority proposes to make an application for an order providing for activities to become licensable activities, it shall give notice—

(a) stating that it proposes to make an application for an order providing for the activities to become licensable activities;

(b) setting out the conditions which it would expect such an order to determine to be standard conditions for the purposes of licences authorising the undertaking of the activities and any other conditions which it would expect to be included in such licences; and

(c) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,

and shall consider any representations or objections which are duly made and not withdrawn.

(2) The notice shall be given by serving a copy on **[**F492Citizens Advice and Citizens Advice Scotland**]** and by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of—

(a) persons appearing to it to be carrying on, or be intending to carry on, the activities; and

(b) any other persons appearing to it to be likely to be affected by an order providing for the activities to become licensable activities.

(3) If an objection has been duly made (and not withdrawn) by a person who is carrying on or intends to carry on the activities, the Authority **[**F493shall, before making the application, make a reference under section 56C to the CMA**]** .

(4) In any other case where the Authority considers it appropriate to make a reference to the **[**F494CMA**]** under section 56C before making the application, the Authority may make such a reference.

(5) If a reference is made to the **[**F494CMA**]** , the application shall not be made unless the **[**F494CMA**]** has reported on the reference that the fact that the activities to which the application relates are not licensable activities operates, or may be expected to operate, against the public interest.

(6) The application shall set out—

(a) the activities which the Authority considers should become licensable activities; and

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(b) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities in question and any other conditions which it would expect to be included in such licences.

[The functions of the CMA with respect to a reference under section 56C (including F495(7) functions under sections 109 to 115 of the Enterprise Act 2002, as applied by section 56CB) are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.**]**

Textual Amendments

F492 Words in s. 56B(2) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(14)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F493 Words in s. 56B(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 38(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F494 Word in s. 56B(4)(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 38(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F495 S. 56B(7) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 38(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

56C References to [F496CMA] .

(1) A reference to the **[**F497CMA**]** under this section shall require **[**F498the CMA**]** to investigate and report on whether the fact that the activities specified in the reference are not licensable activities operates, or may be expected to operate, against the public interest.

(2) The Authority may, at any time, by notice given to the **[**F499CMA**]** vary the reference by adding to the activities specified in the reference or by excluding from the reference some of the activities so specified; and on receipt of such notice the **[**F499CMA**]** shall give effect to the variation.

(3) The Authority shall specify in the reference, or a variation of the reference, for the purpose of assisting the **[**F499CMA**]** in carrying out the investigation on the reference—

(a) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities specified in the reference and any other conditions which it would expect to be included in such licences; and

(b) any effects adverse to the public interest which, in its opinion, the fact that the activities so specified are not licensable activities has or may be expected to have.

(4) As soon as practicable after making the reference, or a variation of the reference, the Authority shall serve a copy of it on **[**F500Citizens Advice and Citizens Advice Scotland**]** and publish particulars of it in such manner as the Authority considers appropriate for bringing it to the attention of—

(a) persons appearing to the Authority to be carrying on, or be intending to carry on, the activities specified in it; and

(b) any other persons appearing to the Authority to be likely to be affected by it.

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(5) The Authority shall, for the purpose of assisting the **[**[F501]CMA**]** in carrying out the investigation on the reference, give to the **[**[F501]CMA**]**—

(a) any information which is in its possession and which relates to matters falling within the scope of the investigation, and which is either requested by the **[**[F501]CMA**]** for that purpose or is information which in its opinion it would be appropriate for that purpose to give to the **[**[F501]CMA**]** without any such request; and

(b) any other assistance which the **[**[F501]CMA**]** may require, and which it is within its power to give, in relation to any such matters,

and the **[**[F501]CMA**]** shall take account of the information for the purpose of carrying out the investigation.

(6) In determining for the purposes of this section whether the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, the **[**[F501]CMA**]** shall have regard to—

(a) the matters referred to in section 3A;

(b) any social or environmental policies set out or referred to in guidance issued under section 3B; and

(c) any advice given by **[**[F502]the Health and Safety Executive **[**[F503], the Office for Nuclear Regulation**]]** or the Secretary of State under section 3C (advice about health and safety in relation to electricity).

[F504](7) . . . . . .

[F504](8) . . . . . **]**

Textual Amendments

F496 Word in s. 56C heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 39(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F497 Word in s. 56C(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 39(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F498 Word in s. 56C(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 39(2)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F499 Word in s. 56C(2)(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 39(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F500 Words in s. 56C(4) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(15)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F501 Word in s. 56C(5)(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 39(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F502 Words in s. 56C(6)(c) substituted (1.4.2008) by The Legislative Reform (Health and Safety Executive) Order 2008 (S.I. 2008/960), art. 1, **Sch. 3** (with art. 21, Sch. 2)

F503 Words in s. 56C(6)(c) inserted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 62**; S.I. 2014/251, art. 4

F504 S. 56C(7)(8) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(11), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

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Modifications etc. (not altering text)

C97 S. 56C amended (16.5.2001) by 2000 c. 27, **s. 104(1)(b)(2)** (with s. 104(6)); S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10)

[F505 56CA References under section 56C: time limits

(1) Every reference under section 56C above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.

(2) A report of the **[**F506CMA**]** on a reference under section 56C above shall not have effect (in particular for the purposes of section 56B(5) above) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.

(3) The Authority may, if it has received representations on the subject from the **[**F506CMA**]** and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.

(4) No more than one extension is possible under subsection (3) above in relation to the same reference.

(5) The Authority shall publish an extension under subsection (3) above in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

Textual Amendments

F505 Ss. 56CA, 56CB inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(12)**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

F506 Word in s. 56CA(2)(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 40**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

56CB References under section 56C: application of Enterprise Act 2002

(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections **[**F507(1A),**]** (2) and (3) below, for the purposes of references under section 56C above as they apply for the purposes of references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc.);
(b) section 110 (enforcement of powers under section 109: general);
(c) section 111 (penalties);
(d) section 112 (penalties: main procedural requirements);
(e) section 113 (payments and interest by instalments);
(f) section 114 (appeals in relation to penalties);
(g) section 115 (recovery of penalties); and
(h) section 116 (statement of policy).

[F508(1A) Section 109 shall, in its application by virtue of subsection (1) above, have effect as if—

(a) for subsection (A1), there were substituted—

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"(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with a reference under section 56C of the Electricity Act 1989.", and

(b) subsection (8A) were omitted.**]**

(2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—

(a) subsection (2) were omitted; [F509]...

[[F510](aa) after subsection (3), there were inserted—

"(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the CMA on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part."; and**]**

(b) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

[[F511](3) Section 111(5)(b) shall, in its application by virtue of subsection (1) above, have effect as if for sub-paragraph (ii) there were substituted—

"(ii) if earlier, the day on which the report of the CMA on the reference concerned is made or, if no such report is made within the period permitted for that purpose, the latest day on which the report may be made within the permitted period.".**]**

(4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the **[**[F512]CMA**]** in connection with references under section 56C above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2)**[**[F513]—

(a) the words ", OFCOM or the Secretary of State" were omitted; and

(b) for the words "their functions" there were substituted " its functions ".**]**

(5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4) above, have effect in relation to those sections as applied by virtue of those subsections.

(6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.**]**

Textual Amendments

F505 Ss. 56CA, 56CB inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(12)**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

F507 Word in s. 56CB(1) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 68(2)** (with art. 3, Sch. 2 para. 2)

F508 S. 56CB(1A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 68(3)** (with art. 3, Sch. 2 para. 2)

F509 Word in s. 56CB(2)(a) omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 68(4)(a)** (with art. 3, Sch. 2 para. 2)

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F510 S. 56CB(2)(aa) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 68(4)(b)** (with art. 3, Sch. 2 para. 2)

F511 S. 56CB(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 68(5)** (with art. 3, Sch. 2 para. 2)

F512 Word in s. 56CB(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 41(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F513 Words in s. 56CB(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 41(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

[F489 56D Reports on references.

(1) In making a report on a reference under section 56C, the [F514 CMA] shall include in the report definite conclusions on whether the fact that the activities specified in the reference (or the reference as varied) are not licensable activities operates, or may be expected to operate, against the public interest.

(2) The [F515 CMA] shall also include in the report such an account of its reasons for those conclusions as in its opinion is expedient for facilitating proper understanding of the questions raised by the reference and of its conclusions.

(3) Where the [F515 CMA] concludes that the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, it shall specify in the report—

(a) the effects adverse to the public interest which that fact has or may be expected to have; and

(b) any modifications to the conditions specified in the reference in accordance with section 56C(3)(a) which they consider appropriate.

[F516 (3A) For the purposes of section 56B(5), a conclusion contained in a report of the [F517 CMA] is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted [F518 by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference] .

(3B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 56C as the conclusions of the [F519 CMA] , the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]

[F520 (4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the [F519 CMA] on a reference under section 56C.

(4A) In making any report on a reference under section 56C the [F519 CMA] must have regard to the following considerations before disclosing any information.

(4B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [F519 CMA] thinks is contrary to the public interest.

(4C) The second consideration is the need to exclude from disclosure (so far as practicable) —

(a) commercial information whose disclosure the [F519 CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

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(b) information relating to the private affairs of an individual whose disclosure the **[**F519CMA**]** thinks might significantly harm the individual's interests.

(4D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4C)(a) or (b) is necessary for the purposes of the report.**]**

(5) A report of the **[**F521CMA**]** on a reference under section 56C shall be made to the Authority.

(6) On receiving the report, the Authority shall send a copy of it to the Secretary of State.

(7) Subject to subsection (8), the Authority shall, not less than 14 days after the copy is received by the Secretary of State, **[**F522send a copy of the report to Citizens Advice and Citizens Advice Scotland**]** and publish **[**F523the copy sent to Citizens Advice and Citizens Advice Scotland**]** in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(8) If it appears to the Secretary of State that the publication of any matter in the report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in subsection (7), direct the Authority to exclude that matter from the copy of the report to be sent to **[**F524Citizens Advice and Citizens Advice Scotland**]** and published under that subsection.

Textual Amendments

F514 Words in s. 56D(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 42(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F515 Word in s. 56D(2)(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 42(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F516 S. 56D(3A)(3B) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(13)(a)**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

F517 Words in s. 56D(3A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 42(4)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F518 Words in s. 56D(3A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 42(4)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F519 Words in ss. 56D(3B)-(4C) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 42(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F520 S. 56D(4)-(4D) substituted for s. 56D(4) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(13)(b)**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

F521 Word in s. 56D(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 42(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F522 Words in s. 56D(7) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(16)(a)(i)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F523 Words in s. 56D(7) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(16)(a)(ii)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F524 Words in s. 56D(8) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(16)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

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56E Application by Authority for order excluding activities.

(1) Before making an application for an order providing for activities to cease to be licensable activities, the Authority shall give notice—

(a) stating that it proposes to make an application for an order providing for the activities to cease to be licensable activities; and

(b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,

and shall consider any representations or objections which are duly made and not withdrawn.

(2) The notice shall be given—

(a) by serving a copy on the Secretary of State and the **[**[F525], Citizens Advice and Citizens Advice Scotland**]** ; and

(b) by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons appearing to the Authority to be likely to be affected by such an order.

(3) An application under this section shall set out—

(a) the activities which the Authority considers should cease to be licensable activities; and

(b) the Authority's reasons for proposing that the order be made.

Textual Amendments

F525 Words in s. 56E(2)(a) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(17)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

56F Consultation by Secretary of State about order excluding activities.

(1) If the Secretary of State proposes to make an order providing for activities to cease to be licensable activities (otherwise than on an application by the Authority under section 56E), he shall give notice—

(a) stating that he proposes to make an order providing for the activities to cease to be licensable activities; and

(b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,

and shall consider any representations or objections duly made (and not withdrawn).

(2) The notice shall be given—

(a) by serving a copy on the Authority **[**[F526], Citizens Advice and Citizens Advice Scotland**]** ; and

(b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons appearing to him to be likely to be affected by such an order.**]**

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Textual Amendments

F526 Words in s. 56F(2)(a) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(18)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

[F527 56FA New licensable activities: smart meters

(1) The Secretary of State may by order amend this Part so as to provide—

(a) for one or more activities within subsection (3) to be added to the activities which are licensable activities, or

(b) where an order has previously been made under paragraph (a) in relation to an activity, for the activity to cease to be a licensable activity.

(2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 4(1).

(3) The activities within this subsection are activities connected with the provision, installation or operation of relevant meters, including the provision or installation of infrastructure, or the provision of services, in connection with the communication of information by or to such meters.

(4) In this section—

(a) "relevant meter" means a meter of a kind prescribed by the order;

(b) a reference to a meter includes a reference to a visual display unit, or any other device, associated with or ancillary to a meter.

(5) An order under this section may make consequential, transitional, incidental or supplementary provision, including—

(a) amendments (or repeals) in any provision of this Act or any other enactment;

(b) in the case of an order under subsection (1)(a), provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of the activities;

(c) provision modifying any standard conditions of licences.

(6) Without prejudice to the generality of subsections (1) and (5), an order under this section may also make provision—

(a) for licences to authorise the holder to carry out the licensable activities in any area, or only in an area specified in the licence;

(b) enabling the terms of the licence to be modified so as to extend or restrict the area in which the licence holder may carry on the licensable activities;

(c) specifying that a licence, and any modification of a licence, must be in writing;

(d) for a licence, if not previously revoked, to continue in force for such period as may be specified in or determined by or under the licence;

(e) conferring functions on the Secretary of State or the Authority.

(7) An order under this section may provide that it is to remain in force only for the period specified in the order.

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Textual Amendments

F527 Ss. 56FA-56FC inserted (26.11.2008) by Energy Act 2008 (c. 32), s. 110(1)(b), **Sch. 4 para. 2**

56FB Section 56FA: supplemental

(1) Before making an order under section 56FA, the Secretary of State must consult—

(a) the Authority, and

(b) such other persons as the Secretary of State thinks appropriate.

(2) The power to make such an order may not be exercised after **[**F528 1 November 2018**]**.

(3) An order under section 56FA may not be made unless a draft of the statutory instrument containing it has been laid before, and approved by resolution of, each House of Parliament.

(4) Section 60 applies in relation to an order under this section as it applies in relation to regulations under this Part.

Textual Amendments

F527 Ss. 56FA-56FC inserted (26.11.2008) by Energy Act 2008 (c. 32), s. 110(1)(b), **Sch. 4 para. 2**

F528 Words in s. 56FB(2) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 73(7)**, 121(3)

56FC Competitive tenders for licences for new licensable activities

(1) The Secretary of State may by regulations make provision for a determination on a competitive basis of the person to whom a licence in respect of new licensable activities is to be granted.

(2) In this section "new licensable activities" means one or more activities which are the subject of an order under section 56FA(1)(a).

(3) The regulations may—

(a) provide for the determination to be made by the Secretary of State or the Authority;

(b) provide, in prescribed cases, for the publication of a proposal to grant a licence in respect of the new licensable activities;

(c) provide for the inclusion in such a proposal of an invitation to apply for such a licence;

(d) impose conditions in relation to the making of an application for a licence;

(e) impose restrictions in relation to persons who may apply for a licence;

(f) impose requirements as to the period within which applications must be made;

(g) make provision for regulating the manner in which applications are to be considered or determined;

(h) authorise or require the Secretary of State or the Authority, when determining to whom a licence is to be granted, to have regard to the person's suitability for being granted both the licence and a gas licence;

(i) confer on the Authority or the Secretary of State functions in connection with tender exercises.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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(4) The regulations may also include provision—

(a) enabling the Secretary of State or the Authority to require prescribed persons, in relation to a tender exercise, to make payments, in the form and manner prescribed, in respect of tender costs;

(b) about the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of paragraph (a), and the circumstances in which the tender exercise is to stop as a result of such a failure.

(5) In this section—

"gas licence" means a licence for an activity to which an order under section 41HA of the Gas Act 1986 applies;

"prescribed" means prescribed in or determined under regulations under this section;

"tender costs", in relation to a tender exercise, means any costs incurred or likely to be incurred by the Authority or the Secretary of State for the purposes of the exercise;

"tender exercise" means the steps taken in accordance with regulations with a view to determining to whom a particular licence is to be granted.

(6) Any sums received by the Secretary of State or the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund.**]**

Textual Amendments

F527 Ss. 56FA-56FC inserted (26.11.2008) by Energy Act 2008 (c. 32), s. 110(1)(b), **Sch. 4 para. 2**

Miscellaneous

[F529 56G Service by Authority of certain notices on [F530 Citizens Advice and Citizens Advice Scotland] .

Where the Authority is required by any provision of this Part to publish a notice or any other document, the Authority shall send a copy of the document to **[**F531 Citizens Advice and Citizens Advice Scotland**]** .**]**

Textual Amendments

F529 S. 56G inserted (20.12.2000) by 2000 c. 27, **s. 18(6)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

F530 Words in s. 56G heading substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(19)(a)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F531 Words in s. 56G substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(19)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

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[F532]57 . . . . . .

Textual Amendments

F532 S. 57 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

58 Directions restricting the use of certain information.

(1) The Secretary of State may give to **[**[F533]the holder of a transmission licence**]** ("the authorised person") such directions as appear to the Secretary of State to be requisite or expedient for the purpose of securing that, in any case where subsection (2) below applies, neither the person by whom the information mentioned in that subsection is acquired nor any other person obtains any unfair commercial advantage from his possession of the information.

(2) This subsection applies where, in the course of any dealings with an outside person who is, or is an associate of, a person authorised by a licence or exemption to generate, **[**[F534]supply or participate in the transmission of**]** electricity **[**[F535]or to participate in the operation of electricity interconnectors**]****[**[F536]or to provide a smart meter communication service**]**, the authorised person or any associate of his is furnished with or otherwise acquires any information which relates to the affairs of that outside person or any associate of his.

(3) As soon as practicable after giving any directions under subsection (1) above, the Secretary of State shall publish a copy of the directions in such manner as he considers appropriate for the purpose of bringing the directions to the attention of persons likely to be affected by a contravention of them.

(4) The obligation to comply with any directions under subsection (1) above is a duty owed to any person who may be affected by a contravention of them.

(5) Where a duty is owed by virtue of subsection (4) above to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.

(6) In any proceedings brought against any person in pursuance of subsection (5) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the directions.

(7) Without prejudice to any right which any person may have by virtue of subsection (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of any directions under this section, compliance with any such directions shall be enforceable by civil proceedings by the Secretary of State for an injunction or interdict or for any other appropriate relief.

(8) In this section—

"dealings" includes dealings entered into otherwise than for purposes connected with the transmission of electricity;

"outside person", in relation to any person, means any person who is not an associate of his;

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and for the purposes of this section a person is an associate of another if he and that other are connected with each other within the meaning of **[**F537section 1122 of the Corporation Tax Act 2010**]**.

Textual Amendments

F533 Words in s. 58(1) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 14(a)**; S.I. 2004/2184, art. 2(2), Sch. 2

F534 Words in s. 58(2) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 14(b)**; S.I. 2004/2184, art. 2(2), Sch. 2

F535 Words in s. 58(2) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 147(6)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

F536 Words in s. 58(2) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **12**

F537 Words in s. 58(8) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 218** (with Sch. 2)

Modifications etc. (not altering text)

C98 S. 58: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

59 Making of false statements etc.

(1) If any person, in giving any information or making any application under or for the purposes of any provision of this Part, or of any regulations made under this Part, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(2) Any person who seeks to obtain entry to any premises by falsely pretending to be—

(a) an employee of**[**F538, or other person acting on behalf of, an electricity distributor or electricity supplier**]**;

(b) an electrical inspector; or

(c) a meter examiner,

shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under subsection (1) above except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

Textual Amendments

F538 Words in s. 59(2)(a) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 37**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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Supplemental

60 Powers to make regulations.

(1) Regulations made under any provision of this Part may provide for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision—

(a) as to the mode of proof of any matter;

(b) as to parties and their representation;

(c) for the right to appear before and be heard by the Secretary of State, the Director and other authorities; and

(d) as to awarding costs or expenses of proceedings for the determination of such questions, including the amount of the costs or expenses and the enforcement of the awards.

(2) Regulations made under any provision of this Part which prescribe a period within which things are to be done may provide for extending the period so prescribed.

(3) Regulations made under any provision of this Part may—

(a) provide for anything falling to be determined under the regulations to be 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 prescribed by the regulations;

(b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and

(c) make such supplemental, consequential and transitional provision as the Secretary of State or, as the case may be, the Director considers appropriate.

Modifications etc. (not altering text)

C99 S. 60 applied (29.9.2000 for specified purposes and otherwise 7.11.2000) by 2000 c. 27, **s. 27(6)**; S.I. 2000/2412, art. 2, **Sch.**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

C100 S. 60: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

61 Concurrent proceedings.

(1) Subsection (2) below applies where a licence holder makes an application to the Secretary of State for his consent under section 36 above for the construction or extension of a generating station and, for a purpose connected with the proposed construction or extension of that station, makes either or both of the following, namely—

(a) a compulsory purchase order; and

(b) an application to the Secretary of State for authorisation under paragraph 1 of Schedule 5 to this Act (water rights for hydro-electric generating stations in Scotland).

(2) The proceedings which—

(a) in the case of a compulsory purchase order, are required by Part II of the [M8]Acquisition of Land Act 1981 or Schedule 1 to the [M9]Acquisition of Land

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(Authorisation Procedure) (Scotland) Act 1947 to be taken for the purpose of confirming that order;

(b) in the case of an application under paragraph 1 of Schedule 5 to this Act, are required by paragraphs 7 to 12 of that Schedule to be taken in relation to that application,

may be taken concurrently (so far as practicable) with the proceedings required by Schedule 8 to this Act to be taken in relation to the application for consent under section 36 above **[**F539and with any related proceedings under Schedule 16 to the Energy Act 2004**]**.

(3) Subsection (4) below applies where a licence holder makes an application to the Secretary of State for his consent under section 37 above for the installation of an electric line above ground and, for a purpose connected with the proposed installation of that line, makes one or more of the following, namely—

(a) a compulsory purchase order;

(b) an application to the Secretary of State under paragraph 6 of Schedule 4 to this Act for a necessary wayleave; and

(c) a reference to the Secretary of State under paragraph 9 (felling and lopping of trees) of that Schedule.

(4) The proceedings which—

(a) in the case of a compulsory purchase order, are required by Part II of the Acquisition of Land Act 1981 or Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to be taken for the purpose of confirming that order;

(b) in the case of an application under paragraph 6 of Schedule 4 to this Act, are required by that paragraph to be taken in relation to that application;

(c) in the case of a reference under paragraph 9 of that Schedule, are required by that paragraph to be taken in relation to that reference,

may be taken concurrently (so far as practicable) with the proceedings required by Schedule 8 to this Act to be taken in relation to the application for consent under section 37 above.

(5) Where, for a purpose connected with the proposed installation of an electric line, a licence holder makes—

(a) an application to the Secretary of State under paragraph 6 of Schedule 4 to this Act for the necessary wayleave; and

(b) a reference to the Secretary of State under paragraph 9 of that Schedule,

the proceedings required by the said paragraph 9 to be taken in relation to the reference under that paragraph may be taken concurrently (so far as practicable) with the proceedings required by the said paragraph 6 to be taken in relation to the application under that paragraph.

Textual Amendments

F539 Words in s. 61(2) inserted (1.10.2005) by Energy Act 2004 (c. 20), **ss. 102(2)**, 198(2); S.I. 2005/877, art. 2(2), Sch. 2

Modifications etc. (not altering text)

C101 S. 61: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

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Marginal Citations

M8 1981 c. 67.

M9 1947 c. 42.

62 Public inquiries.

(1) The Secretary of State may cause an enquiry to be held in any case where he considers it advisable to do so in connection with any matter arising under this Part other than a matter in respect of which any functions of the Director under section 25 above are or may be exercisable **[**F540or a matter relating to a function which is exercisable by the Scottish Ministers**]**.

[F541(1A) The Scottish Ministers may cause an inquiry to be held in any case where they consider it advisable to do so in connection with any matter relating to the exercise by them of a function under this Part.**]**

(2) The provisions of subsections (2) to (5) of section 250 of the M10 Local Government Act 1972 or subsections (2) to (8) of section 210 of the M11Local Government (Scotland) Act 1973 (which relate to the giving of evidence at, and defraying the cost of, local enquiries) shall apply in relation to any inquiry held under this Part as they apply in relation to a local inquiry which a Minister causes to be held under subsection (1) of that section.

(3) Where—

(a) an enquiry is to be **[**F542caused to be held by the Secretary of State**]** under this Part **[**F543or Schedule 16 to the Energy Act 2004**]** in connection with any matter; and

(b) in the case of some other matter required or authorised (whether by this Part**[**F544, that Schedule**]** or by any other enactment) to be the subject of an enquiry ("the other enquiry"), it appears to the relevant Minister or Ministers that the matters are so far cognate that they should be considered together,

the relevant Minister or Ministers may direct that the two inquiries be held concurrently or combined as one inquiry.

(4) In subsection (3) above "the relevant Minister or Ministers" means the Secretary of State or, where causing the other inquiry to be held is a function of some other Minister of the Crown, the Secretary of State and that other Minister acting jointly.

[F545(5) Where–

(a) an inquiry is to be caused to be held by the Scottish Ministers under this Part in connection with any matter; and

(b) in the case of some other matter required or authorised (whether by this Part or by any other enactment) to be the subject of an inquiry which is to be caused to be held by the Scottish Ministers, it appears to the Scottish Ministers that the matters are so far cognate that they should be considered together,

the Scottish Ministers may direct that the two inquiries be held concurrently or combined as one inquiry.**]**

Textual Amendments

F540 Words in s. 62(1) added (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(1)(2)** (with art. 7)

F541 S. 62(1A) inserted (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(3)** (with art. 7)

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F542 Words in s. 62(1) substituted (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(4)** (with art. 7)
F543 Words in s. 62(3)(a) inserted (1.10.2005) by Energy Act 2004 (c. 20), **ss. 102(3)(a)**, 198(2); S.I. 2005/877, art. 2(2), Sch. 2
F544 Words in s. 62(3)(b) inserted (1.10.2005) by Energy Act 2004 (c. 20), **ss. 102(3)(b)**, 198(2); S.I. 2005/877, art. 2(2), Sch. 2
F545 S. 62(5) added (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(5)** (with art. 7)

Marginal Citations
M10 1972 c. 70.
M11 1973 c. 65.

63 Application to Crown land.

(1) No power (whether a power of compulsory acquisition or other compulsory power, a power to carry out works or a power of entry) which is conferred by or under this Part shall, exept with the consent of the appropriate authority, be exercisable in relation to any land in which there is a Crown or Duchy interest, that is to say, an interest—

(a) belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall; or

(b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department.

(2) A consent given for the purposes of subsection (1) above may be given on such financial and other conditions as the appropriate authority giving the consent may consider appropriate.

(3) Subject to subsection (1) above, the provisions of this Part shall have effect in relation to land in which there is a Crown or Duchy interest as they have effect in relation to land in which there is no such interest.

(4) In this section "the appropriate authority"—

(a) in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;

(b) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of the land;

(c) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of that Duchy;

(d) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of that Duchy, appoints;

(e) in relation to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

64 Interpretation etc. of Part I.

(1) In this Part, unless the context otherwise requires—

"the 1973 Act" means the [M12] Fair Trading Act 1973;

"the 1980 Act" means the [M13] Competition Act 1980;

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[F546“the 2013 Amending Regulation” means Regulation 2013/347/EU of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision 2006/1364/EC and amending Regulations 2009/713/EC, 2009/714/EC and 2009/715/EC;**]**

F547 . . . . . .

[F548“the Agency” means the Agency for the Cooperation of Energy Regulators established under the Agency Regulation;**]**

[F548“the Agency Regulation” means Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators;**]**

[F549“authorised distributor” means a person who is authorised by a licence or exemption to distribute electricity;**]**

[F550“authorised supplier” means a person who is authorised by a licence or exemption to supply electricity;**]**

"**[**F551the CMA "means the Competition and Markets Authority;**]**

[F552“construct” and “construction”, in relation to so much of a generating station as comprises or is to comprise renewable energy installations, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004;**]**

[F548“designated regulatory authority” means an authority designated in accordance with Article 35 of the Electricity Directive;**]**

[F548“designated regulatory authority for Great Britain” means the authority designated by virtue of section 3A of the Utilities Act 2000;**]**

[F549“distribute” in relation to electricity, has the meaning given by section 4(4), and cognate expressions shall be construed accordingly;**]**

[F548“distribution exemption holder” means a person who—

(a) is distributing electricity for the purpose mentioned in section 4(1)(bb); and

(b) is authorised to do so by an exemption;**]**

“electrical plant” means any plant equipment, apparatus or appliance used for, or for purposes connected with the generation, transmission**[**F553, distribution**]** or supply of electricity, other than—

(a) an electric line;

(b) a meter used for ascertaining the quantity of electricity supplied to any premises; or

(c) an electrical appliance under the control of a consumer;

“electric line” means any line which is used for carrying electricity for any purpose and includes, unless the context otherwise requires—

(a) any support of any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;

(b) any apparatus connected to any such line for the purpose of carrying electricity; and

(c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

[F548“the Electricity Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common

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rules for the internal market in electricity and repealing Directive 2003/54/EC;**]**

[F554“electricity distributor”F555... and “electricity supplier” have the meanings given by section 6(9);**]**

[F556“electricity interconnector” has the meaning given by section 4(3E);**]**

[F548“the Electricity Regulation” means Regulation 2009/714/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation 2003/1228/EC **[**F557, as amended by the 2013 Amending Regulation**]**;**]**

[F548“electricity undertaking” has the meaning given by section 10O;**]**

[F548“exempt distribution system” means a distribution system operated or controlled by a distribution exemption holder who is covered by an exemption granted to it in relation to that system;**]**

“exemption” means an exemption under section 5 above;

“extension”, in relation to a generating station, has the meaning given by section 36(8) above and “extend” shall be construed accordingly;

“final order” and “provisional order” have the meanings given by section 25(8) above;

[F558“generate”, in relation to electricity, has the meaning given by section 4(4) above, and cognate expressions shall be construed accordingly;**]**

“generating station”, in relation to a generating station wholly or mainly driven by water, includes all structures and works for holding or channelling water for a purpose directly related to the generation of electricity by that station;

[F559“high voltage line” means an electric line which—

(a) if it is in Scotland or is a relevant offshore line (as defined in subsection (1A)), is of a nominal voltage of 132 kilovolts or more; and

(b) in any other case, is of a nominal voltage of more than 132 kilovolts,

and “low voltage line” shall be construed accordingly;**]**

“information” includes accounts, estimates and returns;

“licence” means a licence under section 6 above and “licence holder” shall be construed accordingly;

[F560“licensable activity” means an activity which, if carried on without the authority of a licence or exemption, constitutes an offence under section 4(1);**]**

“line” means any wire, cable, tube, pipe or any other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity;

F561 . . . . . .

“notice” means notice in writing;

“premises” includes any land, building or structure;

“prescribed”, **[**F562means prescribed by regulations made, unless the context otherwise requires,**]** by the Secretary of State;

F563 . . . . . .

F563 . . . . . .

[F564“providing a smart meter communication service” has the meaning given in section 4(3G) above, and cognate expressions shall be construed accordingly;**]**

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[[F548]"regulated person" has the meaning given by section 25(8);**]**

"relevant condition"and "relevant requirement" have the meanings given by section 25(8) above;

[[F548]"relevant producer or supplier" has the meaning given by section 10O;**]**

[[F565]"renewable energy installation" and "Renewable Energy Zone" have the same meanings as in Chapter 2 of Part 2 of the Energy Act 2004;**]**

[[F548]"senior officer" means—

(a) in relation to a company, a director;

(b) in relation to a partnership, a partner;

(c) in any other case, a person holding a position equivalent to that of a director or partner;**]**

[[F566]"special connection agreement" means a special agreement under section 22;**]**

"supply", in relation to electricity, has the meaning given by section 4(4) above, and cognate expressions shall be construed accordingly;

[[F548]"supply exemption holder" means a person who—

(a) is carrying on the activity mentioned in section 4(1)(c); and

(b) is authorised to do so by an exemption;**]**

[F563] . . . . . .

[[F567]"transmission", in relation to electricity, has the meaning given by section 4(4) above;

"transmission system" has the same meaning given by section 4(4) above;**]**

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the [M14] Banking and Financial Dealings Act 1971.

[[F568](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.**]**

[[F569](1B) In this Part, references to participation, in relation to the transmission of electricity, are to be construed in accordance with section 4(3A) and (3B) above **[**[F570] and section 6F**]**.**]**

(2) The provision of section 3 of the [M15] Administration of Justice (Scotland) Act 1972 (power of arbiter to state case to Court of Session) shall not apply in relation to any determination under this Part made by an arbiter.

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Textual Amendments

F546 Words in s. 64(1) inserted (14.1.2015) by The Electricity and Gas (Internal Markets) Regulations 2014 (S.I. 2014/3332), regs. 1(1), **5(a)**

F547 Words in s. 64(1) repealed (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 23 Pt. 1**; S.I. 2004/2184, art. 2(2), Sch. 2

F548 Words in s. 64(1) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **48**

F549 S. 64(1): definitions of "authorised distributor" and "distribute" inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F550 S. 64(1): definition of "authorised supplier" inserted (7.11.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(2)**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F551 Words in s. 64(1) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 43**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F552 Words in s. 64(1) inserted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 102(4)(a)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

F553 S. 64(1): words in definition of "electrical plant" inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(3)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F554 S. 64(1): definitions of "electricity distributor" and "electricity supplier" inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(4)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F555 Words in s. 64(1) omitted (6.4.2014) by virtue of Energy Act 2011 (c. 16), s. 121(5)(c), **Sch. 1 para. 6**

F556 Words in s. 64(1) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 147(7)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

F557 Words in s. 64(1) inserted (14.1.2015) by The Electricity and Gas (Internal Markets) Regulations 2014 (S.I. 2014/3332), regs. 1(1), **5(b)**

F558 Words in s. 64(1) inserted (1.3.2005 for specified purposes, 29.7.2010 for specified purposes, 10.6.2014 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 89(4)**, 198(2); S.I. 2005/442, art. 2(1), Sch. 1; S.I. 2010/1889, art. 2; S.I. 2014/1460, art. 2

F559 Words in s. 64(1) substituted (29.7.2010 for specified purposes, 10.6.2014 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 180(1)**, 198(2); S.I. 2010/1889, art. 2; S.I. 2014/1460, art. 2

F560 S. 64(1): definition of "licensable activity" inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(5)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F561 S. 64(1): definition of "Monopolies Commission" repealed (1.4.1999) by S.I. 1999/506, **art. 24(c)**

F562 S. 64(1): words in definition of "prescribed" substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(6)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F563 S. 64(1): definitions of "private electricity supplier", "public electricity supplier" and "tariff customer" repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 38(8), **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F564 Words in s. 64(1) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **13**

F565 Words in s. 64(1) inserted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 102(4)(b)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

F566 S. 64(1): definition of "special connection agreement" inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(7)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F567 Words in s. 64(1) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 15(2)**; S.I. 2004/2184, art. 2(2), Sch. 2

F568 S. 64(1A)(1AA) inserted (29.7.2010 for specified purposes, 10.6.2014 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 44(3)**, 110(2); S.I. 2010/1888, art. 2(1); S.I. 2014/1461, art. 2(a)

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F569 S. 64(1B) inserted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 15(3)**; S.I. 2004/2184, art. 2(2), Sch. 2
F570 Words in s. 64(1B) inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 147(4)**, 156(2)

Modifications etc. (not altering text)
C102 S. 64: definitions applied by Heathrow Express Railway Act 1991 (c. vii), **s. 37(1)(a)**

Marginal Citations
M12 1973 c. 41.
M13 1980 c. 21.
M14 1971 c. 80.
M15 1972 c. 59

PART II

REORGANISATION OF THE INDUSTRY

Modifications etc. (not altering text)
C103 Pt. II: power to repeal conferred (E.W.S.) (8.5.2003) by Electricity (Miscellaneous Provisions) Act 2003 (c. 9), **s. 2(2)**
C104 Pt. II (ss. 65-95) extended (15.12.2001) by S.I. 2001/4011, **art. 12(1)(a)**

Transfers to successor companies

65 Transfer of property etc. of Area Boards.

(1) On such day as the Secretary of State may by order appoint for the purposes of this subsection and subsection (5) of section 66 below (in this Part referred to, in relation to any transfer effected by either subsection, as "the transfer date"), all property, rights and liabilities to which each Area Board is entitled or subject immediately before that date shall become by virtue of this subsection property, rights and liabilities of a company which, in relation to that Board, is nominated for the purposes of this subsection by the Secretary of State.

(2) Subject to subsection (3) below, the Secretary of State may, after consulting the Area Board concerned, by order nominate for the purposes of subsection (1) above any company formed and registered under the [M16] Companies Act 1985.

(3) On the transfer date each company so nominated must be a company limited by shares which is wholly owned by the Crown.

(4) The Secretary of State shall not exercise any power conferred on him by this section or sections 66 to 69 below except with the consent of the Treasury.

(5) In this Part "supply company" means a company nominated for the purposes of subsection (1) above.

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Marginal Citations

M16 1985 c. 6.

66 Transfer of property etc. of Generating Board and Electricity Council.

(1) Before such date as the Secretary of State may direct, the Generating Board shall make a scheme for the division of all its property, rights and liabilities between three or more companies nominated by the Secretary of State for the purposes of this subsection; and of the companies so nominated—

(a) two shall be designated as generating companies; and

(b) one shall be designated as the transmission company.

(2) Before such date as the Secretary of State may direct, the Electricity Council shall make a scheme—

(a) for the transfer to a company nominated for the purposes of this subsection by the Secretary of State; or

(b) for the division between two or more companies so nominated,

of all its property, rights and liabilities (other than excepted rights and liabilities).

(3) Subject to subsection (4) below, the Secretary of State may, after consulting the transferor, by order nominate for the pruposes of subsection (1) or (2) above any company formed and registered under the [M17]Companies Act 1985.

(4) On the transfer date each company so nominated must be—

(a) a company limited by shares which is wholly owned by the Crown; or

(b) in the case of company nominated for the purposes of subsection (2) above, a company limited by guarantee of which no person other than the Treasury or the Secretary of State, or a nominee of the Treasury or the Secretary of State, is a member.

(5) Subject to provisions of section 70 below, on the transfer date—

(a) all property, rights and liabilities to which immediately before that date the Generating Board was entitled or subject; and

(b) all property, rights and liabilities to which immediately before that date the Electricity Council was entitled or subject (other than excepted rights and liabilities),

shall become by virtue of this subsection property, rights and liabilities of the company to which they are allocated by the scheme under subsection (1) or, as the case may be, subsection (2) above.

(6) In this section "excepted rights and liabilities" means—

(a) any rights and liablilities with respect to corporation tax (including rights to receive any sums by way of repayment supplement and liabilities to pay any sums by way of interest or penalty);

(b) any rights and liabilities arising under an agreement which relates to any such rights and liabilities as are mentioned in paragraph (a) above and is specified or is of a description specified by the scheme made under subsection (2) above; and

(c) any rights and liabilities transferred by section 91 below.

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Marginal Citations
M17 1985 c. 6.

67 Transfer of property etc. of Scottish Boards.

(1) Before such date as the Secretary of State may direct, each of the Scottish Boards shall, in consultation with the other, make a scheme for the transfer of all their property, rights and liabilities (other than excepted rights and liabilities) to one or more of three or more companies nominated by the Secretary of State for the purposes of this subsection; and of the companies so nominated—

(a) two shall be designated as the Scottish electricity companies; and

(b) one shall be designated as the Scottish nuclear company.

(2) Subject to subsection (3) below, the Secretary of State may, after consultation with the Scottish Boards, by order nominate for the purposes of subsection (1) above any company formed and registered in Scotland under the Companies Act 1985.

(3) On such day as the Secretary of State may by order appoint for the purposes of subsection (4) below (in this Part referred to, in relation to any transfer effected by that subsection, as "the transfer date") each company so nominated must be a company limited by shares which is wholly owned by the Crown.

(4) Subject to the provisions of section 70 below, on the transfer date all property, rights and liabilities (other than excepted rights and liabilities) to which immediately before that date the Scottish Boards were entitled or subject shall become by virtue of this subsection property, rights and liabilities of the company to which they are allocated by a scheme under subsection (1) above.

(5) In this section "excepted rights and liabilities" means any rights and liabilities transferred by section 91 below.

68 Transfer schemes under sections 66 and 67.

(1) This section applies to any scheme under subsection (1) or (2) of section 66 or subsection (1) of section 67 above (in this Part referred to as a "transfer scheme"); and in this section and section 69 below "the relevant subsection", in relation to such a scheme, means that subsection.

(2) A transfer scheme may—

(a) define the property, rights and liabilities to be allocated to a particular company nominated for the purposes of the relevant subsection—

(i) by specifying or describing the property, rights and liabilities in question;

(ii) by referring to all the property, rights and liabilities comprised in a specified part of the transferor's undertaking; or

(iii) partly in the one way and partly in the other;

(b) provide that any rights or liabilities specified or described in the scheme shall be enforceable either by or against either or any, or by or against both or all, of two or more companies nominated for the purposes of the relevant subsection;

(c) impose on any company nominated for the purposes of the relevant subsection an obligation to enter into such written agreements with, or execute such other

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instruments in favour of, any other company so nominated as may be specified in the scheme; and

(d) make such supplemental, incidental and consequential provision as the transferor considers appropriate (including provision specifying the order in which any transfers or transactions are to be regarded as taking effect).

(3) An obligation imposed by a provision included in a transfer scheme by virtue of subsection (2)(c) above shall be enforceable by civil proceedings by the other company for an injunction or for interdict or for any other appropriate relief.

(4) A transaction of any description which is effected in pursuance of such a provision as is mentioned in subsection (3) above—

(a) shall have effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register; but

(b) subject to that, shall be binding on all other persons, notwithstanding that it would, apart from this subsection, have required the consent or concurrence of any other person.

(5) Where a lease of any land is granted in pursuance of such a provision as is mentioned in subsection (3) above, any right of pre-emption or other like right affecting that land—

(a) shall not become exercisable by reason of the grant of the lease; but

(b) shall have effect as if the lessee were the same person in law as the lessor.

69 Functions of Secretary of State in relation to transfer schemes.

(1) A transfer scheme shall not take effect unless it is approved by the Secretary of State; and the Secretary of State may modify such a scheme before approving it.

(2) If, in relation to a transfer scheme—

(a) the transferor fails, before the date specified in the Secretary of State's direction under the relevant subsection, to submit the scheme for the approval of the Secretary of State; or

(b) the Secretary of State decides not to approve the scheme that has been submitted to him by the transferor (either with or without modifications),

the Secretary of State may himself make the scheme.

(3) It shall be the duty of the transferor to provide the Secretary of State with all such information and other assistance as he may require for the purposes of or in connection with the exercise, in relation to a transfer scheme, of any power conferred on him by subsection (1) or (2) above.

(4) The Secretary of State shall not exercise any power conferred on him by subsection (1) or (2) above except after consultation with the transferor and—

(a) in the case of a scheme under section 66(1) above, the Area Boards; and

(b) in the case of a scheme under section 67(1) above, the other Scottish Board.

70 Supplementary provisions as to transfers under sections 66 and 67.

The provisions of Schedule 10 to this Act shall apply, to the extent there mentioned, to any transfer which is effected by subsection (5) of section 66 or subsection (4) of section 67 above; and those subsections shall have effect subject to the provisions of that Schedule.

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Ownership of successor companies

71 Initial Government holding in the companies.

(1) As a consequence of the vesting in a company nominated for the purposes of section 65(1), 66(1) or (2) or 67(1) above (in this Part referred to as a "successor company") of any property, rights and liabilities, the company shall issue such securities of the company as the Secretary of State may from time to time direct—

(a) to the Treasury or the Secretary of State; or

(b) to any person entitled to require the issue of the securities following their initial allotment to the Treasury or the Secretary of State.

(2) The Secretary of State shall not give a direction under subsection (1) above in relation to a successor company at a time when the company has ceased to be wholly owned by the Crown.

(3) Securities required to be issued in pursuance of this section shall be issued or allotted at such time or times and on such terms as the Secretary of State may direct.

(4) Shares in a company which are issued in pursuance of this section—

(a) shall be of such nominal value as the Secretary of State may direct; and

(b) shall be issued as fully paid and treated for the purposes of **[**F571the Companies Act 2006**]** as if they had been paid up by virtue of the payment to the company of their nominal value in cash.

(5) The Secretary of State shall not exercise any power conferred on him by this section, or dispose of any securities issued or of any rights to securities initially allotted to him in pursuance of this section, without the consent of the Treasury.

(6) Any dividends or other sums received by the Treasury or the Secretary of State in right of or on the disposal of any securities or rights acquired by virtue of this section shall be paid into the Consolidated Fund.

Textual Amendments

F571 Words in s. 71(4)(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 102(3)** (with art. 10)

F572 72 Government investment in securities of the companies.

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Textual Amendments

F572 S. 72 repealed (8.5.2003) by Electricity (Miscellaneous Provisions) Act 2003 (c. 9), **s. 2(1)**

73 Exercise of functions through nominees.

(1) The Treasury or, with the consent of the Treasury, the Secretary of State may, for the purposes of section 71 or 72 above or section 80 below, appoint any person to act as the nominee, or one of the nominees, of the Treasury or the Secretary of State; and—

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(a) securities of a successor company may be issued under section 71 above or section 80 below to any nominee of the Treasury or the Secretary of State appointed for the purposes of that section or to any person entitled to require the issue of the securities following their initial allotment to any such nominee; and

(b) any such nominee appointed for the purposes of section 72 above may acquire securities or rights under that section,

in accordance with directions given from time to time by the Treasury or, with the consent of the Treasury, by the Secretary of State.

(2) Any person holding any securities or rights as a nominee of the Treasury or the Secretary of State by virtue of subsection (1) above shall hold and deal with them (or any of them) on such terms and in such manner as the Treasury or, with the consent of the Treasury, the Secretary of State may direct.

F573 74 Target investment limit for Government shareholding.

. . . . . .

Textual Amendments

F573 S. 74 repealed (8.5.2003) by Electricity (Miscellaneous Provisions) Act 2003 (c. 9), **s. 2(1)**

Finances of successor companies

75 Statutory reserves.

(1) If the Secretary of State with the approval of the Treasury so directs at any time before a successor company ceases to be wholly owned by the Crown, such sum as may be specified in the direction but not exceeding—

(a) in the case of a supply company, the accumulated realised profits of the transferor;

(b) in the case of a Scottish electricity company, the aggregate of such proportion of the accumulated realised profits of the transferor as is determined by or under the transfer scheme and any accumulated realised profits arising (after compliance with any direction to the company under subsection (2) of section 80 below) by virtue of the extinguishment of liabilities of the company by an order under subsection (1) of that section;

(c) in any other case, such proportion of the accumulated realised profits of the transferor as is determined by or under the transfer scheme,

shall be carried by the company to a reserve (in this section referred to as "the statutory reserve").

(2) A company having a statutory reserve shall not apply it except in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

(3) Notwithstanding subsection (2) above, the statutory reserve of a company shall not count as an undistributable reserve of the company for the purposes of **[**F574section 831(4)(d) of the Companies Act 2006**]**; but for the purpose of determining under that section whether a company with a statutory reserve may make a distribution

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at any time any amount for the time being standing to the credit of the reserve shall be treated for the purposes of **[**F575section 831(4)(c)**]** of that Act as if it were unrealised profits of the company.

Textual Amendments

F574 Words in s. 75(3) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 102(4)(a)** (with art. 10)

F575 Words in s. 75(3) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 102(4)(b)** (with art. 10)

76 Statutory accounts.

(1) The following provisions of this section shall have effect for the purposes of any statutory accounts of a successor company, that is to say, any accounts prepared by such a company for the purpose of any provision of the Companies Act 1985 (including group accounts).

(2) The vesting in the company effected by virtue of this Part shall be taken to have been effected immediately after the end of the last complete accounting year of the transferor to end before the transfer date and—

(a) in the case of a supply company, to have been a vesting of all the property, rights and liabilities to which the transferor was entitled or subject immediately before the end of the year;

(b) in any other case, to have been a vesting of such of the property, rights and liabilities to which the transferor was so entitled or subject as are determined by or under the transfer scheme.

(3) The value of any asset and the amount of any liability which is taken by virtue of subsection (2) above to have been vested in the company shall be taken to have been—

(a) in the case of a supply company, the value or amount assigned to the asset or liability for the purposes of the corresponding statement of accounts prepared by the transferor in respect of the last complete accounting year of the transferor to end before the transfer date:

(b) in any other case, the value or amount so assigned or, if the asset or liability is part only of an asset or liability to which a value or amount is so assigned, so much of that value or amount as may be determined by or under the transfer scheme.

(4) The amount to be included in respect of any item shall be determined as if—

(a) in the case of a supply company, anything done by the transferor (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise);

(b) in any other case, so much of anything so done as may be determined by or under the transfer scheme,

had been done by the company.

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(5) Without prejudice to the generality of the preceding provisions, the amount to be included from time to time in any reserves of the company as representing the company's accumulated realised profits shall be determined as if—

(a) in the case of a supply company, any profits realised and retained by the transferor;

(b) in any other case, such proportion of any such profits as is determined by or under the transfer scheme,

had been realised and retained by the company.

(6) In this section "complete accounting year," in relation to the transferor, means an accounting year of the transferor ending on 31st March.

77 Temporary restrictions on borrowings etc.

(1) If articles of association of a successor company confer on the Secretary of State powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.

(2) For the purposes of this section an alteration of the articles of association of a successor company shall be disregarded if the alteration—

(a) has the effect of conferring or extending any such power as is mentioned in subsection (1) above; and

(b) is made at a time when that company has ceased to be wholly owned by the Crown.

(3) In this section—

"group", in relation to a company, means that company and all of its subsidiaries taken together;

"subsidiary" **[**[F576]has the meaning given by**]|[**[F577]section 1159 of the Companies Act 2006**]**.

Textual Amendments

F576 Words substituted by S.I. 1990/1395, **reg. 2**

F577 Words in s. 77(3) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 102(5)** (with art. 10)

78 Government lending to the companies.

(1) Subject to section 81 below, the Secretary of State may, with the approval of the Treasury, make loans of such amounts as he thinks fit to any successor company which is for the time being wholly owned by the Crown.

(2) Subject to section 80 below, any loans which the Secretary of State makes under this section shall be repaid to him at such times and by such methods, and interest thereon shall be paid to him at such rates and at such times, as he may, with the approval of the Treasury, from time to time direct.

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(3) The Treasury may issue out of the National Loans Fund to the Secretary of State such sums as are required by him for making loans under this section.

(4) Any sums received under subsection (2) above by the Secretary of State shall be paid into the National Loans Fund.

(5) It shall be the duty of the Secretary of State as respects each financial year—

(a) to prepare, in such form as the Treasury may direct, an account of sums issued to him in pursuance of subsection (3) above and of sums received by him under subsection (2) above and of the disposal by him of the sums so issued or received; and

(b) to send the account to the Comptroller and Auditor General not later than the end of the month of August in the following financial year;

and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it and of his report before each House of Parliament.

Modifications etc. (not altering text)

C105 S. 78 applied (2.10.2014) by The Clocaenog Forest Wind Farm Order 2014 (S.I. 2014/2441), arts. 1, **4(2)** (with art. 33)

79 Treasury guarentees for loans made to the companies.

(1) Subject to section 81 below, the Treasury may guarantee, in such manner and on such terms as they may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Secretary of State by any successor company which is for the time being wholly owned by the Crown.

(2) Immediately after a guarantee is given under this section, the Treasury shall lay a statement of the guarantee before each House of Parliament; and immediately after any sum is issued for fulfilling a guarantee so given, the Treasury shall so lay a statement relating to that sum.

(3) Any sums required by the Treasury for fulfilling a guarantee under this section shall be charged on and issued out of the Consolidated Fund.

(4) If any sums are issued in fulfilment of a guarantee given under this section the company whose obligations are so fulfilled shall make to the Treasury, at such times and in such manner as the Treasury may from time to time direct—

(a) payments of such amounts as the Treasury may so direct in or towards repayment of the sums so issued; and

(b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Treasury may so direct.

(5) Any sums received under subsection (4) above by the Treasury shall be paid into the Consolidated Fund.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

Modifications etc. (not altering text)

C106 S. 79 applied (2.10.2014) by The Clocaenog Forest Wind Farm Order 2014 (S.I. 2014/2441), arts. 1, **4(2)** (with art. 33)

80 Conversion of certain loans etc. to the Scottish companies.

(1) The Secretary of State may by order extinguish all or any of the liabilities of a successor company in Scotland in respect of the principal of such relevant loans as may be specified in the order; and the assets of the National Loans Fund shall accordingly be reduced by amounts corresponding to any liabilities so extinguished.

(2) Where the Secretary of State has made an order under subsection (1) above and he considers it appropriate to do so, he may from time to time give a direction under this subsection to the company whose liabilities are extinguished by the order, or to a company or companies wholly owning the company whose liabilities are so extinguished; and a company to which such a direction is given shall, as a consequence of the making of the order, issue such securities of the company as may be specified or described in the direction—

(a) to the Treasury or the Secretary of State;

(b) to any person entitled to require the issue of the securities following their initial allotment to the Treasury or the Secretary of State; or

(c) if it is the company whose liabilities are extinguished by the order, to a company or companies wholly owning that company.

(3) For the purposes of any statutory accounts of a company to whom securities are issued by virtue of subsection (2)(c) above, the value at the time of its issue of any such security shall be taken—

(a) in the case of a share, to have been equal to its nominal value; and

(b) in the case of debenture, to have equal to the principal sum payable under the debenture,

and such nominal value or principal sum shall be taken in those accounts to be accumulated realised profits.

(4) In subsection (3) above "statutory accounts of a company" means any accounts prepared by the company for the purpose of any provision of **[**F578the Companies Act 2006**]** (including group accounts).

(5) The Secretary of State shall not—

(a) make an order under subsection (1) above extinguishing the liability of any company; or

(b) give a direction under subsection (2) above for the issue of securities,

except at a time when the company whose liability is extinguished by the order or, as the case may be, the company which is directed to issue securities is wholly owned by the Crown; and he shall not give a direction under paragraph (c) of the said subsection (2) except at a time when the company or companies to whom the securities are to be issued is, or are, so owned.

(6) Except as may be agreed between the Secretary of State and a company which is directed to issue debentures in pursuance of this section—

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(a) the aggregate of the principal sums payable under the debentures to which the direction relates shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and

(b) the terms as to the payment of the principal sums payable on the debentures to which the direction relates, and as to the payment of interest thereon, shall be the same as the corresponding terms of the loans specified in the order.

(7) For the purposes of subsection (6) above any express or implied terms of a loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.

(8) Subsections (3) to (6) of section 71 above shall apply for the purposes of this section as they apply for the purposes of that section.

(9) In this section "relevent loan", in relation to a successor company in Scotland, means—

(a) any loan made, or deemed to have been made, by the Secretary of State or from the National Loans Fund the liability to repay which vests in that company by virtue of section 67(4) above;

(b) any loan made to that company by the Secretary of State under section 78 above; and

(c) any sums payable under debentures issued as a consequence of the making of an order under this section.

(10) In this section and section 81 below "successor company in Scotland" means a company nominated for the purposes of section 67(1) above.

Textual Amendments

F578 Words in s. 80(4) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 156** (with arts. 6, 11, 12)

81 Financial limits on borrowing etc.

(1) The aggregate of any amounts outstanding by way of principal in respect of—

(a) loans made by the Secretary of State under section 78 above to successor companies in England and Wales; and

(b) sums issued under section 79 above in fulfilment of guarantees given in respect of loans made to such companies,

shall not exceed £2,000 million.

(2) The aggregate of any amounts outstanding by way of principal in respect of—

(a) relevant loans within the meaning of section 80 above; and

(b) sums issued under section 79 above in fulfilment of guarantees given in respect of loans made to successor companies in Scotland,

shall not exceed £3,000 million.

(3) In this section "successor company in England and Wales" means a company nominated for the purposes of section 65(1) or 66(1) or (2) above.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

Provisions with respect to floatation

82 Responsibility for composite listing particulars.

(1) Where—

(a) the same document contains listing particulars for securities of two or more successor Companies; and

(b) any person's responsibility for any information included in the document is stated in the document to be confined to its inclusion as part of the listing particulars for securities of any one of those companies,

that person shall not be treated as responsible for that information in so far as it is stated in the document to form part of the listing particulars for securities of any other of those companies.

(2) In this section—

"the 1986 Act" means the [M18]Financial Services Act 1986;

"listing particulars" means any listing particulars or supplementary listing particulars within the meaning of the 1986 Act;

"responsible" means responsible for the purposes of Part IV of the 1986 Act and "responsibility" shall be construed accordingly.

Marginal Citations

M18 1986 c. 60.

83 Application of Trustee Investments Act 1961 in relation to investment in operating companies.

(1) Subsection (2) below shall have effect for the purpose of applying paragraph 3(b) of Part IV of Schedule I to the [M19] Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider–range and narrower–range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of an operating company during the calendar year in which the transfer date falls ("the first investment year") or during any year following that year.

(2) The company shall be deemed to have paid a dividend as mentioned in the said paragraph 3(b)—

(a) in every year preceding the first investment year which is included in the relevant five years; and

(b) in the first investment year, if that year is included in the relevant five years and that company does not in fact pay such a dividend in that year.

(3) In subsection (2) above "the relevant five years" means the five years immediately preceding the year in which the investment in question is made or proposed to be made.

Marginal Citations

M19 1961 c. 62.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

Provisions with respect to existing bodies

F579 84 Dissolution etc. of existing bodies.

. . . . . .

Textual Amendments
F579 Ss. 84-89 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 5** Group 5

F579 85 Compensation to members and employees of existing bodies.

. . . . . .

Textual Amendments
F579 Ss. 84-89 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 5** Group 5

F579 86 Discharge of certain advances and loans made to existing bodies.

. . . . . .

Textual Amendments
F579 Ss. 84-89 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 5** Group 5

F579 87 Expenditure and receipts of Electricity Council.

. . . . . .

Textual Amendments
F579 Ss. 84-89 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 5** Group 5

F579 88 Grants towards expenditure during transitional period.

. . . . . .

Textual Amendments
F579 Ss. 84-89 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 5** Group 5

Miscellaneous

F579 89 Payments for the use of tax losses.

. . . . . .

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F579 Ss. 84-89 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 5** Group 5

90 Taxation provisions.

Schedule 11 to this Act (which makes provision about taxation in relation to or in connection with the other provisions of this Part) shall have effect.

91 Electricity Stock.

(1) On the transfer date all the rights and liabilities —

(a) to which the Electricity Council was entitled or subject immediately before that date under the terms of issue of British Electricity Stock; or

(b) to which the North of Scotland Hydro-Electric Board was entitled or subject immediately before that date under the terms of issue of North of Scotland Electricity Stock,

shall become by virtue of this section rights and liabilities of the Treasury.

F580(2) . . . . . .

(3) The Bank of England shall deal with—

(a) money paid to them under subsection (2) above; and

(b) money already in their hands which represents such unclaimed interest or redemption money as is mentioned in that subsection,

as money entrusted to them for payment to holders of the Stock concerned and section 5 of the M20Miscellaneous Financial Provisions Act 1955 (which relates to unclaimed dividends etc. on Government Stock) shall apply accordingly.

(4) In this section—

"British Electricity Stock" means any stock created and issued under section 16(1) of the M21Electricity Act 1957 or under section 40 of the M22Electricity Act 1947;

"North of Scotland Electricity Stock" means any stock created and issued under section 13 of the M23Hydro-Electric Development (Scotland) Act 1943.

Textual Amendments

F580 S. 91(2) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 5** Group 5

Marginal Citations

M20 1955 c. 6.
M21 1957 c. 48.
M22 1947 c. 54.
M23 1943 c. 32.

F581 92 Abolition of central guarantee fund.

. . . . . .

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F581 S. 92 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 5** Group 5

Supplemental

93 Parliamentary disqualification.

In the [M24]House of Commons Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices) there shall be inserted (at the appropriate place) the following entry—

> "Director of a successor company (within the meaning of Part II of the Electricity Act 1989), being a director nominated or appointed by a Minister of the Crown or by a person acting on behalf of the Crown"

and the like insertion shall be made in Part III of Schedule 1 to the [M25]Northern Ireland Assembly Disqualification Act 1975.

Marginal Citations

M24 1975 c. 24.
M25 1975 c. 25.

94 Construction of references to property, rights and liabilities.

(1) References in this Part to property, rights and liabilities of an Electricity Board or the Electricity Council are references to all such property, rights and liabilities, whether or not capable of being transferred or assigned by that body.

(2) It is hereby declared for the avoidance of doubt that—

(a) any reference in this Part to property of an Electricity Board or the Electricity Council is a reference to property of that Board or Council, whether situated in the United Kingdom or elsewhere; and

(b) any such reference to rights and liabilities of an Electricity Board or the Electricity Council is a reference to rights to which that Board or Council is entitled, or (as the case may be) liabilities to which that body is subject, whether under the law of the United Kingdom or of any part of the United Kingdom or under the law of any country or territory outside the United Kingdom.

95 Other interpretation of Part II.

(1) In this Part, unless the context otherwise requires—

"the appropriate successor company", in relation to an existing body, has the meaning given by section 88(4) above;

"debentures" includes debenture stock;

"existing body" has the meaning given by section 84(1) above;

"generating company" means a company designated as such by the Secretary of State;

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"operating company" has the meaning given by section 74(10) above;

"securities", in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

"shares" includes stock;

"Scottish electricity company" means a company designated as such by the Secretary of State;

"Scottish nuclear company" means the company designated as such by the Secretary of State;

"successor company" has the meaning given by section 71(1) above;

"supply company" has the meaning given by section 65(5) above;

"the transfer date"—

(a) in relation to any transfer effected by subsection (1) of section 65 or subsection (5) of section 66 above, has the meaning given by the said subsection (1);

(b) in relation to any transfer effected by subsection (4) of section 67 above, has the meaning given by subsection (3) of that section;

"transferee" and "transferor", in relation to any transfer of property, rights and liabilities effected or proposed to be effected under this Part, mean respectively the person to whom and the person from whom they are or are to be so transferred;

"transfer scheme" has the meaning given by section 69(1) above;

"transitional period", in relation to an existing body, has the meaning given by section 84(2) above;

"transmission company" means the company designated as such by the Secretary of State.

(2) A company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when none of the issued shares in the company is held otherwise than—

(a) by, or by a nominee of, the Treasury or the Secretary of State; or

(b) by a company which is itself wholly owned by the Crown.

PART III

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

96 Directions for preserving security of electricity supplies etc.

(1) The Secretary of State may, after consultation with a person to whom this section applies, give to that person such directions of a general character as appear to the Secretary of State to be requisite or expedient for the purpose of—

(a) preserving the security of buildings or installations used for, or for purposes connected with, the generation, transmission or supply of electricity **[**F582or the provision of a smart meter communication service**]**; or

(b) mitigating the effects of any civil emergency which may occur.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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(2) If it appears to the Secretary of State to be requisite or expedient to do so for any such purpose as is mentioned in subsection (1) above, he may, after consultation with a person to whom this section applies, give to that person a direction requiring him (according to the circumstances of the case) to do, or not to do, a particular thing specified in the direction.

(3) A person to whom this section applies shall give effect to any direction given to him by the Secretary of State under this section notwithstanding any other duty imposed on him by or under this Act.

(4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under this section unless he is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.

(5) A person shall not disclose, or be required by virtue of any enactment or otherwise to disclose, anything done by virtue of this section if the Secretary of State has notified him that the Secretary of State is of the opinion that disclosure of that thing is against the interests of national security or the commercial interests of some other person.

(6) This section applies to any licence holder and any person authorised by an exemption to generate or supply electricity **[**F583or the provision of a smart meter communication service**]**.

(7) In this section "civil emergency" means any natural disaster or other emergency which, in the opinion of the Secretary of State, is or may be likely to disrupt electricity supplies; and expressions used in Part I have the same meanings as in that Part.

Textual Amendments

F582 Words in s. 96(1)(a) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **14(2)**

F583 Words in s. 96(6) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **14(3)**

97 Financial assistance for discharge of nuclear liabilities.

The provisions of Schedule 12 to this Act (which provide for the giving of financial assistance in connection with the storage and reprocessing of nuclear fuel, the treatment, storage and disposal of radioactive waste and the decommissioning of nuclear installations) shall have effect.

98 Provision of statistical information.

(1) The Secretary of State may, if he considers it expedient for the purpose of obtaining statistical information relating to the generation, transmission or supply of electricity **[**F584or the use of electricity interconnectors**][**F585or the provision of a smart meter communication service**]**, serve a notice under this section on any licence holder or any person who is authorised by an exemption to generate or supply electricity **[**F586or to participate in the operation of electricity interconnectors**][**F587or to provide a smart meter communication service**]**.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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(2) A notice under this section may require the person on whom it is served to furnish, at a time and place specified in the notice, to the Secretary of State such statistical information about that person's business as may be so specified.

(3) Subject to subsections (4) and (5) below, no information with respect to any particular business which—

(a) has been obtained under this section; and

(b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be published or otherwise disclosed without the consent of that individual or the person for the time being carrying on that business.

(4) Subsection (3) above does not apply in relation to any disclosure which is made after consultation with the individual concerned, or the person for the time being carrying on the business concerned, and is of information relating to—

(a) the quantities of electricity generated by particular methods or by the use of particular fuels;

(b) the quantities of particular fuels used for the generation of electricity;

(c) the quantities of electricity transferred between Great Britain and countries or territories outside Great Britain, or between England and Wales on the one hand and Scotland on the other; or

(d) the quantities of electricity supplied in England, Scotland or Wales either generally or to persons of any particular class or description.

(5) Subsection (3) above does not apply in relation to any disclosure which is made to the Minister in charge of any Government department **[**F588or to the Scottish Ministers**]** or for the purposes of any proceedings under this section.

(6) The Secretary of State may, after consultation with persons or bodies appearing to him to be representative of persons likely to be affected, by order amend subsection (4) above so as to add other descriptions of information which may be disclosed notwithstanding that it may relate to a particular person or business.

(7) Any person who without reasonable excuse fails to furnish information in compliance with a requirement under this section shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(8) Any person who publishes or discloses any information in contravention of subsection (3) above or, in purported compliance with a requirement under this section, knowingly or recklessly furnishes any information which is false in any material particular shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

(9) In this section "information" does not include estimates as to future matters but, subject to that, expressions which are used in Part I have the same meanings as in that Part.

Textual Amendments

F584 Words in s. 98(1) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 147(8)(a)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

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F585 Words in s. 98(1) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **15(a)**

F586 Words in s. 98(1) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 147(8)(b)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

F587 Words in s. 98(1) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), **art. 15(b)**

F588 Words in s. 98(5) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 95**

Modifications etc. (not altering text)

C107 S. 98(1)(2): certain functions made exercisable by the Scottish Ministers concurrently with the Minister (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 3, **Sch. 2** (with art. 7)

99 Promotion of new techniques in national interest.

(1) The Secretary of State shall exercise the power conferred on him by section 5 of the [M26]Science and Technology Act 1965 (expenditure on research and development in science or technology) for the purpose of promoting such research into, and such development of, new techniques relating to the generation, transmission or supply of electricity as appears to him to be necessary in the national interest.

(2) The Secretary of State may, if he considers it expedient for purposes connected with the performance of his duty under this section, serve notice under this subsection on any licence holder or any person who is authorised by an exemption to generate or supply electricity.

(3) A notice under subsection (2) above may require the person on whom it is served to furnish, at a time and place specified in the notice, to the Secretary of State such information about that person's business as may be so specified.

(4) Subsections (3), (5) and (7) to (9) of section 98 above shall apply for the purposes of this section as they apply for the purposes of that section.

Marginal Citations

M26 1965 c. 4.

Amendment of enactments

100 Competition and restrictive trade practices.

(1) Electricity shall be treated as goods for the purposes of the 1973 Act, [F589]... **[**[F590], the 1980 Act and the Enterprise Act 2002**]**.

[F591](2) . . . . . .

[F591](3) . . . . . .

[F591](4) . . . . . .

[F591](5) . . . . . .

[F591](6) . . . . . .

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F589 Words in s. 100(1) repealed (1.3.2005) by The Competition Act 1998 (Transitional, Consequential and Supplemental Provisions) Order 2000 (S.I. 2000/311), arts. 1, **23(2)(a)**

F590 Words in s. 100(1) substituted (20.6.2003) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 1, **Sch. para. 9(2)**

F591 S. 100(2)(3)(4)(5)(6) repealed (1.3.2005) by The Competition Act 1998 (Transitional, Consequential and Supplemental Provisions) Order 2000 (S.I. 2000/311), arts. 1, **23(2)(b)**

101 Rights of entry.

In section 2 of the [M27]Rights of Entry (Gas and Electricity Boards) Act 1954 (warrant to authorise entry), for subsection (4) there shall be substituted the following subsection—

"(4) Every warrant granted under this section shall continue in force until—

(a) the time when the purpose for which the entry is required is satisfied; or

(b) the end of the period of 28 days beginning with the day on which the warrant was granted,

whichever is the earlier."

Marginal Citations

M27 1954 c. 21.

102 Production and supply of heat or electricity etc. by Scottish local authorities.

The provisions of Schedule 13 (which inserts into the [M28]Local Government (Scotland) Act 1973 provisions analogous to sections 11 (production and supply of heat or electricity or both by local authorities in England and Wales) and 12 (provisions supplementary to the said section 11) of the [M29]Local Government (Miscellaneous Provisions) Act 1976) shall have effect.

Marginal Citations

M28 1973 c. 65.

M29 1976 c. 57.

103 Stamp duty exemption for certain contracts.

Electricity shall be treated as goods for the purposes of section 59 of the [M30]Stamp Act 1891 (certain contracts chargeable as conveyances on sale).

Marginal Citations

M30 1891 c. 39.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

Amendment etc. of pension schemes

104 Amendment etc. of Electricity Supply Pension Scheme.

The provisions of Schedule 14 to this Act (which provide for amending the Electricity Supply Pension Scheme and for giving special protection to certain persons who have or may acquire rights under that scheme) shall have effect.

105 Amendment etc. of Scottish Pension Schemes.

The provisions of Schedule 15 to this Act (which provide for amending the Hydroboard Superannuation Fund and the South of Scotland Electricity Board's Superannuation Scheme and for giving special protection to certain persons who have or may acquire rights under those schemes) shall have effect.

Supplemental

106 Regulations and orders.

(1) Any power under this Act to make regulations, and any power of the Secretary of State under this Act to make orders (other than the powers conferred by **[**F592section 23,**]** paragraph 9(6) of Schedule 4 and paragraph 2 of Schedule 5), shall be exercisable by statutory instrument.

[F593(1ZA) Subsection (1) does not apply to the power conferred on the Scottish Ministers by section 36C.**]**

[F594(1A) Any power of the Scottish Ministers to make orders under section 32 is exercisable by statutory instrument.**]**

(2) Any statutory instrument containing—

(a) regulations under this Act made by the Secretary of State; or

(b) an order under this Act (other than an order appointing a day or nominating a company**[**F595, an order under section 11A, **[**F596 27O**]**, 32, **[**F597 32LA,**][**F598 32N, 32R(4),**]** 41A, F599... **[**F600 56A or 56FA**]]** or an order under paragraph 4 of Schedule 12 to this Act),

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[F601(3) Regulations made by the Scottish Ministers under section 36C are subject to the negative procedure.**]**

Textual Amendments

F592 Words in s. 106(1) inserted (1.4.2009) by Energy Act 2008 (c. 32), **ss. 96(2)**, 110(2); S.I. 2009/45, art. 3(b)(ii)

F593 S. 106(1ZA) inserted (19.6.2013 for specified purposes, 31.7.2013 in relation to E.W. so far as it is not already in force, 1.12.2013 in relation to S. so far as it is not already in force) by Growth and Infrastructure Act 2013 (c. 27), **ss. 20(3)(a)**, 35(1); S.I. 2013/1488, arts. 2, 5(a), 7

F594 S. 106(1A) inserted (26.11.2008) by Energy Act 2008 (c. 32), s. 110(1)(e), **Sch. 5 para. 5**

F595 Words in s. 106(2)(b) inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 39**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

F596 Word in s. 106(2)(b) substituted (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), **Sch. 14 para. 2(6)**
F597 Word in s. 106(2)(b) inserted (18.12.2013) by Energy Act 2013 (c. 32), **ss. 55(3)**, 156(3)
F598 Words in s. 106(2)(b) inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(3)**, 156(2)
F599 Word in s. 106(2) omitted (8.6.2010) by virtue of Energy Act 2010 (c. 27), s. 38(3), **Sch. para. 10**
F600 Words in s. 106(2)(b) substituted (26.1.2009) by Energy Act 2008 (c. 32), s. 110(2), **Sch. 5 para. 6**; S.I. 2009/45, art. 2(e)(iv)
F601 S. 106(3) inserted (19.6.2013 for specified purposes, 31.7.2013 in relation to E.W. so far as it is not already in force, 1.12.2013 in relation to S. so far as it is not already in force) by Growth and Infrastructure Act 2013 (c. 27), **ss. 20(3)(b)**, 35(1); S.I. 2013/1488, arts. 2, 5(a), 7

107 Directions.

(1) It shall be the duty of any person to whom a direction is given under this Act to give effect to that direction.

(2) Any power conferred by this Act to give a direction shall, unless the context otherwise requires, include power to vary or revoke the direction.

(3) Any direction given under this Act shall be in writing.

108 Offences by bodies corporate.

(1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting t oact in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

[F602 108A Extraterritorial operation of Act

(1) Where by virtue of this Act an act or omission taking place outside Great Britain constitutes an offence, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain.

(2) Provision made by or under this Act in relation to places outside Great Britain—
(a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
(b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of a part of the United Kingdom.**]**

Textual Amendments
F602 S. 108A inserted (1.4.2005) by Energy Act 2004 (c. 20), **ss. 102(5)**, 198(2); S.I. 2005/877, art. 2(1), Sch. 1

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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109 Service of documents.

(1) Any document required or authorised by virtue of this Act to be served on any person may be served—

(a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or

(b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary of that body; or

(c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having the control or management of the partnership business.

(2) For the purposes of this section and section 7 of the [M31]Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—

(a) in the case of service on a body corporate or its secretary, it shall be the address of the registered or principal office of the body;

(b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(3) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purposes of this section and for the purposes of the said section 7 in its application to this section.

(4) If the name or address of any owner or occupier of land on whom by virtue of this Act any document is to be served cannot after reasonable inquiry be ascertained, the document may be served by—

(a) addressing it to him by the description of "owner" or "occupier" of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) This section shall not apply to any document in relation to the service of which provision is made by rules of court.

(6) In this section "secretary", in relation to a local authority within the meaning of the [M32] Local Goverment Act 1972 or the [M33] Local Govermnent (Scotland) Act 1973, means the proper officer within the meaning of that Act.

Marginal Citations

M31 1978 c. 30.

M32 1972 c. 70.

M33 1973 c. 65.

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110 Financial provisions.

There shall be paid out of money provided by Parliament—

(a) any administrative expenses incurred by the Secretary of State or the Treasury in consequence of the provisions of this Act; and

(b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

111 General interpretation.

(1) In this Act, unless the context otherwise requires—

"Area Board" has the same meaning as in the [M34]Electricity Act 1947;

[[F603]"the Authority" means the Gas and Electricity Markets Authority;**]**

[[F604]"Citizens Advice" means the National Association of Citizens Advice Bureaux;

"Citizens Advice Scotland" means the Scottish Association of Citizens Advice Bureaux;**]**

"contravention", in relation to any direction, condition, requirement, regulation or order, includes any failure to comply with it and cognate expressions shall be construed accordingly;

[F605]...

[F606]. . . . . .

"Electricity Board" means an Area Board, the Generating Board or a Scottish Board;

"the Generating Board" means the Central Electricity Generating Board;

"modifications" includes additions, alterations and omissions and cognate expressions shall be construed accordingly;

[[F607]"protection of the water environment" has the same meaning as in section 1(2) of the Water Environment and Water Services (Scotland) Act 2003;**]**

"Scottish Board" means either the North of Scotland Hydro-Electric Board or the South of Scotland Electricity Board.

(2) For the purposes of this Act any class or description may be framed by reference to any matters or circumstances whatever.

Textual Amendments

F603 S. 111(1): definition of "the Authority" inserted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 40(a)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

F604 Words in s. 111(1) inserted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(20)(a)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F605 Words in s. 111(1) omitted (1.4.2014) by virtue of The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(20)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

F606 Words in s. 111 repealed (1.10.2000) by Utilities Act 2000 (c. 27), s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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F607 Words in s. 111 inserted (S.) (1.4.2006) by The Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054), art. 1(1), **Sch. 1 para. 1(3)**

Marginal Citations

M34 1947 c. 54.

112 Amendments, transitional provisions, savings and repeals.

(1) The enactments mentioned in Schedule 16 to this Act shall have effect subject to the amendments there specified (being minor amendments or amendments consequential on the preceding provisions of this Act).

(2) The Secretary of State may by order make such consequential modifications of any provision contained in any Act (whether public general or local) passed, or in subordinate legislation made, before the relevant date as appear to him necessary or expedient—

(a) in respect of any reference in that Act or subordinate legislation to any of the Electricity Boards or the Electricity Council;

(b) in respect of any reference (in whatever terms) in that Act or subordinate legislation to a person carrying on an electricity undertaking or to such an undertaking;

(c) in respect of any reference in that Act or subordinate legislation to any enactment repealed by this Act; or

(d) in the case of a provision contained in a local Act or subordinate legislation, in respect of any other inconsistency between that Act or subordinate legislation and this Act;

and in this subsection "the relevant date", in relation to any modifications, means the date of the coming into force of the provisions of this Act on which they are consequential.

(3) The transitional provisions and savings contained in Schedule 17 to this Act shall have effect; but those provisions are without prejudice to sections 16 and 17 of the [M35]Interpretation Act 1978 (effect of repeals).

(4) The enactments mentioned in Schedule 18 to this Act (which include some that are spent or no longer of practical utility) are hereby repealed to the extent specified in the third column of that Schedule.

Commencement Information

I1 S. 112 wholly in force at 9.11.2001; s. 112 not in force at Royal Assent see s. 113(2); s. 112(1)-(3) in force at 31.3.1990 and s. 112(4) in force for certain purposes at 31.3.1990 by S.I. 1990/117, **art. 3**; s. 112(4) in force for remaining purposes at 9.11.2001 by S.I. 2001/3419, **art. 2**

Marginal Citations

M35 1978 c. 30.

113 Short title, commencement and extent.

(1) This Act may be cited as the Electricity Act 1989.

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(2) This Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be so appointed for different provisions or for different purposes.

(3) This Act, except this section and the following provisions, namely—

[[F608]Sections 32N to 32Z2;**]**

sections 65 to 70;

section 82;

sections 91 to 95;

section 100;

paragraph 8 of Schedule 1 and section 1(5) so far as relating to that paragraph;

paragraph 10 of Schedule 2 and section 2(6) so far as relating to that paragraph;

paragraph 11 of Schedule 16 and section 112(1) so far as relating to that paragraph; and

Schedule 18 and section 112(4) so far as relating to enactments which extend there [F609]...,

does not extend to Northern Ireland.

Textual Amendments

F608 Words in s. 113(3) inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 56(4)**, 156(2)

F609 Words in s. 113(3) repealed (20.6.2003) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 1, **Sch. para. 9(3)**

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[F610]SCHEDULES

[F611]SCHEDULE 1]

. . . . . .

Textual Amendments

F611 Sch. 1 repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

[F612SCHEDULE 2]

. . . . . .

Textual Amendments

F612 Sch. 2 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

[F613SCHEDULE 2ZA

Section 5A

DUTIES OF DISTRIBUTION EXEMPTION HOLDERS

Textual Amendments

F613 Sch. 2ZA, Sch. 2ZB inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 21(3), **Sch. 2**

Third party access

1. (1) This paragraph applies where—

(a) a customer owns or occupies premises which are connected to an exempt distribution system;

(b) the customer is taking a supply of electricity through that system from—

(i) the distribution exemption holder that operates or has control of the system, or

(ii) a person related to the distribution exemption holder; and

(c) the customer—

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(i) has served on the distribution exemption holder a notice expressing the customer's interest in taking a supply of electricity from a third party supplier through that system; and

(ii) has provided with the notice evidence that at least one third party supplier would be willing to supply the customer with electricity through that system, and has identified any such third party supplier in the notice.

(2) In this Schedule "expression of interest" means a notice served under sub-paragraph (1).

(3) Within 5 working days beginning with the day on which it receives the expression of interest, the distribution exemption holder must provide any person related to it that is currently supplying the customer with electricity with a copy of the expression of interest.

(4) Within 10 working days beginning with the day on which it receives the expression of interest, the distribution exemption holder must serve on the customer—

(a) a notice informing the customer that it will take the steps in sub-paragraph (6) with a view to giving a third party supplier access to its distribution system; or

(b) a notice informing the customer that the distribution exemption holder considers—

(i) that it would need to increase the capacity of its distribution system in order to give a third party supplier access to that distribution system; and

(ii) that one of the conditions in sub-paragraph (5) is met.

(5) Those conditions are—

(a) that it is not technically feasible to provide the increase in capacity in question;

(b) that providing that increase in capacity would have a significant and adverse economic impact on the distribution exemption holder or any other person.

(6) Where the distribution exemption holder has served on the customer a notice under sub-paragraph (4)(a), the distribution exemption holder must—

(a) serve on any third party supplier identified in the expression of interest a notice specifying—

(i) any metering arrangements that the distribution exemption holder considers would be required to enable access to be given; and

(ii) whether it would be willing to give access through contractual arrangements which would not require a connection to be made or modified; and

(b) provide each such third party supplier with any other documents or information that it may reasonably request.

(7) The distribution exemption holder must serve the notice required by sub-paragraph (6)(a) within 20 working days beginning with the day on which it receives the expression of interest.

(8) The distribution exemption holder must provide any documents or information requested by a third party supplier under sub-paragraph (6)(b)—

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(a) within 20 working days beginning with the day of the distribution exemption holder's receipt of the expression of interest; or

(b) if the request is made at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in paragraph (a) above, within 10 working days beginning with the day of the distribution exemption holder's receipt of the request.

2. (1) This paragraph and paragraph 3 apply where a customer who has served an expression of interest relating to an exempt distribution system serves on the distribution exemption holder a notice—

(a) confirming that the customer has entered into a contract with a third party supplier identified in the expression of interest for the supply of electricity to premises which are connected to the exempt distribution system; and

(b) identifying that third party supplier.

(2) Within 5 working days beginning with the day on which it receives the notice served under sub-paragraph (1), the distribution exemption holder must provide any person related to it that is currently giving a supply of electricity to the customer with a copy of that notice.

(3) If the distribution exemption holder has not, by the end of the 10 working day period mentioned in paragraph 1(4), served on the customer a notice under paragraph 1(4)(b), the distribution exemption holder must give the third party supplier such access to the distribution system to which the expression of interest relates as is necessary to enable the third party supplier to give a supply of electricity to the customer.

(4) Access under sub-paragraph (2) must be given either—

(a) as soon as is reasonably practicable after the distribution exemption holder receives the notice served under sub-paragraph (1); or

(b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.

(5) Sub-paragraphs (6) to (11) apply if the distribution exemption holder has served on the customer a notice under paragraph 1(4)(b) (whether before or after the service of the notice under sub-paragraph (1)).

(6) Subject to sub-paragraph (7), the distribution exemption holder must give the third party supplier such access to its distribution system as is necessary to enable the third party supplier to give a supply of electricity to the customer, and must give that access—

(a) as soon as is reasonably practicable after the end of the period of 28 working days beginning with the day on which the customer serves the notice under sub-paragraph (1); or

(b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.

(7) If, before the end of the period mentioned in sub-paragraph (6)(a), the distribution exemption holder takes the steps mentioned in sub-paragraph (8)—

(a) the distribution exemption holder is not required to give access in accordance with sub-paragraph (6), and

(b) sub-paragraph (9) applies.

(8) The steps mentioned in sub-paragraph (7) are—

(a) providing the third party supplier with evidence to show—

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(i) that the distribution exemption holder would need to increase the capacity of its distribution system in order to give the third party supplier access to that distribution system; and

(ii) that one of the conditions in paragraph 1(5) is met; and

(b) sending a copy of the evidence to the customer.

(9) If, within the period mentioned in sub-paragraph (10), the distribution exemption holder and the third party supplier enter into a contract for the provision to the third party supplier of such access as is necessary to enable it to give a supply of electricity to the customer through the distribution system, the distribution exemption holder must give access to the third party supplier in accordance with the terms of the contract.

(10) That period is—

(a) the 14 days immediately following the period mentioned in sub-paragraph (6)(a); or

(b) any longer period that the distribution exemption holder, the third party supplier and the customer may agree in writing.

(11) If, before the end of the 28 day period mentioned in sub-paragraph (6)(a), the distribution exemption holder, the third party supplier and the customer agree in writing to the extension of that period, sub-paragraphs (6) to (10) have effect as if sub-paragraph (6)(a) referred to the extended period instead of to the period of 28 working days there mentioned.

3. (1) The third party supplier mentioned in paragraph 2(1) may make an application to the Authority under this paragraph if—

(a) the distribution exemption holder has served on the customer a notice under paragraph 1(4)(b); and

(b) at the end of the period mentioned in paragraph 2(10), the distribution exemption holder is not under a duty (whether by virtue of sub-paragraph (6) or (9) of paragraph 2) to give access to the third party supplier.

(2) The third party supplier may not make an application under this paragraph unless it has, no later than the 10th working day before the day on which the application is made, served on the distribution exemption holder a notice—

(a) informing the distribution exemption holder that it intends to make an application under this paragraph; and

(b) inviting the distribution exemption holder to provide it with any further evidence it may wish to provide for the purpose mentioned in paragraph 2(8)(a).

(3) The application must include—

(a) any evidence provided by the distribution exemption holder under paragraph 2(8)(a) or sub-paragraph (2)(b) above;

(b) a description of the nature of the access required by the third party supplier (including any alternative forms of access that would be acceptable to it); and

(c) any evidence the third party supplier may wish to include—

(i) to show that the capacity of the distribution system would not need to be increased in order to give a third party supplier access to it;

(ii) to show that a condition in paragraph 1(5) is not met; or

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(iii) as to the benefits that would be brought by any increase in capacity that may be necessary.

(4) The third party supplier must send a copy of the application to the distribution exemption holder and the customer.

(5) Where an application has been made under this paragraph the Authority may, at the request of the customer or the third party supplier (the "requesting party"), ask the distribution exemption holder to provide the Authority and the requesting party with information in respect of the measures that would be required to reinforce the distribution system in order to provide the necessary capacity.

(6) Except to the extent that sub-paragraph (7) applies, the distribution exemption holder must comply with any request made by the Authority under sub-paragraph (5).

(7) If the distribution exemption holder represents to the Authority that particular information should not be disclosed under sub-paragraph (6) because it is commercially sensitive, the Authority may determine that the information in question should be excepted from the duty to disclose information under that sub-paragraph, having regard to the need to preserve the confidentiality of commercially sensitive information.

(8) The distribution exemption holder may recover from the requesting party any costs reasonably incurred in providing any information requested under sub-paragraph (5).

(9) Where an application has been made under this paragraph the Authority—

(a) must, if satisfied that the conditions in sub-paragraph (10) are met, determine that the distribution exemption holder is entitled to refuse the third party supplier access to its distribution system on the ground of lack of capacity;

(b) must, if not satisfied that those conditions are met, determine that the distribution exemption holder is not entitled to refuse the third party supplier access to its distribution system on the ground of lack of capacity.

(10) Those conditions are—

(a) that the distribution exemption holder would need to increase the capacity of its distribution system in order to give the third party supplier access to it; and

(b) that either it is not technically feasible to provide that increase in capacity, or the benefits of the increase in capacity would be outweighed by the economic impact that the provision of the increase in capacity would have on the distribution exemption holder or any other person.

(11) The Authority must, as soon as is reasonably practicable after making its determination—

(a) notify the distribution exemption holder of its determination; and

(b) provide the customer and the third party supplier with a copy of that notice.

(12) If the Authority determines that the distribution exemption holder is not entitled to refuse the third party supplier access to its distribution system on the ground of lack of capacity—

(a) the distribution exemption holder must give the third party supplier such access to its distribution system as is necessary to enable the third party supplier to give a supply of electricity to the customer;

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(b) paragraph 1(6) to (8) applies as if the distribution exemption holder had served a notice under paragraph 1(4)(a) on the customer, and as if the references in paragraph 1(7) and (8)(a) to the "expression of interest" were to the notification under sub-paragraph (11) above; and

(c) paragraph 5 has effect as if the reference in paragraph 5(3) to the "expression of interest" were to the notification under sub-paragraph (11) above.

(13) Access under sub-paragraph (12)(a) must be given either—

(a) as soon as is reasonably practicable after the distribution exemption holder receives the notification under sub-paragraph (11); or

(b) on a date agreed by the distribution exemption holder, the third party supplier and the customer in writing.

4. (1) This paragraph applies where a distribution exemption holder is required under paragraph 2(3), (6) or (9) or 3(12)(a) to give a third party supplier access to its distribution system.

(2) The duty must be performed for so long as the access is required.

(3) In meeting the duty the distribution exemption holder must not—

(a) treat the third party supplier less favourably than any other supplier in respect of the terms and conditions for access to its distribution system, including those relating to any connection under paragraph 7(2);

(b) refuse to give access on the basis that the Authority has not yet approved its charging methodology; or

(c) act in a manner which unreasonably prevents, restricts or delays access to its distribution system by the third party supplier.

(4) The distribution exemption holder must grant the third party supplier such ancillary or incidental rights over its distribution system as are necessary to enable the third party supplier to meet its licence or statutory obligations, including any obligations of the third party supplier relating to metering functions.

(5) Where access has been given before a methodology for calculating a use of system charge has been given an approval that is required by virtue of paragraph 5(1), the distribution exemption holder may, within a reasonable period after receiving notification of the approval of the methodology, require the third party supplier to pay for that access an amount that is—

(a) equivalent to the charge that would have been payable for that access had the methodology been approved before the access was given; and

(b) payable within such period as the parties agree or, in the absence of such agreement, within such reasonable period after the distribution exemption holder demands the payment as may be specified by the distribution exemption holder.

Charges for use of system

5. (1) Subject to paragraph 13(1), a distribution exemption holder on whom a customer has served an expression of interest must not impose a use of system charge unless the Authority has approved the methodology for calculating that charge under sub-paragraph (5) or paragraph 14(7).

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(2) If such a distribution exemption holder proposes to impose a use of system charge in circumstances where, by virtue of sub-paragraph (1), the Authority's approval of the methodology for that charge is required the distribution exemption holder must—

(a) prepare a record of the assets and liabilities associated with its distribution activities at the time of the receipt of the expression of interest;

(b) prepare a statement (a "charging statement") containing details of the proposed methodology for calculating the use of system charge;

(c) provide the Authority with—

(i) the charging statement,

(ii) any evidence that the distribution exemption holder may wish to provide in support of the methodology proposed for calculating the use of system charge,

(iii) a copy of the expression of interest, and

(iv) such other information or documents as the Authority may request;

(d) provide the relevant third party supplier with a copy of the charging statement.

(3) Subject to sub-paragraph (4), all of the steps required by sub-paragraph (2) must be carried out within 20 working days beginning with the day of the distribution exemption holder's receipt of the expression of interest.

(4) Where the Authority has requested further information or documents in accordance with sub-paragraph (2)(c)(iv) at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in sub-paragraph (3), the further information or documents must be provided within 10 working days beginning with the day of the distribution exemption holder's receipt of the request.

(5) Where a distribution exemption holder has complied with sub-paragraph (2)(c) the Authority must, as soon as is reasonably practicable—

(a) decide whether to approve the methodology proposed by that distribution exemption holder; and

(b) notify the distribution exemption holder of that decision.

(6) Where a distribution exemption holder receives a notice under sub-paragraph (5)(b), it must, as soon as is reasonably practicable after that receipt, provide the relevant third party supplier with a copy of that notice.

(7) Where the Authority does not approve the methodology proposed by the distribution exemption holder, the Authority must give reasons for that decision.

(8) Where the Authority does not approve the methodology proposed by the distribution exemption holder and the distribution exemption holder still wishes to impose a use of system charge the distribution exemption holder must—

(a) submit to the Authority a charging statement containing details of a revised methodology;

(b) provide the Authority with a copy of such other information as the Authority may request in respect of that revised methodology; and

(c) provide the relevant third party supplier with a copy of the charging statement.

(9) Where at any time a distribution exemption holder wishes to modify a methodology that has previously been approved under this Schedule and is used by it for

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calculating a use of system charge levied for the use of a distribution system other than a closed distribution system, the distribution exemption holder must—

(a) submit to the Authority a charging statement containing details of the proposed revised methodology;

(b) provide the Authority with a copy of such other information as the Authority may request; and

(c) provide the relevant third party supplier, and any other third party supplier who would be affected by the modification proposed, with a copy of the charging statement.

(10) If a distribution exemption holder takes the steps required by sub-paragraph (8) or (9), sub-paragraphs (5) to (7) apply as if it had complied with sub-paragraph (2)(c).

(11) For the purposes of sub-paragraphs (2)(d), (6), (8)(c) and (9)(c), a duty to provide anything to "the relevant third party supplier" is a duty to provide it—

(a) if at the time when the duty is discharged the distribution exemption holder has received a notice from the customer under paragraph 2(1), to the third party supplier identified in that notice; or

(b) if at the time when the duty is discharged the distribution exemption holder has not received such a notice from the customer, to any third party supplier identified in the expression of interest.

6. (1) Sub-paragraph (2) applies where a distribution exemption holder is under a duty to give access to its distribution system under paragraph 2(3), (6) or (9) or 3(12)(a).

(2) Where and for so long as the distribution exemption holder is imposing a use of system charge, it must—

(a) prepare and maintain distribution accounts in respect of the distribution system for each regulatory year;

(b) keep copies of those accounts for 6 years from the date of the transactions to which they relate; and

(c) notify the Authority of the address where those accounts are held.

(3) In sub-paragraph (2)—

"distribution accounts" means accounting records in relation to the business (the "distribution business") constituted by the distribution activities of the distribution exemption holder's business that—

(a) are sufficient to show and explain the transactions of the distribution business, separate from any other transactions of the distribution exemption holder's business;

(b) are sufficient to disclose with reasonable accuracy, at any time, the financial position of the distribution business at that time;

(c) contain entries from day to day of all sums of money received and expended in the course of the distribution business and the matters in respect of which the receipt and expenditure takes place; and

(d) contain a record of the assets and liabilities attributable to the distribution business;

"regulatory year", in relation to a distribution business, means—

(a) a period of 12 months beginning on 1 April in any calendar year and ending on 31 March of the next calendar year; or

(b) where the distribution exemption holder wishes to align the accounting period for the distribution business with the accounting period for any

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other business it carries on or the business of any a person related to it, the period of 12 months used as the accounting period for that other business or the business of that related person.

Connection

7. (1) This paragraph applies where a distribution exemption holder is under a duty to give access to a third party supplier under paragraph 2(3), (6) or (9) or 3(12)(a).

(2) The distribution exemption holder must, if required to do so by the third party supplier or the customer who served the notice under paragraph 2(1), make a connection between its distribution system and—

(a) the premises mentioned in paragraph 1(1)(a); or

(b) the distribution system of another authorised distributor.

(3) The duty under sub-paragraph (2) includes a duty to provide such electric lines or electrical plant as may be necessary to enable the connection to be used for the purpose for which it is required.

(4) The duty under sub-paragraph (2) must be performed in accordance with such terms as are agreed under paragraphs 8 and 9, or paragraph 10, for so long as the connection is required.

(5) In this paragraph and paragraphs 8 to 10—

(a) any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant);

(b) any reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines or electrical plant); and

(c) any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical plant either by the installation of a new one or by the modification of an existing one.

8. (1) Where a distribution exemption holder makes a connection under paragraph 7(2) any expenses reasonably incurred in making the connection or in providing any electric line or electrical plant that the distribution exemption holder is under a duty to provide must, if and to the extent that the distribution exemption holder requires, be met by the person requiring the connection.

(2) The reference in sub-paragraph (1) to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it.

(3) Where a distribution exemption holder is under a duty to make a connection under paragraph 7(2)—

(a) it may require the person requiring the connection to provide it with reasonable security for the payment to it under sub-paragraph (1) of amounts in respect of the provision of any electric lines or electrical plant that it is under a duty to provide; and

(b) if the person requiring the connection fails to provide any security required under paragraph (a), or any security given by the person requiring the connection becomes invalid or insufficient and that person fails to provide

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alternative or additional security, the distribution exemption holder may if it thinks fit—

(i) where the connection has not been made, refuse to provide the line or plant for so long as the failure continues, or

(ii) where the connection is being maintained, disconnect the premises or distribution system in question.

(4) Where any sum has been deposited with a distribution exemption holder by way of security under sub-paragraph (3) the distribution exemption holder must, on repaying the amount, also pay interest on that amount, calculated on a daily basis at the rate of 1 per cent above LIBOR, for the period beginning with the day following that on which the amount was deposited and ending on the day on which the amount is repaid.

(5) In sub-paragraph (4) "LIBOR", in relation to any day, means the sterling three-month London inter-bank offered rate in force for that day rounded if necessary to two decimal places.

(6) Nothing in paragraph 7 is to be taken as requiring the distribution exemption holder to make a connection between its distribution system and any premises or other distribution system if and to the extent that—

(a) the distribution exemption holder is prevented from doing so by circumstances outside its control;

(b) circumstances exist by reason of which the connection would or might involve danger to the public, and the distribution exemption holder has taken all reasonable steps to prevent the circumstances from occurring and to prevent them from having that effect; or

(c) it is not reasonable in all the circumstances for the distribution exemption holder to be required to do so.

(7) Without prejudice to the generality of sub-paragraph (6), nothing in paragraph 7 is to be taken as requiring the distribution exemption holder to make a connection if any consent that is necessary for the connection to be made has not been given.

(8) A distribution exemption holder who is required to make a connection under paragraph 7(2) may require the person requiring the connection to accept, in respect of the making of the connection, any terms restricting any liability of the distribution exemption holder for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept.

(9) Sub-paragraphs (3)(b)(ii) and (6)(c), do not permit a distribution exemption holder to disconnect any premises or distribution system unless the distribution exemption holder has given the owner and the occupier of the premises or (as the case may be) the person who operates or has control of the distribution system not less than 7 working days' notice of its intention to disconnect.

9. (1) This paragraph applies where a distribution exemption holder has a duty to make a connection under paragraph 7(2).

(2) Except where an agreement under paragraph 10(1) is in place, the distribution exemption holder must comply with the requirements of sub-paragraph (3) as soon as is reasonably practicable after the person requiring the connection has—

(a) served on the distribution exemption holder a notice requesting that the distribution exemption holder offer terms for making the connection; and

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(b) provided the distribution exemption holder with the following information—

(i) details of the premises or distribution system from which the connection to the distribution exemption holder's distribution system is required, including the location of the premises or distribution system,

(ii) the date on or by which the person requiring the connection proposes that the work necessary for the connection to be made should be carried out,

(iii) the maximum power at which electricity may be required to be conveyed through the connection,

(iv) details of any other requirements that the person requiring the connection has, including any metering requirements, and

(v) any other information in relation to the required connection reasonably requested by the distribution exemption holder.

(3) The distribution exemption holder must serve on the person requiring the connection a notice—

(a) raising any concerns that it has with the information provided in accordance with sub-paragraph (2)(b);

(b) proposing arrangements for any security that the person requiring the connection will be required to pay to it under paragraph 8(3);

(c) proposing arrangements for any payment that the person requiring the connection will be required to make under paragraph 8(1);

(d) stating any terms that the person requiring a connection will be required to accept under paragraph 8(8), restricting the distribution exemption holder's liability; and

(e) proposing any other terms on which it will make the connection.

(4) The distribution exemption holder must negotiate in good faith with the person requiring the connection and endeavour to reach an agreement on the terms and conditions for that connection.

10. (1) The distribution exemption holder may enter into an agreement with a person requiring a connection in pursuance of paragraph 7(2) for the making of a connection on such terms as may be agreed by the parties.

(2) So long as the agreement is effective, the rights and liabilities of the parties shall be those arising under the agreement and not those provided for under paragraphs 7 to 9.

11. (1) Section 23 (determination of disputes) applies in relation to a dispute arising under paragraphs 7 to 9 of this Schedule as it applies to a dispute arising under sections 16 to 21, but as if—

(a) the references to an electricity distributor were to a distribution exemption holder;

(b) the references to a person requiring a connection were to a person requiring a connection in pursuance of paragraph 7(2); and

(c) the reference in subsection (3) to section 20(1) were to paragraph 8(3)(a).

(2) The reference in sub-paragraph (1)(b) to requiring a connection is to be construed in accordance with paragraph 7(5).

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Closed distribution systems

12. (1) A distribution exemption holder may apply to the Authority for an exempt distribution system operated or controlled by it to be classified as a closed distribution system.

(2) Where the Authority has received an application from a distribution exemption holder under sub-paragraph (1) (a "closed distribution system application"), it must classify the distribution system as a closed distribution system if the Authority considers that all of the following criteria are met—

(a) the distribution system is not used for the purpose of supplying electricity to household customers, or is used to supply fewer than 50 household customers who—

(i) are employees of, or work for or otherwise render services to, the distribution exemption holder or a person related to the distribution exemption holder; and

(ii) take a supply of electricity that is wholly or mainly from a generating station embedded in the distribution system;

(b) the distribution system is wholly or mainly used for distributing electricity within a geographically self-contained industrial, commercial or shared services site and is not integrated with any distribution system operated or controlled by an electricity distributor, or any transmission system operated or controlled by the holder of a transmission licence; and

(c) the distribution system is wholly or mainly used either—

(i) by system users whose businesses, for technical or safety-related reasons, have operational or production processes that are integrated with those of other system users of that distribution system; or

(ii) for the purpose of supplying electricity to premises owned or occupied by the distribution exemption holder or by a person related to the distribution exemption holder.

(3) A closed distribution system application must—

(a) identify the distribution system to which the application relates;

(b) include any evidence available to the applicant to support that application; and

(c) provide any further information or documents that the Authority may request in respect of that application.

(4) The Authority must decide whether to classify a distribution system as a closed distribution system as soon as is reasonably practicable after the Authority has received—

(a) the closed distribution system application; and

(b) any further information or documents requested by it in under sub-paragraph (3)(c).

(5) The Authority must notify the distribution exemption holder of its decision as soon as is reasonably practicable after that decision has been made.

13. (1) Paragraph 5(1) to (8) does not apply in relation to any use of system charge (or proposed use of system charge) that relates to a closed distribution system.

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(2) Where a distribution exemption holder that operates or has control of a closed distribution system receives an expression of interest from a customer who owns or occupies premises that are connected to that system, it must—

(a) include in any notice served under paragraph 1(4) a statement that its distribution system is a closed distribution system; and

(b) within 7 working days beginning with the day on which it receives the expression of interest, by notice inform any third party supplier identified in the expression of interest that its distribution system is a closed distribution system.

14. (1) Sub-paragraphs (2) and (3) apply if a customer has served an expression of interest with respect to a closed distribution system and—

(a) the customer, or a third party supplier identified in the expression of interest, serves a notice on the distribution exemption holder requesting that the methodology for a proposed use of system charge be submitted to the Authority for approval; and

(b) at the time of receiving the request the distribution exemption holder has not received any confirmation under paragraph 2(1) that the customer has entered into a contract with a third party supplier.

(2) From the time when the distribution exemption holder receives that request, paragraph 5(1) to (8) has effect in relation to the closed distribution system as if paragraph 13(1) did not have effect.

(3) For the purposes of the application of paragraph 5(2) in relation to the proposed use of system charge mentioned in sub-paragraph (1)(a), the reference in paragraph 5(3) to the "expression of interest" is to be read as a reference to the request mentioned in sub-paragraph (1)(a) above.

(4) Sub-paragraphs (5) to (11) apply where a customer who owns or occupies premises that are connected to a closed distribution system has served a notice under paragraph 2(1) confirming that it has entered into a contract with a third party supplier ("the confirmed third party supplier") and—

(a) the customer or the confirmed third party supplier serves on the distribution exemption holder that operates or has control of the closed distribution system a notice requesting that the methodology for a use of system charge that is being applied by the distribution exemption holder be submitted to the Authority for approval;

(b) the methodology for calculating the charge has not previously been approved under this Schedule; and

(c) at the time of receiving the notice under paragraph (a), the distribution exemption holder has received the notice served under paragraph 2(1).

(5) The distribution exemption holder must, within 20 working days beginning with the day on which it receives the request under sub-paragraph (4)(a)—

(a) provide the Authority with—

(i) a charging statement in respect of the methodology for any use of system charge applied at the time of the request being made; and

(ii) such other information or documents as the Authority may specify; and

(b) provide the customer and the confirmed third party supplier with a copy of that charging statement.

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(6) Where the Authority has requested further documents or information in accordance with sub-paragraph (5)(a)(ii) at a time when there are fewer than 10 working days remaining in the 20 working day period mentioned in sub-paragraph (5), those further documents or information must be provided within 10 working days beginning with the day of the distribution exemption holder's receipt of that request for further documents or information.

(7) Where the distribution exemption holder has complied with sub-paragraph (5)(a), the Authority must, as soon as is reasonably practicable—

(a) decide whether to approve the methodology set out in the charging statement; and

(b) notify the distribution exemption holder and the confirmed third party supplier of its decision.

(8) Where the Authority does not approve the methodology, the Authority must give reasons for that decision.

(9) Where the Authority has notified the distribution exemption holder of a decision that it does not approve the methodology, the distribution exemption holder must not continue to impose a use of system charge, except where the Authority has considered the methodology for such a charge by virtue of sub-paragraph (11) and has approved it.

(10) Where the Authority does not approve the methodology submitted under sub-paragraph (5)(a) the distribution exemption holder may—

(a) submit to the Authority a charging statement containing details of a revised methodology;

(b) provide the Authority with such other information or documents as the Authority may specify; and

(c) send a copy of the charging statement to the customer and the confirmed third party supplier.

(11) If the distribution exemption holder takes the steps mentioned in sub-paragraph (10)(a) to (c), sub-paragraphs (7) and (8) apply as if it had complied with sub-paragraph (5)(a).

(12) Where at any time a distribution exemption holder wishes to modify a methodology that has previously been approved under this Schedule and is used by it for calculating a use of system charge levied for the use of a closed distribution system, the distribution exemption holder must—

(a) submit to the Authority a charging statement containing details of the proposed revised methodology;

(b) provide the Authority with a copy of such other information or documents as the Authority may request; and

(c) send a copy of the charging statement to the customer, the confirmed third party supplier and any other third party supplier who would be affected by the modification proposed.

(13) If the distribution exemption holder takes the steps mentioned in sub-paragraph (12)(a) to (c), sub-paragraphs (7) and (8) apply as if it had complied with sub-paragraph (5)(a).

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Change of circumstance in respect of a closed distribution system

15. (1) If, after a system has been classified as a closed distribution system, there is a change of circumstance which affects, or might affect, whether the system continues to meet the criteria set out in paragraph 12(2), the distribution exemption holder that operates or has control of the distribution system must notify the Authority of the change as soon as is reasonably practicable after it occurs.

(2) If the distribution exemption holder that operates or has control of the distribution system wishes the system to continue to be classified as a closed distribution system, it must include in the notice an application to the Authority asking the Authority to confirm the classification.

(3) Any application under sub-paragraph (2) must—

(a) identify the distribution system to which the application relates;

(b) include any evidence available to the applicant to support that application; and

(c) provide any further information or documents that the Authority may request in respect of that application.

(4) Where the Authority has received a notice under sub-paragraph (1), it must, as soon as is reasonably practicable, either—

(a) revoke the classification; or

(b) confirm the classification if—

(i) the notice includes an application made under sub-paragraph (2);

(ii) the Authority has received any further information or documents requested by it; and

(iii) the Authority considers that the criteria set out in paragraph 12(2) continue to be met.

(5) The Authority must notify the applicant of its decision under sub-paragraph (4) as soon as is reasonably practicable after the decision has been made.

Interpretation

16. (1) In this Schedule—

"charging statement" (in relation to a distribution exemption holder who proposes to impose a use of system charge) is to be construed in accordance with paragraph 5(2)(b);

"closed distribution system" means a system classified as a closed distribution system by the Authority under paragraph 12(2);

"customer" means a person who purchases electricity for the person's own consumption;

"expression of interest' has the meaning given by paragraph 1(2);

"household customer" means a customer who purchases electricity for consumption by the customer's own household;

"system user", in relation to a distribution system, means—

(a) a person supplying electricity that is being conveyed by means of that distribution system; or

(b) a customer who owns or occupies premises that are connected to that distribution system;

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"third party supplier", in relation to a distribution exemption holder, means any authorised supplier that is not related to the distribution exemption holder;

"use of system charge", in relation to a distribution exemption holder, means a charge which—

(a) is levied by the distribution exemption holder on a third party supplier identified in an expression of interest that has been served on the distribution exemption holder; and

(b) is for use of the exempt distribution system to which the expression of interest relates.

(2) For the purposes of this Schedule, a person ("A") is related to another person ("B") where A is—

(a) an undertaking in which B has a participating interest within the meaning of section 421A of the Financial Services and Markets Act 2000;

(b) a holding company of B;

(c) a subsidiary of B; or

(d) a subsidiary of a holding company of B.

(3) For the purposes of sub-paragraph (2) "holding company" and "subsidiary" are to be construed in accordance with section 1159 of the Companies Act 2006.

SCHEDULE 2ZB

Section 5B

DUTIES OF SUPPLY EXEMPTION HOLDERS

Change of supplier

1. (1) This paragraph applies if a supply exemption holder enters into a contract with a customer to start supplying electricity to any premises.

(2) The supply exemption holder must, within 7 days beginning with the day on which the contract is entered into, give any person who is currently supplying electricity to the premises a notice stating—

(a) that the contract has been entered into, and

(b) when the supply exemption holder will start supplying electricity to the premises.

(3) Subject to sub-paragraphs (4) and (7), the supply exemption holder must start supplying electricity to the premises within 21 days of the relevant date.

(4) The supply exemption holder need not comply with sub-paragraph (3) if—

(a) the customer requests that the supply start on a later date;

(b) the customer terminates, or gives notice to terminate, the contract; or

(c) one or more of the reasons in sub-paragraph (5) applies.

(5) The reasons in this sub-paragraph are—

(a) that the supply exemption holder—

(i) does not have all of the information it requires in order to start supplying electricity to the premises, despite having taken

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all reasonable steps to obtain the missing information from the customer; and

(ii) cannot readily obtain that information from another source;

(b) that the customer is taking a supply of electricity through an exempt distribution system and the supply exemption holder is unable to start supplying electricity to the premises because—

(i) a connection which the customer or supply exemption holder requires to be made in pursuance of paragraph 7(2) of Schedule 2ZA has not yet been made; or

(ii) the distribution exemption holder has specified, in a notice under paragraph 1(6)(a)(i) of Schedule 2ZA, a metering arrangement which it considers would be required for access to be given to a third party supplier (within the meaning of that Schedule) and that metering arrangement is not yet in place;

(c) that any other circumstance which is outside the control of the supply exemption holder and which it has taken all reasonably practicable steps to resolve prevents it from starting to supply electricity to the premises.

(6) If, because of a reason in sub-paragraph (5), a supply exemption holder is not required to start supplying electricity to the premises within 21 days of the relevant date, it must start supplying electricity to the premises as soon as is reasonably practicable after the reason ceases to apply, and in any event within 21 days of the date on which the reason ceases to apply (but if there is more than one reason, references in this sub-paragraph to a reason's ceasing to apply are to all the reasons' having ceased to apply).

(7) If another supply exemption holder is currently supplying electricity to the premises and has objected to the change of supplier under paragraph 2, then the supply exemption holder mentioned in sub-paragraph (1) above—

(a) must not start supplying electricity to the premises before that objection is resolved; but

(b) must start supplying electricity to the premises as soon as is reasonably practicable after the objection is resolved, and in any event within 21 days of the date on which the objection is resolved.

(8) For the purposes of sub-paragraph (7) an objection made under paragraph 2 is taken to be resolved—

(a) in the case of an objection based on the reason in paragraph 2(5)(a) alone—

(i) when the customer, or the supply exemption holder who made the objection, informs the supply exemption holder mentioned in sub-paragraph (1) above that the debt has been paid off in full, or

(ii) when an arrangement such as is mentioned in paragraph 2(5)(a)(iii) is made with respect to the debt;

(b) in the case of an objection based on the reason in paragraph 2(5)(b) alone, when the period mentioned in that paragraph expires;

(c) in the case of an objection based on both those reasons, when the objection has been resolved in relation to each reason in accordance with paragraphs (a) and (b) above; or

(d) in any case, when the objection is withdrawn.

(9) In this paragraph "the relevant date" means—

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(a) the day after the day on which the supply exemption holder enters into the contract mentioned in sub-paragraph (1); or

(b) if, after the contract is entered into, there is a period within which the customer may decide not to proceed with it, the earlier of—

(i) the day after the day on which that period ends; or

(ii) the 14th day after the day on which the contract was entered into.

2. (1) This paragraph applies if—

(a) a person ("the new supplier") has entered into a contract with a customer to start supplying electricity to any premises; and

(b) a supply exemption holder is currently supplying electricity to the premises under a contract with that customer.

(2) If one or more of the reasons in sub-paragraph (5) applies, the supply exemption holder may object to the change of supplier by sending notice of the objection and the reason (or reasons) for it to—

(a) the new supplier; and

(b) the customer.

(3) A notice under sub-paragraph (2) must be sent—

(a) as soon as reasonably practicable; and

(b) if the supply exemption holder is notified under paragraph 1(2), or in accordance with a condition in a licence, that the contract has been entered into, not later than the end of the 14th day after the day on which it receives that notification.

(4) If the supply exemption holder objects to a change of supplier because of the reason in sub-paragraph (5)(b), the notice of this objection must also state when the period mentioned in that sub-paragraph will expire.

(5) The reasons in this sub-paragraph are that—

(a) the customer owes money ("the debt") to the supply exemption holder in respect of electricity supplied to the customer and—

(i) the supply exemption holder has demanded payment of the debt;

(ii) at least 28 days have passed since the date on which the demand was sent to the customer and any date for payment stated in the demand has also passed; and

(iii) the new supplier and the supply exemption holder have not agreed to an arrangement under which some or all of the debt will be assigned to the new supplier; or

(b) a contract between the supply exemption holder and the customer includes a term which prevents the customer from terminating that contract within a specified period which has not expired.

(6) The supply exemption holder must comply with any reasonable request from the new supplier to provide any information, or take any other steps, required to enable the new supplier to start supplying electricity to the customer's premises.

3. (1) A supply exemption holder must not require a household customer to pay any sum in respect of a change of supplier by that household customer.

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(2) Sub-paragraph (1) does not prevent a supply exemption holder from requiring payment of any termination fee payable under any contract between it and the household customer.

(3) A supply exemption holder must take all reasonable steps to ensure that a final bill in respect of any unpaid charges for electricity supplied to a household customer's premises is sent to that customer within 6 weeks of the date on which the supply exemption holder stops supplying electricity to the premises.

Customer contracts

4. (1) Where a supply exemption holder enters into a contract with a household customer for the supply of electricity it must provide the customer with a copy of the contract.

(2) The contract must specify—

(a) the identity and address of the supply exemption holder;

(b) the services provided, including any maintenance services provided;

(c) any service quality levels that are to be met;

(d) if a connection is required, when that connection will take place;

(e) the means by which up-to-date information may be obtained about—

(i) any applicable tariffs and maintenance charges; and

(ii) the supply exemption holder's standard terms and conditions;

(f) the duration of the contract;

(g) any conditions for renewal of the contract;

(h) any conditions for termination of the contract or of any services provided under it and whether the customer can terminate the contract if the supply exemption holder increases the applicable tariffs or charges, or changes one or more of the main contractual conditions;

(i) any charges for early termination of the contract;

(j) any compensation and refund arrangements which apply if any service quality levels specified in the contract are not met, including any arrangements which apply in the event of inaccurate or delayed billing;

(k) the methods of dispute resolution available to the customer in the event of a dispute with the supply exemption holder, including how such dispute resolution procedures can be initiated; and

(l) where further information on the customer's rights as a consumer of electricity can be found.

(3) If a supply exemption holder intends to increase the applicable tariffs or charges payable under a contract with a household customer it must inform that customer of the change and of any applicable termination rights as soon as practicable and no later than the date on which the customer is first charged for electricity at the increased rate.

(4) If a supply exemption holder intends to change any of the main contractual conditions of a contract with a household customer it must inform that customer of the change and of any applicable termination rights at least one month before the change is to come into effect.

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(5) Any charge made under the contract for offering a particular payment method, including any charge for use of a pre-payment meter, must reflect the cost to the supply exemption holder of making that payment method available.

(6) A supply exemption holder must not treat a household customer or group of household customers differently without good reason when offering different payment methods to customers.

(7) In this paragraph, "main contractual conditions" means any conditions of the contract which relate to a matter mentioned in any of paragraphs (b), (c) and (f) to (j) of sub-paragraph (2).

Customer information

5. (1) No later than 12 months after entering into a contract with a customer to start supplying electricity to any premises, and at intervals of not less than 12 months thereafter, a supply exemption holder must send the customer the information specified in sub-paragraph (3), (4) or (5) (whichever is applicable).

(2) But the supply exemption holder is required to specify the matters mentioned in sub-paragraphs (3)(b) and (4)(b) only so far as it is reasonably practicable to do so.

(3) If the customer is charged for its supply wholly or partly by reference to the quantity of electricity supplied and a meter records the quantity supplied to that customer separately from the quantity supplied to other customers, the information in question is—

(a) the number of that meter if it has one;

(b) the amount of electricity recorded by that meter as having been consumed by that customer in the 12 months immediately preceding the date on which the information is sent (or in the part of the period during which the supply exemption holder supplied electricity to those premises under the contract with the customer); and

(c) the total cost that the customer has been charged for that electricity.

(4) If the customer is charged for its supply wholly or partly by reference to the quantity of electricity supplied and that quantity is not recorded using a separate meter, the information in question is—

(a) the number of any meter that recorded the total electricity consumed by that customer and other customers in the 12 months immediately preceding the date on which the information is sent (or in any part of that period during which the supply exemption holder supplied electricity to those premises under the contract with the customer);

(b) the amount of electricity recorded by that meter; and

(c) an explanation as to how the proportion of electricity charged to the customer was determined.

(5) If the customer is not charged for its supply by reference to the quantity of electricity supplied, the information in question is the total cost that the customer has been charged for that electricity in the 12 months immediately preceding the date on which the information is sent.

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(6) A supply exemption holder who is supplying electricity to any premises under a contract with a customer must comply with any written request by the customer to send relevant information—

(a) to the customer, or

(b) to a person who is not currently supplying electricity to the premises under a contract with the customer but has expressed an interest in doing so.

(7) In sub-paragraph (6) "relevant information" means—

(a) if information has been sent to a customer in accordance with sub-paragraph (1) in the previous 12 months, a copy of that information;

(b) in any other case, so much of the information referred to in sub-paragraph (1) as can be readily provided by the supply exemption holder.

(8) A supply exemption holder must not require a customer to pay for any costs associated with preparing or sending information to the customer, or to any other person at the customer's request, in accordance with this paragraph.

6. (1) A supply exemption holder must, so far as is reasonably practicable to do so, inform each customer with each bill of the following matters—

(a) what sources of energy were used to generate the electricity supplied in the period covered by that bill;

(b) the proportions in which the sources of energy were used; and

(c) where further information can be found about the environmental impact of generating electricity using those sources of energy.

(2) A supply exemption holder must, at the end of any period of 12 months during which it has supplied a customer with electricity but has neither sent a bill nor provided the customer with information under this sub-paragraph, provide the customer with the information required by sub-paragraph (1) (but for this purpose sub-paragraph (1)(a) is to be read as if the reference to the period covered by the bill were to the period of 12 months mentioned in this sub-paragraph).

(3) A supply exemption holder must not require a customer to pay for any costs associated with preparing or sending information to the customer in accordance with this paragraph.

7. (1) A supply exemption holder must—

(a) with each bill inform each customer what methods of dispute resolution are available to the customer in the event of a dispute with the supply exemption holder; and

(b) with each bill inform each household customer—

(i) where the energy consumer guidance and the concise consumer guidance can be found; and

(ii) that the household customer has a right to request a copy of the concise guidance from the supply exemption holder.

(2) At the end of any period of 12 months during which a supply exemption holder has supplied a customer with electricity but has not sent a bill (nor provided the customer with information under this sub-paragraph) the supply exemption holder must inform the customer of—

(a) the matters mentioned in sub-paragraph (1)(a), and

(b) if the customer is a household customer, the matters mentioned in sub-paragraph (1)(b).

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(3) A supply exemption holder must send a household customer a copy of the concise guidance within one month of receiving a request for it from or on behalf of that customer.

(4) A supply exemption holder must not require a customer to pay for any costs associated with preparing or sending information to the customer in accordance with this paragraph.

(5) In this paragraph—

(a) "the energy consumer guidance" means any guidance such as is mentioned in section 19A(1)(a) of the Consumers, Estate Agents and Redress Act 2007 which is published under that section; and

(b) "the concise guidance" means any summary such as is mentioned in section 19A(1)(b) of that Act which is so published.

Determination of disputes

8. (1) Sections 44C and 44D apply in relation to an exempt supply dispute as they apply in relation to an Article 37 dispute such as is mentioned in section 44C(1), but as if in section 44C(8) the words "against whom a complaint is made as mentioned in section 44B(1)(a), and" were omitted.

(2) A dispute is an "exempt supply dispute" if—

(a) it is wholly or mainly a dispute—

(i) regarding an obligation of a supply exemption holder under this Schedule; or

(ii) as to whether a supply exemption holder who has objected to a change of supplier because of a reason in paragraph 2(5) of this Schedule was entitled to object on that basis;

(b) it arises from a written complaint made against the supply exemption holder; and

(c) it is a dispute between the complainant and that supply exemption holder.

Interpretation

9. In this Schedule—

"customer" means a person who purchases electricity for the person's own consumption;

"household customer" means a customer who purchases electricity for consumption by the customer's own household.**]**

[[F614]SCHEDULE 2A

SECTION 6E

PROPERTY SCHEMES

Textual Amendments

F614 Sch. 2A inserted (20.5.2009) by Energy Act 2008 (c. 32), ss. 44(4), 110(2), **Sch. 2**; S.I. 2009/1270, art. 2

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Scheme-making power

1 (1) This paragraph applies where—

(a) a tender exercise is held in relation to an offshore transmission licence,

(b) any transmission assets have been transferred to the successful bidder or, for operational purposes, it is necessary for any transmission assets to be so transferred, and

(c) those assets were not constructed or installed by the successful bidder.

(2) The Authority may, on an application under paragraph 3, make a scheme ("a property scheme") providing for—

(a) the transfer to the successful bidder of, or

(b) the creation in favour of the successful bidder of rights in relation to,

property, rights or liabilities.

(3) In sub-paragraph (1)—

(a) "transmission assets" means the transmission system in respect of which the offshore transmission licence is (or is to be) granted or anything which forms part of that system, and

(b) the reference to the successful bidder in paragraph (c) includes, if the successful bidder is a body corporate, a reference to any body corporate which was associated with the successful bidder at the time the transmission assets were constructed or installed.

(4) Until such time as section 180 of the Energy Act 2004 (meaning of "high voltage line") comes into force, "transmission system" in sub-paragraph (3)(a) includes a system which, if that section were in force, would be a transmission system.

Further provision about the content of a scheme

2 (1) A property scheme may also contain—

(a) provision for the creation, in relation to property which the scheme transfers, of an interest in or right over the property in favour of the asset owner;

(b) provision for the creation of any rights or liabilities as between the asset owner and the successful bidder;

(c) provision for imposing on the asset owner or the successful bidder an obligation to enter into a written agreement with, or to execute an instrument of another kind in favour of, the other;

(d) provision requiring the successful bidder to pay the asset owner compensation;

(e) provision requiring the asset owner to pay the successful bidder compensation;

(f) supplemental, incidental and consequential provision.

(2) The property, rights and liabilities which may be transferred by a property scheme include property, rights or liabilities which would not otherwise be capable of being transferred.

(3) If a property scheme provides for the division of an estate or interest in land and any rent is—

(a) payable in respect of the estate or interest under a lease, or

(b) charged on the estate or interest,

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the scheme may contain provision for apportionment or division so that one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest.

(4) A property scheme which contains provision which affects a third party may also contain provision requiring the successful bidder or the asset owner to pay the third party compensation.

Applications for schemes

3 (1) An application for a property scheme may be made by—

(a) the preferred bidder,

(b) the successful bidder, or

(c) a person who owns the property, rights and liabilities in relation to which provision of a kind mentioned in paragraph 1(2) is proposed to be included in the scheme.

(2) An application must specify—

(a) the property, rights and liabilities in relation to which provision of a kind mentioned in paragraph 1(2) is proposed to be included in the scheme,

(b) the name and address of the non-applicant party, and

(c) the name and address of each third party whom the applicant considers would be affected by a provision of the proposed property scheme.

(3) All property, rights and liabilities specified in an application in accordance with sub-paragraph (2)(a) must belong to the same person.

(4) A person may make more than one application under this paragraph.

Timing of applications

4 An application for a property scheme, in relation to a tender exercise, may only be made at a time when—

(a) a notice identifying the preferred bidder has been published under paragraph 35(2) (and not withdrawn), or

(b) a notice has been published under paragraph 36 identifying the successful bidder.

5 (1) No application may be made for a property scheme after the end of the transitional period.

(2) Subject to sub-paragraph (3), "the transitional period" means the period of 4 years beginning with the day on which section 92 of the Energy Act 2004 (competitive tenders for offshore transmission licences) comes into force.

(3) Before the end of the transitional period, the Secretary of State may, by order, extend that period by a period specified in the order.

(4) An order under sub-paragraph (3) may relate to a particular case, or to cases of a particular description, only.

(5) The total transitional period in any case must not exceed **[**F615 16 years**]**.

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(6) Before making an order under sub-paragraph (3), the Secretary of State must give notice of the proposal to extend the transitional period.

(7) The notice must—

(a) state that the Secretary of State proposes to make an order extending the transitional period and set out the terms of the proposed order,

(b) state the reasons why the Secretary of State proposes to make the order, and

(c) specify the time (not being less than 28 days from the date of publication of the notice under sub-paragraph (8)(b)) within which representations with respect to the proposals may be made.

(8) The notice must be given—

(a) by serving a copy of it on the Authority, and

(b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of—

(i) the owner of any property, right or liability who may have an interest in the making of the proposed order, and

(ii) if the order relates to a case where a tender exercise has begun, any person who has submitted an application for the offshore transmission licence to which the exercise relates.

Textual Amendments

F615 Words in Sch. 2A para. 5(5) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 104(3)**, 121(3)

Modifications etc. (not altering text)

C109 Sch. 2A para. 5(2) modified (19.5.2013) by The Electricity (Extension of Transitional Period for Property Schemes) Order 2013 (S.I. 2013/968), arts. 1, **2**

Notifying the non-applicant party

6 (1) On receipt of an application for a property scheme, the Authority must serve on the non-applicant party a notice which—

(a) invites the non-applicant party to make representations to the Authority about the application within the period specified in the notice (being not less than 21 days) beginning with the day on which the notice is served, and

(b) describes the effect of paragraphs 9 and 11.

(2) A notice under sub-paragraph (1) must be accompanied by—

(a) a copy of the application, and

(b) a notice under paragraph 16 which complies with the requirements of sub-paragraph (3).

(3) The notice under paragraph 16 must require the non-applicant party to provide the Authority, within the period specified in the notice (being not less than 7 days) beginning with the day on which the notice is served, with—

(a) the name and address of each person to whom sub-paragraph (4) applies, or

(b) if the non-applicant party does not consider that there is any person to whom that sub-paragraph applies, a statement to that effect.

(4) This sub-paragraph applies to a person—

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(a) whom the non-applicant party considers is a third party who would be affected by a provision of the proposed property scheme, and

(b) whose name and address were not specified in the application under paragraph 3(2)(c).

Notifying third parties

7 (1) As soon as reasonably practicable after receiving the information required by a notice within paragraph 6(2)(b), the Authority must serve on each person within sub-paragraph (2)—

(a) a copy of the application, and

(b) a notice inviting that person to make representations to the Authority about the application within the period specified in the notice (being not less than 21 days) beginning with the day on which the notice is served.

(2) A person is within this sub-paragraph if the person's name and address were—

(a) specified in the application in accordance with paragraph 3(2)(c), or

(b) provided to the Authority in response to a notice within paragraph 6(2)(b).

Publishing the application

8 As soon as reasonably practicable after an application is made for a property scheme, the Authority must publish a notice which—

(a) states that an application for a property scheme has been made,

(b) states the names of the applicant and the non-applicant party, and

(c) contains a general description of the property scheme to which the application relates.

Supplementing the application

9 (1) The non-applicant party may, by notice served on the Authority during the period mentioned in paragraph 6(1)(a), modify the application so as to specify additional property, rights or liabilities of the asset owner in relation to which provision of a kind mentioned in paragraph 1(2) is proposed to be included in the scheme.

(2) Where an application is modified by a notice under sub-paragraph (1) (a "modification notice"), this Schedule has effect from that time as if any additional property, rights or liabilities specified in the notice had been specified in the application in accordance with paragraph 3(2)(a).

(3) A modification notice must specify the name and address of each person—

(a) whom the non-applicant party considers to be a third party who would be affected by a provision of the proposed property scheme as modified by the notice, and

(b) who is not within paragraph 7(2).

(4) On receipt of a modification notice, the Authority must serve on the applicant a notice (a "warning notice") which invites the applicant to make representations to the Authority about the modification notice within the period specified in the warning notice (being a period of not less than 21 days) beginning with the day on which the warning notice is served.

(5) A warning notice must be accompanied by—

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(a) a copy of the modification notice,

(b) a notice under paragraph 16 which complies with the requirements of sub-paragraph (6), and

(c) a copy of any information provided by the non-applicant to the Authority in response to a notice within paragraph 6(2)(b).

(6) The notice under paragraph 16 must require the applicant to provide the Authority, within the period specified in the notice (being not less than 7 days) beginning with the day on which the notice is served, with—

(a) the name and address of each person to whom sub-paragraph (7) applies, or

(b) if the applicant does not consider that there is any person to whom that sub-paragraph applies, a statement to that effect.

(7) This sub-paragraph applies to a person—

(a) whom the applicant considers is a third party who would be affected by a provision of the proposed property scheme as modified by the modification notice, and

(b) whose name and address were not—

(i) specified in the application in accordance with paragraph 3(2)(c),

(ii) provided to the Authority in response to a notice within paragraph 6(2)(b), or

(iii) specified in the modification notice under sub-paragraph (3).

(8) As soon as reasonably practicable after receiving the information required by a notice within sub-paragraph (5)(b), the Authority must serve on each person within sub-paragraph (9) a notice inviting that person to make representations to the Authority about the modification notice within the period specified in the notice (being a period of not less than 21 days) beginning with the day on which the notice is served.

(9) A person is within this sub-paragraph if the person's name and address were—

(a) specified in the application in accordance with paragraph 3(2)(c),

(b) provided to the Authority in response to a notice within paragraph 6(2)(b) or sub-paragraph (5)(b) of this paragraph, or

(c) specified in the modification notice.

(10) A notice under sub-paragraph (8) must be accompanied by—

(a) a copy of the modification notice, and

(b) if a copy of the application has not previously been served on the person under paragraph 7(1), a copy of the application.

10 As soon as reasonably practicable after the Authority receives a modification notice, the Authority must publish a notice which—

(a) states that a modification notice has been served on the Authority in relation to an application,

(b) states the names of the applicant and the non-applicant party in relation to the application, and

(c) contains a general description of the modifications made to the application by the modification notice.

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Restricting or withdrawing the application

11 (1) Where an application for a property scheme has been made, the applicant and the non-applicant party may, by a notice served by them jointly on the Authority—

(a) restrict the property, rights and liabilities in relation to which provision of a kind mentioned in paragraph 1(2) is proposed, or

(b) withdraw the application.

(2) Where a notice is served under sub-paragraph (1) the Authority must serve a copy of the notice on any person served with a notice in relation to the application under paragraph 7(1) or 9(8).

(3) A notice may be served under sub-paragraph (1) at any time before a property scheme is made in response to the application.

(4) If, at any time, a notice specifying the preferred bidder, in relation to a tender exercise, is withdrawn under paragraph 35, any application for a property scheme previously made, in relation to that exercise, by the preferred bidder or by the asset owner (unless previously withdrawn under sub-paragraph (1)) is treated as withdrawn at that time.

(5) Where an application is withdrawn by virtue of sub-paragraph (4), the Authority must serve notice to that effect on—

(a) the asset owner, and

(b) any person served with a notice in relation to the application under paragraph 7(1) or 9(8).

(6) If a notice is served under sub-paragraph (1) or an application is withdrawn by virtue of sub-paragraph (4), the Authority may direct the applicant or the non-applicant party (or both) to make a payment to a person within sub-paragraph (7) in respect of the costs incurred by such a person in connection with the application.

(7) Those persons are—

(a) the Authority;

(b) any third party affected by a provision of the proposed property scheme.

(8) A determination under sub-paragraph (6) must be made on the basis of what is just in all the circumstances of the case.

(9) The Authority must serve notice of a direction given under sub-paragraph (6) on—

(a) the applicant (if not the recipient of the direction),

(b) the non-applicant party (if not the recipient of the direction), and

(c) any person served with a notice in relation to the application under paragraph 7(1) or 9(8).

(10) Any sums received by the Authority under sub-paragraph (6) are to be paid into the Consolidated Fund.

The Authority's functions in relation to applications

12 (1) On an application for the making of a property scheme, the Authority must determine whether the proposed provision in relation to any property, right or liability specified in the application in accordance with paragraph 3(2)(a) is necessary or expedient for operational purposes.

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(2) Sub-paragraph (1) does not apply, in relation to any property, right or liability specified in the application, if the successful bidder and the asset owner agree that the proposed provision, in relation to that property, right or liability, is necessary or expedient for operational purposes.

(3) If the Authority determines under sub-paragraph (1) that the proposed provision, in relation to any property, right or liability specified in the application, is not necessary or expedient for operational purposes—

(a) it must refuse the application in relation to the property, right or liability, but

(b) it may serve on the applicant and the non-applicant party a notice proposing, in relation to the property, right or liability, alternative provision of a kind mentioned in paragraph 1(2).

(4) A notice under sub-paragraph (3)(b) must—

(a) invite the recipient to make representations to the Authority about the proposed alternative provision within the period specified in the notice (being not less than 21 days) beginning with the day on which the notice is served, and

(b) be accompanied by a notice under paragraph 16 which complies with the requirements of sub-paragraph (5).

(5) The notice under paragraph 16 must require the recipient of the notice to provide the Authority, within the period specified in the notice (being not less than 7 days) beginning with the day on which the notice is served, with—

(a) the name and address of each person to whom sub-paragraph (6) applies, or

(b) if the recipient does not consider that there is any such person, a statement to that effect.

(6) This sub-paragraph applies to a person—

(a) whom the recipient of the notice considers is a third party who would be affected by the Authority's proposed alternative provision, and

(b) whose name and address were not—

(i) specified in the application in accordance with paragraph 3(2)(c) or in a modification notice under paragraph 9(3), or

(ii) provided to the Authority in response to a notice within paragraph 6(2)(b) or 9(5)(b).

(7) As soon as reasonably practicable after receiving the information required by a notice within sub-paragraph (4)(b), the Authority must serve on each person within sub-paragraph (8)—

(a) if a copy of the application has not previously been served on the person under paragraph 7(1) or 9(8), a copy of the application,

(b) if a copy of any modification notice has not previously been served on the person under paragraph 9(8), a copy of the notice,

(c) a copy of the notice served under sub-paragraph (3)(b), and

(d) a notice inviting that person to make representations to the Authority about the proposed alternative provision within the period specified in the notice beginning with the day on which the notice is served.

(8) A person is within this sub-paragraph if the person's name and address were—

(a) specified in the application in accordance with paragraph 3(2)(c) or in a modification notice under paragraph 9(3),

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(b) provided to the Authority in response to a notice within sub-paragraph (4)(b) or paragraph 6(2)(b) or 9(5)(b).

(9) The period specified under sub-paragraph (7)(d) must be not less than—

(a) in the case of a person whose name and address were provided to the Authority in response to a notice within sub-paragraph (4)(b), 21 days, and

(b) in any other case, 14 days.

(10) Having considered any representations made in accordance with sub-paragraph (4)(a) or (7)(d), the Authority must determine whether the proposed alternative provision is necessary or expedient for operational purposes.

(11) If—

(a) the Authority determines under sub-paragraph (1) that the proposed provision, in relation to any property, right or liability specified in the application, is necessary or expedient for operational purposes,

(b) the successful bidder and the asset owner agree that that is the case, or

(c) the Authority determines under sub-paragraph (10) that the proposed alternative provision, in relation to any property, right or liability, is necessary or expedient for operational purposes,

the Authority must, subject to paragraphs 13 and 14(4), make a property scheme in relation to that property, right or liability.

(12) In this paragraph "the proposed provision", in relation to any property, right or liability, means the provision of a kind mentioned in paragraph 1(2) which the application proposes is made in relation to that property, right or liability (having regard to any modification under paragraph 9 or restriction under paragraph 11).

13 (1) On an application for a property scheme, no scheme may be made until—

(a) the offshore transmission licence has been issued to the successful bidder, and

(b) the relevant co-ordination licence holder has given the Authority, in accordance with the co-ordination licence, a completion notice in relation to the transmission system to which the property scheme relates.

(2) For this purpose—

(a) a "completion notice", in relation to a transmission system, is a notice which states that it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use that system;

(b) a property scheme relates to a transmission system if the property, rights and liabilities in respect of which the scheme makes provision of a kind mentioned in paragraph 1(2) are relevant to the performance by the successful bidder of its licensed functions in relation to that system.

(3) Until such time as section 180 of the Energy Act 2004 (meaning of "high voltage line") comes into force—

(a) the references in sub-paragraphs (1) and (2) to a transmission system include a system which, if that section were in force, would be a transmission system ("an offshore 132 kilovolt system"), and

(b) that section is to be treated as if it were in force for the purposes of determining under sub-paragraph (2)(a) whether it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use an offshore 132 kilovolt system.

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(4) In this paragraph—

"licensed functions" means—

(a) functions under the offshore transmission licence to which the tender exercise relates, and

(b) functions which the successful bidder has, in the capacity of holder of that licence, under or by virtue of any enactment;

"relevant co-ordination licence holder" means—

(a) the holder of a co-ordination licence to whom a person has applied (in accordance with any provision made by that licence) for an offer of connection to and use of a transmission system for the purposes of which the tender exercise is held, or

(b) where the tender exercise is held for the purposes of a connection request within the meaning of section 6D(3)(b), the holder of a co-ordination licence to whom a connection request within the meaning of section 6D(3)(a) would have been made if section 180 of the Energy Act 2004 had been in force and, accordingly, the tender exercise had been held for the purposes of such a request.

Terms of a property scheme

14 (1) Where the Authority is required to make a property scheme, the terms of the scheme must be such as the successful bidder and the asset owner may agree or, if they fail to agree, as the Authority may determine.

This is subject to sub-paragraphs (2) to (9).

(2) A property scheme must not provide for any provision to come into operation before the end of the period of 21 days beginning with the day on which the scheme is made.

(3) In determining the terms of a scheme under sub-paragraph (1), the Authority must, in particular, determine whether the scheme should include provision for compensation to be paid—

(a) by the successful bidder to the asset owner, or

(b) by the asset owner to the successful bidder,

and, if so, what that provision should be.

(4) The Authority may not include in a property scheme provision which would adversely affect a third party unless it determines that it is necessary or expedient for operational purposes for the provision to be made.

(5) Where the Authority includes in a property scheme provision which would adversely affect a third party, the Authority must determine whether the scheme should include provision for compensation and, if so, what that provision should be.

(6) The Authority may include in a property scheme provision for payments to be made by the successful bidder or the asset owner (or both) in respect of costs incurred in connection with the scheme (including the application for the scheme) by—

(a) the Authority,

(b) the successful bidder,

(c) the asset owner, or

(d) a third party affected by a provision of the property scheme.

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(7) For the purposes of making a determination under sub-paragraph (6), the Authority may have regard to the conduct of the parties mentioned in sub-paragraph (6)(a) to (d).

(8) Any sums received by the Authority under sub-paragraph (6) are to be paid into the Consolidated Fund.

(9) For the purposes of this paragraph, a provision of a property scheme adversely affects a third party if that party—

(a) is affected by the provision (see paragraph 38(2)), and

(b) does not consent to the making of the provision by means of the scheme.

15 (1) A determination under paragraph 14, so far as relating to any financial matter, must be made on the basis of what is just in all the circumstances of the case.

(2) A determination under paragraph 14, so far as relating to any other matter, must be made on the basis of what appears to the Authority to be appropriate in all the circumstances of the case having regard, in particular, to what is necessary or expedient for operational purposes.

Additional powers of the Authority

16 (1) The Authority may, by notice, require any of the following persons to provide information or assistance in connection with the performance by the Authority of its functions under this Schedule—

(a) the preferred bidder in relation to a tender exercise;

(b) the successful bidder in relation to a tender exercise;

(c) the asset owner in relation to a property scheme or an application for such a scheme;

(d) the holder of a co-ordination licence;

(e) any third party who is or may be affected by a provision of a property scheme or a proposed property scheme.

(2) If the Authority considers that any other person may be able to provide it with information in respect of any provision of a property scheme or proposed property scheme, it may, by notice, require the person to provide it with such information.

(3) A notice under this paragraph may specify the period within which the information or assistance is to be provided.

(4) If at any time it appears to the Authority that a person has failed to comply with a requirement under sub-paragraph (1) or (2), the Authority may make an application to the court under this paragraph.

(5) If, on an application under this paragraph, the court decides that the person has failed to comply with the requirement, it may order the person to take such steps as the court directs for securing that the requirement is complied with.

(6) In this paragraph "the court" means—

(a) in the case of an application made in England and Wales, the High Court, and

(b) in the case of an application made in Scotland, the Court of Session.

17 The Authority may engage consultants for the purpose of advising it in relation to the making of a determination under this Schedule.

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Notification of property scheme

18 (1) This paragraph applies where the Authority makes a property scheme.

(2) The Authority must, as soon as reasonably practicable, serve a copy of the scheme on—

(a) the successful bidder,

(b) the asset owner, and

(c) each third party affected by the scheme whose name and address was—

(i) specified in the application for the scheme in accordance with paragraph 3(2)(c) or in a modification notice in relation to that application in accordance with paragraph 9(3), or

(ii) provided to the Authority in response to a notice within paragraph 6(2)(b), 9(5)(b) or 12(4)(b).

(3) The Authority must, as soon as reasonably practicable, publish a notice which—

(a) states that a property scheme has been made,

(b) states the names of the successful bidder and the asset owner in relation to the scheme, and

(c) contains a general description of the provision made by the scheme.

Refusal of application or part of application

19 (1) This paragraph applies where the Authority—

(a) determines to refuse an application for a property scheme so far as it relates to any property, right or liability specified in the application in accordance with paragraph 3(2)(a), or

(b) determines not to make any alternative provision proposed under paragraph 12(3)(b) in relation to any such property, right or liability.

(2) The Authority must, as soon as reasonably practicable, serve a notice giving details of the determination on each person mentioned in paragraph 18(2)(a) to (c).

(3) The Authority may direct the successful bidder or the asset owner to make a payment in respect of the costs incurred in connection with the application by—

(a) the Authority,

(b) the successful bidder,

(c) the asset owner, or

(d) a third party affected by a provision of the proposed property scheme or any alternative provision proposed under paragraph 12(3)(b).

(4) The Authority must serve notice of a direction given under sub-paragraph (3) on—

(a) the successful bidder (if not the recipient of the direction),

(b) the asset owner (if not the recipient of the direction), and

(c) any person served with a notice in relation to the application under paragraph 7(1), 9(8) or 12(7).

(5) A determination under sub-paragraph (3) must be made on the basis of what is just in all the circumstances of the case.

(6) Any sums received by the Authority under sub-paragraph (3) are to be paid into the Consolidated Fund.

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Effect of property scheme

20 A property scheme, by virtue of this paragraph, has effect according to its terms.

21 (1) A transaction of any description effected by or under a property scheme has effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register.

(2) Subject to that, a transaction of any description effected by or under a property scheme is binding on all persons, despite the fact that it would, apart from this provision, have required the consent or concurrence of any person.

(3) In this paragraph "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

22 Where—

(a) an amount of compensation is owed to a person in accordance with a property scheme, or

(b) an amount in respect of costs is owed to a person in accordance with such a scheme or with a direction under paragraph 11(6) or 19(3),

the amount may be recovered by that person.

Review of determinations

23 (1) Any person affected by a determination of the Authority under this Schedule may apply to the Competition Appeal Tribunal for a review of the determination.

(2) An application under sub-paragraph (1) may be made—

(a) during the relevant appeal period, or

(b) with the permission of the Competition Appeal Tribunal, at a later time.

(3) The relevant appeal period means—

(a) where the application is in respect of a determination relating to a property scheme which has been made by the Authority, 21 days beginning with the day on which a notice in respect of the scheme is published under paragraph 18(3);

(b) in any other case, 21 days beginning with the day on which the determination was made.

(4) On an application under sub-paragraph (1), the Competition Appeal Tribunal may by order—

(a) dismiss the application, or

(b) make such other determination as it considers appropriate.

24 (1) This paragraph applies where—

(a) the Competition Appeal Tribunal makes an order under paragraph 23(4)(b), and

(b) the Authority has not made a property scheme in relation to the property, rights or liabilities concerned.

(2) The Tribunal may include in the order provision requiring the Authority to make a property scheme in relation to that property, or those rights and liabilities.

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(3) Where paragraph 14 applies because of provision under this paragraph, anything the Tribunal has determined is to be treated for the purposes of that paragraph as determined by the Authority.

25 (1) This paragraph applies where—

(a) the Competition Appeal Tribunal makes an order under paragraph 23(4)(b),

(b) the Authority has made a property scheme in relation to the property, rights or liabilities concerned, and

(c) the scheme has not come into operation.

(2) Where the Tribunal's determination is that provision of a kind mentioned in paragraph 1(2) is not, in relation to the property, rights or liabilities concerned, necessary or expedient for operational purposes, it may include in the order provision quashing the scheme.

(3) In any other case, the Tribunal may include in the order—

(a) provision for the scheme to have effect with such amendments with respect to any matter dealt with by the Authority's determination as it thinks fit, and

(b) to the extent that the Authority's determination dealt with any financial matter, provision requiring the Authority to redetermine the matter in accordance with the order and to amend the scheme accordingly.

26 (1) This paragraph applies where—

(a) the Competition Appeal Tribunal makes an order under paragraph 23(4)(b),

(b) the Authority has made a property scheme in relation to the property, rights or liabilities concerned, and

(c) the scheme has come into operation.

(2) The Tribunal may include in the order such provision as it thinks fit for the purpose of doing justice between—

(a) the successful bidder,

(b) the person who was the asset owner immediately before the scheme came into operation, and

(c) any third party affected by the scheme,

in the light of its determination.

(3) Without prejudice to the generality of sub-paragraph (2), the Tribunal may include in the order—

(a) provision for the transfer of anything transferred by the scheme;

(b) provision for the surrender or extinction of rights;

(c) provision for the payment of compensation to the successful bidder or the person who was the asset owner immediately before the scheme came into operation;

(d) provision for the payment of compensation to a third party affected by the scheme;

(e) provision about the payment of costs of the kind mentioned in paragraph 14(6).

(4) Any sums received by the Authority by virtue of sub-paragraph (3)(e) are to be paid into the Consolidated Fund.

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27 (1) An order under paragraph 23(4)(b) may include provision for the award of interest at such rate and for such period as the Competition Appeal Tribunal thinks fit.

(2) Where the application made under paragraph 23(1) is for a review of a determination under paragraph 11(6) or 19(3), the Tribunal may include in an order under paragraph 23(4)(b) one or both of the following—

(a) provision amending or revoking any direction made as a result of the determination;

(b) provision equivalent to any direction which could have been made by the Authority under paragraph 11(6) or 19(3).

Interim arrangements pending review of determination

28 (1) This paragraph applies where—

(a) a person makes an application under paragraph 23(1) for the review of a determination, and

(b) the Authority has not made a property scheme in relation to the property, rights or liabilities to which the determination relates.

(2) The Competition Appeal Tribunal may, at any time before an order is made under paragraph 23(4), on application by the successful bidder or the asset owner make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned.

(3) Without prejudice to the generality of sub-paragraph (2), the power under that sub-paragraph includes, in particular, power to make provision for the successful bidder to have access to, or otherwise to enjoy the benefit of, any of the property or rights concerned for such period, and on such terms, as the Tribunal thinks fit.

29 (1) This paragraph applies where—

(a) a person makes an application under paragraph 23(1) for the review of a determination, and

(b) the Authority has made a property scheme in relation to the property, rights or liabilities to which the determination relates.

(2) The Competition Appeal Tribunal may, at any time before an order is made under paragraph 23(4), on application by—

(a) the successful bidder,

(b) if the scheme has not come into operation, the asset owner,

(c) if the scheme has come into operation, the person who was the asset owner immediately before it did so, or

(d) a third party who is affected by any provision of the property scheme,

make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned.

(3) Without prejudice to the generality of sub-paragraph (2), the power under that sub-paragraph includes, in particular, power—

(a) to make provision postponing or suspending the operation of any provision of the scheme for such period, and on such terms, as the Tribunal thinks fit;

(b) to make provision for the successful bidder, or an applicant within sub-paragraph (2)(c), to have access to, or otherwise to enjoy the benefit of, any of the property or rights concerned for such period and on such terms as the Tribunal thinks fit.

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30 In exercising its powers under paragraph 28 or 29, the Competition Appeal Tribunal must have regard, in particular, to what is necessary or expedient for operational purposes.

31 Paragraphs 28 or 29 are without prejudice to any powers of the Competition Appeal Tribunal to make orders on an interim basis under rules under section 15 of the Enterprise Act 2002 (c. 40).

32 (1) If an order under paragraph 28 or 29 is registered in England and Wales in accordance with rules of court or any practice direction, it is enforceable as an order of the High Court.

(2) An order under paragraph 28 or 29 may be recorded for execution in the Books of Council and Session and is to be enforceable accordingly.

(3) Subject to rules of court or any practice direction, an order under paragraph 28 or 29 may be registered or recorded for execution by a person entitled to any right under the interim arrangements for which the order makes provision.

(4) Sub-paragraphs (1) to (3) apply to an order on an interim basis made under rules under section 15 of the Enterprise Act 2002 in connection with an application under paragraph 23(1) as they apply to an order under paragraph 28 or 29.

Appeal on a point of law

33 (1) An appeal lies on any point of law arising from a decision of the Competition Appeal Tribunal under this Schedule to the appropriate court.

(2) An appeal under this paragraph requires the permission of the Tribunal or of the appropriate court.

(3) In this paragraph "the appropriate court" means—

(a) in the case of Tribunal proceedings in England and Wales, the Court of Appeal, and

(b) in the case of Tribunal proceedings in Scotland, the Court of Session.

Change of asset owner during application process

34 (1) Where any property, rights or liabilities specified in an application in accordance with paragraph 3(2)(a) are transferred by the asset owner to another person ("the new asset owner") after the application is made, this Schedule has effect as if—

(a) references to the asset owner included the new asset owner, and

(b) anything done by or in relation to the asset owner had been done by or in relation to the new asset owner.

(2) In the case of property, rights or liabilities treated as specified in an application by virtue of paragraph 9(2), sub-paragraph (1) applies as if for "the application is made" there were substituted " the modification notice is served on the Authority ".

The preferred bidder

35 (1) The preferred bidder, in relation to a tender exercise, is the person whose name and address is specified in a notice which has been published under sub-paragraph (2) (and has not been withdrawn under sub-paragraph (4)).

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(2) Where a tender exercise is held, as soon as the Authority is satisfied that it will grant the offshore transmission licence to a particular person if certain matters are resolved to the Authority's satisfaction, it must publish a notice to that effect.

(3) The notice must—

(a) specify the name and address of the person, and

(b) describe, in general terms, those matters.

(4) The Authority may withdraw a notice under sub-paragraph (2) by publishing a notice to that effect.

(5) A notice published under sub-paragraph (2) must be withdrawn before a subsequent notice may be published under that sub-paragraph in relation to the same tender exercise.

The successful bidder

36 (1) The successful bidder, in relation to a tender exercise, is the person to whom, as a result of that exercise, the offshore transmission licence has been or is to be granted.

(2) Where a tender exercise is held, as soon as the Authority determines to grant the offshore transmission licence to a person, it must publish a notice to that effect.

(3) The notice must specify the name and address of the successful bidder.

Associated bodies corporate

37 (1) For the purposes of this Schedule, one body corporate is associated with another if one of them controls the other or a third body corporate controls both of them, and sub-paragraphs (2) to (6) set out the circumstances in which one body corporate ("A") controls another ("B").

(2) 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.

(3) 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.

(4) In sub-paragraph (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

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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 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 determining whether, by virtue of sub-paragraphs (2) to (5), 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 sub-paragraph).

Interpretation

38 (1) In this Schedule—

"the asset owner"—

(a) in relation to an application for a property scheme, means the owner of the property, rights and liabilities in relation to which provision of a kind mentioned in paragraph 1(2) is proposed to be included in the scheme;

(b) in relation to a property scheme, means the owner of the property, rights and liabilities in relation to which provision of such a kind is included in the scheme;

"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 by means of which the transmission of electricity takes place and the whole or a part of which is at a relevant place;

"functions" includes powers and duties;

"modification notice" is to be construed in accordance with paragraph 9;

"non-applicant party" means—

(a) in the case of an application made by the preferred bidder or the successful bidder, the asset owner, and

(b) in the case of an application made by the asset owner, the successful bidder or, if a notice has not yet been published under paragraph 36, the preferred bidder;

"operational purposes" means the purposes of performing any functions which the successful bidder has, or may in future have—

(a) under or by virtue of the offshore transmission licence which has been, or is to be, granted as a result of the tender exercise, or

(b) under or by virtue of any enactment, in the successful bidder's capacity as holder of the licence;

"preferred bidder", in relation to a tender exercise, is to be construed in accordance with paragraph 35;

"property scheme" is to be construed in accordance with paragraph 1;

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

"successful bidder", in relation to a tender exercise, is to be construed in accordance with paragraph 36;

"tender exercise" has the same meaning as in section 6D;

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"third party", in relation to a property scheme or proposed property scheme in connection with a tender exercise, means a person other than the preferred bidder, the successful bidder, or the asset owner.

(2) For the purposes of this Schedule, a provision of a property scheme affects a third party if that party's consent or concurrence would be required to the making of the provision otherwise than by means of the scheme.**]**

SCHEDULE 3

Section 10(1).

COMPULSORY ACQUISITION OF LAND ETC. BY LICENCE HOLDERS

PART I

POWERS OF ACQUISITION

Modifications etc. (not altering text)
C110 Sch. 3 Pt. 1: transfer of functions to the Scottish Minster (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1**

1 (1) Subject to paragraph 2 below, the Secretary of State may authorise a licence holder to purchase compulsorily any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.

(2) In this paragraph and paragraph 2 below "land" includes any right over land (other than, in Scotland, a right to abstract, divert and use water); and the power of the Secretary of State under this paragraph includes power to authorise the acquisition of rights over land by creating new rights as well as acquiring existing ones.

2 (1) No order shall be made under paragraph 1 above authorising the compulsory purchase of land belonging to another licence holder except with the consent of the Director.

(2) The Director shall not give his consent under this paragraph if—

(a) the land is being used by the licence holder to whom it belongs for the purposes of an installation necessary for the carrying on of the activities which he is authorised by his licence to carry on; or

(b) it appears to the Director that the land will be so used and that the use will commence, or any necessary planning permission or consent under section 36 or 37 of this Act will be applied for, within the period of five years beginning with the date of the application for his consent.

(3) The Secretary of State may by order provide that sub-paragraph (2) above shall have effect as if for the period mentioned in paragraph (b) there were substituted such other period as may be specified in the order.

(4) A consent under this paragraph which is not acted on within the period of six months beginning with the day on which it is granted shall cease to have effect at the end of that period.

(5) In this paragraph—

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"the Planning Act" means **[**F616the Town and Country Planning Act 1990**]** or **[**F617the Town and Country Planning (Scotland) Act 1997**]**;

"planning permission" means a planning permission granted under Part III of the Planning Act.

Textual Amendments

F616 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 83(1)**

F617 Words in Sch. 3 para. 2(5) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 44(1)**

3 (1) This paragraph applies to land which—

(a) for the purposes of the M44Acquisition of Land Act 1981, is or forms part of a common, open space or a fuel or field garden allotment; or

(b) for the purposes of the M45Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, is or forms part of a common or open space.

(2) Where for any purpose a licence holder has acquired, or proposes to acquire, any land to which this paragraph applies, or any right over any such land, and other land is required for the purpose of being given in exchange for the land or right in question, the Secretary of State may authorise the licence holder to purchase that other land compulsorily, or he may acquire it by agreement.

Marginal Citations

M44 1981 c. 67.

M45 1947 c. 42.

4 Where a licence holder has acquired any land by virtue of paragraph 1 above, he shall not dispose of that land or of any interest in or right over it except with the consent of the Director.

PART II

PROCEDURE, COMPENSATION ETC. (ENGLAND AND WALES)

Application of Acquisition of Land Act 1981 generally

5 (1) Subject to sub-paragraph (2) below, the M46Acquisition of Land Act 1981 shall apply to a compulsory purchase by a licence holder of land or rights in England and Wales; and Schedule 3 to that Act shall apply in the case of a compulsory acquisition by a licence holder of a right by the creation of a new right.

(2) Section 16 of, and paragraph 3 of Schedule 3 to, the said Act of 1981 (statutory undertakers' land excluded from compulsory purchase) shall not apply where the land or rights in question belong to another licence holder.

Marginal Citations

M46 1981 c. 67.

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New rights: general adaptation of Compulsory Purchase Act 1965

6 The [M47]Compulsory Purchase Act 1965 shall have effect with the modifications necessary to make it apply to a licence holder's compulsory acquisition of a right in England and Wales by the creation of a new right as it applies to the compulsory acquisition of land, so that, in appropriate contexts, references in that Act to land are to be read as referring, or as including references, to the right acquired or to be acquired, or to land over which the right is or is to be exercisable, according to the requirements of the particular context.

Marginal Citations
M47 1965 c. 56.

New rights: specific adaptations of Act of 1965

7 Without prejudice to the generality of paragraph 6 above, Part I of the Compulsory Purchase Act 1965 shall apply in relation to a licence holder's compulsory acquisition of a right in England and Wales by the creation of a new right with the modifications specified in paragraphs 8 to 13 below.

8 For section 7 of that Act (measure of compensation) there shall be substituted the following section—

"**7** In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."

9 For subsection (1) of section 8 of that Act (protection for vendor against severance of house, garden, etc.) there shall be substituted the following subsections—

"(1) No person shall be required to grant any right over part only—

(a) of any house, building or manufactory; or

(b) of a park or garden belonging to a house,

if he is willing to sell the whole of the house, building, manufactory, park or garden, unless the **[**[F618]Upper Tribunal determines**]** that—

(i) in the case of a house, building or manufactory, the part over which the right is proposed to be acquired can be made subject to that right without material detriment to the house, building or manufactory; or

(ii) in the case of a park or garden, the part over which the right is proposed to be acquired can be made subject to that right without seriously affecting the amenity or convenience of the house;

and if the **[**[F619]Upper Tribunal so determines**]**, the Tribunal shall award compensation in respect of any loss due to the acquisition of the right, in addition to its value; and thereupon the party interested shall be required to grant to the acquiring authority that right over the part of the house, building, manufactory, park or garden.

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(1A) In considering the extent of any material detriment to a house, building or manufactory, or any extent to which the amenity or convenience of a house is affected, the **[**F620Upper Tribunal**]** shall have regard not only to the right which is to be acquired over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase."

Textual Amendments

F618 Words in Sch. 3 para. 9 substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), art. 1, **Sch. 1 para. 191(a)(i)** (with Sch. 5)

F619 Words in Sch. 3 para. 9 substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), art. 1, **Sch. 1 para. 191(a)(ii)** (with Sch. 5)

F620 Words in Sch. 3 para. 9 substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), art. 1, **Sch. 1 para. 191(b)** (with Sch. 5)

10 The following provisions of that Act (being provisions stating the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land)—

section 9(4) (refusal by owners to convey);

Schedule 1, paragraph 10(3) (owners under incapacity);

Schedule 2, paragraph 2(3) (absent and untraced owners); and

Schedule 4, paragraphs 2(3) and 7(2) (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

11 Section 11 of that Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on **[**F621enforcement officer's or sheriff's warrant**]** in the event of obstruction) shall be modified correspondingly.

Textual Amendments

F621 Words in Sch. 3 para. 11 substituted (1.4.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 22 para. 7**; S.I. 2007/2709, art. 5(b)

12 Section 20 of that Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

13 Section 22 of that Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred

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to in that section, to continue entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

New rights: compensation

14 The enactments in force in England and Wales with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a licence holder's compulsory acquisition of a right by the creation of a new right as they apply to compensation on the compulsory purchase of land and interests in land.

PART III

PROCEDURE, COMPENSATION ETC. (SCOTLAND)

Application of Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 generally

15 (1) Subject to sub-paragraph (2) below, the [M48]Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply to the compulsory purchase by a licence holder of land or rights in Scotland as if the licence holder were a local authority within the meaning of that Act, and as if this Act had been in force immediately before the commencement of that Act.

(2) Paragraph 10 of the First Schedule to that Act (statutory undertakers' land excluded from compulsory purchase) shall not apply where the land or rights in question belong to another licence holder.

Modifications etc. (not altering text)
C111 Sch. 3 Pt. III para. 15: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

Marginal Citations
M48 1947 c. 42.

New rights: general application of Act of 1947 and incorporated enactments

16 The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, and the enactments incorporated with this Act by virtue of paragraph 15 above and paragraph 1 of the Second Schedule to that Act shall have effect with the modifications necessary to make them apply to a licence holder's compulsory acquisition of a right in Scotland by the creation of a new right (other than a right to abstract, divert and use water) as they apply to the compulsory acquisition of land, so that, in appropriate contexts, references in those enactments and that Act to land are to be read as referring, or as including references, to the right acquired or to be acquired, or to land over which the right is or is to be exercisable, according to the requirements of the particular context.

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Modifications etc. (not altering text)
C112 Sch. 3 Pt. III para. 16: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

New rights: specific adaptations of Act of 1947

17 Without prejudice to the generality of paragraph 16 above, Part III of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (requirement of special parliamentary procedure, and other special provisions, in the case of acquisition of certain descriptions of land) shall apply in relation to a licence holder's compulsory acquisition of a right in Scotland by the creation of a new right with the modifications specified in paragraphs 18 to 23 below.

Modifications etc. (not altering text)
C113 Sch. 3 Pt. III para. 17: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

18 In paragraph 9 of that Schedule (compulsory purchase affecting land of the National Trust for Scotland) for references to the compulsory purchase of land there shall be substituted references to the compulsory acquisition of rights over land.

19 In paragraph 10 of that Schedule (land of statutory undertakers)—

(a) for the words "land comprised in the order" there shall be substituted the words "land over which a right is to be acquired by virtue of the order";

(b) for the words "purchase of" there shall be substituted the words "acquisition of a right over";

(c) for the words "it can be purchased and not replaced" there shall be substituted the words "the right can be acquired"; and

(d) for sub-paragraph (ii) there shall be substituted the following sub-paragraph—

"(ii) that any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to, or available for acquisition by, them".

20 In paragraph 11 of that Schedule (common or open space), for sub-paragraph (1) there shall be substituted the following sub-paragraph—

"(1) In so far as a compulsory purchase order authorises the acquisition of a right over land forming part of a common or open space, it shall be subject to special parliamentary procedure unless the Secretary of State is satisfied—

(a) that the land, when burdened with that right, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before;

(b) that there has been or will be given in exchange for the right additional land which will as respects the persons in whom there

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is vested the land over which the right is to be acquired, the persons, if any, entitled to rights of common or other rights over that land, and the public, be adequate to compensate them for the disadvantages which result from the acquisition of the right, and that the additional land has been or will be vested in the persons in whom there is vested the land over which the right is to be acquired, and subject to the like rights, trusts and incidents as attach to that land apart from the compulsory purchase order; or

(c) that the land affected by the right to be acquired does not exceed 250 square yards in extent, and that the giving of other land in exchange for the right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public,

and certifies accordingly."

Modifications etc. (not altering text)

C114 Sch. 3 Pt. III para. 20: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

F622 21 . . . . . .

Textual Amendments

F622 Sch. 3 para. 21 repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

22 Paragraph 3(1) of the Second Schedule to the M49 Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall be so modified as to secure that, as from the date on which the licence holder has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice).

Marginal Citations

M49 1947 c. 42.

23 For paragraph 4 of that Schedule (protection for owner against severance of property) there shall be substituted the following paragraphs—

"4 No person shall be required to grant any right over part only—

(a) of any house, building or manufactory; or

(b) of a park or garden belonging to a house,

if he is willing to sell the whole of the house, building, manufactory, park or garden, unless the Lands Tribunal for Scotland determines that—

(i) in the case of a house, building or manufactory, the part over which the right is proposed to be acquired can be made subject to that right without material detriment to the house, building or manufactory; or

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(ii) in the case of a park or garden, the part over which the right is proposed to be acquired can be made subject to that right without seriously affecting the amenity or convenience of the house;

and if it so determines, it shall award compensation in respect of any loss due to the acquisition of the right, in addition to its value; and thereupon the party interested shall be required to grant to the acquiring authority that right over the part of the house, building, manufactory, park or garden.

4A In considering, for the purposes of paragraph 4 above, the extent of any material detriment to a house, building or manufactory, or any extent to which the amenity or convenience of a house is affected, the Lands Tribunal for Scotland shall have regard not only to the right which is to be acquired over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase."

New rights: specific adaptations of Lands Clauses Consolidation (Scotland) Act 1845

24 Without prejudice to the generality of paragraph 16 above, the [M50]Lands Clauses Consolidation (Scotland) Act 1845 shall apply in relation to a licence holder's compulsory acquisition of a right in Scotland by the creation of a new right with the modifications specified in paragraphs 25 to 28 below.

Marginal Citations
M50 1845 c. 19.

25 For section 61 of that Act (estimation of compensation) there shall be substituted the following section—

"**61** In estimating the purchase money or compensation to be paid by the licence holder under the special Act, in any of the cases aforesaid, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right, but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."

26 The following provisions of that Act (being provisions stating the effect of a notarial instrument or of a disposition executed in various circumstances where there is no conveyance by persons with interests in the land)—

section 74 (failure by owner to convey);

section 76 (refusal to convey or show title or owner cannot be found);

section 98 (vesting of common land),

shall be so modified as to secure that, as against persons with interests in the land over which the right is to be compulsorily acquired, such right is vested absolutely in the licence holder.

27 Sections 114 (compensation to be made to tenants for a year etc.) and 115 (compensation where greater interest than tenant for a year) of that Act shall apply with the modifications necessary to secure that persons with such interests as are mentioned in those sections are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of that land, but

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taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

28 Sections 117 (protection of promoter of undertaking where by inadvertence an interest in land has not been purchased etc.) and 118 (provisions supplementary to section 117) of that Act shall be so modified as to enable the licence holder, in circumstances corresponding to those referred to in those sections, to continue entitled to exercise the right acquired, subject to compliance with those sections as respects compensation.

New rights: compensation

29 The enactments in force in Scotland with respect to compensation for the compulsory purchase of land shall apply as respects compensation in the case of a licence holder's compulsory acquisition of a right by the creation of a new right (other than a right to abstract, divert and use water) as they apply to compensation on the compulsory purchase of land and interests in land.

SCHEDULE 4

Section 10(1).

OTHER POWERS ETC. OF LICENCE HOLDERS

Modifications etc. (not altering text)
C115 Sch. 4 applied (with modifications) (1.9.2004) by Energy Act 2004 (c. 20), **ss. 143(2)**, 198(2); S.I. 2004/2184, art. 2(2), Sch. 2

Street works etc. in England and Wales

1 (1) Subject to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—

(a) the following kinds of works, that is to say, installing under, over, in, on, along or across any street and from time to time inspecting, maintaining, adjusting, repairing, altering, replacing or removing—

(i) any electric lines or electrical plant; and

(ii) any structures for housing or covering any such lines or plant; and

(b) any works requisite for or incidental to the purposes of any works falling within paragraph (a) above, including for those purposes—

(i) opening or breaking up any street or any sewers, drains or tunnels within or under any street;

(ii) tunnelling or boring under any street; and

(iii) removing or using all earth and materials in or under any street;

but nothing in this sub-paragraph shall empower a licence holder to lay down or place any electric line or electrical plant into, through or against any building, or in any land not dedicated to the public use.

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(2) The power of a licence holder under sub-paragraph (1) to place on or over a street any structure for housing any line or plant shall be **[**F623exercisable only with the consent of the street authority; but such consent shall not be unreasonably withheld**]**.

(3) Any question under sub-paragraph (2) above as to whether or not a consent is unreasonably withheld shall be determined by a single arbitrator to be appointed by the parties or, in default of agreement, by the Director.

(4) Except in cases of emergency arising from faults in any electric lines or electrical plant, **[**F624a street which is not a maintainable highway**]** shall not be opened or broken up by virtue of sub-paragraph (1) above except with the consent of **[**F625the street authority**]** or the consent of the Secretary of State.

(5) The Secretary of State shall not entertain an application for his consent under sub-paragraph (4) above unless the licence holder has served notice of the application on the person whose consent would otherwise be required.

(6) A licence holder shall do as little damage as possible in the exercise of the powers conferred by sub-paragraph (1) above and shall make compensation for any damage done in the exercise of those powers.

(7) A licence holder shall exercise the powers conferred by sub-paragraph (1) above in such manner as will secure that nothing which he instals or keeps installed under, over, in, on, along or across any street becomes a source of danger to the public.

F626**[**(8) Nothing in sub-paragraph (1) above shall affect the application to any operation of sections 34 to 36 of the Coast Protection Act 1949.**]**

F627**[**(9) In this paragraph "maintainable highway", "street" and "street authority" have the same meaning as in Part III of the New Roads and Street Works Act 1991.**]**

(10) This paragraph extends to England and Wales only.

Textual Amendments

F623 Words in Sch. 4 para. 1(2) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(2)**; S.I. 1992/2984, art. 2(2), **Sch. 2**.

F624 Words in Sch. 4 para. 1(4) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(3)(a)**; S.I. 1992/2984, art. 2(2), **Sch.2**.

F625 Words in Sch. 4 para. 1(4) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(3)(b)**; S.I. 1992/2984, art. 2(2), **Sch. 2**.

F626 Sch. 4 para. 1(8) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(4)**; S.I. 1992/2984, art. 2(2), **Sch.2**.

F627 Sch. 4 para. 1(9) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(5)**; S.I. 1992/2984, art. 2(2), **Sch.2**.

Road works etc. in Scotland

2 (1) Subject to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—

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(a) the following kinds of works, that is to say, installing under, over, in, on, along or across any road or bridge and from time to time inspecting, maintaining, adjusting, repairing, altering or removing—

(i) any electric lines or electrical plant; and

(ii) any structures for housing or covering any such lines or plant; and

(b) any works requisite for or incidental to the purposes of any works falling within paragraph (a) above, including for those purposes—

(i) opening or breaking up any road or bridge or any sewers, drains or tunnels within or under any road or bridge;

(ii) tunnelling or boring under any road; and

(iii) removing or using all earth and materials in or under any road;

but nothing in this sub-paragraph shall empower a licence holder to lay down or place any electric line or electrical plant into, through or against any building, or in any land over which there is no public right of passage.

(2) The power of a licence holder under sub-paragraph (1) above to place on or over a road or bridge any structure for housing any line or plant shall be **[**F628exercisable only with the consent of the road works authority; but such consent shall not be unreasonably withheld**]** .

(3) Any question under sub-paragraph (2) above as to whether or not a consent is unreasonably withheld shall be determined by a single arbiter to be appointed by the parties or, in default of agreement, by the Director.

(4) Except in cases of emergency arising from faults in any electric lines or electrical plant, **[**F629a road which is not a public road**]** shall not be opened or broken up by virtue of sub-paragraph (1) above except with the consent of **[**F630the road works authority**]** or the consent of the Secretary of State.

(5) The Secretary of State shall not entertain an application for his consent under sub-paragraph (4) above unless the licence holder has served notice of the application in the prescribed form on the person whose consent would otherwise be required.

(6) A licence holder shall do as little damage as possible in the exercise of the powers conferred by sub-paragraph (1) above and shall make compensation for any damage done in the exercise of those powers.

(7) A licence holder shall exercise the powers conferred by sub-paragraph (1) above in such manner as will secure that nothing which he instals or keeps installed under, over, in, on, along or across any road or bridge becomes a source of danger to the public.

F631**[**(8) Nothing in sub-paragraph (1) above shall affect the application to any operation of sections 34 to 36 of the Coast Protection Act 1949.**]**

F632**[**(9) In this paragraph "public road", "road" and "road works authority" have the same meaning as in Part IV of the New Roads and Street Works Act 1991.**]**

(10) This paragraph extends to Scotland only.

Textual Amendments

F628 Words in Sch. 4 para. 2(2) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 124(2)**; S.I. 1992/2990, art. 2(2), **Sch.2**.

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F629 Words in Sch. 4 para. 2(4) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 168(1)**,Sch. 8 Pt. IV para. 124(3)(a); S.I. 1992/2990, **art. 2(2)**, SCh. 2.

F630 Words in Sch. 4 para. 2(4) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), **s. 168(1)**,Sch. 8 Pt. IV para. 124(3)(b); S.I. 1992/2990, art. 2(2), **Sch.2**.

F631 Sch. 4 para 2(8) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 124(4)**; S.I.1992/2990, art. 2(2), **Sch.2**.

F632 Sch. 4 para 2(9) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 124(5)**; S.I. 1992/2990, art. 2(2), **Sch.2**.

Alteration of works

3 (1) A licence holder may execute works in pursuance of paragraph 1 or 2 above, notwithstanding that they involve a temporary or permanent alteration of any of the following, namely—

(a) any electric line or electrical plant under the control of another licence holder;

(b) any gas pipe **[**F633operated by a public gas transporter**]**;

(c) any relevant pipe (within the meaning of **[**F634section 159 of the Water Resources Act 1991 or section 158 of the Water Industry Act 1991 which (whether or not it is in a street) is**]**) under the control of the National Rivers Authority, **[**F635the Natural Resources Body for Wales,**]** a water undertaker or a sewerage undertaker or, in Scotland, any water pipe under the control of a person supplying water in the exercise of statutory powers;

(d) any **[**F636electronic communications apparatus**]** used for the purposes of **[**F637an electronic communications code network**]** which is operated by a person to whom the **[**F638electronic communications code**]** applies; or

(e) any system apparatus (within the meaning of Part II of the M51Road Traffic (Driver Licensing and Information Systems) Act 1989) of an operator of a driver information system who is licensed under Part II of that Act.

(2) Where a licence holder is proposing to execute works in pursuance of paragraph 1 or 2 above which involve or are likely to involve any such alteration as is mentioned in sub-paragraph (1)(a), (b) or (c) above, the following provisions of this paragraph shall apply; and in those provisions "the relevant undertaker" means the other licence holder, the **[**F639public gas transporter**]** or the person supplying water in the exercise of statutory powers, as the case may be.

(3) The licence holder shall, not less than one month before the works are commenced, give the relevant undertaker a notice specifying the nature of the licence holder's works, the alteration or likely alteration involved and the time and place at which the works will be commenced.

(4) Sub-paragraph (3) above shall not apply in relation to any emergency works of which the licence holder gives the relevant undertaker notice as soon as practicable after commencing the works.

(5) Where a notice has been given under sub-paragraph (3) above by the licence holder to the relevant undertaker, the undertaker may within the period of seven days beginning with the giving of the notice give the licence holder a counter-notice which may state either—

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(a) that the undertaker intends himself to make any alteration made necessary or expedient by the licence holder's proposed works; or

(b) that he requires the licence holder in making any such alteration to do so under the supervision and to the satisfaction of the undertaker.

(6) Where a counter-notice given under sub-paragraph (5) above states that the relevant undertaker intends himself to make any alteration—

(a) the undertaker shall (subject to sub-paragraph (8) below) have the right, instead of the licence holder, to execute any works for the purpose of making that alteration; and

(b) any expenses incurred by the undertaker in or in connection with the execution of those works and the amount of any loss or damage sustained by the undertaker in consequence of the alteration shall be recoverable by the undertaker from the licence holder in any court of competent jurisdiction.

(7) Where a counter-notice given under sub-paragraph (5) above states that any alteration is to be made under the supervision and to the satisfaction of the relevant undertaker—

(a) the licence holder shall not make the alteration except as required by the notice or under sub-paragraph (8) below; and

(b) any expenses incurred by the undertaker in or in connection with the provision of that supervision and the amount of any loss or damage sustained by the undertaker in consequence of the alteration shall be recoverable by the undertaker from the licence holder in any court of competent jurisdiction.

(8) Where—

(a) no counter-notice is given under sub-paragraph (5) above; or

(b) the relevant undertaker, having given a counter-notice falling within that sub-paragraph, fails to make any alteration made necessary or expedient by the licence holder's proposed works within such period (being not less than 48 hours) as the licence holder may by notice specify or, as the case may be, unreasonably fails to provide the required supervision,

the licence holder may himself execute works for the purpose of making the alteration or, as the case may be, may execute such works without the supervision of the undertaker; but in either case the licence holder shall execute the works to the satisfaction of the undertaker.

(9) If the licence holder or any of his agents—

(a) executes any works without the notice required by sub-paragraph (3) above having been given; or

(b) unreasonably fails to comply with any reasonable requirement of the relevant undertaker under this paragraph,

he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Textual Amendments

F633 Words in Sch. 4 para. 3(1)(b) substituted (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 17(1)(a)**; S.I. 1996/218, **art. 2**

F634 Words in Sch. 4 para. 3(1)(c) substituted (E.W.) (01.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(1), 4(2), **Sch. 1 para. 51(2)**.

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F635 Words in Sch. 4 para. 3(1)(c) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 196(2)** (with Sch. 7)

F636 Words in Sch. 4 para. 3(1)(d) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 17 para. 99(2)(a)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

F637 Words in Sch. 4 para. 3(1)(d) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 17 para. 99(2)(b)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

F638 Words in Sch. 4 para. 3(1)(d) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 17 para. 99(2)(c)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

F639 Words in Sch. 4 para. 3(2) substituted (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 17(1)(b)**; S.I. 1996/218, **art. 2**

Marginal Citations

M51 1989 c. 22.

4 (1) Any of the following who is authorised by or under any enactment to execute works corresponding to those authorised by paragraph 1 or 2 above, namely—

(a) any **[**F640public gas transporter**]**;

(b) the **[**F641Environment Agency**]**, **[**F642the Natural Resources Body for Wales,**]** any water undertaker or any sewerage undertaker or, in Scotland, any person supplying water in the exercise of statutory powers;

[F643(c) any electronic communications code operator or any former PTO; and**]**

(d) any operator of a driver information system who is licensed under Part II of the M52Road Traffic (Driver Licensing and Information Systems) Act 1989,

(in this paragraph referred to as a "relevant undertaker") may execute such works, notwithstanding that they involve a temporary or permanent alteration of any electric line or electrical plant under the control of a licence holder.

(2) Where a relevant undertaker is proposing to execute any such works as are mentioned in sub-paragraph (1) above which involve or are likely to involve any such alteration as is there mentioned, sub-paragraphs (3) to (9) of paragraph 3 above shall apply as if—

(a) any reference to the licence holder were a reference to the relevant undertaker; and

(b) any reference to the relevant undertaker were a reference to the licence holder.

Textual Amendments

F640 Words in Sch. 4 para. 4(1)(a) substituted (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 17(2)**; S.I. 1996/218, **art. 2**

F641 Words in Sch. 4 para. 4(1)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 40** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F642 Words in Sch. 4 para. 4(1)(b) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 196(3)** (with Sch. 7)

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F643 Sch. 4 para. 4(1)(c) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 17 para. 99(3)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

Marginal Citations

M52 1989 c. 22.

Protection from interference

5 (1) Subject to sub-paragraph (2) below, a licence holder who instals or alters, or changes the mode of operation of, any electric line or electrical plant shall take all reasonable precautions for securing that the operation of that line or plant does not interfere with the operation of any **[**F644electronic communications apparatus**]** which—

(a) is under the control of a person to whom the **[**F645electronic communications code**]** applies; and

(b) is not unusually sensitive to interference with its operation.

(2) In the case of any **[**F644electronic communications apparatus**]** which is subsequently installed or altered or whose mode of operation is subsequently changed, the duty imposed by sub-paragraph (1) above shall not apply in relation to—

(a) any momentary interference with its operation; or

(b) where it is installed in unreasonably close proximity to the electric line or electrical plant, any other interference with its operation.

(3) Sub-paragraphs (1) and (2) above shall be read as also applying in the converse case of a person to whom the **[**F645electronic communications code**]** applies who instals or alters, or changes the mode of operation of, any **[**F644electronic communications apparatus**]**, and in such a case shall have effect as if—

(a) any reference to the licence holder were a reference to that person;

(b) any reference to an electric line or electrical plant were a reference to such apparatus; and

(c) any reference to such apparatus under the control of a person to whom that code applies were a reference to such a line or such plant under the control of a licence holder.

(4) Any difference arising under this paragraph between a licence holder and a person to whom the **[**F645electronic communications code**]** applies shall be referred to arbitration by an arbitrator or, in Scotland, arbiter appointed, in default of agreement between the parties, by the President of the Chartered Institute of Arbitrators.

(5) In this paragraph "momentary interference" means any interference of momentary duration which is not a regular occurrence (whether caused by physical contact or otherwise).

Textual Amendments

F644 Words in Sch. 4 para. 5 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 17 para. 99(2)(a)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, **art. 1(3)**); S.I. 2003/3142, **art. 3(2)** (with art. 11)

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F645 Words in Sch. 4 para. 5 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 17 para. 99(2)(c)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, **art. 1(3)**); S.I. 2003/3142, **art. 3(2)** (with art. 11)

Acquisition of wayleaves

6 (1) This paragraph applies where—

(a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to instal and keep installed an electric line on, under or over any land; and

(b) the owner or occupier of the land, having been given a notice requiring him to give the necessary wayleave within a period (not being less than 21 days) specified in the notice—

(i) has failed to give the wayleave before the end of that period; or

(ii) has given the wayleave subject to terms and conditions to which the licence holder objects;

and in this paragraph as it so applies "the necessary wayleave" means consent for the licence holder to instal and keep installed the electric line on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line.

(2) This paragraph also applies where—

(a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to keep an electric line installed on, under or over any land; and

(b) the owner or occupier of the land has given notice to the licence holder under paragraph 8(2) below requiring him to remove the electric line;

and in this paragraph as it so applies "the necessary wayleave" means consent for the licence holder to keep the electric line installed on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line.

(3) Subject to sub-paragraphs (4) and (5) below, the Secretary of State may, on the application of the licence holder, himself grant the necessary wayleave subject to such terms and conditions as he thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

(4) The Secretary of State shall not entertain an application under sub-paragraph (3) above in any case where—

(a) the land is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on; and

(b) the line is to be installed on or over the land.

(5) Before granting the necessary wayleave, the Secretary of State shall afford—

(a) the occupier of the land; and

(b) where the occupier is not also the owner of the land, the owner,

an opportunity of being heard by a person appointed by the Secretary of State.

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(6) A necessary wayleave granted under this paragraph—

(a) shall not be subject to the provisions of any enactment requiring the registration of interests in, charges over or other obligations affecting land; but

(b) shall bind any person who is at any time the owner or occupier of the land.

(7) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for an electric line, he shall be deemed to have an interest in that land for the purposes of section 7 of the [M53]Mines (Working Facilities and Support) Act 1966.

(8) In this paragraph "dwelling" means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling or, in relation to Scotland, a private house, and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part.

Modifications etc. (not altering text)
C116 Sch. 4 para. 6: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

Marginal Citations
M53 1966 c. 4.

Provisions supplementary to paragraph 6

7 (1) Where a wayleave is granted to a licence holder under paragraph 6 above—

(a) the occupier of the land; and

(b) where the occupier is not also the owner of the land, the owner,

may recover from the licence holder compensation in respect of the grant.

(2) Where in the exercise of any right conferred by such a wayleave any damage is caused to land or to moveables, any person interested in the land or moveables may recover from the licence holder compensation in respect of that damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any land or moveables he may recover from the licence holder compensation in respect of that disturbance.

(3) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.

(4) Any question of disputed compensation under this paragraph shall be determined by the Tribunal; and **[**[F646]section 4**]** of the [M54]Land Compensation Act 1961 or sections 9 and 11 of the [M55]Land Compensation (Scotland) Act 1963 shall apply to any such determination.

Textual Amendments
F646 Words in Sch. 4 para. 7(4) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), art. 1, **Sch. 1 para. 192(a)** (with Sch. 5)

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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Marginal Citations

M54 1961 c. 33.

M55 1963 c. 51.

Temporary continuation of wayleaves

8 (1) This paragraph applies where at any time such a wayleave as is mentioned in paragraph 6 above (whether granted under that paragraph or by agreement between the parties)—

(a) is determined by the expiration of a period specified in the wayleave;

(b) is terminated by the owner or occupier of the land in accordance with a term contained in the wayleave; or

(c) by reason of a change in the ownership or occupation of the land after the granting of the wayleave, ceases to be binding on the owner or occupier of the land.

(2) The owner or occupier of the land may—

(a) in a case falling within paragraph (a) of sub-paragraph (1) above, at any time after or within three months before the end of the period specified in the wayleave;

(b) in a case falling within paragraph (b) of that sub-paragraph, at any time after the wayleave has been terminated by him; or

(c) in a case falling within paragraph (c) of that sub-paragraph, at any time after becoming the owner or occupier of the land by virtue of such a change in the ownership or occupation of the land as is mentioned in that paragraph,

give to the licence holder a notice requiring him to remove the electric line from the land; but the licence holder shall not be obliged to comply with such a notice except in the circumstances and to the extent provided by the following provisions of this paragraph.

(3) Where within the period of three months beginning with the date of the notice under sub-paragraph (2) above the licence holder makes neither—

(a) an application for the grant of the necessary wayleave under paragraph 6 above; nor

(b) an order authorising the compulsory purchase of the land made by virtue of paragraph 1 of Schedule 3 to this Act,

the licence holder shall comply with the notice at the end of that period.

(4) Where—

(a) within the period mentioned in sub-paragraph (3) above the licence holder makes an application for the grant of the necessary wayleave under paragraph 6 above; and

(b) that application is refused by the Secretary of State,

the licence holder shall comply with the notice under sub-paragraph (2) above at the end of the period of one month beginning with the date of the Secretary of State's decision or such longer period as the Secretary of State may specify.

(5) Where—

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(a) within the period mentioned in sub-paragraph (3) above the licence holder makes an order by virtue of paragraph 1 of Schedule 3 to this Act authorising the compulsory purchase of the land; and

(b) that order is not confirmed by the Secretary of State,

the licence holder shall comply with the notice under sub-paragraph (2) above at the end of the period of one month beginning with the date of the Secretary of State's decision or such longer period as the Secretary of State may specify.

Modifications etc. (not altering text)

C117 Sch. 4 para. 8: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

Felling and lopping of trees etc.

9 (1) This paragraph applies where any tree is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by a licence holder as—

(a) to obstruct or interfere with the installation, maintenance or working of the line or plant; or

(b) to constitute an unacceptable source of danger (whether to children or to other persons);

and in this paragraph "the land" means the land on which the tree is growing.

(2) The licence holder may give notice to the occupier of the land requiring him to fell or lop the tree or cut back its roots so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b) above, subject to the payment to him by the licence holder of the expenses reasonably incurred by him in complying with the notice.

(3) Where the occupier is not also the owner of the land, a copy of any notice under sub-paragraph (2) above shall also be served on the owner.

(4) If within 21 days from the giving of a notice under sub-paragraph (2) above—

(a) the requirements of the notice are not complied with; and

(b) neither the owner nor occupier of the land gives a counter notice under sub-paragraph (5) below,

the licence holder may cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b) above.

(5) If, within 21 days from the giving of a notice under sub-paragraph (2) above, the owner or occupier of the land gives a counter notice to the licence holder objecting to the requirements of the notice, the matter shall, unless the counter notice is withdrawn, be referred to the Secretary of State.

(6) On a reference under sub-paragraph (5) above, the Secretary of State, after giving the parties an opportunity of being heard by a person appointed by him, may make such order as he thinks just, and any such order—

(a) may empower the licence holder (after giving such notice to any person by whom a counter notice was given of the commencement of the work as the order may direct) to cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b) above; and

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(b) may determine any question as to what expenses (if any) are to be paid.

(7) Where the licence holder exercises any powers conferred under sub-paragraph (4) or (6) above, he shall—

(a) cause trees to be felled or lopped or their roots to be cut back in accordance with good arboricultural practice and so as to do as little damage as possible to trees, fences, hedges and growing crops;

(b) cause felled trees, lopped boughs or root cuttings to be removed in accordance with the directions of the owner or occupier; and

(c) make good any damage done to the land.

(8) In this paragraph "tree" includes any shrub and references to felling or lopping, felled trees or lopped boughs shall be construed accordingly.

Modifications etc. (not altering text)

C118 Sch. 4 para. 9: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

Entry on land for purposes of exploration

10 (1) Subject to the following provisions of this paragraph and without prejudice to any other right of entry, a person authorised in writing by a licence holder may, at any reasonable time, enter upon and survey any land for the purpose of ascertaining whether the land would be suitable for use for any purpose connected with the carrying on of the activities which the licence holder is authorised by his licence to carry on.

(2) A person authorised to enter upon any land under this section shall not demand to do so as of right unless—

(a) 14 days notice of the intended entry has been given to the occupier; and

(b) if required to do so, he has produced evidence of his authority.

(3) The powers conferred by this paragraph shall not be exercisable in relation to land which is covered by a building or will be so covered on the assumption that any planning permission which is in force is acted on.

(4) The power to survey land conferred by this paragraph includes power to search and bore for the purpose of ascertaining the nature of the subsoil; but works may not be carried out on the land for this purpose unless—

(a) notice of the proposed works is included in the notice given under sub-paragraph (2) above; and

(b) where land is held by statutory undertakers who object to the works on the ground that the carrying out of the works would be seriously detrimental to the carrying on of their undertaking, the Secretary of State gives his consent.

(5) Where any person exercises any powers conferred by this paragraph, the licence holder by whom he was authorised shall make good any damage done to the land.

(6) In this paragraph "building" includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with a building.

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Modifications etc. (not altering text)

C119 Sch. 4 para. 10(4)(b): transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

Provisions supplementary to paragraphs 9 and 10

11 (1) Any person who intentionally obstructs a person acting in the exercise of any power conferred by or under paragraph 9 or 10 above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where in the exercise of any power conferred by or under paragraph 9 or 10 above any damage is caused to land or to moveables, any person interested in the land or moveables may recover compensation in respect of that damage from the licence holder on whose behalf the power is exercised; and where in consequence of the exercise of such a power a person is disturbed in his enjoyment of any land or moveables he may recover from that licence holder compensation in respect of that disturbance.

(3) Any question of disputed compensation under sub-paragraph (2) above shall be referred to and determined by the Tribunal; and **[**F647section 4**]** of the M56Land Compensation Act 1961 or sections 9 and 11 of the M57Land Compensation (Scotland) Act 1963 shall apply to any such determination.

Textual Amendments

F647 Words in Sch. 4 para. 11(3) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), art. 1, **Sch. 1 para. 192(a)** (with Sch. 5)

Marginal Citations

M56 1961 c. 33.
M57 1963 c. 51.

Interpretation

12 In this Schedule—

"moveables" means chattels in relation to England and Wales and corporeal moveables in relation to Scotland;

F648 . . .

"the Planning Act" means **[**F649the Town and Country Planning Act 1990**]** or **[**F650the Town and Country Planning (Scotland) Act 1997**]**;

"planning permission" means a planning permission granted under Part III of the Planning Act;

"**[**F651public gas transporter**]**" has the same meaning as in Part I of the M58Gas Act 1986;

F652 . . . . . .

F653 . . . . . .

"statutory undertakers" has the same meaning as in the Planning Act;

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F652 . . . . . .

"the Tribunal" means the **[**F654Upper Tribunal in**]** relation to England and Wales and the Lands Tribunal for Scotland in relation to Scotland.

Textual Amendments

F648 Sch. 4 para. 12 definition of "navigation authority" repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168, Sch. 8 Pt. IV para. 125, **Sch. 9**; (E.W.) S.I. 1992/2984, art. 2(2), **Sch. 2** and (S.) S.I. 1992/2990, art. 2(2), **Sch. 2**.

F649 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 83(1)**

F650 Words in Sch. 4 para. 12 substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 44(2)**

F651 Words in Sch. 4 para. 12 substituted (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 17(3)**; S.I. 1996/218, **art. 2**

F652 Words in Sch. 4 para. 12 repealed (25.7.2003 for specified purposes) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

F653 Sch. 4 para. 12 definition of "railway authority" repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168, Sch. 8 Pt. IV para. 125, **Sch. 9**; (E.W.) S.I. 1992/2984, art. 2(2), **Sch. 2** and (S.) S.I. 1992/2990, art. 2(2), **Sch. 2**.

F654 Words in Sch. 4 para. 12 substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), art. 1, **Sch. 1 para. 192(b)** (with Sch. 5)

Marginal Citations

M58 1986 c. 44.

SCHEDULE 5

Section 10(5).

WATER RIGHTS FOR HYDRO-ELECTRIC GENERATING STATIONS IN SCOTLAND

Modifications etc. (not altering text)

C120 Sch. 5: transfer of functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

1 In Scotland, a person who holds a licence under section 6(1)(a) of this Act may be authorised by the Secretary of State to abstract and divert from any watercourse or loch and to use such water as may be necessary for the purposes of constructing or extending a generation station wholly or mainly driven by water and of operating that generating station after such construction or extension ; but he shall do as little damage as possible in the exercise of the powers conferred by the authorisation and shall make compensation for any damage done in the exercise of those powers.

2 Authorisation under paragraph 1 above shall be by order and shall provide for the compulsory acquisition by the person of such rights, as regards the abstraction, diversion and use, as may be specified in the order ; and the order may contain such incidental , consequential and supplementary provisions as the Secretary of State thinks necessary or expedient.

3 Where the abstraction, diversion, and use will, in the opinion of the Secretary of State—

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(a) substantially reduce the flow of water in any watercourse, he shall in the order prescribe the extent to which and the circumstances in which water may be taken ;

(b) substantially reduce the level of water in any loch, he shall in the order either—

(i) prescribe the extent to which and the circumstances in which water may be taken ; or

(ii) prescribe the quantity of compensation water to be provided by the person ;

(c) impound any watercourse, he shall in the order prescribe the quantity of compensation order to be provided by the person.

4 In this Schedule "compensation water" means a flow of water, on such conditions and by such means as the Secretary of State may specify in the order, for the benefit of riparian owners and other owners of land or salmon fishings affected by the compulsory acquisition.

5 **[**F655Subject to paragraphs 5A and 5B,**]** In deciding whether to make the order or in prescribing the quantity of any compensation water to be provided under the order, the Secretary of State shall have regard to all the circumstances of the particular case, including—

(a) the interest of public health ;

(b) the character of the watercourse or loch, and the flow, or as the case may be the level, of water in it ;

(c) the extent to which the watercourse or loch is, or may in future be, used for industrial purposes or for the purposes of any public undertaking or for fisheries, water supply, agriculture, transport and navigation ; and

(d) the effect on land drainage or on any canal or inland navigation of any alteration in the flow of water in the watercourse or level of water in the loch,

and shall secure, so far as practicable, the protection of the rights of riparian owners and of other owners of land or salmon fishings.

Textual Amendments

F655 Words in Sch. 5 para. 5 inserted (S.) (1.4.2006) by The Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054), art. 1(1), **Sch. 1 para. 1(4)(a)**

[F656 5A Before making an order under paragraph 2, and in considering the matters referred to in paragraphs 3 to 5, the Secretary of State shall–

(a) obtain and have regard to the advice of the Scottish Environment Protection Agency on matters relating to the protection of the water environment (and in particular as to the extent to, and the circumstances in, which water may be taken and the quantity of compensation water to be provided); and

(b) have regard to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.

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Textual Amendments

F656 Sch. 5 paras. 5A, 5B inserted (S.) (1.4.2006) by The Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054), art. 1(1), **Sch. 1 para. 1(4)(b)**

5B In the event that the provisions of an order made under paragraph 2 on matters relating to the protection of the water environment, and the conditions of an authorisation granted under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 differ and cannot reasonably be reconciled, the relevant provisions of that order shall be treated as modified to the extent necessary to be consistent with the conditions of that authorisation.**]**

Textual Amendments

F656 Sch. 5 paras. 5A, 5B inserted (S.) (1.4.2006) by The Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054), art. 1(1), **Sch. 1 para. 1(4)(b)**

6 Any question of disputed compensation under paragraph 1 above shall be referred to and determined by the Lands Tribunal for Scotland ; and sections 9 and 11 of the [M59]Land Compensation (Scotland) Act 1963 shall apply to any such determination.

Marginal Citations

M59 1963 c. 51.

7 An applicant for authorisation under paragraph 1 above shall submit to the Secretary of State a draft of the order which he desires the Secretary of State to make and shall publish once at least in each of two successive weeks in one or more local newspapers circulating in the area affected by the proposed order a notice—

(a) stating the general effect of the proposed order ;

(b) specifying a place, in or near the said area, where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of 28 days from the date of the first publication of the notice ; and

(c) stating that within the said period any person may by notice to the Secretary of State object to the application.

8 Not later than the date on which the said notice is first published, the applicant shall serve a copy thereof—

(a) along with a copy of the draft order, on—

[F657](i) . . . . . .

(ii) the **[**[F658]council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]** ... **[**[F659]; and

(iia) any National Park Authority**]**;

[F660](iii) . . . . . .

for every area affected by the proposed order ;

[[F661](aa) along with a copy of the draft order, on Scottish Water;**]**

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(b) on the district salmon fishery board of any salmon fishery district from which water is taken, or into which water is to be discharged, under the rights acquired, on any navigation authority exercising functions in relation to any watercourse or loch from or into which water is to be so taken or discharged, on any public undertakers known by the applicant to be authorised by any enactment to take or use water from any such watercourse or loch and on the **[**F662Scottish Environment Protection Agency**]**.

Textual Amendments

F657 Words in Sch. 5 para. 8(a)(i) repealed (S.) (14.7.2004) by The Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/1822), art. 1(1), **Sch. para. 15(a)(i)**

F658 Words in Sch. 5 para. 8(a)(ii) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 160(2)(b)**; S.I. 1996/323, **art. 4(1)(b)(c)**

F659 Sch. 5 para. 8(a)(iia) and word "; and" immediately preceding it inserted (S.) (8.9.2000) by 2000 asp 10, s. 36, **Sch. 5 para. 14(1)(b)** (with s. 32); S.I. 2000/312, **art. 2**

F660 Sch. 5 para. 8(a)(iii) and preceding word omitted (S.) (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 160(2)(c), **Sch. 14**; S.I. 1996/323, art. 4(1)(b)(c), **Sch. 2**

F661 Sch. 5 para. 8(aa) inserted (S.) (14.7.2004) by The Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/1822), art. 1(1), **Sch. para. 15(a)(ii)**

F662 Words in Sch. 5 para. 8(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 41** (with s. 7(6), 115, 117); S.I. 1996/186, **art. 3**

9 The applicant shall also publish in the Edinburgh Gazette a notice stating that he is about to apply for authorisation under paragraph 1 above, F663... specifying a place where a copy of the draft order and of any relevant map or plan may be inspected, and giving the name and date of issue of a local newspaper in which the notice explaining the effect of the order applied for will be found.

Textual Amendments

F663 Words in Sch. 5 para. 9 repealed (S.) (14.7.2004) by The Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/1822), art. 1(1), **Sch. para. 15(b)**

10 The applicant shall, at the request of any person interested, furnish to him a copy of the draft order upon payment of a reasonable charge.

11 The Secretary of State may make an order in the terms of the draft submitted to him or in those terms as modified in such manner as he thinks fit ; but, where he proposes to make any modification and considers that persons other than the applicant to give and publish additional notices in such manner as the Secretary of State thinks best adapted for informing all persons so affected of the modification proposed.

12 If before the expiration of the 28 days referred to in paragraph 7 above or of 25 days from the publication of the said notice in the Edinburgh Gazette, or before expiration of any period specified in notices give under the last foregoing paragraph, an objection is received by the Secretary of State from **[**F664Scottish Water or**]** any authority or board or undertakers on whom a notice is required to be served under paragraph 8 above, or from any other person appearing to him to be affected by the application, or, as the case may be, by the proposed modification, and the objection is not withdrawn, the Secretary of State, before making any order on the application, shall cause a local inquiry to be held.

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Textual Amendments

F664 Words in Sch. 5 para. 12 inserted (S.) (14.7.2004) by The Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/1822), art. 1(1), **Sch. para. 15(c)**

13 The expenses incurred by the Secretary of State in connection with the making, notification and confirmation of any order giving authorisation under paragraph 1 above shall be paid by the applicant ; and the Secretary of State may, in a case where there are two or more applicants, apportion such expenses between them.

F665 14 . . . . . .

Textual Amendments

F665 Sch. 5 para. 14 repealed (S.) (14.7.2004) by The Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/1822), art. 1(1), **Sch. para. 15(d)**

15 In paragraphs 1 to 8 above "watercourse" includes all rivers, streams and passages through which water flows.

[F666SCHEDULE 5A

Section 11D

PROCEDURE FOR APPEALS UNDER SECTION 11C

Textual Amendments

F666 Sch. 5A inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 43(9), **Sch. 6** (with reg. 44)

Application for permission to bring appeal

1. (1) An application for permission to bring an appeal may be made only by sending a notice to the **[**F667CMA**]** requesting the permission.

(2) Only a person entitled under section 11C to bring the appeal if permission is granted may apply for permission.

(3) Where the Authority publishes a decision to modify the conditions of any licence under section 11A(7), any application for permission to appeal is not to be made after the end of 20 working days beginning with the first working day after the day on which the decision is published.

(4) An application for permission to appeal must be accompanied by all such information as may be required by appeal rules.

(5) Appeal rules may require information contained in an application for permission to appeal to be verified by a statement of truth.

(6) A person who applies for permission to bring an appeal in accordance with this paragraph is referred to in this Schedule as the appellant.

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(7) The appellant must send the Authority—

(a) a copy of the application for permission to appeal at the same time as it is sent to the **[**F668CMA**]**; and

(b) such other information as may be required by appeal rules.

(8) The **[**F669CMA's**]** decision whether to grant permission to appeal is to be taken by an authorised member of the **[**F670CMA**]**.

(9) Before **[**F671the authorised member decides**]** whether to grant permission under this paragraph, **[**F672the Authority must be given**]** an opportunity of making representations or observations, in accordance with paragraph 3(2).

(10) The **[**F673CMA's**]** decision on an application for permission must be made—

(a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;

(b) in any other case, before the end of 14 working days beginning with the first working after the day on which the application for permission was received.

(11) The grant of permission may be made subject to conditions, which may include—

(a) conditions which limit the matters that are to be considered on the appeal in question;

(b) conditions for the purpose of expediting the determination of the appeal; and

(c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).

(12) Where a decision is made to grant or to refuse an application for permission, **[**F674an authorised member of the CMA must**]** notify the decision, giving reasons—

(a) to the appellant; and

(b) to the Authority.

(13) A decision **[**F675of the CMA**]** under this paragraph must be published, in such manner **[**F676as an authorised member of the CMA**]** considers appropriate, as soon as reasonably practicable after it is made.

(14) Section 11H(2) applies to the publication of a decision under sub-paragraph (13) as it does to the publication of a decision under section 11H.

Textual Amendments

F667 Word in Sch. 5A para. 1(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F668 Word in Sch. 5A para. 1(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F669 Word in Sch. 5A para. 1(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(2)(b)(i)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F670 Word in Sch. 5A para. 1(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(2)(b)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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F671 Words in Sch. 5A para. 1(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(2)(c)(i)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F672 Words in Sch. 5A para. 1(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(2)(c)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F673 Word in Sch. 5A para. 1(10) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(2)(d)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F674 Words in Sch. 5A para. 1(12) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(2)(e)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F675 Words in Sch. 5A para. 1(13) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(2)(f)(i)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F676 Words in Sch. 5A para. 1(13) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(2)(f)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Suspension of decision

2. (1) The **[**F677CMA**]** may direct that, pending the determination of an appeal against a decision of the Authority—

(a) the decision is not to have effect; or

(b) the decision is not to have effect to such extent as may be specified in the direction.

(2) The power to give a direction under this paragraph is exercisable only where—

(a) an application for its exercise has been made by the appellant at the same time the appellant made an application in accordance with paragraph 1(3) for permission to bring an appeal against a decision of the Authority;

(b) **[**F678the Authority has been given**]** an opportunity of making representations or observations, in accordance with paragraph 3(2);

(c) the relevant licence holder, the licence holder or consumers whose interests are materially affected mentioned in section 11C(2) (as the case may be) would incur significant costs if the decision were to have effect before the determination of the appeal; and

(d) the balance of convenience does not otherwise require effect to be given to the decision pending that determination.

(3) The **[**F679CMA's**]** decision on an application for a direction under this paragraph must be made—

(a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;

(b) in any other case, before the end of 14 working days beginning with the first working day following the day on which the application under sub-paragraph (2)(a) is received.

(4) The appellant must send the Authority a copy of the application for a direction under this paragraph at the same time as it is sent to the **[**F680CMA**]**.

(5) The **[**F681CMA's**]** decision whether to give a direction is to be taken by an authorised member of the **[**F682CMA**]**.

(6) A direction under this paragraph must be—

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(a) given by an authorised member of the **[**F683CMA**]**; and

(b) published, in such manner as **[**F684an authorised member of the CMA**]** considers appropriate, as soon as reasonably practicable after it is given.

(7) Section 11H(2) applies to the publication of a direction under sub-paragraph (6) as it does to the publication of a decision under section 11H.

Textual Amendments

F677 Word in Sch. 5A para. 2(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F678 Words in Sch. 5A para. 2(2)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F679 Word in Sch. 5A para. 2(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(3)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F680 Word in Sch. 5A para. 2(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(3)(d)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F681 Word in Sch. 5A para. 2(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(3)(e)(i)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F682 Word in Sch. 5A para. 2(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(3)(e)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F683 Word in Sch. 5A para. 2(6)(a) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(3)(f)(i)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F684 Words in Sch. 5A para. 2(6)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(3)(f)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Time limit for representations and observations by the Authority

3. (1) Sub-paragraph (2) applies where the Authority wishes to make representations or observations to the **[**F685CMA**]** in relation to—

(a) an application for permission to bring an appeal under paragraph 1;

(b) an application for a direction under paragraph 2.

(2) The Authority must make the representations or observations in writing before the end of 10 working days beginning with the first working day after the day on which it received a copy of the application under paragraph 1(7) or 2(4) as the case may be.

(3) Sub-paragraph (4) applies where an application for permission to bring an appeal has been granted and the Authority wishes to make representations or observations to the **[**F686CMA**]** in relation to—

(a) the Authority's reasons for the decision in relation to which the appeal is being brought;

(b) any grounds on which that appeal is being brought against that decision.

(4) The Authority must make the representations or observations in writing before the end of 15 working days beginning with the first working day after the day on which permission to bring the appeal was granted.

(5) The Authority must send a copy of the representations and observations it makes under this paragraph to the appellant.

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Textual Amendments

F685 Word in Sch. 5A para. 3(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F686 Word in Sch. 5A para. 3(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Consideration and determination of appeal by group

4. F687(1) . . . . . .

(2) A group **[**F688constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal under section 11C**]** must consist of three members of the **[**F689CMA panel**]**.

F690(3) . . . . . .

F690(4) . . . . . .

F690(5) . . . . . .

F690(6) . . . . . .

F690(7) . . . . . .

(8) A decision of **[**F691the group**]** is effective if, and only if—

(a) all the members of the group are present when it is made; and

(b) at least two members of the group are in favour of the decision.

Textual Amendments

F687 Sch. 5A para. 4(1) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(5)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F688 Words in Sch. 5A para. 4(2) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(5)(b)(i)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F689 Words in Sch. 5A para. 4(2) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(5)(b)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F690 Sch. 5A para. 4(3)-(7) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(5)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F691 Words in Sch. 5A para. 4(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(5)(d)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Matters to be considered on appeal

5. (1) **[**F692The CMA**]**, if it thinks it necessary to do so for the purpose of securing the **[**F693determination of an appeal**]** within the period provided for by section 11G, may disregard—

(a) any or all matters raised by an appellant that were not raised by that appellant at the time of the relevant application; and

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(b) any or all matters raised by the Authority that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 3.

(2) In this paragraph "relevant application" means an application under paragraph 1 or 2.

Textual Amendments

F692 Words in Sch. 5A para. 5(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(6)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F693 Words in Sch. 5A para. 5(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(6)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Production of documents etc.

6. (1) For the purposes of this Schedule, the **[**F694CMA**]** may, by notice, require—

(a) a person to produce to the **[**F694CMA**]** the documents specified or otherwise identified in the notice;

(b) any person who carries on a business to supply to the **[**F694CMA**]** such estimates, forecasts, returns or other information as may be specified or described in the notice in relation to that business.

(2) The power to require the production of a document, or the supply of any estimate, forecast, return or other information, is a power to require its production or, as the case may be, supply—

(a) at the time and place specified in the notice; and

(b) in a legible form.

(3) No person is to be compelled under this paragraph to produce a document or supply an estimate, forecast, return or other information that the person could not be compelled to produce in civil proceedings in the High Court or Court of Session.

(4) **[**F695An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken**]** of a document produced or an estimate, forecast, return or other information supplied F696... under this paragraph.

(5) A notice for the purposes of this paragraph—

(a) may be issued on the **[**F697CMA's behalf by an authorised member of the CMA**]**

(b) must include information about the possible consequences of not complying with the notice (as set out in paragraph 10).

Textual Amendments

F694 Word in Sch. 5A para. 6(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(7)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F695 Words in Sch. 5A para. 6(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(7)(b)(i)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F696 Words in Sch. 5A para. 6(4) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(7)(b)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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F697 Words in Sch. 5A para. 6(5)(a) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(7)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Oral hearings

7. (1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath—

(a) by a person considering an application for permission to bring an appeal under paragraph 1;

(b) by a person considering an application for a direction under paragraph 2; or

(c) by a group with the function of determining an appeal;

and, for that purpose, such a person or group may administer oaths.

(2) The **[**F698CMA**]** may, by notice, require a person—

(a) to attend at a time and place specified in the notice; and

(b) at that time and place, to give evidence to a person or group mentioned in sub-paragraph (1).

(3) At any oral hearing the person or group conducting the hearing may require—

(a) the appellant, or the Authority, if present at the hearing to give evidence or to make representations or observations; or

(b) a person attending the hearing as a representative of the appellant or of the Authority to make representations or observations.

(4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.

(5) If the appellant, the Authority, or the appellant's or Authority's representative is not present at a hearing—

(a) **[**F699there is no requirement**]** to give notice to that person under sub-paragraph (2); and

(b) the person or group conducting the hearing may determine the application or appeal without hearing that person's evidence, representations or observations.

(6) No person is to be compelled under this paragraph to give evidence which that person could not be compelled to give in civil proceedings in the High Court or Court of Session.

(7) Where a person is required under this paragraph to attend at a place more than 10 miles from that person's place of residence, **[**F700an authorised member of the CMA must arrange for that person to be paid**]** the necessary expenses of attendance.

(8) A notice for the purposes of this paragraph may be issued on the **[**F701CMA's behalf by an authorised member of the CMA**]**

Textual Amendments

F698 Word in Sch. 5A para. 7(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(8)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F699 Words in Sch. 5A para. 7(5)(a) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(8)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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F700 Words in Sch. 5A para. 7(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(8)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
F701 Words in Sch. 5A para. 7(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(8)(d)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Written statements

8. (1) The **[**F702CMA**]** may, by notice, require a person to produce a written statement with respect to a matter specified in the notice to—
(a) a person who is considering, or is to consider, an application for a direction under paragraph 2; or
(b) a group with the function of determining an appeal.

(2) The power to require the production of a written statement includes power—
(a) to specify the time and place at which it is to be produced; and
(b) to require it to be verified by a statement of truth;
and a statement required to be so verified must be disregarded unless it is so verified.

(3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which that person could not be compelled to give evidence in civil proceedings in the High Court or Court of Session.

(4) A notice for the purposes of this paragraph may be issued on the **[**F703CMA's behalf by an authorised member of the CMA**]** .

Textual Amendments
F702 Word in Sch. 5A para. 8(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(9)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
F703 Words in Sch. 5A para. 8(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(9)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Expert advice

9. Where permission to bring an appeal is granted under paragraph 1 the **[**F704CMA**]** may commission expert advice with respect to any matter raised by a party to that appeal.

Textual Amendments
F704 Word in Sch. 5A para. 9 substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(10)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Defaults in relation to evidence

10. (1) If a person ("the defaulter")—
(a) fails to comply with a notice issued or other requirement imposed under paragraph 6, 7 or 8;
(b) in complying with a notice under paragraph 8, makes a statement that is false in any material particular; or

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(c) in providing information verified in accordance with a statement of truth required by appeal rules, provides information that is false in a material particular,

[[F705]an authorised member of the CMA**]** may certify the failure, or the fact that such a false statement has been made or such false information has been given, to the High Court or the Court of Session.

(2) The High Court or Court of Session may inquire into a matter certified to it under this paragraph; and if, after having heard—

(a) any witness against or on behalf of the defaulter; and

(b) any statement in the defaulter's defence,

it is satisfied that the defaulter did, without reasonable excuse, fail to comply with the notice or other requirement, or made the false statement, or gave the false information, that court may punish that defaulter as if the person had been guilty of contempt of court.

(3) Where the High Court or Court of Session has power under this paragraph to punish a body corporate for contempt of court, it may so punish any director or other officer of that body (either instead of or as well as punishing the body).

(4) A person who wilfully alters, suppresses or destroys a document that that person has been required to produce under paragraph 6 is guilty of an offence and shall be liable—

(a) on summary conviction, to—

(i) in England and Wales, a fine not exceeding the statutory maximum, and

(ii) in Scotland, a fine not exceeding £5,000;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

Textual Amendments

F705 Words in Sch. 5A para. 10(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(11)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Appeal rules

11. (1) The **[**[F706]CMA Board**]** may make rules of procedure regulating the conduct and disposal of appeals under section 11C.

(2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing, power or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—

(a) the taking of evidence at an oral hearing; or

(b) the making of representations or observations at such a hearing.

(3) The **[**[F707]CMA Board**]** must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.

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(4) Before making rules under this paragraph, the **[**F708CMA Board**]** must consult such persons as it considers appropriate.

(5) Rules under this paragraph may make different provision for different cases.

Textual Amendments

F706 Words in Sch. 5A para. 11(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(12)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F707 Words in Sch. 5A para. 11(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(12)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F708 Words in Sch. 5A para. 11(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(12)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Costs

12. (1) A group that determines an appeal must make an order requiring the payment to the **[**F709CMA**]** of the costs incurred by the **[**F709CMA**]** in connection with the appeal.

(2) An order under sub-paragraph (1) must require those costs to be paid—

(a) where the appeal is allowed in full, by the Authority;

(b) where the appeal is dismissed in full, by the appellant; or

(c) where the appeal is partially allowed, by one or more parties in such proportions as the **[**F709CMA**]** considers appropriate in all the circumstances.

(3) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another party in respect of costs reasonably incurred by that other party in connection with the appeal.

(4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.

(5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) shall bear interest at such rate as may be determined in accordance with provision contained in the order.

(6) Any costs payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour that order is made.

Textual Amendments

F709 Word in Sch. 5A para. 12(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(13)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Interpretation of Schedule

13. (1) In this Schedule—

"appeal" means an appeal under section 11C;

"appeal rules" means rules of procedure under paragraph 11;

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[F710“authorised member of the CMA”—

(a) in relation to a power exercisable in connection with an appeal in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power;

(b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal in respect of which a group has not been so constituted by the chair of the CMA, means—

(i) any member of the CMA Board who is also a member of the CMA panel, or

(ii) any member of the CMA panel authorised by the Secretary of State (whether generally or specifically) to exercise the power in question.**]**

F711…

“**[**F712CMA Board ” and "CMA panel" have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;**]**

F713…

“statement of truth”, in relation to the production of a statement or provision of information by a person, means a statement that the person believes the facts stated in the statement or information to be true;

“working day” means any day other than—

(a) Saturday or Sunday;

(b) Christmas Day or Good Friday;

(c) a day which is a bank holiday in England and Wales or Scotland under the Banking and Financial Dealings Act 1971.

(2) References in this Schedule to a party to an appeal are references to—

(a) the appellant; or

(b) the Authority.**]**

Textual Amendments

F710 Words in Sch. 5A para. 13(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(14)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F711 Words in Sch. 5A para. 13(1) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(14)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F712 Words in Sch. 5A para. 13(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(14)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F713 Words in Sch. 5A para. 13(1) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 44(14)(d)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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[F714SCHEDULE 6

THE ELECTRICITY CODE

Textual Amendments

F714 Sch. 6 substituted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 51(2), **Sch. 4**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

Suppliers' charges relating to meters for disabled persons

1 (1) Where an electricity supplier, for the purpose of meeting the needs of a disabled person—

(a) alters the position of any electricity meter provided by him for a customer of his; or

(b) replaces such a meter with one which has been specially adapted,

the supplier shall not charge the customer for the alteration or replacement.

(2) Section 23 applies to any dispute arising under this paragraph.

Non-payment of suppliers' charges

2 (1) Where a customer has not, within the requisite period, **[**F715made all the relevant payments**]**, the supplier may—

(a) install a pre-payment meter on the premises; or

(b) disconnect the premises,

and the supplier may recover any expenses incurred in so doing from the customer.

[F716(1A) A payment is a relevant payment for the purposes of sub-paragraph (1) if it is due from the customer to an electricity supplier—

(a) in respect of the supply of electricity to any premises or the provision of an electricity meter; or

(b) under a green deal plan (within the meaning of section 1 of the Energy Act 2011) in respect of the premises.**]**

(2) The power of a supplier under sub-paragraph (1)(a) or (b) may not be exercised—

(a) as respects any amount which is genuinely in dispute (disregarding for this purpose a dispute under section 39 or regulations made under it); and

(b) unless not less than seven working days' notice has been given to the occupier of the premises (or the owner of the premises if they are unoccupied) of his intention to exercise it.

(3) In this paragraph the "requisite period" means the period of 28 days after the making by the supplier of a demand in writing for **[**F717the relevant payments to be made**]**.

Textual Amendments

F715 Words in Sch. 6 para. 2(1) substituted (28.1.2013) by Energy Act 2011 (c. 16), **ss. 24(3)**, 121(1); S.I. 2013/125, art. 3(a)

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F716 Sch. 6 para. 2(1A) inserted (28.1.2013) by Energy Act 2011 (c. 16), **ss. 24(4)**, 121(1); S.I. 2013/125, art. 3(a)

F717 Words in Sch. 6 para. 2(3) substituted (28.1.2013) by Energy Act 2011 (c. 16), **ss. 24(5)**, 121(1); S.I. 2013/125, art. 3(a)

Deemed contracts in certain cases

3 (1) Where an electricity supplier supplies electricity to any premises otherwise than in pursuance of a contract, the supplier shall be deemed to have contracted with the occupier (or the owner if the premises are unoccupied) for the supply of electricity as from the time ("the relevant time") when he began so to supply electricity.

(2) Where—

(a) the owner or occupier of any premises takes a supply of electricity which has been conveyed to those premises by an electricity distributor;

(b) that supply is not made by an authorised supplier; and

(c) a supply of electricity so conveyed has been previously made by an electricity supplier,

the owner or occupier shall be deemed to have contracted with the appropriate supplier for the supply of electricity as from the time ("the relevant time") when he began to take such a supply.

(3) Nothing in sub-paragraph (2) shall be taken to afford a defence in any criminal proceedings.

(4) The Authority shall publish a document containing provision for determining the "appropriate supplier" for the purposes of sub-paragraph (2).

(5) The Authority may revise the current document published under sub-paragraph (4); and where it does so it shall publish the revised document.

(6) The express terms and conditions of a contract which, by virtue of sub-paragraph (1) or (2), is deemed to have been made shall be provided for by a scheme made under this paragraph.

(7) Each electricity supplier shall make (and may from time to time revise), a scheme for determining the terms and conditions which are to be incorporated in the contracts which, by virtue of sub-paragraph (1) or (2), are to be deemed to have been made.

(8) The terms and conditions so determined may include terms and conditions for enabling the electricity supplier to determine, in any case where the meter is not read immediately before the relevant time, the quantity of electricity which is to be treated as supplied by the supplier to the premises, or taken by the owner or occupier of the premises, during the period beginning with the relevant time and ending with—

(a) the time when the meter is first read after the relevant time; or

(b) the time when the supplier ceases to supply electricity to the premises, or the owner or occupier ceases to take a supply of electricity,

whichever is the earlier.

(9) A scheme under this paragraph may (subject to section 7B) make different provision for different cases or classes of cases, or for different areas, determined by, or in accordance with, the provisions of the scheme.

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(10) As soon as practicable after an electricity supplier makes a scheme under this paragraph, or a revision of such a scheme, he shall—

(a) publish, in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it, a notice stating the effect of the scheme or revision;

(b) send a copy of the scheme or revision to the Authority **[**[F718], to Citizens Advice and to Citizens Advice Scotland**]** ; and

(c) if so requested by any other person, send such a copy to that person without charge to him.

Textual Amendments

F718 Words in Sch. 6 para. 3(10)(b) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(21)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

Supplies of electricity illegally taken

4 (1) Where any person takes a supply of electricity which is in the course of being conveyed by an electricity distributor, the distributor shall be entitled to recover from that person the value of the electricity so taken.

(2) Where—

(a) any person at premises at which a connection has been restored in contravention of paragraph 5(1) takes a supply of electricity which has been conveyed to those premises by an electricity distributor; and

(b) the supply is taken otherwise than in pursuance of a contract made with an authorised supplier, or of a contract deemed to have been made with an electricity supplier by virtue of paragraph 3 above or paragraph 23 (former tariff customers) of Schedule 7 to the Utilities Act 2000,

the distributor shall be entitled to recover from that person the value of the electricity so taken.

(3) Each electricity distributor shall make, and from time to time revise, a scheme providing for the manner in which, and the persons by whom, the quantity of electricity taken in such circumstances as are mentioned in sub-paragraph (1) or (2) is to be determined for the purposes of that sub-paragraph.

(4) Sub-paragraphs (9) and (10) of paragraph 3 shall apply in relation to a scheme under this paragraph as they apply in relation to a scheme under that paragraph.

(5) In this paragraph "value", in relation to any electricity taken in such circumstances as are mentioned in sub-paragraph (1) or (2), means the amount which, if the electricity had been taken in such circumstances as are mentioned in sub-paragraph (2) of paragraph 3, could reasonably be expected to have been payable in respect of the electricity under a contract deemed to have been made by virtue of that sub-paragraph.

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Restoration of connection without consent

5 (1) Where, otherwise than in the exercise of a power conferred by regulations under section 29, premises have been disconnected by an electricity supplier or an electricity distributor, no person shall, without the consent of the supplier or, as the case may be, the distributor, restore the connection.

(2) A person who acts in contravention of this paragraph shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A connection restored in contravention of this paragraph may be disconnected by the distributor to whose distribution system the connection is made or, if the original disconnection was carried out by an electricity supplier, by that supplier.

Damage to electrical plant etc.

6 (1) A person who intentionally or by culpable negligence damages or allows to be damaged—

(a) any electric line or electrical plant provided by an electricity distributor; or

(b) any electricity meter provided by an electricity supplier,

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where an offence has been committed under sub-paragraph (1) by the occupier of any premises (or by the owner of the premises if they are unoccupied when the offence is committed) in relation to any electric line or electrical plant provided by an electricity distributor for making or maintaining a connection to the premises, the distributor may disconnect the premises.

(3) Where an offence has been committed under sub-paragraph (1) in relation to an electricity meter provided by an electricity supplier which is situated on any premises, by the occupier (or by the owner of the premises if they are unoccupied when the offence is committed), the supplier may disconnect the premises and may remove the meter.

(4) A meter removed under sub-paragraph (3) shall be kept safely by the supplier until the Authority authorises its destruction or disposal.

(5) The distributor or supplier shall not be under any obligation to reconnect (and in the case of a supplier to restore the supply to) any premises disconnected under sub-paragraph (2) or (3) until—

(a) the offender is no longer the occupier or, as the case may be, the owner of the premises; or

(b) the matter in consequence of which the premises were disconnected has been remedied.

Entry during continuance of connection or supply

7 (1) Any officer or other person authorised by an electricity distributor may at all reasonable times enter any premises to which the distributor is maintaining a connection, for the purpose of inspecting any electric line or electrical plant provided by him.

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(2) Any officer or other person authorised by an electricity supplier may at all reasonable times enter any premises to which electricity is being supplied by him for the purpose of—

(a) ascertaining the register of any electricity meter and, in the case of a pre-payment meter, removing any money or tokens belonging to the supplier;

(b) removing, inspecting or re-installing any electricity meter or installing any substitute meter.

(3) The supplier shall provide a substitute meter while a meter is removed under sub-paragraph (2)(b).

(4) Where an electricity supplier is authorised by paragraph 2(1) to install a pre-payment meter on any premises, any officer or other person authorised by the supplier may at all reasonable times enter the premises for the purpose of installing such a meter.

(5) A power of entry for the purpose of removing or installing an electricity meter may not be exercised unless at least two working days' notice has been given to the occupier (or the owner of the premises if they are unoccupied).

Entry on discontinuance of supply or connection

8 (1) Where an electricity supplier or an electricity distributor is authorised by paragraph 6(2) or (3) above or paragraph 11(3) of Schedule 7 to this Act—

(a) to disconnect any premises; or

(b) to remove an electricity meter,

any officer or other person authorised by the supplier or distributor may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing the meter.

(2) Where—

(a) an electricity distributor is authorised by any provision of this Act (other than one mentioned in sub-paragraph (1)) or of regulations made under it to disconnect any premises;

(b) a person occupying premises which are connected to a distribution system of an electricity distributor ceases to require a connection; or

(c) a person entering into occupation of any premises connected to a distribution system of an electricity distributor does not require such a connection,

any officer or other person authorised by the distributor may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing any electrical plant or electric line provided by the distributor.

(3) Where—

(a) an electricity supplier is authorised by any provision of this Act (other than one mentioned in sub-paragraph (1)), or of regulations made under it, to disconnect any premises or to discontinue the supply to any premises;

(b) a person occupying premises which are supplied with electricity by an electricity supplier ceases to require such a supply; or

(c) a person entering into occupation of any premises previously supplied with electricity by an electricity supplier does not require such a supply;

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any officer or other person authorised by the supplier may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing any electricity meter provided by the supplier.

(4) A power of entry under sub-paragraph (2) or (3) may not be exercised unless at least two working day's notice has been given to the occupier (or to the owner of the premises if they are unoccupied).

Entry for replacing, repairing or altering lines or plant

9 (1) Any officer or other person authorised by an electricity distributor may at all reasonable times enter any premises for the purpose of—

(a) placing a new electric line or any new electrical plant in the place of or in addition to any existing line or plant which has already been lawfully placed; or

(b) repairing or altering any such existing line or plant.

(2) A power of entry under sub-paragraph (1) may not be exercised unless at least five working days' notice has been given to the occupier of any premises (or to the owner of the premises if they are unoccupied).

(3) In the case of emergency arising from faults in an electric line or any electrical plant entry may be made under sub-paragraph (1) above without the notice required by sub-paragraph (2), but notice shall then be given as soon as possible after the occurrence of the emergency.

Provisions as to powers of entry

10 (1) The [M60]Rights of Entry (Gas and Electricity Boards) Act 1954 (entry under a justice's warrant) shall apply in relation to the powers of entry conferred by this Schedule.

(2) Any reference in this Schedule to an officer or other person authorised by an electricity supplier or an electricity distributor includes a reference to a person who, in accordance with a written authority given by the supplier or distributor to an agent of the supplier or distributor, is authorised by the agent on behalf of the supplier or distributor.

(3) Where in pursuance of any power of entry conferred by this Schedule, entry is made on any premises by a person authorised to do so—

(a) that person shall ensure that the premises are left no less secure by reason of the entry; and

(b) the supplier or distributor shall make good, or pay compensation for, any damage caused by that person (or by any other person accompanying him under sub-paragraph (5)) in entering the premises, in taking any action on the premises or in making them secure.

(4) A person may only exercise a power of entry conferred by this Schedule on production of some duly authenticated document showing his authority.

(5) Any person exercising a power of entry conferred by this Schedule may be accompanied by such other persons as may be necessary or expedient for the purpose for which the entry is made or for the purposes of sub-paragraph (3)(a) or (b) above.

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(6) A person who intentionally obstructs a person exercising powers of entry conferred by this Schedule shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Marginal Citations

M60 1954 c. 1.

Electrical plant etc. not to be subject to distress

11 (1) This paragraph applies to any electric line, electrical plant or electricity meter belonging to or provided by an electricity distributor or electricity supplier which is marked or impressed with a sufficient mark or brand indicating an electricity supplier or electricity distributor as the owner or provider thereof.

(2) Anything to which this paragraph applies—

(a) shall be deemed not to be landlord's fixtures, notwithstanding that they may be fixed or fastened to any part of any premises; and

(b) shall not in England and Wales be subject to distress or be liable **[**F719to be taken control of under Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, or**]** to be taken in execution under process of any court or any proceedings in bankruptcy against the person in whose possession they may be.**]**

Textual Amendments

F719 Words in Sch. 6 para. 11(2)(b) inserted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 13 para. 90** (with s. 89); S.I. 2014/768, art. 2(1)(b)

[F720SCHEDULE 6A

Section 25(8)

PROVISIONS IMPOSING OBLIGATIONS ENFORCEABLE AS RELEVANT REQUIREMENTS

Textual Amendments

F720 Sch. 6A inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 39(5), **Sch. 4** (as amended (14.1.2015) by S.I. 2014/3332, regs. 1(1), **7**)

Modifications etc. (not altering text)

C121 Sch. 6A: power to amend conferred (18.12.2013) by Energy Act 2013 (c. 32), **ss. 38(c)**, 156(3)

All licence holders

1. The following are relevant provisions in relation to all licence holders **[**F721(except the holder of a smart meter communication licence)**]** —

(a) sections 32 to 32M;

(b) section 42C;

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(c) section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (directions to comply with requirements under section 24 of that Act);

(d) in the Electricity Regulation—

(i) Article 15(5) (provision of information relating to the transmission system etc),

(ii) Article 16(4) (duties relating to intended use of capacity);

(e) in Annex 1 to the Electricity Regulation (guidelines concerning capacity of interconnections between national systems)—

(i) points 2.11 and 2.13 (duties relating to nomination of, and compensation regarding, capacity),

(ii) point 5.5 (duties in respect of publication of data concerning cross-border trade).

Textual Amendments

F721 Words in Sch. 6A para. 1 inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **16(2)**

Generation licence holders

2. Article 15(6) of the Electricity Regulation (duty to keep specified information at the disposal of the Authority) is a relevant provision in relation to the holder of a generation licence.

Transmission licence holders

3. The following are relevant provisions in relation to all holders of a transmission licence—

(a) section 9;

(b) sections 26 to 29 of the Energy Act 2010 (adjustment of charges to help disadvantaged groups of customers).

Persons required to be certified as to independence

4. The following are relevant provisions in relation to a person who holds a transmission licence or an interconnector licence and is required to be certified under section 10D—

(a) section 10A;

(b) section 10B(4) and (6);

(c) section 10J(2) and (4);

(d) in the Electricity Regulation—

(i) Article 3(3) (duty to supply information relating to certification of transmission system operators),

(ii) Article 4 (duty to cooperate through the ENTSO for Electricity),

(iii) Article 11 (duty to pay costs of the ENTSO for Electricity),

(iv) Article 12(1) and (2) (duties relating to regional cooperation),

(v) Article 13(2) and (3) (duties relating to the inter-transmission system operator compensation mechanism),

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(vi) Article 14(1) to (3) and (5) (duties relating to charges for access to networks),

(vii) Article 15(1) to (4) (duties relating to publication of specified information),

(viii) Article 16(1), (2), (3), (5) and (6) (duties concerning congestion management);

(e) in Annex 1 to the Electricity Regulation (guidelines concerning capacity of interconnections between national systems)—

(i) points 1.1 to 1.9 (general provisions),

(ii) points 2.1 to 2.7, 2.9, 2.10 and 2.12 (congestion management methods),

(iii) points 3.1, 3.2 and 3.4 to 3.6 (coordination of allocation and congestion-management procedures),

(iv) points 4.1 to 4.4 (timetable for market operations),

(v) points 5.1 to 5.10 (duties relating to transparency),

(vi) points 6.1, 6.3, 6.4 and 6.6 (duties relating to the use of congestion income);

(f) Article 2 of the ITC Regulation (duty to apply access charges in accordance with guidelines);

(g) in Part A of the Annex to the ITC Regulation—

(i) point 1.3 (duties concerning the ITC fund),

(ii) point 1.4 (duty to supply information regarding implementation of ITC mechanism),

(iii) point 6.1 (duty to make contributions to the ITC fund),

(iv) point 7.2 (duty to impose use fee on third country electricity imports and exports).

Distribution licence holders

5. The following are relevant provisions in relation to the holder of a distribution licence—

(a) section 9;

(b) sections 16 to 23;

(c) section 40A;

(d) sections 42 and 42A;

(e) section 42AB;

(f) sections 43, 46 and 47 of the Consumers, Estate Agents and Redress Act 2007 (complaints);

(g) sections 26 to 29 of the Energy Act 2010 (adjustment of charges to help disadvantaged groups of consumers).

Supply licence holders

6. The following are relevant provisions in relation to the holder of a supply licence—

(a) section 40;

(b) sections 42 and 42A;

(c) section 42AB;

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(d) sections 43, 46 and 47 of the Consumers, Estate Agents and Redress Act 2007 (complaints);
(e) paragraph 3(4) of Schedule 2ZA;
(f) in the Energy Act 2010—
(i) section 9 (schemes for reducing fuel poverty),
(ii) section 11 (reconciliation mechanism),
(iii) sections 26 to 29 (adjustment of charges to help disadvantaged groups of consumers).

Distribution exemption holders

7. The following paragraphs of Schedule 2ZA are relevant provisions in relation to a distribution exemption holder—
(a) paragraph 1(3), (4) and (6) to (8);
(b) paragraph 2(2) to (4), (6) and (9);
(c) paragraph 3(6), (12)(a) and (13);
(d) paragraph 5(1) to (4), (6), (8) and (9);
(e) paragraph 6(2);
(f) paragraph 7(2) and (4);
(g) paragraph 8(4) and (9);
(h) paragraph 9;
(i) paragraph 13(2);
(j) paragraph 14(5), (6), (9) and (12);
(h) paragraph 15(1).

Supply exemption holders

8. The following are relevant provisions in relation to a supply exemption holder—
(a) paragraph 3(4) of Schedule 2ZA;
(b) the following paragraphs of Schedule 2ZB—
(i) paragraph 1(2), (3), (6) and (7),
(ii) paragraph 2(6),
(iii) paragraph 3(1) and (3),
(iv) paragraph 4,
(v) paragraph 5(1), (6) and (8),
(vi) paragraph 6,
(vii) paragraph 7.

Electricity undertakings which are relevant producers or suppliers

9. The following are relevant provisions in relation to an electricity undertaking which is a relevant producer or supplier—
(a) section 10B(5) and (6);
(b) section 10J(3) and (4);
(c) section 8D(5) and (6) of the Gas Act 1986 (duties concerning supply of information for application for certification as to independence);
(d) section 8L(3) and (4) of that Act (duties concerning supply of information for review of certification as to independence);

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(e) Article 3(3) of the Electricity Regulation (duty to supply information relating to certification of electricity transmission system operators);

(f) Article 3(3) of the Gas Regulation (duty to supply information relating to certification of gas transmission system operators).

[F722 Smart meter communication licence holders

Textual Amendments

F722 Sch. 6A para. 9A and cross-heading inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), **art. 16(3)**

9A. The following are relevant provisions in relation to the holder of a smart meter communication licence—

(a) section 42C; and

(b) section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (directions to comply with requirements under section 24 of that Act).**]**

Interpretation

10. In this Schedule "ITC Regulation" means Commission Regulation 2010/838/EU of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging.

F723 11. . . . . .**]**

Textual Amendments

F723 Sch. 6A para. 11 omitted (14.1.2015) by virtue of The Electricity and Gas (Internal Markets) Regulations 2014 (S.I. 2014/3332), regs. 1(1), **6**

SCHEDULE 7

Section 31.

USE ETC. OF ELECTRICITY METERS

Modifications etc. (not altering text)

C122 Sch. 7 modified (1.11.1995) by S.I. 1995/2607, **reg. 3(1)**

C123 Sch. 7 modified (30.10.2006) by The Measuring Instruments (Active Electrical Energy Meters) Regulations 2006 (S.I. 2006/1679), regs. 1(3), **28(1)-(4)**

C124 Sch. 7 modified (1.4.2009) by Energy Act 2008 (c. 32), **s. 95(2)**(5), 110(2); S.I. 2009/45, art. 3(b)(ii)

Consumption to be ascertained by appropriate meter

1 (1) Where a customer of an **[**F724 authorised supplier**]** is to be charged for his supply wholly or partly by reference to the quantity of electricity supplied, the supply

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shall be given through, and the quantity of electricity shall be ascertained by, an appropriate meter.

[F725(1A) An authorised supplier may give a supply otherwise than through an appropriate meter in such circumstances as may be prescribed.**]**

[F726(2) If the **[**F724authorised supplier**]** agrees, the meter may be provided by the customer **[**F727(who may provide a meter which belongs to him or is made available otherwise than in pursuance of arrangements made by the supplier)**]**; but otherwise it shall be provided by the **[**F724authorised supplier**][**F728(who may provide a meter which belongs to him or to any person other than the customer)**]**.

(2A) **[**F729An authorised supplier**]** may refuse to allow one of his customers to provide a meter only if there are reasonable grounds for his refusal.**]**

(3) The meter shall be installed on the customer's premises in a position determined by the **[**F724authorised supplier**]**, unless in all the circumstances it is more reasonable to place it outside those premises or in some other position.

(4) The **[**F724authorised supplier**]** may require the replacement of any meter provided and installed in accordance with sub-paragraphs (2) and (3) above where its replacement—

(a) is necessary to secure compliance with this Schedule or any regulations made under it; or

(b) is otherwise reasonable in all the circumstances;

and any replacement meter shall be provided and installed in accordance with those sub-paragraphs.

(5) If the customer refuses or fails to take his supply through an appropriate meter provided and installed in accordance with sub-paragraphs (2) and (3) above, the supplier may refuse to give or may discontinue the supply.

(6) For the purposes of this paragraph a meter is an appropriate meter for use in connection with any particular supply if it is of a pattern or construction which, having regard to the terms on which the supply is to be charged for, is particularly suitable for such use.

[F730(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.**]**

(8) Pending the determination under section 23 of this Act **[**F731(as modified by sub-paragraph (7))**]** of any dispute arising under this paragraph, the meter and its provision and installation shall be such as the Director may direct; and directions under this sub-paragraph may apply either in cases of particular descriptions or in particular cases.

(9) Part I of this Act shall apply as if any duty or other requirement imposed on **[**F732an electricity supplier**]** by directions under sub-paragraph (8) above were imposed by directions under section 23 of this Act **[**F733(as modified by sub-paragraph (7))**]**.

(10) In this Schedule "exempt supply" means a supply of electricity to any premises where—

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(a) the premises are not premises used wholly or mainly for domestic purposes; or

(b) the **[**F724authorised supplier**]** or the customer is a person authorised by an exemption to supply electricity to those premises.

Textual Amendments

F724 Words in Sch. 7 paras. 1(1)-(4)(10)(b) substituted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 2(1)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F725 Sch. 7 para. 1(1A) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 3(2)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F726 Sch. 7 para. 1(2)(2A) substituted (1.7.1992) for para. 1(2) by Competition and Service (Utilities) Act 1992 (c. 43), s. 56(6), **Sch. 1 para. 16**; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I

F727 Words in Sch. 7 para. 1(2) inserted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 3(3)(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F728 Words in Sch. 7 para. 1(2) substituted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 3(3)(b)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F729 Words in Sch. 7 para. 1(2A) substituted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 3(4)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F730 Sch. 7 para. 1(7) substituted (1.4.2009) by Energy Act 2008 (c. 32), **ss. 96(3)(a)**, 110(2); S.I. 2009/45, art. 3(b)(ii)

F731 Words in Sch. 7 para. 1(8) inserted (1.4.2009) by Energy Act 2008 (c. 32), **ss. 96(3)(b)**, 110(2); S.I. 2009/45, art. 3(b)(ii)

F732 Words in Sch. 7 para. 1(7)(9) substituted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 3(5)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F733 Words in Sch. 7 para. 1(9) inserted (1.4.2009) by Energy Act 2008 (c. 32), **ss. 96(3)(b)**, 110(2); S.I. 2009/45, art. 3(b)(ii)

Restrictions on use of meters

2 (1) No meter shall be used for ascertaining the quantity of electricity supplied by an **[**F734authorised supplier**]** to a customer unless the meter—

(a) is of an approved pattern or construction and is installed in an approved manner; and

(b) subject to sub-paragraph (2) below, is certified under paragraph 5 below;

and in this Schedule "approved" means approved by or under regulations made under this paragraph.

(2) Paragraph (b) of sub-paragraph (1) above shall not apply to a meter used in connection with an exempt supply if the **[**F734authorised supplier**]** and the customer have agreed in writing to dispense with the requirements of that paragraph.

(3) Regulations under this paragraph may provide—

(a) for determining the fees to be paid for approvals given by or under the regulations;

(b) for revoking an approval so given to any particular pattern or construction of meter and requiring meters of that pattern or construction which have been installed to be replaced with meters of an approved pattern or construction within a prescribed period;

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(c) for revoking an approval so given to any particular manner of installation and requiring meters which have been installed in that manner to be installed in an approved manner within such a period;

and may make different provision for meters of different descriptions or for meters used or intended to be used for different purposes.

Textual Amendments

F734 Words in Sch. 7 para. 2(1)(2) substituted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 2(1)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

3 (1) If an **[**F735authorised supplier**]** supplies electricity through a meter which is used for ascertaining the quantity of electricity supplied and—

(a) is not of an approved pattern or construction or is not installed in an approved manner; or

(b) in the case of a meter to which paragraph 2(1)(b) above applies, is not certified under paragraph 5 below,

he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

[F736(1A) Regulations under paragraph 1(1A) may provide for this paragraph not to apply in such circumstances as may be prescribed (being circumstances in which an authorised supplier is not required to supply electricity through an appropriate meter).**]**

(2) Where the commission by any person of an offence under this paragraph is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this sub-paragraph whether or not proceedings are taken against the first-mentioned person.

(3) In any proceedings in respect of an offence under this paragraph it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) No proceedings shall be instituted in England and Wales in respect of an offence under this paragraph except by or on behalf of the Director.

Textual Amendments

F735 Words in Sch. 7 para. 3(1) substituted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 2(1)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F736 Sch. 7 para. 3(1A) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 4**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Meter examiners

4 (1) The Director shall appoint competent and impartial persons as meter examiners for the purposes of this Schedule.

(2) There shall be paid out of money provided by Parliament to meter examiners **[**F737employed in the civil service of the State**]** such remuneration and such

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allowances as may be determined by the Director with the approval of the Treasury; and such pensions as may be so determined may be paid out of money provided by Parliament to or in respect of such examiners.

[F738(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.**]**

(3) All fees payable in respect of the examination of meters by meter examiners **[**F739employed in the civil service of the State**]** shall be paid to the Director; and any sums received by him under this sub-paragraph shall be paid into the Consolidated Fund.

Textual Amendments

F737 Words in Sch. 7 para. 4(2) inserted (1.4.2009) by Energy Act 2008 (c. 32), **ss. 96(4)(a)**, 110(2); S.I. 2009/45, art. 3(b)(ii)

F738 Sch. 7 para. 4(2A) inserted (1.4.2009) by Energy Act 2008 (c. 32), **ss. 96(4)(b)**, 110(2); S.I. 2009/45, art. 3(b)(ii)

F739 Words in Sch. 7 para. 4(3) inserted (1.4.2009) by Energy Act 2008 (c. 32), **ss. 96(4)(c)**, 110(2); S.I. 2009/45, art. 3(b)(ii)

Certification of meters

5 (1) Subject to sub-paragraph (2) below, a meter may be certified—

(a) by a meter examiner appointed under paragraph 4 above; or

(b) by a person who is authorised to certify meters of that description by or under regulations made under this paragraph;

and in this paragraph "examiner" means a meter examiner or a person so authorised.

(2) No meter shall be certified unless the examiner is satisfied—

(a) that the meter is of an approved pattern or construction; and

(b) that the meter conforms to such standards (including standards framed by reference to margins of error) as may be prescribed;

and references in this Schedule to prescribed margins of error shall be construed accordingly.

(3) An examiner may certify any meter submitted to him, notwithstanding that he has not himself examined or tested it, if—

(a) the meter is submitted to him by F740. . . a person authorised by the Director for the purposes of this sub-paragraph;

(b) the meter is accompanied by a report stating that the meter has been examined and tested by the person submitting it and containing such other information as may be prescribed;

(c) the examiner considers that the report indicates that the meter is entitled to be certified;

(d) the meter is one of a number submitted at the same time by the same person,

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and the examiner has himself examined and tested as many of those meters as he may consider sufficient to provide a reasonable test of all of them.

(4) Regulations under this paragraph may make different provision for meters of different descriptions or for meters used or intended to be used for different purposes and may include provision—

(a) for the termination of certification in the case of meters which no longer conform to the prescribed standards and in such other cases as may be prescribed;

(b) for determining the fees to be paid **[**F741to meter examiners employed in the civil service of the State**]** for examining, testing and certifying meters, and the persons by whom they are to be paid; and

(c) as to the procedure to be followed in examining, testing and certifying meters.

(5) Regulations under this paragraph above may also include provision—

(a) for determining the fee to be paid in respect of any authorisation under sub-paragraph (1) or (3) above;

(b) for imposing conditions on any such authorisation; and

(c) for withdrawing any such authorisation before the end of any period for which it is given if any of those conditions is not satisfied.

Textual Amendments

F740 Words in Sch. 7 para. 5(3)(a) repealed (1.10.2001) by 2000 c. 27, ss. 52, 108, Sch. 5 para. 5, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F741 Words in Sch. 7 para. 5(4)(b) inserted (1.4.2009) by Energy Act 2008 (c. 32), **ss. 96(5)**, 110(2); S.I. 2009/45, art. 3(b)(ii)

Apparatus for testing etc. of meters

6 (1) It shall be the duty of a person to whom this paragraph applies, that is to say, F742. . . a person authorised by the Director for the purposes of paragraph 5(3) above—

(a) to provide and maintain such apparatus for the examination, testing and regulation of meters, and such apparatus for the sealing and unsealing of meters, as may be specified by a direction of the Director;

(b) to use apparatus so provided and maintained to carry out such examination, testing and regulation of meters, or to seal or unseal meters in such circumstances, as may be so specified; and

(c) to keep such records and make such reports of things done in pursuance of paragraph (b) above as may be so specified.

(2) It shall also be the duty of a person to whom this paragraph applies to afford to meter examiners, acting in the exercise of **[**F743functions conferred by or under**]** this Schedule, all necessary facilities for the use of apparatus provided and maintained in pursuance of sub-paragraph (1) above.

(3) If the Director considers that any person to whom this paragraph applies has made satisfactory arrangements whereby apparatus provided by some other person is available for the examination, testing or regulation of the first mentioned person's

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meters, the Director may direct that this paragraph shall not apply to that person to such extent as may be specified in the direction.

(4) Any two or more persons to whom this paragraph applies may with the approval of the Director enter and carry into effect arrangements whereby apparatus provided by one or more of the parties is to be available to all or any of them for the purposes of fulfilling their obligations under this paragraph.

F744(5) . . . . . .

Textual Amendments

F742 Words in Sch. 7 para. 6(1) repealed (1.10.2001) by 2000 c. 27, ss. 52, 108, Sch. 5 para. 6(a), **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F743 Words in Sch. 7 para. 6(2) substituted (1.4.2009) by Energy Act 2008 (c. 32), **ss. 96(6)**, 110(2); S.I. 2009/45, art. 3(b)(ii)

F744 Sch. 7 para. 6(5) repealed (1.10.2001) by 2000 c. 27, ss. 52, 108, Sch. 5 para. 6(b), **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Testing etc. of meters

7 (1) It shall be the duty of a meter examiner **[**F745employed in the civil service of the State**]**, on being required to do so by any person and after giving notice to such persons as may be prescribed—

(a) to examine and test any meter used or intended to be used for ascertaining the quantity of electricity supplied to any premises;

(b) to determine whether it is of an approved pattern or construction and, if it is installed for use, whether it is installed in an approved manner;

(c) to determine whether it is in proper order for ascertaining the quantity of electricity supplied within the prescribed margins of error and, if it has been in use and there is a dispute as to whether it registered correctly at any time, to determine if possible whether it registered within those margins at that time; and

(d) to make a written report of his conclusions as to the matters mentioned in paragraphs (b) and (c) above.

(2) If a meter examiner determines that a meter is, or was at any time, operating outside the prescribed margins of error, he shall if possible give an opinion as to—

(a) any period for which the meter has or may have been so operating; and

(b) the accuracy (if any) with which it was or may have been operating for any such period.

(3) Regulations under this paragraph may make provision for determining the fees to be paid **[**F746to meter examiners employed in the civil service of the State**]** for examining and testing meters, and the persons by whom and the circumstances in which they are to be paid.

(4) In relation to a meter used or intended to be used in connection with an exempt supply, this paragraph shall have effect as if any reference to the prescribed margins of error included a reference to any margins of error agreed between the **[**F747authorised supplier**]** and the customer (in this Schedule referred to as "agreed margins of error").

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Textual Amendments

F745 Words in Sch. 7 para. 7(1) inserted (1.4.2009) by Energy Act 2008 (c. 32), **ss. 96(7)(a)**, 110(2); S.I. 2009/45, art. 3(b)(ii)

F746 Words in Sch. 7 para. 7(3) inserted (1.4.2009) by Energy Act 2008 (c. 32), **ss. 96(7)(b)**, 110(2); S.I. 2009/45, art. 3(b)(ii)

F747 Words in Sch. 7 para. 7(4) substituted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 2(1)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

8 (1) This paragraph applies where there is a genuine dispute as to the accuracy of a meter used for ascertaining the quantity of electricity supplied to any premises and notice of the dispute—

(a) is given to the **[**F748authorised supplier**]** by the customer, or to the customer by the **[**F748authorised supplier**]**; or

(b) is given to the **[**F748authorised supplier**]** and to the customer by any other person interested.

(2) Except with the approval of a meter examiner and, if he so requires, under his supervision, the meter shall not be removed or altered by the supplier or the customer until after the dispute is resolved by agreement or the meter is examined and tested under paragraph 7 above, whichever first occurs.

(3) If the supplier or the customer removes or alters the meter in contravention of sub-paragraph (2) above, he shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Textual Amendments

F748 Words in Sch. 7 para. 8(1)(a)(b) substituted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 2(1)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Presumptions and evidence

9 (1) This paragraph applies to meters used for ascertaining the quantity of electricity supplied to any premises.

(2) The register of a meter to which this paragraph applies shall be admissible in any proceedings as evidence of the quantity of electricity supplied through it.

(3) Where electricity has been supplied for any period through such a meter which is of an approved pattern or construction and is installed in an approved manner, the register of the meter shall be presumed to have been registering for that period—

(a) within the prescribed margins of error; and

(b) in the case of a meter used in connection with an exempt supply, within any agreed margins of error,

unless the contrary is proved.

(4) Where a meter to which this paragraph applies has been operating for any period—

(a) within the prescribed margins of error; and

(b) in the case of a meter used in connection with an exempt supply, within any agreed margins of error,

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the meter shall be conclusively presumed to have been correctly registering for that period the quantity of electricity supplied through it.

(5) The report of a meter examiner on any question relating to such a meter shall be admissible in evidence in any proceedings in which that question is raised; and any conclusions in the report as to the accuracy of the meter when it was tested shall be presumed to be correct unless the contrary is proved.

Meters to be kept in proper order

10 (1) A customer of an **[**F749authorised supplier**]** shall at all times, at his own expense, keep any meter **[**F750provided by**]** him in proper order for correctly registering the quantity of electricity supplied to him; and in default of his doing so the supplier may discontinue the supply of electricity through that meter.

(2) An **[**F749authorised supplier**]** shall at all times, at his own expense, keep any meter **[**F751provided**]** by him to any customer in proper order for correctly registering the quantity of electricity supplied and, in the case of pre-payment meters, for operating properly on receipt of the necessary payment.

[F752(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.**]**

(3) . . . . . .

(4) Sub-paragraphs (2) and (3) above are without prejudice to any remedy the supplier may have against the customer for failure to take proper care of the meter.

Textual Amendments

F749 Words in Sch. 7 para. 10(1)(2) substituted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 2(1)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F750 Words in Sch. 7 para. 10(1) substituted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 7(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F751 Words in Sch. 7 para. 10(2) substituted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 7(b)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F752 Sch. 7 para. 10(2A) substituted (1.4.2009) by Energy Act 2008 (c. 32), **ss. 96(8)**, 110(2); S.I. 2009/45, art. 3(b)(ii)

Interference with meters

11 (1) If any person intentionally or by culpable negligence—

(a) alters the register of any meter used for measuring the quantity of electricity supplied to any premises by an **[**F753authorised supplier**]**; or

(b) prevents any such meter from duly registering the quantity of electricity supplied,

he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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(2) Where any person is prosecuted for an offence under sub-paragraph (1) above, the possession by him of artificial means for causing an alteration of the register of the meter or, as the case may be, the prevention of the meter from duly registering shall, if the meter was in his custody or under his control, be prima facie evidence (or in Scotland sufficient evidence) that the alteration or prevention was intentionally caused by him.

(3) Where an offence under sub-paragraph (1) above has been committed, the supplier may discontinue the supply of electricity to the premises until the matter has been remedied and remove the meter in respect of which the offence was committed.

(4) Where an **[**F753authorised supplier**]** removes a meter under sub-paragraph (3) above, he shall keep it safely until the Director authorises him to destroy or otherwise dispose of it.

Textual Amendments

F753 Words in Sch. 7 para. 11(1)(a)(4) substituted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 2(1)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

Special provision for pre-payment meters

12 (1) A customer of an **[**F754authorised supplier**]** who takes his supply through a pre-payment meter shall be under a duty to take all reasonable precautions for the safekeeping of any money or tokens which are inserted into that meter.

[F755(2) A pre-payment meter installed by an authorised supplier through which a customer of such a supplier takes his supply of electricity shall not be used to recover a sum unless—

[F756(a) the sum is owed to an authorised supplier—

(i) in respect of the supply of electricity to the premises on which the meter is installed,

(ii) in respect of the provision of the meter, or

(iii) under a green deal plan (within the meaning of section 1 of the Energy Act 2011) in respect of the premises; or**]**

(b) the recovery of the sum in that manner is permitted by both—

(i) regulations; and

(ii) an agreement falling within sub-paragraph (3) below between the customer and the person to whom the sum is owed.

(3) An agreement falls within this sub-paragraph if—

(a) the person to whom the sum is owed is a person who is authorised by regulations to enter into agreements falling within this sub-paragraph;

(b) the agreement permits that person to use the meter in question to recover such sums as may be specified in or determined under the agreement; and

(c) the agreement complies with the requirements specified for the purposes of this sub-paragraph by regulations.

(4) The sums that regulations under this paragraph may permit the recovery of through a pre-payment meter include—

(a) sums owed to a person other than an authorised supplier;

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(b) sums owed in respect of premises other than the premises on which the meter is installed;

(c) sums owed in respect of matters other than the supply of electricity.

(5) Before making regulations under this paragraph the Authority must consult—

(a) **[**F757Citizens Advice;

(aa) Citizens Advice Scotland;**]**

(b) all authorised suppliers;

(c) such other persons as the Authority considers appropriate.**]**

Textual Amendments

F754 Words in Sch. 7 para. 12(1) substituted (1.10.2001) by 2000 c. 27, s. 52, **Sch. 5 para. 2(1)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F755 Sch. 7 para. 12(2)-(5) substituted for Sch. 7 para. 12(2) (5.10.2004) by Energy Act 2004 (c. 20), **ss. 181(2)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

F756 Sch. 7 para. 12(2)(a) substituted (28.1.2013) by Energy Act 2011 (c. 16), **ss. 24(6)**, 121(1); S.I. 2013/125, art. 3(a)

F757 Sch. 7 para. 12(5)(a)(aa) substituted for Sch. 7 para. 12(5)(a) (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(22)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

Interpretation

13 In this Schedule—

"agreed margins of error" has the meaning given by paragraph 7(4) above;

"approved" means approved by or under regulations made under paragraph 2 above;

F758 . . . . . .

"exempt supply" has the meaning given in paragraph 1(10) above;

"prescribed" means prescribed by regulations;

"prescribed margins of error" has the meaning given by paragraph 5(2) above;

[F759"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.**]**

Textual Amendments

F758 Sch. 7 para. 13: definition of "electricity supplier" repealed (1.10.2001) by 2000 c. 27, ss. 52, 108, Sch. 5 para. 2(2), **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F759 Words in Sch. 7 para. 13 substituted (1.4.2009) by Energy Act 2008 (c. 32), **ss. 96(9)**, 110(2); S.I. 2009/45, art. 3(b)(ii)

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SCHEDULE 8

Section 36(8).

CONSENTS UNDER SECTIONS 36 AND 37

Modifications etc. (not altering text)

C125 Sch. 8: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

C126 Sch. 8 modified in part (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12(5)(a)**, 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

Applications for consent

1 (1) An application for a consent under section 36 or 37 of this Act shall be in writing and shall describe by reference to a map the land to which the application relates, that is, the land—

(a) on which the generating station is proposed to be constructed, extended or operated; or

(b) across which the electric line is proposed to be installed or kept installed.

(2) An application for a consent under section 37 of this Act shall also state—

(a) the length of the proposed line and its nominal voltage; and

(b) whether all necessary wayleaves have been agreed with owners and occupiers of land proposed to be crossed by the line,

and shall be supplemented, if the Secretary of State so directs, by such additional information as may be specified in the direction.

(3) The Secretary of State may by regulations make provision for determining the fees to be paid on applications for consent under section 36 or 37 of this Act, and the circumstances in which they are to be paid.

(4) Any sums received by the Secretary of State under this paragraph shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

C127 Sch. 8 para. 1(4) excluded (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12(6)**, 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

Objections by relevant planning authority

2 (1) Where an application is made to the Secretary of State for his consent under section 36 or 37 of this Act, notice of the application shall be served on the relevant planning authority.

(2) Where the relevant planning authority notify the Secretary of State that they object to the application and their objection is not withdrawn, the Secretary of State—

(a) shall cause a public inquiry to be held; and

(b) before determining whether to give his consent, shall consider the objection and the report of the person who held the inquiry.

(3) For the purposes of sub-paragraph (2) above the Secretary of State may make regulations limiting the time within which notification of objections may be made to

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the Secretary of State by relevant planning authorities, and providing that objections which are not notified within the time so limited may be disregarded for those purposes.

(4) Sub-paragraph (2) above shall not apply where the Secretary of State proposes to accede to the application subject to such modifications or conditions as will give effect to the objection of the relevant planning authority.

(5) The Secretary of State may make regulations providing that, in relation to applications for consent under section 37 of this Act for electric lines of a nominal voltage less than 132 kilovolts, the provisions of this paragraph shall have effect with such modifications as may be prescribed.

(6) In this Schedule "relevant planning authority"—

(a) in relation to **[**F760land in England F761... which is not in a National Park for which a National Park authority is the local planning authority**]**, means a local planning authority within the meaning of **[**F762the Town and Country Planning Act 1990,**]** except that in relation to a non-metropolitan county and an application for consent under section 37 of this Act it includes the county planning authority only—

F763(i) . . . . . .

(ii) where the line will have a nominal voltage of not less than 132 kilovolts;

F764**[**(aa) in relation to land in England F765. . . which is in a National Park for which a National Park authority is the local planning authority, means that National Park authority; and**]**

[F766(ab) in relation to Wales, means a local planning authority;.**]**

(b) in relation to Scotland, means a general planning authority, or a district planning authority, within the meaning of Part IX of the M61Local Government (Scotland) Act 1973.

Textual Amendments

F760 Words in Sch. 8 para. 2 (6)(a) substituted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 30(3)(a)(4)(5)** (with ss.7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**

F761 Words in Sch. 8 para. 2(6)(a) repealed (1.4.1996) by 1994 c. 19, ss. 20(4), 66(8), Sch. 6 Pt. II para. 22, **Sch. 18** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2**

F762 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 83(1)**

F763 Sch. 8 para. 2(6)(a)(i) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**

F764 Sch. 8 para. 2(6)(aa) inserted (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10**, para. 30(3)(b)(4)(5) (with ss. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**

F765 Words in Sch. 8 para. 2(6)(aa) omitted (1.4.1996) by virtue of 1995 c. 25, s. 78, **Sch. 10 para. 30(3)(c)(4)(5)** (with s. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**; S.I. 1996/396, art. 4, **Sch. 2**

F766 Sch. 8 para. 2(6)(aa) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 22** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 4, **Sch. 2** and renumbered as Sch. 8 para. 2(6)(ab) (23.11.1995) by 1995 c. 25, s. 78, **Sch. 10 para. 30(6)** (with ss. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, **art. 2(1)**

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Marginal Citations
M61 1973 c. 65.

Objections by other persons

3 (1) The Secretary of State may by regulations make provision for securing—

(a) that notice of any application for consent under section 36 or 37 of this Act shall, in such circumstances as may be prescribed by the regulations, be published in such manner as may be so prescribed;

(b) that notice of any such application shall, in such circumstances as may be prescribed by the regulations or where the Secretary of State so directs, be served on such persons as may be so prescribed or, as the case may be, specified in the direction;

(c) that every notice published or served in pursuance of the regulations shall state the time within which, and the manner in which, objections to the application may be made by persons other than the relevant planning authority, and that the time so stated shall not be less than such minimum period as may be prescribed by the regulations; and

(d) that, in so far as any such notice requires objections to be sent to any person other than the Secretary of State, copies of the objections shall be sent to the Secretary of State by that person;

and in relation to applications for consent under section 36 of this Act to the extension of a generating station or to the operation of such a station in a different manner, the regulations may include provision for enabling the Secretary of State to give directions dispensing with the requirements of the regulations in such cases as he thinks fit.

(2) Where in the case of an application for consent under section 36 or 37 of this Act—

(a) the Secretary of State is not required by virtue of paragraph 2(2) above to cause a public inquiry to be held; but

(b) objections or copies of objections have been sent to the Secretary of State in pursuance of regulations made under this paragraph,

the Secretary of State shall consider those objections, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the application and, if he thinks it appropriate to do so, shall cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the application.

Public inquiries

4 (1) Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held in respect of an application for consent under section 36 or 37 of this Act, the Secretary of State shall inform the applicant accordingly; and the applicant shall in two successive weeks publish a notice stating—

(a) the fact that the application has been made, and the purpose of it, together with a description of the land to which it relates;

(b) a place in the locality where a copy of the application, and of the map referred to in it, can be inspected; and

(c) the place, date and time of the public inquiry.

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(2) A notice under sub-paragraph (1) above shall be published in one or more local newspapers circulating in the locality in which the land in question is situated, or circulating respectively in the several localities in which different parts of that land are situated, as the applicant may consider appropriate.

(3) If it appears to the Secretary of State that, in addition to the publication of a notice in accordance with sub-paragraphs (1) and (2) above, further notification of the public inquiry should be given (either by the service of notices, or by advertisement, or in any other way) in order to secure that the information specified in paragraphs (a) to (c) of sub-paragraph (1) above is sufficiently made known to persons in the locality, the Secretary of State may direct the applicant to take such further steps for that purpose as may be specified in the direction.

(4) Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held in respect of an application for consent under section 36 or 37 of this Act and the Secretary of State is proceeding concurrently as mentioned in section 61(2) or (4) of this Act, the public inquiry shall extend to all the matters arising in the concurrent proceedings, and any notice of the inquiry (in addition to any other matters required to be stated in it) shall indicate the extent of the inquiry accordingly.

(5) In the application of this paragraph to Scotland, for sub-paragraphs (1) to (3) there shall be substituted the following sub-paragraph—

"(1) Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held, and it appears to the Secretary of State that in addition to any public notice of such an inquiry any further notification concerning the inquiry is necessary or expedient (either by way of service of notice upon any person or in any other way), the Secretary of State may direct the applicant to take such further steps for this purpose as may be specified in the direction."

Modifications etc. (not altering text)
C128 Sch. 8 para. 4(4)(5) applied (with modifications) (S.) (1.12.2013) by The Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 (S.S.I. 2013/304), **reg. 6(3)**

Provisions supplementary to paragraphs 2 to 4

5 (1) Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held and the application for consent relates to land in the areas of two or more relevant planning authorities—

(a) the application shall not be the subject of a public inquiry in so far as it relates to land which is not within the area of a planning authority who have notified the Secretary of State that they object to the application, unless the Secretary of State otherwise directs having regard to objections by other persons of which he has notice; and

(b) in so far as the application is to be the subject of a public inquiry in relation to land in the areas of two or more relevant planning authorities, the Secretary of State may direct that separate public inquiries shall be held;

and, where the Secretary of State gives any such directions, the provisions of paragraphs 2 to 4 above shall apply with the necessary modifications.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(2) For the purposes of sub-paragraph (1)(a) above a relevant planning authority who have notified the Secretary of State that they object to the application shall 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 will give effect to the objection.

I[F767] Additional inspectors

Textual Amendments

F767 Sch. 8 para. 5A and cross-heading inserted (E.W.) (6.4.2007) by Energy Act 2004 (c. 20), **ss. 182(1)**, 198(2); S.I. 2007/1091, art. 2(a)

5A (1) This paragraph applies in the case of—

(a) a public inquiry in England and Wales by virtue of paragraph 2(2) or 3(2); or

(b) a public inquiry in England and Wales which is a combination under section 62 of this Act into one inquiry—

(i) of two or more such inquiries; or

(ii) of one or more such inquiries and one or more other inquiries.

(2) At any time after appointing a person to hold the inquiry ("the lead inspector"), the Secretary of State may direct him—

(a) to consider such matters relating to the conduct of the inquiry as are specified in the direction; and

(b) to make recommendations to the Secretary of State about those matters.

(3) After considering the recommendations of the lead inspector, the Secretary of State may—

(a) appoint for the purposes of the inquiry such number of additional inspectors as he thinks appropriate; and

(b) direct that each additional inspector must consider such of the matters to which the inquiry relates as are allocated to him by the lead inspector.

(4) An additional inspector must—

(a) comply with every direction as to procedural matters given to him by the lead inspector; and

(b) report to the lead inspector on every matter allocated to him.

(5) It is to be for the lead inspector to report to the Secretary of State on the consideration of both—

(a) the matters which he considered himself; and

(b) the matters the consideration of which was allocated to additional inspectors.

(6) The power of the Secretary of State to give directions to the lead inspector may be exercised on one or more different occasions after the appointment of the lead inspector.

(7) Accordingly—

(a) the recommendations that may be made by the lead inspector following such a direction include, in particular, a recommendation for varying the number of additional inspectors; and

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(b) the power of the Secretary of State to appoint an additional inspector includes power to revoke such an appointment.

(8) A direction by any person under this paragraph may be varied or revoked by a subsequent direction by that person.**]**

Proceedings for questioning certain decisions under paragraph 3(2)

[F768 5B (1) If a person is aggrieved by a decision of the Scottish Ministers to which this paragraph applies, and wishes to question the validity of the decision on either of the grounds mentioned in sub-paragraph (2), the person (the "aggrieved person") may make an application to the Inner House of the Court of Session under this paragraph.

(2) The grounds are that—

(a) the decision is not within the powers of the Scottish Ministers under this Schedule,

(b) one or more of the relevant requirements have not been complied with in relation to the decision.

(3) This paragraph applies to a decision under paragraph 3(2) as to whether a public inquiry should be held with respect to an application for consent to construct, extend or operate a generating station that comprises or is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters.

(4) An application under this paragraph must be made within the period of 6 weeks beginning with the date on which the decision to which the application relates is taken.

(5) On an application under this section, the Inner House of the Court of Session—

(a) may suspend the decision until the final determination of the proceedings,

(b) may quash the decision either in whole or in part if satisfied that—

(i) the decision in question is not within the powers of the Scottish Ministers under this Schedule, or

(ii) the interests of the aggrieved person have been substantially prejudiced by failure to comply with any of the relevant requirements in relation to the decision.

(6) In this paragraph—

"relevant waters" has the same meaning as in section 36A(7);

"the relevant requirements", in relation to a decision to which this paragraph applies, means the requirements of this Act, or of any regulations made under this Schedule, which are applicable to that decision.

Textual Amendments

F768 Sch. 8 paras. 5B, 5C inserted (26.2.2015) by The Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015 (S.I. 2015/374), arts. 1(1), **4(3)** (with art. 4(4))

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Applications under paragraph 5B: requirement for permission

5C (1) No proceedings may be taken in respect of an application under paragraph 5B unless the Inner House of the Court of Session has granted permission for the application to proceed.

(2) The Court may grant permission under sub-paragraph (1) for an application to proceed only if it is satisfied that—

(a) the applicant can demonstrate a sufficient interest in the subject matter of the application, and

(b) the application has a real prospect of success.

(3) The Court may grant permission under subsection (1) for an application to proceed—

(a) subject to such conditions as the Court thinks fit, or

(b) only on such of the grounds specified in the application as the Court thinks fit.**]**

Textual Amendments

F768 Sch. 8 paras. 5B, 5C inserted (26.2.2015) by The Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015 (S.I. 2015/374), arts. 1(1), **4(3)** (with art. 4(4))

Special provisions as to consents under section 37

6 (1) Where an application for consent under section 37 of this Act states that all necessary wayleaves have not been agreed with owners and occupiers of land proposed to be crossed by the electric line, the Secretary of State may—

(a) give notice to the applicant that he does not intend to proceed with the application until he is satisfied, with respect to all the land over which wayleaves have not been agreed, that the applicant has applied to the Secretary of State for consent under paragraph 6 (acquisition of wayleaves) of Schedule 4 to this Act; or

(b) grant his consent subject to the condition (either in respect of the whole of the line or in respect of any part of it specified in the consent) that the work is not to proceed until the Secretary of State has given his permission.

(2) In determining at any time whether to give permission for any work to proceed, either generally or in respect of any part of the line, the Secretary of State—

(a) shall have regard to the extent to which the necessary wayleaves have been agreed by that time; and

(b) in so far as any such wayleaves have not then been agreed in respect of any part of the line, shall take into account any prejudicial effect which, in his opinion, the giving of permission (whether in respect of that part or of any adjacent part of the line) might have on any subsequent proceedings relating to the outstanding wayleaves.

Deemed planning permission etc.

F769 7 . . . . . .

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Textual Amendments

F769 Sch. 8 para. 7 repealed (E.W.) by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, **Sch. 1 Pt. II** and (S.) (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. I** (with s. 5, Sch. 3)

I[F770]Generating stations not within areas of relevant planning authorities

Textual Amendments

F770 Sch. 8 para. 7A and cross-heading inserted (1.3.2005) by Energy Act 2004 (c. 20), **s. 93(2)**(4), 198(2); S.I. 2005/442, art. 2(1), Sch. 1

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

(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.

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(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.**]**

Modifications etc. (not altering text)

C129 Sch. 8 para. 7A functions modified (12.4.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 (S.I. 2006/1040), arts. 1(2), **2** (with art. 6)

C130 Sch. 8 para. 7A: transfer of functions (13.4.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 (S.I. 2006/1040), arts. 1(1), **3** (with art. 6)

Supplemental

8 (1) In this Schedule "relevant planning authority" has the meaning given by paragraph 2(6) above.

(2) In section 149 of the [M62]Local Government, Planning and Land Act 1980, each of the following, namely—

(a) subsection (3)(a) (power of Secretary of State to confer on urban development corporation functions of local planning authority in England and Wales); and

(b) subsection (8)(a) (which makes corresponding provision in relation to Scotland),

shall have effect in relation to the provisions of this Schedule (so far as applying to applications for consent under section 37 of this Act) as it has effect in relation to the provisions referred to in that subsection.

[[F771](3) Where an application for a declaration under section 36A of this Act is made with an application for a consent under section 36 of this Act, the application for the declaration shall be treated for the purposes of this Schedule as part of the application for the consent.**]**

Textual Amendments

F771 Sch. 8 para. 8(3) inserted (1.3.2005) by Energy Act 2004 (c. 20), **ss. 99(2)**, 198(2); S.I. 2005/442, art. 2(1), Sch. 1

Marginal Citations

M62 1980 c. 65.

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SCHEDULE 9

Section 38.

PRESERVATION OF AMENITY AND FISHERIES.

Preservation of amenity: England and Wales

1 (1) In formulating any relevant proposals, a licence holder or a person authorised by exemption to **[**[F772]generate, **[**[F773]distribute, supply or participate in the transmission of**]** electricity**]**—

(a) shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archeological interest; and

(b) shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

(2) In considering any relevant proposals for which his consent is required under section 36 or 37 of this Act, the Secretary of State shall have regard to—

(a) the desirability of the matters mentioned in paragraph (a) of sub-pargaraph (1) above; and

(b) the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of that sub-paragraph.

(3) In this paragraph—

"building" includes structure;

"relevant proposals" means any proposals—

(a) for the construction or extension of a generating station of a capacity not less than 10 megawatts, or for the opreation of such a station in a different manner;

(b) for the installation (whether above or below ground) of an electric line; or

(c) for the execution of any other works for or in connection with the transmission or supply of electricity.

(4) The Secretary of State may by order provide that sub-paragraph (3) above shall have effect as if for the capacity mentioned in paragraph (a) there were substituted such other capacity as may be specified in the order.

(5) This paragraph and paragraph 2 below extend to England and Wales only.

Textual Amendments

F772 Words in Sch. 9 para. 1(1) substituted (1.10.2001) by S.I. 2001/3264, **art. 6**

F773 Words in Sch. 9 para. 1(1) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 16**; S.I. 2004/2184, art. 2(2), Sch. 2

Modifications etc. (not altering text)

C131 Sch. 9 para. 1(2) modified (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12(5)(b)**, 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

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2 (1) A licence holder shall within twelve months from the grant of his licence prepare, and from time to time modify, a statement setting out the manner in which he proposes to perform his duty under paragraph 1(1) above, including in particular the consultation procedures which he intends to follow.

(2) Before preparing or modifying a statement under this paragraph, a licence holder shall consult the **[**F774Countryside Agency**]**, **[**F775and—

(a) where the activities which he is authorised by his licence to carry on include activities in England, **[**F776Natural England**]** and the Historic Buildings and Monuments Commission for England; and

(b) where those activities include activities in Wales, **[**F777the Natural Resources Body for Wales**]** and the **[**F778National Assembly**]** for Wales.**]**

(3) As soon as practicable after preparing or modifying a statement under this paragraph, the licence holder shall publish the statement as so prepared or so modified in such manner as he considers appropriate.

Textual Amendments

F774 Words in Sch. 9 para. 2 substituted (20.2.1999) by S.I. 1999/416, art. 3, **Sch. 1 para. 13**

F775 Words in Sch. 9 para. 2(2) substituted (1.4.1991) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 132(1)(a), **Sch. 9 para. 16(a)**; S.I. 1991/685, **art. 3**

F776 Words in Sch. 9 para. 2(2) substituted (1.10.2006) by Natural Environment and Rural Communities Act 2006 (c. 16), s. 107, **Sch. 11 para. 115(b)**; S.I. 2006/2541, art. 2 (with Sch.)

F777 Words in Sch. 9 para. 2(2)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 197** (with Sch. 7)

F778 Words in Sch. 9 para. 2(2)(b) substituted (1.4.2006) by The Historic Buildings Council for Wales (Abolition) Order 2006 (S.I. 2006/63), arts. 1(2), **3(4)**

Preservation of amenity and fisheries: Scotland

3 (1) In formulating any relevant proposals, a licence holder or a person authorised by an exemption to **[**F779generate, **[**F780distribute, supply or participate in the transmission of**]** electricity**]**—

(a) shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and

(b) shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

(2) In considering any relevant proposals for which his consent is required under section 36 or 37 of this Act, the Secretary of State shall have regard to—

(a) the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and

(b) the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of that sub-paragraph.

(3) Without prejudice to sub-paragraphs (1) and (2) above, in exercising any relevant functions each of the following, namely, a licence holder, a person authorised by an

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exemption to generate or supply electricity and the Secretary of State shall avoid, so far as possible, causing injuries to fisheries or to the stock of fish in any waters.

(4) In this paragraph—

"building" includes structure;

"relevant proposals" has the same meaning as in paragraph 1 above and, for the purposes of this paragraph, any such order as is mentioned in sub-pargaraph (4) of that paragraph may be made under this sub-paragraph;

"relevant functions" means any powers conferred and any duties imposed by or under this Act.

(5) This paragraph and paragraphs 4 and 5 below extend to Scotland only.

Textual Amendments

F779 Words in Sch. 9 para. 3(1) substituted (1.10.2001) by S.I. 2001/3264, **art. 6**

F780 Words in Sch. 9 para. 3(1) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 16**; S.I. 2004/2184, art. 2(2), Sch. 2

Modifications etc. (not altering text)

C132 Sch. 9 para. 3: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

4 (1) A licence holder shall within twelve months from the grant of his licence prepare, and from time to time modify, a statement setting out the manner in which he proposes too perform his duty under paragraph 3(1) above, inlcuding in particular the consultation procedures which he intends to follow.

(2) Before preparing or modifying a statement under this paragraph, a licence holder shall consult with **[**F781Scottish Natural Heritage**]**F782... **[**F783and with the National Park authority for any National Park which would be affected by the relevant proposals**]**.

(3) As soon as practicable after preparing or modifying a statement under this paragraph, the licence holder shall publish the statement so prepared or so modified in such a manner as he considers appropriate.

Textual Amendments

F781 Words in Sch. 9 para. 4(2) substituted (1.4.1992) by Natural Heritage (Scotland) Act 1991 (c. 28, SIF 46:1), ss. 27(1), 28(2), **Sch. 10 para. 13**; S.I. 1991/2633, **art. 4**

F782 Words in Sch. 9 para. 4(2) repealed (31.5.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), **Sch. 4 para. 10**; S.S.I. 2003/219, art. 2(1)(c)

F783 Words in Sch. 9 para. 4(2) inserted (S.) (9.8.2000) by 2000 asp 10, s. 36, **Sch. 5 para. 14(2)** (with s. 32); S.I. 2000/312, **art. 2**

Fisheries Committee: Scotland

F7845 . . . . . .

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Textual Amendments

F784 Sch. 9 para. 5 omitted (1.10.2010) by virtue of Flood and Water Management Act 2010 (c. 29), **ss. 46(3)**, 49(3) (with s. 49(1)(6)); S.I. 2010/2169, art. 4, Sch.

SCHEDULE 10

Section 70.

TRANSFERS UNDER SECTIONS 66 AND 67

Modifications etc. (not altering text)

C133 Sch. 10 applied (with modifications) (8.11.1995) by 1995 c. 25, ss. 17(1), 18(2)(c), Sch. 5 Pt. I paras. 1, **7(1)**

C134 Sch. 10 applied (with modifications) (16.5.2001) by 2000 c. 27, s. 108, **Sch. 7 para. 7**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10)

Allocation of property, rights and liabilities: general

1 (1) The provisions of this paragraph shall apply where the transfers effected in pursuance of a transfer scheme include a transfer of all property, rights and liabilities comprised in a specified part of the transferor's undertaking, but shall not apply to any such rights or liabilities under a contract of employment.

(2) Any property, right or liability comprised partly in the specified part of the transferor's undertaking and partly in some other part or parts of that undertaking shall, where the nature of the property, right or liability permits, be divided or apportioned between the transferee of the specified part ("transferee A") and the transferee of the other part or each of the other parts ("transferee B") in such proportions as may be appropriate.

(3) Where any estate or interest in land falls to be so divided—

(a) any rent payable under a lease in respect of that estate or interest; and

(b) any rent charged on that estate or interest,

shall be correspondingly apportioned or divided so that the one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest.

(4) Sub-paragraph (3) above shall apply, with any necessary modifications, in relation to any feu duty payable in respect of an estate or interest in land in Scotland as it applies in relation to any rents charged on an estate or interest in land.

(5) Any property, right or liability comprised as mentioned in sub-paragraph (2) above the nature of which does not permit its division or apportionment as so mentioned shall be transferred to transferee A or transferee B according to—

(a) in the case of an estate or interest in land, whether on the transfer date transferee A or transferee B appears to be in greater need of the security afforded by that estate or interest or, where neither appears to be in greater need of that security, whether on that date transferee A or transferee B appears likely to make use of the land to the greater extent;

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(b) in the case of any other property or any right or liability, whether on the transfer date transferee A or transferee B appears likely to make use of the property, or as the case may be to be affected by the right or liability, to the greater extent,

subject (in either case) to such arrangements for the protection of the other of them as may be agreed between them.

2 (1) The provisions of this paragraph shall apply where the transfers effected in pursuance of a transfer scheme include a transfer of all property, rights and liabilities comprised in a specified part of the transferor's undertaking, but shall not apply to any such rights or liabilities under a contract of employment.

(2) It shall be the duty of the transferee of the specified part of the transferor's undertaking ("transferee A") and each of the other transferees ("transferee B"), whether before or after the transfer date, so far as practicable to arrive at such written agreements and to execute such other instruments as are necessary or expedient to identify or define the property, rights and liabilities transferred to transferee A or transferee B and as will—

(a) afford to transferee A and transferee B as against one another such rights and safeguards as they may require for the carrying on of their respective undertakings; and

(b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarification and modifications of the division of the transferor's undertaking as will best serve the carrying on of the respective undertakings of transferee A and transferee B.

(3) Any such agreement shall provide so far as it is expedient—

(a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;

(b) for the granting of indemnities in connection with the severance of leases and other matters; and

(c) for responsibility for registration of any matter in any statutory register.

(4) If transferee A or transferee B represents to the Secretary of State, or if it appears to the Secretary of State without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (2) above that such agreement will be reached, the Secretary of State, whether before or after the transfer date, may—

(a) give a direction determining that matter; and

(b) include in the direction any provision which might have been included in an agreement under sub-paragraph (2) above.

(5) Any property, rights or liabilities required by a direction under sub-paragraph (4) above to be transferred to transferee A or transferee B shall be regarded as having been transferred by this Act to, and by virtue thereof vested in, that transferee accordingly.

Allocation of rights and liabilities: contracts of employment

3 (1) The provisions of this paragraph shall apply where—

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(a) the transfers effected in pursuance of a transfer scheme include a transfer of all property, rights and liabilities comprised in a specified part of the transferor's undertaking; and

(b) it falls to be determined whether the rights and liabilities transferred to the transferee of that part ("transferee A") include rights and liabilities under a particular contract of employment.

(2) Rights and liabilities under the contract of employment shall be transferred to transferee A only if immediately before the transfer date the employee is employed wholly or mainly for the purposes of the specified part of the transferor's undertaking.

(3) The employee, transferee A or any of the other transferees may apply to the Secretary of State to determine whether or not rights and liabilities in respect of the employee's services under the contract of employment are transferred to transferee A, and the Secretary of State's decision on the application shall be final.

Variation of transfers by agreement

4 (1) The provisions of this paragraph shall apply where the transfers effected in pursuance of a transfer scheme include a transfer of all property, rights and liabilities comprised in a specified part of the transferor's undertaking.

(2) At any time before the end of the period of twelve months beginning with the transfer date the transferee of the specified part and the transferee of any property, rights and liabilities comprised in some other part of the transferor's undertaking may, with the approval of the Secretary of State, agree in writing that—

(a) as from such date as may be specified in or determined under the agreement; and

(b) in such circumstances (if any) as may be so specified,

there shall be transferred from the one transferee to, and vested in, the other transferee any property, rights and liabilities specified in the agreement; but no such agreement shall have effect in relation to rights and liabilities under a contract of employment unless the employee concerned is a party to the agreement.

(3) Subject to sub-paragraph (4) below, in the case of an agreement under sub-paragraph (2) above, the property, rights and liabilities in question shall on the date of the coming into force of the agreement be transferred, and by virtue of the agreement vest, in accordance with the agreement.

(4) The following provisions of this Schedule shall have effect as if—

(a) any reference to a transfer effected in pursuance of a transfer scheme included a reference to a transfer effected in pursuance of an agreement under sub-paragraph (2) above;

(b) any reference to a transaction effected in pursuance of paragraph 2(2) above or of a direction under paragraph 2(4) above included a reference to such an agreement; and

(c) any reference to a vesting by virtue of this Act included a reference to a vesting by virtue of such an agreement.

Right to production of documents of title

5 (1) The provisions of this paragraph shall apply where the transferee under a transfer effected in pursuance of a transfer scheme ("transferee A") is entitled to possession

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of any document relating in part to the title to, or to the management of, any land or other property transferred to the transferee under some other transfer effected in pursuance of that scheme ("transferee B").

(2) Where the land or other property is situated in England and Wales—

(a) transferee A shall be deemed to have given to transferee B an acknowledgment in writing of the right of transferee B to production of the document and to delivery of copies thereof; and

(b) section 64 of the [M63]Law of Property Act 1925 shall have effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.

(3) Where the land or other property is situated in Scotland, subsections (1) and (2) of section 16 of the [M64]Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) shall have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words "unless specially qualified" were omitted.

Marginal Citations

M63 1925 c. 20.

M64 1979 c. 33.

Proof of title by certificate

6 (1) Where two or more transfers are effected in pursuance of a transfer scheme, a certificate issued by either or any of the transferees ("transferee A") with the concurrence of the other or others of them that—

(a) any property specified in the certificate;

(b) any such interest in or right over any such property as may be so specified; or

(c) any right or liability so specified,

is by virtue of this Act for the time being vested in transferee A shall be conclusive evidence for all purposes of that fact, and shall constitute a link of title for the purposes of section 5(1) of the [M65]Conveyancing (Scotland) Act 1924 (deduction of title).

(2) If, on the expiration of one month after a request from either or any of the transferees ("transferee A") for the other or one of the others of them ("transferee B") to concur in the issue of such a certificate, transferee B has failed so to concur—

(a) transferee A may refer the matter to the Secretary of State; and

(b) the Secretary of State may direct transferee B to concur in the issue of a certificate prepared in such terms as are specified in the direction.

Marginal Citations

M65 1924 c. 27.

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Restrictions on dealing with certain land

7 (1) Where two or more transfers are effected in pursuance of a transfer scheme and the Secretary of State is satisfied, on the representation of either or any of the transferees ("transferee A"), that—

(a) in consequence of those transfers, different interests in land, whether the same or different land, are held by transferee A and by the other or one of the other transferees ("transferee B"); and

(b) the circumstances are such that the provisions of this paragraph should have effect,

the Secretary of State may direct that those provisions shall apply to such of that land as may be specified in the direction; and while the direction remains in force, those provisions shall have effect accordingly.

(2) Neither transferee A nor transferee B shall dispose of any interest to which they may respectively be entitled in any of the specified land except with the consent of the Secretary of State.

(3) If, in connection with any proposal to dispose of any interest of either transferee A or transferee B in any of the specified land, it appears to the Secretary of State to be necessary or expedient for the protection of either of them, he may—

(a) require either transferee A or transferee B to dispose of any interest to which it may be entitled in any of the specified land to such person and in such manner as may be specified in the requirement;

(b) require either transferee A or transferee B to acquire from the other any interest in any of the specified land to which that other is entitled; or

(c) consent to the proposed disposal subject to compliance with such conditions as the Secretary of State may see fit to impose.

(4) A person other than transferee A and transferee B dealing with, or with a person claiming under, either transferee A or transferee B shall not be concerned to see or enquire—

(a) whether this paragraph applies or has applied in relation to any land to which the dealing relates; or

(b) whether the provisions of this paragraph have been complied with in connection with that or any other dealing with that land,

and no transaction between persons other than transferee A and transferee B shall be invalid by reason of any failure to comply with those provisions.

Third parties affected by vesting provisions

8 (1) A transaction of any description which, in pursuance of paragraph 2(2) above or of a direction under paragraph 2(4) above, is effected between transferee A and transferee B—

(a) shall have effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register; but

(b) subject to that, shall be binding on all persons notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.

(2) If any transaction is effected in pursuance of paragraph 2(2) above or of a direction under paragraph 2(4) above, transferee A and transferee B shall notify any person

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who has rights or liabilities which thereby become enforceable as to part by or against transferee A and as to part by or against transferee B.

(3) If, within 28 days of being notified, such a person as is mentioned in sub-paragraph (2) above applies to the Secretary of State and satisfies him that the transaction operated unfairly against him, the Secretary of State may give such directions to transferee A and transferee B as appear to him appropriate for varying the transaction.

9 (1) If in consequence of two or more transfers effected in pursuance of a transfer scheme or of anything done in pursuance of the provisions of this Schedule—

(a) the rights or liabilities of any person other than the transferor and the transferees which were enforceable against or by the transferor become enforceable as to part against or by one transferee and as to part against or by another transferee; and

(b) the value of any property or interest of that person is thereby diminished,

such compensation as may be just shall be paid to that person by one or more of the transferees.

(2) Any dispute as to whether, and if so how much, compensation is payable under sub-paragraph (1) above, or as to the person to or by whom it shall be paid, shall be referred to and determined—

(a) by an arbitrator appointed by the Lord Chancellor; or

(b) where the proceedings are to be held in Scotland, by an arbiter appointed by the Lord President of the Court of Session.

F785(3) . . . . . .

Textual Amendments

F785 Sch. 10 para. 9(3) repealed (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 1(1), **Sch. 9** (with regs. 44-46)

Modifications etc. (not altering text)

C135 Sch. 10 para. 9(2) restricted (31.3.1995) by 1993 c. 8, **s. 26(8)(g)** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**

Interpretation

10 Any reference in this Schedule to a transfer effected in pursuance of a transfer scheme is a reference to a transfer effected by this Act in pursuance of such a scheme.

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SCHEDULE 11

Section 90.

TAXATION PROVISIONS

General

1 (1) Subject to sub-paragraphs (2) and (3) below, the following provisions shall apply for the purposes of the Corporation Tax Acts, namely—

(a) all the trades or parts of trades carried on by the existing bodies which are transferred by this Act to successor companies shall be treated as having been, at the time of their commencement and at all times since that time, separate trades carried on by those companies respectively;

(b) the trade carried on by each of those companies after the transfer date shall be treated as the same trade as that which, by virtue of paragraph (a) above, it is treated as having carried before that date;

(c) all property, rights and liabilities of an existing body which are transferred by this Act to a successor company shall be treated as hvaing been, at the time when tney became vested in that body and at all times since that time, property, rights and liabilities of that company; and

(d) anything done by an existing body in relation to property, rights and liabilities which are transferred by this Act to a successor company shall be deemed to have been done by that company.

(2) Except in the case of an Area Board, there shall be made such apportionments of unallowed tax losses and of expenditure by reference to which capital allowances may be made as may be specified in the transferor's transfer scheme.

(3) Where any property, rights and liabilities of an existing body in England and Wales which are transferred by this Act to a successor company became vested in that body by virtue of a qualifying transfer, or two or more successive qualifying transfers—

(a) sub-paragraph (1)(c) above shall have effect as if the reference to the time when the property, rights and liabilities became vested in that body were a reference to the time when they became vested in the original transferor, that is to say, the transferor under the qualifying transfer or, as the case may be, the first qualifying transfers; and

(b) if the property, rights and liabilities becam vested in the original transferor by virtue of a transfer made by a compnany in which, at the time of the transfer, the original transferor or another existing body in England or Wales held an interest, that interest shal be deemed to have been held at that time by the successor company.

(4) Where any property, rights and liabilities of an existing body in England or Wales which are transferred by this Act to a successor company became vested in that body by virtue of a transfer made by a company in which, at the time of the transfer, that body or another body held an interest, that interest shall be deemed to have been held at that time by the successor company.

(5) In this paragraph—

"capital allowance" has the same meaning as in the Tax Acts;

"the final accounting period" means the last complete accounting period of the relevant body, that is to say—

(a) in the case of an existing body in England or Wales, the Electricity Council;

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(b) in the case of an existing body in Scotland, that body,

ending before that transfer date;

"qualifying transfer" means a transfer to an existing body in England and Wales by another such body;

"unallowed tax losses" means any losses, allowances or amounts which, as at the end of the final accountign period, are tax losses within the meaning given by section 400(2) of the 1988 Act;

and in construing sub-paragraphs (1) to (4) above, section 511(2) of the 1988 Act and the corresponding earlier enactments shall be disregarded.

(6) This paragraph shall have effect in relation to accounting periods beginning after the final accounting period.

Chargeable gains

2 (1) This paragraph applies where—

(a) by virtue of a transfer of property, rights and liabilities effected by this Act to a successor company (in this paragraph referred to as "the transferee"), a company would, but for paragraph (1) above, cease to be a member of a group of which an existing body is a member; and

(b) assets have been acquired by that company from that body or from any other member of that group.

(2) On the company ceasing to be a member of a group of which the transferee is a member, section **[**F786178 or 179 of the 1992 Act**]** (company ceasing to be a member of a group) shall apply as if any assets acquired at any time as mentioned in sub-paragraph (1) above had been acquired by the company from the transferee at that time.

(3) In this paragraph "group" has the meaning given by section **[**F786170 of the 1992 Act**]**; and in construing this paragraph the provisions of section 511(2) of the 1988 Act and the corresponding earlier enactments shall be disregarded.

Textual Amendments

F786 Words in Sch. 11 para. 2 substituted (6.3.1992 with effect for the year 1992-93 and subsequent years of assessment) by Taxation and Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 20(1)**

[F7872A In this Schedule "the 1992 Act" means the Taxation of Chargeable Gains Act 1992.**]**

Textual Amendments

F787 Sch. 11 para. 2A added (6.3.1992 with effect for 1992-93 and subsequent years of assessment) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 20(1)**

Roll-over relief

3 (1) Where—

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(a) a held over gain would, but for the provisions of section **[**F788154 of the 1992 Act**]**, have beencarried forward to a depreciating asset; and

(b) that asset is transferred by this Act to a successor company,

that section shall have effect as if the gain had accrued to, and the claim for it to be held oveer had been made by, that company.

(2) In this paragraph the expressions which are used in the said section **[**F788154**]** have the same meanings as in that section.

Textual Amendments

F788 Words in Sch. 11 para. 3 substituted (6.3.1992 with effect for the year 1992-93 and subsequent years of assessment) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 20(2)**

Unallowed capital losses

4 (1) Any unallowed capital losses of an existing body shall be treated as allowable capital losses accruing to the appropriate successor company on the diposal of an asset on the transfer date.

(2) Immediately before the transfer date the unallowed capital losses of the Electricity Council shall be divided between the existing bodies in England and Wales; and there shall be allocated to each such body such proportion (if any) of those losses as is given by the formula—

$$\frac{A}{B}$$

where—

A is the amount which, but for section 511(2) of the 1988 Act and the corresponding earlier enactments, would have been the amount of the unallowed capital losses of that body;

B is the aggregate of the amounts which, but for that section and those enactments, would have been the amounts of the unallowed capital losses of those bodies.

(3) In this paragraph—

"allowable capital losses" means losses which are allowable for the purposes of the **[**F7891992 Act**]**;

"unallowed capital losses", in relation to any body, means any allowable capital losses which have been accrued to that body before the transfer date, in so far as they have not been allowed as deductions from chargeable gains.

Textual Amendments

F789 Words in Sch. 11 para. 4 substituted (6.3.1992 with effect for the year 1992-93 and subsequent years of assessment) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 20(3)**.

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Transaction in pursuance of section 68(2)(c)

5 (1) Sub-paragraph (2) below applies to any disposal (within the meaning of the **[**F790 1992 Act**]**) which is effected, and sub-paragraphs (3) and (4) below apply to any lease which is granted, in pursuance of a provision included in a transfer scheme by virtue of section 68(2) of this Act.

(2) A disposal to which this sub-paragraph applies shall be taken for the purposes of the **[**F790 1992 Act**]** to be effected for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the disponer.

[F791 (3) Section 291(1) of the Capital Allowances Act 2001 (supplementary provisions with respect to elections) shall not prevent the application of section 290 of that Act (election to treat grant of lease exceeding 50 years as sale) where the lease is a lease to which this sub-paragraph applies.**]**

(4) Where, in the case of any machinery or plant which is a fixture and on the provision of which for the purposes of the transferor's trade the transferor incurred capital expenditure, a lease of the relevant land (with or without other land) is a lease to which this sub-paragraph applies—

(a) the lessor shall not be required to bring the disposal value of the machinery or plant into account in accordance with **[**F792 Chapter 5 of Part 2 of the Capital Allowances Act 2001**]** (writing down allowances and balancing adjustments); and

(b) so far as relating to the bringing of disposal values into account, **[**F793 Chapters 5 and 14 ofPart 2 of the Capital Allowances Act 2001**]** (capital allowances for fixtures) shall have effect as if—

(i) the capital expenditure incurred by the transferor had been incurred by the lessee on the provision of the machinery or plant wholly and exclusively for the purposes of the lessee's trade; and

(ii) the machinery or plant had become a fixture, immediately after the grant of the lease.

[F794 (5) In sub-paragraph (4) above "the transferor" means the transferor under the transfer scheme in question and expressions which are used in Chapter 14 of Part 2 of the Capital Allowances Act 2001 have the same meanings as in that Chapter; and in construing that sub-paragraph section 511(2) of the 1988 Act shall be disregarded.**]**

Textual Amendments

F790 Words in Sch. 11 para. 5 substituted (6.3.1992 with effect for the year 1992-93 and subsequent years of assessment) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 20(3)**

F791 Sch. 11 para. 5(3) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 578, **Sch. 2 para. 71(1)**

F792 Words in Sch. 11 para. 5(4)(a) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 578, **Sch. 2 para. 71(2)**

F793 Words in Sch. 11 para. 5(4)(b) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 578, **Sch. 2 para. 71(3)**

F794 Sch. 11 para. 5(5) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, s. 578, **Sch. 2 para. 71(4)**

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Transfers in pursuance of Schedule 10

6 Where any property, rights and liabilities to which a transfer effected by this Act relates are, in pursuance of Schedule 10 to this Act, transferred by the transferee to another successor company—

(a) the foregoing provisiions of this Schedule shall have effect as if the transfer effected by this Act had been a transfer to the other successor company; and

(b) anything which, in relation to the property, rights and liabilities transferred, was done by the transferee for the purposes of the transferee's trade shall be deemed to have been done by the other successor company for the purposes of that company's trade.

Apportionments etc.

7 (1) This paragraph applies where any apportionment or other matter arising under the foregoing provisions of this Schedule appears to be material as respects the liability to tax (for whatever period) or two or more successor companies.

(2) Any question which arises as to the manner in which the apportionment is to be made or the matter to be dealt with shall be determined, for the purposes of tax of all the companies—

(a) in a case where the same body of General Commissioners have juridiction with respect to all those companies, by those Commissioners, unless all the companies agree that it shall be determined by the Special Commissioners;

(b) in a case where different bodies of Commissioners have jurisdiction with respect to those companies, by such of those bodies as the Board may direct, unless all the companies agree that it shall be determined by the Special Commissioners; and

(c) in any other case, by the Special Commissioners.

(3) The Commissioners by whom the question falls to be determined shall make the determination in like manner as if it were an appeal except that all the companies shall be entitled to appear and be heard by the Commissioners or to make representations to them in writing.

Securities of successor companies

8 (1) Any share issued by a successor company in pursuance of section 71 or 80 of this Act shall be treated for the purposes of the Corporation Tax Acts as if it had been issued wholly in consideration of a subscription paid to that company of an amount equal to the nominal value of the share.

(2) Any debenture issued by a successor company in pursuance of section 71 or 80 of this Act shall be treated for the purposes of the Corporation Tax Acts as if it had been issued—

(a) wholly in consideration of a loan made to that company of an amount equal to the principal sum payable under the debenture; and

(b) wholly and exclusively for the purposes of the trade carried on by that company.

[[F795]and if any such debenture includes provision for the payment of a sum expressed as interest in respect of a period which falls wholly or partly before the issue of the debenture, any payment made in pursuance of that provision in respect of that period shall be treated for the purposes of the Corporation Tax Acts as if the debenture had

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been issued at the commencement of that period and, accordingly, as interest on the principal sum payable under the debenture.**]**

Textual Amendments

F795 Words in Sch. 11 para. 8(2) added*(retrospectively)* by Finance Act 1991 (c. 31, SIF 63:1), **s.80**.

Extinguishment of liabilities: restriction of tax losses

9 (1) Section 400(1) of the 1988 Act (write-off of government investment: restriction of tax losses) shall not have effect by virtue of section 80(1) of this Act; but in the case of any such extinguishment (whether or not it is a case as regards which the said section 400(1) would, but for the foregoing provisions of this sub-paragraph, have effect) the Secretary of State may, with the consent of the Treasury, from time to time, direct that such amount ("amount" including nil) as is specified in the direction shall be set off against the sucessor company's tax losses as at the end of the accounting period ending last before the date of the direction.

(2) In any direction under sub-paragraph (1) above it may further be provided that the balance of tax losses remaining after the set off shall be aggregated with the balance of another successor company's (or other successor companies') tax losses remaining after a direction underr that sub-paragraph in respect of that other company (or directions in respect of those other companies) and the losses so aggregated apportioned between the companies in such manner as may be specified in the direction which makes such further provision.

(3) No direction shall be given under sub-paragraph (1) above in relation to a successor company as a time when the company has ceased to be wholly owned by the Crown.

(4) For the purpose of sub-paragraphs (1) and (2) above, a successor company's tax losses at the end of the accounting period mentioned in the said sub-paragraph (1) are those referred to in paragraphs (a) to (e) of subsection (2) of the said section 400; and subsections (3) and (4) of that section shall have effect in relation to any set off under sub-paragraph (1) above as if—

(a) any reference to subsection (1) of that section were a reference to sub-paragraph (1) above; and

(b) the reference in subsection (4) of that section to the write-off date were a reference to the date of the direction under sub-paragraph (1) above.

(5) Subsection (6) of the said section 400 shall apply in relation to any such extinguishment as is mentioned in sub-pargaraph (1) above as if the reference to the body in question were a reference to the company whose liabilities are so extinguished.

(6) The trade carried on by a company whose liabilities are extinguished by virtue of section 80(1) of this Act shall, if the company's tax losses are aggregated and apportioned by virtue of sub-pargaraph (2) above, be treated for the purposes of giving any relief under the Corporation Tax Acts in respect of the losses so apportioned as being, and having at all times been, the trade carried on by the successor companies to which the losses are apportioned.

(7) In this paragraph "accounting period" has the same meaning as in the 1988 Act.

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Income tax exemption for certain interests

10 The vesting in a successor company by this Act of a liability for any loan made to an existing body shall not affect any direction in respect of the loan given or having effect as if given by the Treasury under **[**F796section 755 of the Income Tax (Trading and Other Income) Act 2005**]** (income tax exemption for interest on foreign securities).

Textual Amendments

F796 Words in Sch. 11 para. 10 substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 413** (with Sch. 2)

Stamp Duty

PROSPECTIVE

11 (1) No transfer effected by this Act shall give rise to any liability to stamp duty.

(2) Stamp duty shall not be chargeable on a transfer scheme or, subject to sub-paragraph (3) below, on any instrument which is certified to the Board by the Secretary of State as having been made in pursuance of such a scheme.

(3) No instrument which is certified as mentioned in sub-paragraph (2) above shall be taken as duly stamped unless—

(a) it is stamped with the duty to which it would but for that sub-paragraph be liable; or

(b) it has, in accordance with section 12 of the M66Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped.

(4) Stamp duty shall not be chargeable on any instrument which is made in pursuance of Schedule 10 to this Act.

(5) Stamp duty shall not be chargeable on any instrument by which the Secretary of State, or any nominee of the Treasury or the Secretary of State, transfers securities of a company to another company if—

(a) either or both of the companies are successor companies; and

(b) each of the companies is, at the time when the instrument is made,

wholly owned by the Crown.

Marginal Citations

M66 1891 c. 39.

Stamp duty reserve tax

12 (1) No agreement made for the purposes of or for purposes connected with a transfer scheme shall give rise to a charge to stamp duty reserve tax.

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(2) No agreement which is made in pursuance of Schedule 10 to this Act shall give rise to a charge to stamp duty reserve tax.

(3) No agreement by which the Treasury or the Secretary of State, or any nominee of the Treasury or Secretary of State, agrees to transfer securities of a company to another company shall give rise to a charge to stamp duty reserve tax if—

(a) either or both of the companies are successor companies; and

(b) each of the companies is, at the time when the agreement is made,

wholly owned by the Crown.

Interpretation etc.

13 (1) In this Schedule—

"the 1988 Act" means the [M67]Income and Corporation Tax Act 1988;

"the Board" means the Commissioners of Inland Revenue;

"existing body in England and Wales" means an Area Board, the Generating Board or the Electricity Council;

"existing body in Scotland" means a Scottish board.

(2) For the purposes of this Schedule a transfer, instrument or agreement shall be regarded as made in pursuance of Schedule 10 to this Act if the making of that transfer, instrument or agreement is required or authorised by or under paragraph 2 or 4 of that Schedule.

Marginal Citations

M67 1988 c. 1.

SCHEDULE 12

Section 97.

NUCLEAR LIABILITIES: FINANCIAL ASSISTANCE

Grants by Secretary of State

1 (1) [F797]... , the Secretary of State may, with the approval of the Treasury, make grants of such amounts as he thinks fit **[**[F798]for the purpose of meeting**]** qualifying expenditure, that is to say, expenditure incurred or to be incurred by any person **[**[F799](whether or not the same person as the person to whom the grant is made)**]** in connection with—

(a) the storage or reprocessing of nuclear fuel;

(b) the treatment, storage or disposal of radioactive waste;

[[F800](ba) the cleaning-up of a principal nuclear site; or

(c) the decommissioning of a nuclear installation.**]**

(2) [F797]... , the Secretary of State may, with the approval of the Treasury, enter into an agreement with any person under which the Secretary of State undertakes that, if such conditions as may be specified in the agreement are satisfied, he will exercise the power conferred by this paragraph in such manner and to such extent as may be specified in the agreement.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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) A grant under this paragraph may be made at such times, in such manner and subject to such conditions as the Secretary of State with the approval of the Treasury may determine.

(4) Any sums required by the Secretary of State for making grants under this paragraph shall be paid out of money provided by Parliament.

[F801(5) In this paragraph "cleaning-up", "decommissioning", "nuclear installation" and "principal nuclear site" have the same meanings as in Chapter 1 of Part 1 of the Energy Act 2004.**]**

Textual Amendments

F797 Words in Sch. 12 para. 1(1) (2) repealed (8.5.2003) by Electricity (Miscellaneous Provisions) Act 2003 (c. 9), **s. 3(2)**

F798 Words in Sch. 12 para. 1(1) substituted (8.5.2003) by Electricity (Miscellaneous Provisions) Act 2003 (c. 9), **s. 3(3)(a)**

F799 Words in Sch. 12 para. 1(1) inserted (8.5.2003) by Electricity (Miscellaneous Provisions) Act 2003 (c. 9), **s. 3(3)(b)**

F800 Sch. 12 para. 1(1)(ba)(c) substituted (5.10.2004) for Sch. 12 para. 1(1)(c) and preceding word by Energy Act 2004 (c. 20), **ss. 34(1)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

F801 Sch. 12 para. 1(5) inserted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 34(2)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

Loans by Secretary of State

2 (1) F802... , the Secretary of State may, with the approval of the Treasury, make loans of such amounts as he thinks fit **[**F803for the purpose of meeting**]** qualifying expenditure.

(2) A loan under this paragraph—

(a) may be made at such times, in such manner and subject to such conditions as the Secretary of State may with the approval of the Treasury determine; and

(b) shall be repaid to him at such times and by such methods, and interest thereon shall be paid to him at such rates and at such times, as he may, with the approval of the Treasury, from time to time direct.

(3) Any sums required by the Secretary of State for making loans under this paragraph shall be paid out of money provided by Parliament.

(4) Any sums received under sub-paragraph (2) above by the Secretary of State shall be paid into the Consolidated Fund.

(5) It shall be the duty of the Secretary of State—

(a) to prepare in respect of each financial year, in such form as the Treasury may direct, an account of sums issued to him for loans under this paragraph or received by him under this paragraph, and of the disposal by him of those sums; and

(b) to send the account to the Comptroller and Auditor General not later than the end of November in the following financial year;

and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it and of his report before each House of Parliament.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

Textual Amendments

F802 Words in Sch. 12 para. 2(1) repealed (8.5.2003) by Electricity (Miscellaneous Provisions) Act 2003 (c. 9), **s. 3(2)**

F803 Words in Sch. 12 para. 2(1) substituted (8.5.2003) by Electricity (Miscellaneous Provisions) Act 2003 (c. 9), **s. 3(4)**

Guarantees by Secretary of State

3 (1) **F804**..., the Secretary of State with the approval of the Treasury may guarantee, in such manner and on such terms as he may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Secretary of State for the purpose of meeting qualifying expenditure.

(2) Immediately after a guarantee is given under this paragraph, the Secretary of State shall lay a statement of the guarantee before each House of Parliament; and immediately after any sum is paid for fulfilling a guarantee so given, the Secretary of State shall so lay a statement relating to that sum.

(3) Any sums required by the Secretary of State for fulfilling a guarantee under this paragraph shall be paid out of money provided by Parliament.

(4) If any sums are paid out in fulfilment of a guarantee given under this paragraph the person whose obligations are so fulfilled shall make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct—

(a) payments of such amounts as the Secretary of State may so direct in or towards repayment of the sums so paid out; and

(b) payments of interest on what is outstanding for the time being in respect of sums so paid out at such rate as the Secretary of State may so direct;

and the approval of the Treasury shall be required for the giving of a direction under this sub-paragraph.

(5) Any sums received under sub-paragraph (4) above by the Secretary of State shall be paid into the Consolidated Fund.

Textual Amendments

F804 Words in Sch. 12 para. 3(1) repealed (8.5.2003) by Electricity (Miscellaneous Provisions) Act 2003 (c. 9), **s. 3(2)**

[F8053A The Secretary of State shall not—

(a) make any grant or loan under this Schedule for the purpose of meeting any expenditure, or

(b) give any guarantee in respect of borrowing undertaken for the purpose of meeting any expenditure,

if the expenditure is expenditure on anything for which the Nuclear Decommissioning Authority has a financial responsibility under section 21 of the Energy Act 2004.**]**

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

Textual Amendments

F805 Sch. 12 para. 3A inserted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 34(3)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

Financial limits

F806 4 . . . . . .

Textual Amendments

F806 Sch. 12 para. 4 repealed (8.5.2003) by Electricity (Miscellaneous Provisions) Act 2003 (c. 9), **s. 3(2)**

Interpretation

5 In this Schedule "qualifying expenditure" has the meaning given by paragraph 1(1) above.

SCHEDULE 13

Section 102.

PRODUCTION AND SUPPLY OF HEAT OR ELECTRICITY ETC. BY SCOTTISH LOCAL AUTHORITIES

In the M68 Local Government (Scotland) Act 1973, the following provisions shall be inserted after section 170—

" Heating and electricity

170A Production and supply of heat and electricity etc. by local authorities.

(1) Subject to subsections (2) and (3) of this section, a local authority may—

(a) produce heat or electricity or both;

(b) establish and operate such generating stations and other installations as the authority think fit for the purpose of producing heat or electricity or both;

(c) buy or otherwise acquire heat;

(d) use, sell or otherwise dispose of heat produced or acquired, or electricity produced, by the authority by virtue of this section;

(e) without prejudice to the generality of the preceding paragraph, enter into and carry out agreements for the supply by the authority, to premises within or outside the authority's area, of such heat as is mentioned in the preceding paragraphs and steam produced from and air and water heated by such heat.

(2) Nothing in subsection (1) of this section shall be construed as exempting a local authority from the requirements of Part I of the Electricity Act 1989.

(3) Except in such cases as may be prescribed, a local authority shall not be entitled to sell electricity which is produced otherwise than in association with heat.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(4) A local authority may—

(a) construct, lay and maintain pipes and associated works for the purpose of conveying heat produced or acquired by the authority by virtue of this section and steam produced from and air and water heated by such heat;

(b) contribute towards the cost incurred by another person in providing or maintaining pipes or associated works which are connected with pipes provided by the authority in pursuance of the preceding paragraph.

(5) Parts I and II of Schedule 3 to the Water (Scotland) Act 1980 (which relate to the breaking open of roads and the laying of communication and supply pipes etc.) shall apply in relation to pipes and associated works provided or to be provided in pursuance of paragraph (a) of the preceding subsection as those Parts apply in relation to water mains and pipes but as if—

(a) in paragraph 1 of that Schedule the words "which they are authorised to lay" were omitted;

(b) for the reference to the special Act in paragraph 2(3) of that Schedule there were substituted a reference to this subsection;

(c) for any reference to a water authority or a water development board there were substituted a reference to the local authority in question, whether acting alone or jointly with some other person; and

(d) for any reference to the limits of supply or area of a water authority or a water development board there were substituted a reference to the area of the local authority.

(6) It shall be the duty of a local authority by whom an installation for producing heat is operated in pursuance of this section in any financial year to furnish to the Secretary of State, as soon as practicable after the end of that year, such particulars relating to the installation and heat produced at the installation as are prescribed.

(7) In this section "associated works", in relation to pipes, means any of the following connected with the pipes, namely, any valve, filter, stopcock, pump, meter, inspection chamber and manhole and such other works as are prescribed.

(8) Nothing in this section (except the restrictions imposed by subsection (3)) shall be construed as prejudicing any power exercisable by a local authority apart from this section.

(9) Regulations under subsection (3) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

170B Provisions supplementary to s.170A.

(1) A local authority who supply or propose to supply heat, hot air, hot water or steam in pursuance of the preceding section may make byelaws—

(a) with respect to the works and apparatus to be provided or used by persons other than the authority in connection with the supply;

(b) for preventing waste and unauthorised use of the supply and unauthorised interference with works and apparatus used by the authority or any other person in connection with the supply;

(c) providing for any specified contravention of the byelaws to be an offence punishable on summary conviction with a fine of such an amount, not exceeding level 3 on the standard scale, as is specified in the byelaws.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(2) Subsections (1) to (7) of section 38 of the Water (Scotland) Act 1980 (which relates to the entry of premises by authorised officers of water authorities or water development boards) shall have effect for the purpose of authorising the entry of premises by authorised officers of a local authority who provide or propose to provide such a supply as is mentioned in the preceding subsection as if for any reference to water authorities or water development boards there were substituted a reference to the local authority and as if in subsection (1) of that section—

(a) for paragraph (a) there were substituted the following paragraph—

"(a) for the purpose of installing, examining, adjusting, removing or reading any meter used or to be used by the local authority for measuring the heat, hot air, hot water or steam supplied or to be supplied by that authority;"

(b) for the words from "this Act" onwards in paragraph (b) there were substituted the words "byelaws in force by virtue of section 170B of the Local Government (Scotland) Act 1973"; and

(c) for the words "this Act" in paragraphs (c) and (d) there were substituted the words "section 170A of that Act".

(3) Regulations may repeal or alter subsection (1) of this section or any provision of byelaws in force by virtue of that subsection and may make any modification of the preceding subsection which the Secretary of State considers is appropriate in consequence of the repeal or alteration.

(4) An instrument containing regulations under subsection (3) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Section 80 of the Health and Safety at Work etc. Act 1974 (which among other things provides that regulations under subsection (1) of that section may repeal or modify any provision to which that subsection applies if it appears to the authority making the regulations that it is expedient to do so in consequence of any provision made by or under Part I of that Act) shall have effect as if the provisions to which subsection (1) of that section applies included subsection (1) of this section and byelaws in force by virtue of subsection (1) of this section.

(6) The accounts of a local authority by whom expenditure is incurred under any of the provisions of the preceding section and this section shall include a separate account of that expenditure and of any income connected with functions conferred on the authority by those provisions."

Marginal Citations
M68 1973 c. 65.

Marginal Citations
M68 1973 c. 65.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

SCHEDULE 14

Section 104.

THE ELECTRICITY SUPPLY PENSION SCHEME

Power to amend scheme

1 (1) The Secretary of State may make regulations amending the Electricity Supply Pension Scheme (in this Schedule referred to as "the scheme") for any of the following purposes, namely—

(a) for enabling the following persons to participate in or acquire pension rights under the scheme on such terms and conditions as may be prescribed, namely—

(i) members and former members of existing bodies;

(ii) officers and former officers of the Electricity Consumers' Council; and

(iii) persons (other than successor companies) whose participation in the scheme will not prejudice its **[**F807registration or**]** approval for the purposes of the relevant enactments, and employees of such persons;

(b) for requiring any persons (including persons not participating in the scheme) to make payments to the trustees of the scheme in such circumstances as may be prescribed;

(c) for requiring or enabling any functions exercisable under the scheme by existing bodies to be exercisable by such persons, and in such circumstances, as may be prescribed;

(d) for enabling the scheme to be wound up (in whole or in part) in such circumstances as may be prescribed; and

(e) for securing that the scheme continues to be **[**F808registered or**]** approved for the purposes of the relevant enactments, notwithstanding the transfers made by this Act and the repeal by this Act of section 54 of the M69Electricity Act 1947.

(2) Regulations under this paragraph may make such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

(3) Regulations under this paragraph may be made so as to have effect from a date prior to their making, so however that so much of any regulations as provides that any provision of regulations shall have effect from a date prior to their making shall not place any person other than existing bodies or Scottish Boards, or their successor companies, in a worse position than he would have been in if the regulations had been made to have effect only from the date of their making.

(4) Regulations under this paragraph shall not be made at any time after any supply or generating company has ceased to be wholly owned by the Crown.

Textual Amendments

F807 Words in Sch. 14 para. 1(1)(a)(iii) inserted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **3(2)(a)(i)**

F808 Words in Sch. 14 para. 1(1)(e) inserted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **3(2)(a)(ii)**

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

Marginal Citations
M69 1947 c. 54.

Protection for certain persons

2 (1) The Secretary of State may make regulations for the purpose of securing that—

(a) no person to whom paragraph 3(1) or (2) below applies is placed in any worse position by reason of—

(i) any winding up, in whole or in part, of a relevant scheme, that is to say, the scheme or any other scheme which is provided or amended in pursuance of the regulations; or

(ii) any amendment of a relevant scheme which results in benefits under that scheme being reduced, or contributions by employees being increased, and is made otherwise than in such circumstances as may be prescribed;

(b) no person to whom paragraph 3(1) below applies is prevented from continuing to participate in or acquire pension rights under the scheme by reason of any change of employer—

(i) which does not affect his continuity of employment and is made otherwise than in such circumstances as may be prescribed; and

(ii) in the case of which his new employer either is a participant in the scheme or is wholly owned by one or more companies which or each of which is such a participant; and

(c) no person to whom paragraph 3(1) below applies is placed in any worse position by reason of any change of employer which does not affect his continuity of employment but prevents him from continuing to participate in or acquire pension rights under a relevant scheme;

and the references in paragraphs (a) and (c) above to any worse position shall be construed, in relation to a person to whom paragraph 3(1) below applies who, after the transfer date, ceases to participate in or acquire pension rights under the scheme, as references to a position which is any worse than his position immediately before he so ceases.

(2) Regulations under this paragraph may impose duties (whether as to the amendment of the scheme, the provision or amendment of other schemes, the purchase of annuities, the making of payments or otherwise) on persons who are or have been employers of persons to whom paragraph 3(1) or (2) below applies; and duties so imposed on any person may include duties owed to persons of whom he is not and has not been an employer.

(3) Regulations under this paragraph may also provide for any dispute arising under them to be referred to arbitration.

(4) Sub-paragraphs (2) and (4) of paragraph 1 above shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph.

3 (1) Subject to sub-paragraph (3) below, this sub-paragraph applies to—

(a) any existing employee who, immediately before the transfer date, is a participant in the scheme;

(b) any existing employee who, after that date, participates in the scheme within three months of his attaining the minimum age for such participation;

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Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(c) any former participant who, after that date, participates in or acquires pension rights under the scheme in such circumstances as may be prescribed by regulations under paragraph 2 above; and

(d) any person who participates in the scheme in pursuance of regulations made under paragraph 1(1)(a)(i) or (ii) above.

(2) Subject to sub-paragraph (3) below, this sub-paragraph applies to—

(a) any person not falling within sub-paragraph (1)(c) above who, immediately before the transfer date, is not a participant in the scheme but has pension rights under the scheme; and

(b) any person who, after that date, acquires pension rights under a relevant scheme by reason of the death of a person falling within sub-paragraph (1) or paragraph (a) above,

but only as respects the pension rights by virtue of which he falls within paragraph (a) or (b) above.

(3) Any person to whom sub-paragraph (1) or (2) above applies may elect in such manner as may be prescribed by regulations under paragraph 2 above that that sub-paragraph shall cease to apply to him; and if any person to whom sub-paragraph (1) above applies—

(a) ceases to be in continuous employment; or

(b) voluntarily withdraws from a relevant scheme,

otherwise than in such circumstances as may be so prescribed, that sub-paragraph shall cease to apply to him except as respects pension rights which have accrued to him before that time.

4 (1) **[**F809Chapter I of Part XIV of the Employment Rights Act 1996**]** shall apply for the purposes of paragraphs 2 and 3 as if—

(a) those paragraphs were contained in that Act; and

(b) in that Schedule "associated employer", in relation to a company participating in a relevant scheme, included any other company participating in such a scheme and any other company of which a company so participating has control, or two or more companies so participating together have control;

but regulations under paragraph 2 above may provide that no account shall be taken for those purposes of any person ceasing to be in continuous employment for such periods and in such circumstances as may be prescribed by the regulations.

(2) For the purposes of sub-paragraph (1) above, a company has control, or two or more companies together have control, of another company ("the other company") if—

(a) that company, or each of those companies, is a member of the other company and that company controls, or those companies together control, the composition of the other company's board of directors;

(b) that company holds, or those companies together hold, more than half in nominal value of the other company's equity share capital;

(c) a company of which the company has control, or those companies together have control, has control of the other company; or

(d) two or more companies of which that company has control, or those companies together have control, together have control of the other company;

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Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

and subsections (2) to (4) of section 736 of the [M70]Companies Act 1985 (as originally enacted) shall, with any necessary modifications, apply for the purposes of this sub-paragraph as they apply for purposes of subsection (1) of that section.

Textual Amendments

F809 Words in Sch. 14 para. 4(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 43(3)(a)** (with ss. 191-195, 202)

Marginal Citations

M70 1985 c. 6.

Interpretation

5 (1) In this Schedule—

"Consultative Council" means a Consultative Council established under section 7 of the [M71]Electricity Act 1947 for the area of an Area Board;

"employer", in relation to a person employed by a company which is a wholly-owned subsidiary of another company, includes that other company;

"existing body" means any of the following, namely, the Area Boards, the Generating Board and the Electricity Council;

"existing employee" means any person who, immediately before the transfer date, is employed by an existing body or a Consultative Council, or falls to be treated as employed by an existing body by virtue of regulations made under section 54(4) of the [M72]Electricity Act 1947 (service as a member to count as service as an employee);

"former participant" means any person who, immediately before the transfer date, is not a participant in the scheme but has pension rights under the scheme by virtue of his having been such a participant;

"pension", in relation to any person, means a pension of any kind payable to or in respect of him, and includes a lump sum, allowance or gratuity so payable and a return of contributions, with or without interest or any other addition;

"pension rights", in relation to any person, includes—

(a) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him; and

(b) any expectation of the accruer of a pension to or in respect of him;

and includes a right of allocation in respect of the present or future payment of a pension;

"the relevant enactments" means **[**[F810]Part 4 of the Finance Act 2004 (pension schemes etc)**]** and Part III of the **[**[F811]Pension Schemes Act 1993 (so far as relating to occupational pension schemes within the meaning of that Act)**]**;

"relevant scheme" has the meaning given by paragraph 2(1) above;

"the scheme" has the meaning given by paragraph 1(1) above;

"wholly-owned subsidiary" has the same meaning as in the Companies Act 1985.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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)*

(2) For the purposes of this Schedule, a company is wholly owned by one or more other companies if it has no members except—

(a) that other or those others and its or their nominees; and

(b) wholly-owned subsidiaries of that other or those others and their nominees.

(3) Subject to sub-paragraph (1) above, expressions used in this Schedule which are also used in Part I or II of this Act have the same meanings as in that Part.

Textual Amendments

F810 Words in Sch. 14 para. 5(1) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **3(2)(b)**

F811 Words in Sch. 14 para. 5(1) substituted (7.2.1994) by 1993 c. 48, ss. 190, **Sch. 8 para.23** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**

Marginal Citations

M71 1947 c. 54.

M72 1947 c. 54.

SCHEDULE 15

Section 105.

THE SCOTTISH PENSION SCHEMES

Power to amend schemes

1 (1) The Secretary of State may make regulations amending the Hydroboard Superannuation Fund (in this Schedule referred to as "the North Scheme") and the South of Scotland Electricity Board's Superannuation Scheme (in this Schedule referred to as "the South Scheme") for any of the following purposes, namely—

(a) for enabling members, former members and existing employees of the Scottish Boards to participate in or acquire pension rights under the North Scheme or the South Scheme on such terms and conditions as may be prescribed;

(b) for requiring any persons to make payments to the trustees of the schemes in such circumstances as may be prescribed;

(c) for enabling either scheme, or both schemes, to be wound up (in whole or in part) in such circumstances as may be prescribed; and

(d) for securing that the schemes continue to be **[**[F812]registered or**]** approved for the purposes of the relevant enactments notwithstanding the transfers made by this Act and the repeal by this Act of section 37 of the [M73]Electricity (Scotland) Act 1979.

(2) Without prejudice to the generality of paragraph (c) of sub-paragraph (1) above, regulations made for the purposes of that paragraph may require persons not participating in—

(a) the North Scheme to make payments to the trustees of the North Scheme;

(b) the South Scheme to make payments to the trustees of the South Scheme.

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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) Regulations under this paragraph may make such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

(4) Regulations under this paragraph may be made so as to have effect from a date prior to their making, so however that so much of any regulations as provides that any provision of regulations shall have effect from a date prior to their making shall not place any person other than the Boards or existing bodies (within the meaning of Schedule 14 to this Act), or their successor companies, in a worse position than he would have been in if the regulations had been made to have effect only from the date of their making.

(5) Regulations under this paragraph shall not be made at any time after any Scottish electricity company has ceased to be wholly owned by the Crown.

Textual Amendments

F812 Words in Sch. 15 para. 1(1)(d) inserted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **3(3)(a)**

Marginal Citations

M73 1979 c. 11.

Protection for certain persons

2 (1) The Secretary of State may make regulations for the purpose of securing that (regardless of which scheme an existing employee of the Scottish Boards is a participant in immediately before the transfer date)—

(a) no person to whom paragraph 3(1) or (2) below applies is placed in any worse position by reason of—

(i) any winding up, in whole or in part, of a relevant scheme, that is to say, the North Scheme or the South Scheme or any other scheme which is provided or amended in pursuance of the regulations; or

(ii) any amendment of a relevant scheme which results in benefits under that scheme being reduced, or contributions by employees being increased, and is made otherwise than in such circumstances as may be prescribed; and

(b) no person to whom paragraph 3(1) below applies is prevented from continuing to participate in or acquire pension rights under the North Scheme or the South Scheme by reason of any change of employer—

(i) which does not affect his continuity of employment and is made otherwise than in such circumstances as may be prescribed; and

(ii) in the case of which his new employer either is a participant in that scheme or is wholly owned by one or more companies which or each of which is such a participant; and

(c) no person to whom paragraph 3(1) below applies is placed in any worse position by reason of any change of employer which does not affect his continuity of employment but prevents him from continuing to participate in or acquire pension rights under a relevant scheme;

and the references in paragraphs (a) and (c) above to any worse position shall be construed, in relation to a person to whom paragraph 3(1) below applies who, after

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the transfer date, ceases to participate in or acquire pension rights under the North Scheme or the South Scheme, as references to a position which is any worse than his position, immediately before he so ceases, under whichever of the schemes he is then participating in or last acquired pension rights under.

(2) Regulations under this paragraph may impose duties (whether as to the amendment of either scheme, the provision or amendment of other schemes, the purchase of annuities, the making of payments or otherwise) on persons who are or have been employers of persons to whom paragraph 3(1) or (2) below applies; and duties so imposed on any person may include duties owed to persons of whom he is not and has not been an employer.

(3) Regulations made under this paragraph may also provide for any dispute arising under them to be referred to arbitration.

(4) Sub-paragraphs (3) and (5) of paragraph 1 above shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph.

3 (1) Subject to sub-paragraph (3) below, this sub-paragraph applies to—

(a) any—

(i) existing employee of the Scottish Boards; or

(ii) existing employee of a Consultative Council,

who, immediately before the transfer date, is a participant in the North Scheme or the South Scheme;

(b) any existing employee of the Scottish Boards who, after that date, participates in either scheme within three months of his attaining the minimum age for such participation;

(c) any former participant in either scheme who, after that date, participates in or acquires pension rights under either scheme in such circumstances as may be prescribed by regulations under paragraph 2 above; and

(d) any person who participates in either scheme in pursuance of regulations made under paragraph 1(1)(a) above.

(2) Subject to sub-paragraph (3) below, this sub-paragraph applies to—

(a) any person not falling within sub-paragraph (1)(c) above who, immediately before the transfer date, is not a participant in the North Scheme or the South Scheme but has pension rights under either scheme; and

(b) any person who, after that date, acquires pension rights under a relevant scheme by reason of the death of a person falling within sub-paragraph (1) or paragraph (a) above,

but only as respects the pension rights by virtue of which he falls within paragraph (a) or (b) above.

(3) Any person to whom sub-paragraph (1) or (2) above applies may elect in such manner as may be prescribed by regulations under paragraph 2 above that that sub-paragraph shall cease to apply to him; and if, otherwise than in such circumstances as may be so prescribed, any person to whom sub-paragraph (1) above applies—

(a) ceases to be in continuous employment; or

(b) voluntarily withdraws from a relevant scheme and does not forthwith—

(i) become a participant in another such scheme; and

(ii) transfer to that scheme the pension rights which have accrued to him before that time under the scheme from which he is withdrawing,

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that sub-paragraph shall cease to apply to him except as respects pension rights which have so accrued.

4 (1) **[**F813Chapter I of Part XIV of the Employment Rights Act 1996**]** shall apply for the purposes of paragraphs 2 and 3 above as if—

(a) those paragraphs were contained in that Act; and

(b) in that Schedule "associated employer", in relation to a company participating in a relevant scheme, included any other company participating in such a scheme and any other company of which a company so participating has control, or companies so participating together have control;

but regulations under paragraph 2 above may provide that no account shall be taken for the purposes of this paragraph of any person ceasing to be in continuous employment for such periods and in such circumstances as may be prescribed by the regulations.

(2) For the purposes of sub-paragraph (1) above, a company has control, or two or more companies together have control, of another company ("the other company") if—

(a) that company, or each of those companies, is a member of the other company and that company controls, or those companies together control, the composition of the other company's board of directors;

(b) that company holds, or those companies together hold, more than half in nominal value of the other company's equity share capital;

(c) a company of which that company has control, or those companies together have control, has control of the other company; or

(d) two or more companies of which that company has control, or those companies together have control, together have control of the other company;

and subsections (2) to (4) of section 736 of the M74Companies Act 1985 (as originally enacted) shall, with any necessary modifications, apply for the purposes of this sub-paragraph as they apply for purposes of subsection (1) of that section.

Textual Amendments

F813 Words in Sch. 15 para. 4(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 43(3)(b)** (with ss. 191-195, 202)

Marginal Citations

M74 1985 c. 6.

Interpretation

5 (1) In this Schedule—

"Consultative Council" means a Consultative Council established under section 7A of the M75Electricity Act 1947 for the district of a Scottish Board;

"employer", in relation to a person employed by a company which is a wholly-owned subsidiary of another company, includes that other company;

"existing employee of a Consultative Council" means any person who, immediately before the transfer date, is employed by a Consultative Council;

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"existing employee of the Scottish Boards" means any person who, immediately before the transfer date, is employed by one or other of those Boards or falls to be treated as so employed by virtue of regulations made under section 54(4) of the [M76]Electricity Act 1947 (service as a member to count as service as an employee);

"former participant" means any person who, immediately before the transfer date, is not a participant in the North Scheme or the South Scheme but has pension rights under one or other (or both) of the schemes by virtue of his having been such a participant;

"pension", in relation to any person, means a pension of any kind payable to or in respect of him, and includes a lump sum, allowance or gratuity so payable and a return of contributions, with or without interest or any other addition;

"pension rights", in relation to any person, includes—

(a) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him; and

(b) any expectation of the accruer of a pension to or in respect of him;

and includes a right of allocation in respect of the present or future payment of a pension;

"the relevant enactments" means **[**[F814]Part 4 of the Finance Act 2004 (pension schemes etc)**]** and Part III of the **[**[F815]Pension Schemes Act 1993 (so far as relating to occupational pension schemes within the meaning of that Act)**]**;

"relevant scheme" has the meaning given by paragraph 2(1) above;

"wholly-owned subsidiary" has the same meaning as in the [M77]Companies Act 1985.

(2) For the purposes of this Schedule, a company is wholly owned by one or more other companies if it has no members except—

(a) that other or those others and its or their nominees; and

(b) wholly-owned subsidiaries of that other or those others and their nominees.

(3) Subject to sub-paragraph (1) above, expressions used in this Schedule which are also used in Part I or II of this Act have the same meanings as in that Part.

Textual Amendments

F814 Words in Sch. 15 para. 5(1) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **3(3)(b)**

F815 Words in Sch. 15 para. 5(1) substituted (7.2.1994) by 1993 c. 48, s. 190, **Sch. 8 para.23** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**

Marginal Citations

M75 1947 c. 54.

M76 1947 c. 54.

M77 1985 c. 6.

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SCHEDULE 16

Section 112(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

Enactments relating to statutory undertakers etc.

1 (1) The holder of a licence under section 6(1) of this Act shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of the following enactments, namely—

(i) section 16 of the [M78]Public Health Act 1925;

(ii) the [M79]Public Health Act 1936;

[F816](iii) . . . . . .

(iv) Schedule 3 to the [M80]Water Act 1945;

(v) section 4 of the [M81]Requisitioned Land and War Works Act 1948;

[[F817](vi) the [M82]Water Act 1948;**]**

(vii) the National Parks and Access to the [M83]Countryside Act 1949;

(viii) the [M84]Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951;

(ix) the [M85]Landlord and Tenant Act 1954;

(x) the [M86]Opencast Coal Act 1958;

[F818](xi) . . . . . .

(xii) section 17(10) of the [M87]Public Health Act 1961;

(xiii) the [M88]Pipe-lines Act 1962;

(xiv) Schedule 3 to the [M89]Harbours Act 1964;

(xv) Schedule 6 to the [M90]Gas Act 1965;

[F819](xvi) . . . . . .

(xvii) section 40 of the [M91]Forestry Act 1967;

(xviii) section 50 of the [M92]Agriculture Act 1967;

(xix) section 38 of the [M93]Countryside (Scotland) Act 1967;

(xx) paragraph 6 of Schedule 2 to the [M94]Countryside Act 1968;

(xxi) section 22 of the [M95]Sewerage (Scotland) Act 1968;

[F820](xxii) . . . . . .

[F821](xxiii) . . . . . .

[F820](xxiv) . . . . . .

(xxv) sections 51 . . . [F820]of the [M96]Land Compensation Act 1973;

(xxvi) sections 47 [F822]. . . of the [M97]Land Compensation (Scotland) Act 1973;

(xxvii) Part III of the [M98]Control of Pollution Act 1974;

[F823](xxviii) . . . . . .

(xxix) the [M99]Welsh Development Agency Act 1975;

(xxx) sections 15(3) and 26 of the [M100]Local Government (Miscellaneous Provisions) Act 1976;

[F824](xxxi) . . . . . .

(xxxii) section 9(3) of the [M101]Inner Urban Areas Act 1978;

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(xxxiii) the [M102]Ancient Monuments and Archaeological Areas Act 1979;

(xxxiv) **[**[F825]Part**]**XVI of the [M103]Local Government, Planning and Land Act 1980;

(xxxv) section 53 of the [M104]Civil Aviation Act 1982;

(xxxvi) section 30 of the [M105]Local Government (Miscellaneous Provisions) Act 1982;

(xxxvii) section 120 of the [M106]Civic Government (Scotland) Act 1982;

(xxxviii) section 2(2)(c) of the [M107]Cycle Tracks Act 1984;

(xxxix) the [M108]Building Act 1984;

[F826](xl) . . . . . .

(xli) paragraph 11 of Schedule 8 to the [M109]Housing (Scotland) Act 1987.

[[F827](xlii) section 9 of the Enterprise and New Towns (Scotland) Act 1990.**]**

(2) References in the [M110]Landlord and Tenant Act 1927 to a statutory company shall be construed as including references to the holder of a licence under section 6(1) of this Act.

[F828](3) . . . . . .

(4) The references in sections 73(11)(c) and 74(11)(b) of the [M111]Highways Act 1980 to electricity undertakers shall be construed as references to the holder of a licence under section 6(1)(a) of this Act.

[F817]**[**(5) The holder of a licence under section 6(1) of this Act shall be deemed to be an excepted undertaker for the purposes of section 6 of the [M112]Water Act 1981.**]**

(6) Paragraph 23 of Schedule 2 to the [M113]Telecommunications Act 1984 (undertakers' works) shall apply to a licence holder for the purposes of any works carried out by him.

(7) The reference in section 82(4) of the [M114]Building Act 1984 (provisions with respect to demolition orders) to a person authorised by an enactment to carry on an undertaking for the supply of electricity shall be construed as a reference to a licence holder.

(8) A licence holder shall be deemed to be a public undertaker and his undertaking a public undertaking for the purposes of section 125 of, and paragraphs 9 and 10 of Schedule 8 to, the [M115]Housing (Scotland) Act 1987.

Textual Amendments

F816 Sch. 16 para. 1(1)(iii) repealed (31.10.1994) by 1994 c. 21, s. 67, **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**

F817 Sch. 16 para. 1(1)(vi) and (5) repealed (E.W.) (01.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I**.

F818 Sch. 16 para. 1(1)(xi) repealed (S.) (24.12.2010) by Flood Risk Management (Scotland) Act 2009 (asp 6), s. 97(1), **Sch. 3 para. 5** (with s. 91); S.S.I. 2010/401, art. 3(h)

F819 Sch. 16 para. 1(1)(xvi) repealed by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(2), **Sch. 5 Pt. III**

F820 Sch. 16 para. 1(1)(xxii)(xxiv) and words in para. 1(1)(xxv) repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, **Sch. 1 Pt. I**

F821 Sch. 16 para. 1(1)(xxiii) repealed (27.5.1997) by 1997 c. 11 ss. 3, 6(2), Sch. 1 Pt. I (with s. 5, Sch. 3)

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F822 Words in Sch. 16 para. 1(1)(xxvi) repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. I** (with s. 5, Sch. 3)

F823 Sch. 16 para. 1(1)(xxviii), para. 3(2)(f) repealed by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(2), **Sch. 5 Pt. I**

F824 Sch. 16 para. 1(1)(xxxi) repealed (1.10.1998) by 1998 c. 38, s. 152, **Sch. 18 Pt. IV** (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1998/2244, **art. 4**

F825 Words in Sch. 16 para. 1(1)(xxxiv) substituted (1.10.1998) by 1998 c. 38, **s. 135(2)(b)** (with ss. 139(2), 143(2)); S.I. 1998/2244, **art. 4**

F826 Sch. 16 para. 1(1)(xl) repealed (6.4.2006 for E., 16.6.2006 for W.) by Housing Act 2004 (c. 34), s. 270(4)(5)(f), **Sch. 16**; S.I. 2006/1060, art. 2(1)(e) (with Sch.); S.I. 2006/1535, art. 2(c) (with Sch.)

F827 Sch. 16 para. 1(1)(xlii) added by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(1), **Sch 4 para. 17(a)**

F828 Sch. 16 para. 1(3) repealed (14.11.2005) by Civil Contingencies Act 2004 (c. 36), s. 34(1), **Sch. 3**; S.I. 2005/2040, art. 3(r)

Marginal Citations

M78 1925 c. 71.
M79 1936 c. 49.
M80 1945 c. 42.
M81 1948 c. 17.
M82 1948 c. 22.
M83 1949 c. 97.
M84 1951 c. 65.
M85 1954 c. 56.
M86 1958 c. 69.
M87 1961 c. 64.
M88 1962 c. 58.
M89 1964 c. 40.
M90 1965 c. 36.
M91 1967 c. 10.
M92 1967 c. 22.
M93 1967 c. 86.
M94 1968 c. 41.
M95 1968 c. 47.
M96 1973 c. 26.
M97 1973 c. 56.
M98 1974 c. 40.
M99 1975 c. 70.
M100 1976 c. 57.
M101 1978 c. 50.
M102 1979 c. 46.
M103 1980 c. 65.
M104 1982 c. 16.
M105 1982 c. 30.
M106 1982 c. 45.
M107 1984 c. 38.
M108 1984 c. 55.
M109 1987 c. 27.
M110 1927 c. 36.
M111 1980 c. 66.
M112 1981 c. 12.
M113 1984 c. 12.
M114 1984 c. 55.

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M115 1987 c. 26.

2 (1) A licence holder who is entitled to exercise any power conferred by Schedule 3 or 4 to this Act shall be deemed to be a statutory undertaker for the purposes of section 66 of the M116Countryside (Scotland) Act 1967 and section 11 of the M117Countryside Act 1968.

(2) A licence holder who is entitled to exercise any power conferred by Schedule 3 to this Act shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of the following enactments, namely—

(a) the M118Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;

(b) the M119New Towns (Scotland) Act 1968;

(c) F829

F830(d) . . . . . .

(e) section 120 of the M120Local Government, Planning and Land Act 1980;

(f) the M121New Towns Act 1981;

(g) the M122Acquisition of Land Act 1981; and

(h) sections 47, 48, 49 and 51 of, and Schedule 9 to, the M123Civil Aviation Act 1982.

(3) The reference in section 48(6) of the Civil Aviation Act 1982 to an electricity undertaker shall be construed as a reference to a licence holder who is entitled to exercise any power conferred by Schedule 4 to this Act.

(4) A licence holder who is entitled to exercise any power conferred by paragraph 1 of Schedule 4 to this Act shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of the following enactments, namely—

(a) section 26 of the M124Public Health Act 1925;

(b) section 17(1)(b) of the M125Requisitioned Land and War Works Act 1945;

(c) F829

(d) the M126Highways Act 1980; and

(e) sections 296 and 611 of the M127Housing Act 1985.

(5) References in the following enactments, namely—

(a) section 6 of the M128Local Government (Miscellaneous Provisions) Act 1953;

(b) F829

(c) sections 176 and 185 of the M129Highways Act 1980; and

(d) paragraph 3 of Schedule 5 to the M130Road Traffic Regulation Act 1984;

to electricity undertakers shall be construed as references to licence holders entitled to exercise any power conferred by paragraph 1 of Schedule 4 to this Act.

(6) A licence holder entitled to exercise any power conferred by paragraph 1 of Schedule 4 to this Act shall be deemed to be a public utility undertaker for the purposes of the Highways Act 1980 F831. . ..

(7) A licence holder who is entitled to exercise any power conferred by paragraph 2 of Schedule 4 to this Act shall be deemed to be a statutory undertaker and his

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undertaking a statutory undertaking for the purposes of the following enactments, namely—

F830(a) . . . . . .

(b) the M131Roads (Scotland) Act 1984.

(8) References in the M132Local Government (Omnibus Shelters and Queue Barriers) (Scotland) Act 1958 F832. . . to electricity undertakers shall be construed as references to licence holders entitled to exercise any power conferred by paragraph 2 of Schedule 4 to this Act.

(9) It is immaterial for the purposes of this paragraph whether any power conferred by, or by any provision of, Schedule 3 or 4 to this Act on the holder of a licence under section 6(1)(a) or (2) of this Act is qualified by restrictions, exceptions or conditions included in the licence.

Textual Amendments

F829 Sch. 16 para. 2(2)(c)(4)(c)(5)(b) repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, **Sch. 1 Pt. I**

F830 Sch. 16 para. 2 (2)(d)(7)(a) repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. I** (with s. 5, Sch. 3)

F831 Words in Sch. 16 para. 2(6) repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59), s. 168(2), **Sch. 9**; (E.W.) S.I. 1992/2984, art. 2(2), **Sch. 2** and (S.) S.I. 1992/2990, art. 2(2), **Sch. 2**.

F832 Words in Sch. 16 para. 2(8) repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. I** (with s. 5, Sch. 3)

Marginal Citations

M116 1967 c. 86.
M117 1968 c. 41.
M118 1947 c. 42.
M119 1968 c. 16.
M120 1980 c. 65.
M121 1981 c. 64.
M122 1981 c. 67.
M123 1982 c. 16.
M124 1925 c. 71.
M125 1945 c. 43.
M126 1980 c. 66.
M127 1985 c. 68.
M128 1953 c. 26.
M129 1980 c. 66.
M130 1984 c. 27.
M131 1984 c. 54.
M132 1958 c. 50.

3 (1) In the following enactments, namely—

F833[(a) the M133Water Act 1948;]

(b) section 39 of the M134Opencast Coal Act 1958 except in its application to Scotland;

(c) paragraph 2 of Schedule 6 to the M135Gas Act 1965;

F834(d) . . . . . .

(e) the M136Welsh Development Agency Act 1975;

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F835(f) . . . . . .

(g) the M137New Towns Act 1981,

"the appropriate Minister", in relation to a a licence holder, shall mean the [F836Secretary of State for Trade and Industry].

(2) In the following enactments, namely—

(a) section 39 of the Opencast Coal Act 1958 in its application to Scotland;

(b) the M138Pipe-lines Act 1962;

(c) Schedule 3 to the M139Harbours Act 1964;

(d) the M140New Towns (Scotland) Act 1968;

F837(e) . . . . . .

F838(f) . . . . . .

(g) section 121 of the M141Highways Act 1980;

(h) the M142Acquisition of Land Act 1981,

[F839(i) section 9 of the Enterprise and New Towns (Scotland) Act 1990;**]**

"the appropriate Minister", in relation to a licence holder, shall mean the Secretary of State.

Textual Amendments

F833 Sch. 16 para. 3(1)(a) repealed (E.W.) (01.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt. I**.

F834 Sch. 16 para. 3(1)(d) repealed by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 3, **Sch. 1 Pt. I**

F835 Sch. 16 para. 3(1)(f) repealed (1.10.1998) by 1998 c. 38, s. 152, **Sch. 18 Pt. IV** (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1998/2244, **art. 4**

F836 Words in Sch. 16 para. 3(1) substituted (5.7.1992) by S.I. 1992/1314, art. 3(3), **Sch. para. 1(e)**.

F837 Sch. 16 para. 3(2)(e) repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. I** (with s. 5, Sch. 3)

F838 Sch. 16 para. 3(2)(f) repealed by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(2), **Sch. 5 Pt. I**

F839 Sch. 16 para. 3(2)(i) inserted by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(1), **Sch. 4 para. 17(b)**

Modifications etc. (not altering text)

C136 Sch. 16 para. 3(1): transfer of functions (5.3.2009) by The Secretary of State for Energy and Climate Change Order 2009 (S.I. 2009/229), arts. 1(2), 4, **Sch. 1(c)**

Marginal Citations

M133 1948 c. 42.
M134 1958 c. 69.
M135 1965 c. 36.
M136 1975 c. 70.
M137 1981 c. 64.
M138 1962 c. 58.
M139 1964 c. 40.
M140 1968 c. 16.
M141 1980 c. 66.
M142 1981 c. 67.

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The Civil Defence Act 1939 (c.31)

F840 4 . . . . . .

Textual Amendments

F840 Sch. 16 para. 4 repealed (14.11.2005) by Civil Contingencies Act 2004 (c. 36), s. 34(1), **Sch. 3**; S.I. 2005/2040, art. 3(r)

The Water Act 1945 (c.42)

5 In Schedule 3 to the Water Act 1945 (incorporated provisions: water undertakings), in section 70, in paragraph (b) of the proviso, for the words "section fifteen of the Electric Lighting Act, 1882, or section seventeen of the Schedule to the Electric Lighting (Clauses) Act, 1899" there shall be substituted the words "paragraph 3 of Schedule 4 to the Electricity Act 1989".

The Wireless Telegraphy Act 1949 (c.54)

F841 6 . . . . . .

Textual Amendments

F841 Sch. 16 para. 6 repealed (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), s. 126(2), **Sch. 9 Pt. 1** (with Sch. 8 Pt. 1)

The Public Utilities Street Works Act 1950 (c.39)

F842 7 . . . . . .

Textual Amendments

F842 Sch. 16 para. 7 repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59), s. 168(2), **Sch.9**; (E.W.) S.I. 1992/2984, art. 2(2), **Sch. 2** and (S.) S.I. 1992/2990, art. 2(2), **Sch.2**.

The Rights of Entry (Gas and Electricity Boards) Act 1954 (c.21)

8 (1) The Rights of Entry (Gas and Electricity Boards) Act 1954 shall be amended as follows.

(2) For subsection (2) of section 1 there shall be substituted the following subsection—

"(2) This Act applies to all rights of entry conferred by—

(a) the Gas Act 1986, regulations made under it or any other enactment relating to gas,

(b) Schedule 6 to the Electricity Act 1989, and

(c) any local enactment relating to gas or electricity,

in so far as those rights are exercisable for the purposes of a public gas supplier or a public electricity supplier."

(3) In subsection (1) of section 2—

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Changes to legislation: *Electricity Act 1989 is up to date with all changes known to be in force on or before 19 April 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) for the words from "required" to "Board", in the second place where it occurs, there shall be substituted the words "required by a public gas supplier, a public electricity supplier or by an employee of such a supplier";

(b) for the words "the supplier or Board or his or their employee", in both places where they occur, there shall be substituted the words "the supplier or his employee".

(4) For subsection (3) of that section there shall be substituted the following subsection—

"(3) Where paragraph (a) of subsection (2) above applies—

(a) section 46 of the Gas Act 1986 (if entry is required for the purposes of a public gas supplier); or

(b) section 109 of the Electricity Act 1989 (if entry is required for the purposes of a public electricity supplier),

shall apply to the service of the notice required by that paragraph."

(5) In section 3(1)—

(a) the definition of "Electricity Board" shall cease to have effect;

(b) for the definition of "employee" there shall be substituted the following definition—

""employee", in relation to a gas or electricity supplier, means an officer, servant or agent of the supplier"

(c) after the definition of "premises" there shall be inserted the following definition—

""public electricity supplier" has the same meaning as in Part I of the Electricity Act 1989;".

The Land Powers (Defence) Act 1958 (c.30)

9 In section 14(2)(b) of the Land Powers (Defence) Act 1958 for the words "Electric Lighting Act, 1882" there shall be substituted the words "Electricity Act 1989".

The Water Resources Act 1963 (c.38)

F843[10 In section 19(4)(f) of, and in paragraph 4(h) of Schedule 7 to, the Water Resources Act 1963, for the words "Central Electricity Generating Board" there shall be substituted the words "a person authorised by a licence under Part I of the Electricity Act 1989 to generate electricity".]

Textual Amendments

F843 Sch. 16 para. 10 repealed (E.W.) (01.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I**.

The Nuclear Installations Act 1965 (c.57)

F844 11 . . . . . .

Status: *Point in time view as at 12/07/2016. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F844 Sch. 16 para. 11 repealed (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 30**; S.I. 2014/251, art. 4

The Building Control Act 1966 (c.27)

12 In section 5(1) of the Building Control Act 1966, after paragraph (f) there shall be inserted the following paragraph—

"(ff) a public electricity supplier within the meaning of Part I of the Electricity Act 1989".

The Forestry Act 1967 (c.10)

13 (1) Section 9 of the Forestry Act 1967 (licences for tree felling) shall be amended as follows.

(2) In subsection (4)(c), for the words from "an Electricity Board" to the end there shall be substituted "an electricity operator, because the tree is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by the operator as to have the effect mentioned in paragraph 9(1)(a) or (b) of Schedule 4 to the Electricity Act 1989;"

(3) In subsection (6) for the definitions of "Electricity Board" and "electric line" there shall be substituted—

""electricity operator" means a licence holder within the meaning of Part I of the Electricity Act 1989 by whom the powers conferred by paragraph 9 (tree lopping) of Schedule 4 to that Act are exercisable;

"electric line" and "electrical plant" have the same meanings as in Part I of the Electricity Act 1989;".

The Transport Act 1968 (c. 73)

14 In section 109(2) of the Transport Act 1968, for paragraphs (e), (f) and (g), there shall be substituted—

"(e) a public electricity supplier within the meaning of Part I of the Electricity Act 1989;".

The Post Office Act 1969 (c.48)

F845 15 . . . . . .

Textual Amendments

F845 Sch. 16 para. 15 repealed (26.3.2001) by 2000 c. 26, s. 127(6), **Sch. 9**; S.I. 2001/1148, art. 2(2), **Sch.** (subject to arts. 3-42)

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The Fair Trading Act 1973 (c.41)

F846 16 . . . . . .

Textual Amendments

F846 Sch. 16 para. 16 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

The Consumer Credit Act 1974 (c. 39)

17 (1) The Consumer Credit Act 1974 shall be amended as follows.

F847 (2) . . . . . .

(3) In section 189, for the words "the Electric Lighting Act 1882" there shall be substituted the words "the Electricity Act 1989".

Textual Amendments

F847 Sch. 16 para. 17(2) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

The Control of Pollution Act 1974 (c. 40)

18 **[**F848 (1) Section 21 of the Control of Pollution Act 1974 (power of disposal authority to produce and dispose of energy from waste) shall be amended as follows.

(2) In subsection (1), for the words "subsections (2) and (3)" there shall be substituted the words "subsection (2)" and after the words "use, sell or otherwise dispose of any heat" there shall be inserted the words "or electricity".

(3) For subsections (2) and (3) there shall be substituted the following subsection—

"(2) Nothing in subsection (1) of this section shall be construed as exempting a disposal authority from the requirements of Part I of the Electricity Act 1989."

(4) In subsection (6), the words "(except the restrictions imposed by subsections (2) and (3))" shall cease to have effect.**]**

Textual Amendments

F848 Sch. 16 para. 18 repealed (1.4.2015 for S.) by Environmental Protection Act 1990 (c. 43), s. 164(3), **Sch. 16 Pt. II**; S.S.I. 2015/72, art. 2(2)(d)

The Restrictive Trade Practices Act 1976 (c. 34)

19 In section 41(1)(a) of the Restrictive Trade Practices Act 1976 (disclosure of information), after the words "the Director General of Water Supply" there shall be inserted the words "the Director General of Electricity Supply" and after the words

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"or the Water Act 1989" there shall be inserted the words "or the Electricity Act 1989".

The Local Government (Miscellaneous Provisions) Act 1976 (c. 57)

20 (1) Section 11 of the Local Government (Miscellaneous Provisions) Act 1976 (production and supply of energy by local authorities) shall be amended as follows.

(2) In subsection (1)(d), after the words "heat produced or acquired" there shall be inserted the words "or electricity produced".

(3) For subsections (2) and (3) there shall be substituted the following subsections—

"(2) Nothing in subsection (1) of this section shall be construed as exempting a local authority from the requirements of Part I of the Electricity Act 1989.

(3) Except in such cases as may be prescribed, a local authority shall not be entitled to sell electricity which is produced otherwise than in association with heat."

(4) In subsection (7)—

(a) the definition of "Electricity Board" shall cease to have effect;

(b) at the end of the definition of "prescribed" there shall be added the words "which, in the case of regulations under subsection (3) of this section, shall be subject to annulment in pursuance of a resolution of either House of Parliament"; and

(c) after the words "local authority" there shall be inserted the words "(in its capacity as such)".

The Land Drainage Act 1976 (c. 70)

[[F849]21 In section 112(2)(a) of the Land Drainage Act 1976 (protection of nationalised undertakings etc.) for the words "any Electricity Board" there shall be substituted the words "any public electricity supplier (within the meaning of Part I of the Electricity Act 1989) or any person authorised by a licence under that Part to generate or transmit electricity".**]**

Textual Amendments

F849 Sch. 16 para. 21 repealed (E.W.) (01.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I**.

The Energy Act 1976 (c. 76)

[F850]22 . . . . . .

Textual Amendments

F850 Sch. 16 para. 22 omitted (25.6.2013) by virtue of Growth and Infrastructure Act 2013 (c. 27), **ss. 18(2)**, 35(3)

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The Land Registration (Scotland) Act 1979 (c. 33)

F851 23 . . . . . .

Textual Amendments

F851 Sch. 16 para. 23 repealed (S.) (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **sch. 5 para. 31** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

The Estate Agents Act 1979 (c. 38)

F852 24 . . . . . .

Textual Amendments

F852 Sch. 16 paras. 24, 25 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

The Competition Act 1980 (c. 21)

F852 25 . . . . . .

Textual Amendments

F852 Sch. 16 paras. 24, 25 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

The Water (Scotland) Act 1980 (c. 45)

26 (1) The Water (Scotland) Act 1980 shall be amended as follows.

(2) In Schedule 1 (procedure in relation to orders and byelaws)—

(a) in paragraph 2(ii), after the words "public undertakers" there shall be inserted the words "or licence holder within the meaning of Part I of the Electricity Act 1989", and after the words "authorised by" there shall be inserted the words "or by virtue of";

(b) in paragraph 6, after the words "undertakers" there shall be inserted the words "or licence holder";

(c) in paragraph 11(ii), after the words "public undertakers" there shall be inserted the words "or licence holder within the meaning of Part I of the Electricity Act 1989", and after the words "authorised by" there shall be inserted the words "or by virtue of"; and

(d) in paragraph 15, after the word "undertakers" there shall be inserted the words "or licence holder".

(3) In Schedule 4 (provisions to be incorporated in orders relating to statutory undertakers)—

(a) in section 5(4), for the words from "the expressions" to the end there shall be substituted the words—

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""electric line" has the same meaning as in Part I of the Electricity Act 1989;

"electricity undertakers" means public electricity suppliers within the meaning of Part I of the Electricity Act 1989 and persons authorised by a licence under that Part to generate or transmit electricity."; and

(b) in paragraph (b) of the proviso to section 36, for the words "electricity undertakers" there shall be substituted the words "public electricity supplier (within the meaning of Part I of the Electricity Act 1989) or any person authorised by a licence under that Part to generate or transmit electricity."

The Highways Act 1980 (c. 66)

F853 27 . . . . . .

Textual Amendments

F853 Sch. 16 para. 27 repealed (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59), s. 168(2), **Sch.9**; (E.W.) S.I. 1992/2984, art. 2(2), **Sch.2** and (S.) S.I. 1992/2990, art. 2(2), **Sch.2**.

The Acquisition of Land Act 1981 (c. 67)

28 In section 28 of the Acquisition of Land Act 1981 (acquisition of rights over land by the creation of new rights), after paragraph (g) there shall be inserted the following paragraph—

"(h) paragraph 1 of Schedule 3 to the Electricity Act 1989."

The Telecommunications Act 1984 (c. 12)

29 (1) The Telecommunications Act 1984 shall be amended as follows.

(2) In section 98 (use of certain conduits for telecommunications purposes)—

(a) for the words "the Electric Lighting Act 1882" there shall be substituted the words "the Electricity Act 1989"; and

(b) in the definition of "electricity authority", for the words from "an" to "1983" there shall be substituted the words "a person authorised by a licence under Part I of the Electricity Act 1989 to transmit or supply electricity".

(3) In section 101 (general restrictions on disclosure of information)—

(a) in subsection (2)(b), after the words "Director General of Water Services" there shall be inserted the words "the Director General of Electricity Supply"; and

(b) in subsection (3), after paragraph (j) there shall be inserted the following paragraph—

"(k) the Electricity Act 1989."

The Roads (Scotland) Act 1984 (c. 54)

30 In section 61(4) of the Roads (Scotland) Act 1984 (permission to place and maintain apparatus under a road), for the words from the beginning to "permission" in the

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second place where it occurs there shall be substituted the words "Works carried out by a person in pursuance of permission under subsection (1) above are not".

The Building Act 1984 (c. 55)

31 In section 80(3) of the Building Act 1984 (notice to local authority of intended demolition) for paragraph (c) there shall be substituted the following paragraph—

"(c) the public electricity supplier (as defined in Part I of the Electricity Act 1989) in whose authorised area (as so defined) the building is situated and any other person authorised by a licence under that Part to supply electricity to the building;".

The Bankruptcy (Scotland) Act 1985 (c. 66)

32 In section 70(4)(b) of the Bankruptcy (Scotland) Act 1985 (supplies of gas, water, electricity etc. to certain individuals), for the words from "an Electricity Board (within the meaning of the Energy Act 1983)" there shall be substituted the words "a public electricity supplier within the meaning of Part I of the Electricity Act 1989".

The Airports Act 1986 (c. 31)

33 In section 74 of the Airports Act 1986 (restrictions on disclosure of information)—

(a) in subsection (2)(a), after the words "Director General of Water Services" there shall be inserted the words " the Director General of Electricity Supply"; and

(b) in subsection (3), after paragraph (k) there shall be inserted the following paragraph—

"(l) the Electricity Act 1989."

The Gas Act 1986 (c. 44)

34 In section 42 of the Gas Act 1986 (general restrictions on disclosure of information) —

(a) in subsection (2)(b), after the words "Director General of Water Services" there shall be inserted the words "the Director General of Electricity Supply"; and

(b) in subsection (3), after paragraph (l) there shall be inserted the following paragraph—

"(m) the Electricity Act 1989."

The Insolvency Act 1986 (c. 45)

F854 35 . . . . . .

Textual Amendments

F854 Sch. 16 para. 35 repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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The Consumer Protection Act 1987 (c. 43)

F855 36 . . . . . .

Textual Amendments

F855 Sch. 16 para. 36 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

The Water Act 1989 (c. 15)

[F856 37 In section 160 of the Water Act 1989 (protection of certain undertakings), in subsection (3), for paragraph (f) there shall be substituted the following paragraph—

"(f) the undertaking of any person authorised by a licence under Part I of the Electricity Act 1989 to generate, transmit or supply electricity;"**]**.

Textual Amendments

F856 Sch. 16 para. 37 repealed (E.W.) (01.12.1991) by Water Consolidation (Consequential Provions) Act 1991 (c. 60, SIF 130), ss. 3(1), 4(2), **Sch. 3 Pt.I**.

Interpretation

38 In this Schedule expressions which are used in Part I of this Act have the same meanings as in that Part.

SCHEDULE 17

Section 112(4).

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

PROVISIONS AND SAVINGS FOR PART I OF ACT

1 (1) In so far as any requisition made under section 27 of the Schedule to the Electric Lighting (Clauses) Act 1899 which is effective on the day appointed for the coming into force of section 16 of this Act requires a supply of electricity to continue to be given, it shall have effect as if made under subsection (1) of the said section 16; and the provisions of Part I of this Act shall apply accordingly.

(2) In so far as any requisition made under section 27 of the Schedule to the Electric Lighting (Clauses) Act 1899 which is effective on the day appointed for the coming into force of that section's repeal by this Act requires a supply of electricity to be given, the repeal shall not affect the operation of that section in relation to that requisition.

(3) The repeal by this Act of sections 24 to 26 of the Schedule to the M143 Electric Lighting (Clauses) Act 1899 shall not affect the operation of those sections in relation to any

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requisition made under the said section 24 which is effective on the day appointed for the coming into force of the repeal.

Marginal Citations
M143 1899 c. 19.

2 Any tariff fixed under section 37(3) of the [M144]Electricity Act 1947 or section 22(1) of the [M145]Electricity (Scotland) Act 1979 which is effective on the day appointed for the coming into force of section 18 of this Act shall have effect as if fixed under subsection (1) of the said section 18; and the provisions of Part I of this Act shall apply accordingly.

Marginal Citations
M144 1947 c. 54.
M145 1979 c. 11.

3 Any regulations made under section 16 of the [M146]Energy Act 1983 which are effective on the day appointed for the coming into force of section 29 of this Act shall have effect as if—

(a) they were made under the said section 29; and

(b) references to an Electricity Board were references to a person authorised by a licence to supply or transmit electricity;

and the provisions of Part I of this Act shall apply accordingly.

Commencement Information
I2 Sch. 17 para. 3 wholly in force at 9.11.2001; Sch. 17 para. 3 not in force at Royal Assent see s. 113(2); Sch. 17 para. 3 in force at 31.3.1990 except for para. (b) and word "and" preceding it by S.I. 1990/117, **art. 3(c)**; Sch. 17 para. 3(b) and word "and" preceding it in force at 9.11.2001 by S.I. 2001/3419, **art. 2(b)**

Marginal Citations
M146 1983 c. 25.

4 (1) Where any application made under section 2 of the [M147]Electric Lighting Act 1909 or section 35 of the Electricity (Scotland) Act 1979 is effective on the day appointed for the coming into force of section 36 of this Act—

(a) the application shall have effect as if made under the said section 36 modified for that purpose by the omission of subsections (2) and (3);

(b) anything done before that day in relation to the application (whether under the said section 2 or 35 or under section 33 or 34 of the [M148]Electricity Act 1957) shall have effect as if done under the corresponding provisions of Schedule 8 to this Act; and

(c) the provisions of Part I of this Act shall apply accordingly.

(2) The repeal by this Act of section 2 of the Electric Lighting Act 1909 or section 35 of the Electricity (Scotland) Act 1979 shall not affect the validity of any consent granted under that section before the day appointed for the coming into force of the repeal.

(3) Section 36 of this Act shall not apply in relation to—

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(a) the construction of a generating station, or its operation as constructed; or

(b) the extension of a generating station, or its operation as extended,

if its construction or, as the case may be, extension is authorised by a consent given or having effect as if given under section 2 of the Electric Lighting Act 1909 or section 35 of the Electricity (Scotland) Act 1979, or by a planning permission granted on an application made before the day appointed for the coming into force of the said section 36.

Marginal Citations

M147 1909 c. 34.

M148 1957 c. 48.

5 (1) Where any application made under section 10(b) of the Schedule to the Electric Lighting (Clauses) Act 1899 is effective on the day appointed for the coming into force of section 37 of this Act—

(a) the application shall have effect as if made under the said section 37 modified for that purpose by the omission of subsection (2);

(b) anything done before that day in relation to the application (whether under the said section 10(b) or under section 32 or 34 of the Electricity Act 1957) shall have effect as if done under the corresponding provisions of Schedule 8 to this Act; and

(c) the provisions of Part I of this Act shall apply accordingly.

(2) The repeal by this Act of section 10(b) of the Schedule to the [M149]Electric Lighting (Clauses) Act 1899 shall not affect the validity of any consent granted under that section before the day appointed for the coming into force of the repeal.

(3) Where such a consent as is mentioned in sub-paragraph (2) above includes a direction that planning permission for the installation of the electric line shall be deemed to be granted, or otherwise has effect as a grant of planning permission for that installation, that permission shall be deemed to extend to the installation of any of the following, namely—

(a) any support for that line, that is to say, any structure, pole or other thing in, on, by or from which that line is be supported, carried or suspended;

(b) any apparatus connected to that line for the purpose of carrying electricity; and

(c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, that line.

(4) Section 37 of this Act shall not apply in relation to an electric line if its installation is authorised by a consent given under section 10(b) of the Schedule to the Electric Lighting (Clauses) Act 1899 or by a planning permission granted on an application made before the day appointed for the coming into force of the said section 37.

(5) Section 37 of this Act shall not apply to any electric line which—

(a) is a service line within the meaning of section 1 of the Schedule to the Electric Lighting (Clauses) Act 1899; and

(b) is or was installed before the day appointed for the coming into force of the said section 37.

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Marginal Citations
M149 1899 c. 19.

6 Any maximum charge fixed by an Electricity Board under section 29 of the [M150]Electricity Act 1957 or section 23 of the [M151]Electricity (Scotland) Act 1979 for the resale of electricity supplied by it which is effective on the day appointed for the coming into force of section 44 of this Act shall have effect as a maximum price fixed by the Director under the said section 44 for the resale of electricity so supplied.

Marginal Citations
M150 1957 c. 48.
M151 1979 c. 11.

7 Where any representation, reference or report made under, or in such circumstances as are mentioned in, any of the following enactments, namely—

(a) section 7 of the [M152]Electricity Act 1947;

(b) Schedule 7 to the Electricity (Scotland) Act 1979; and

(c) section 21 of the [M153]Energy Act 1983,

is effective on the day appointed for the coming into force of the repeal by this Act of that enactment, the representation, reference or report shall have effect as if it were a representation made to the Director; and the provisions of Part I of this Act shall apply accordingly.

Marginal Citations
M152 1947 c. 54.
M153 1983 c. 25.

8 (1) Any land which has been compulsorily acquired under section 9 of the Electricity Act 1947 or section 12 of the Electricity (Scotland) Act 1979 before the day appointed for the coming into force of Part I of Schedule 3 to this Act shall be treated for the purposes of that Part as compulsorily acquired by virtue of that Part.

(2) Any compulsory purchase order made under section 9 of the Electricity Act 1947 or section 12 of the Electricity (Scotland) Act 1979 before the day appointed for the coming into force of Part I of Schedule 3 to this Act shall have effect as if made under that Part; and the provisions of that Schedule shall apply accordingly.

9 Any consent given under subsection (1) of section 22 of the [M154]Electricity (Supply) Act 1919 which is effective on the day appointed for the coming into force of Schedule 4 to this Act shall have effect as if granted under paragraph 6(3) of that Schedule; anything done before that day with a view to, or otherwise in connection with, the giving of a consent under that subsection (whether under that section or under section 11 of the [M155]Electricity (Supply) Act 1922) shall have effect as if done under the corresponding provisions of that Schedule; and the provisions of Part I of this Act shall apply accordingly.

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Marginal Citations
M154 1919 c. 100.
M155 1922 c. 46.

10 Any order made under subsection (3) of section 34 of the [M156]Electricity (Supply) Act 1926 which is effective on the day appointed for the coming into force of Schedule 4 to this Act shall have effect as if made under paragraph 9(6) of that Schedule; anything done under that section before that day with a view to, or otherwise in connection with, the making of an order under that subsection shall have effect as if done under the corresponding provisions of that Schedule; and the provisions of Part I of this Act shall apply accordingly.

Marginal Citations
M156 1926 c. 51.

11 (1) Any meter of a pattern which is approved for the purposes of section 12 of the [M157]Energy Act 1983 immediately before the day appointed for the coming into force of Schedule 7 to this Act shall be treated as being of an approved pattern for the purposes of that Schedule.

(2) Any meter which is certified under section 50 of the Schedule to the [M158]Electric Lighting (Clauses) Act 1899 immediately before the day appointed for the coming into force of Schedule 7 to this Act shall be treated as certified under paragraph 5 of the said Schedule 7.

(3) Any regulations made under section 30(1) of the [M159]Electricity Act 1957 which are effective on the day appointed for the coming into force of Schedule 7 to this Act shall have effect as if made under paragraph 5 of that Schedule.

(4) Paragraphs (a) and (b) of paragraph 2(1) of Schedule 7 to this Act shall not apply in relation to a meter installed before (and not moved since) the day appointed for the coming into force of that Schedule until, in the case of paragraph (b)—

(a) electricity is supplied through the meter in pursuance of a notice given under section 16(2) of this Act more than twelve months after that day; or

(b) the period of ten years beginning with that day expires,

whichever first occurs.

(5) Sub-paragraph (2) of paragraph 12 of Schedule 7 to this Act shall not prevent a pre-payment meter from being used as mentioned in that sub-paragraph in pursuance of an agreement made before the day appointed for the coming into force of that Schedule.

Marginal Citations
M157 1983 c. 25.
M158 1899 c. 19.
M159 1957 c. 48.

12 Any regulations made under section 34(2) of the Electricity Act 1957 which are effective on the day appointed for the coming into force of Schedule 8 to this Act

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shall have effect as if they were made under paragraph 3(1) of that Schedule; and the provisions of that Schedule shall apply accordingly.

13 Where—

(a) any sum was deposited with an Electricity Board by way of security under any provision of the Electricity Acts; and

(b) on and after the day appointed for the coming into force of any provision of Part I of this Act that sum is treated by the Board as deposited under that provision of that Part,

any period beginning three months or less before that day, being a period during which the sum was deposited with the Board, shall be treated for the purposes of the payment of interest on that sum as a period during which the sum was deposited under that provision of that Part.

14 (1) Where immediately before the day appointed for the coming into force of any provision of Part I of this Act there is in force an agreement which—

(a) confers or imposes on an Electricity Board any rights or liabilities; and

(b) refers (in whatever terms and whether expressly or by implication) to any provision of the Electricity Acts, to an Electricity Board's statutory electricity undertaking or to statutory purposes,

the agreement shall have effect, in relation to anything falling to be done on or after that day, as if that reference included or, as the case may require, were a reference to the corresponding provision of this Act, to the Board's undertaking as a person authorised by a licence to generate, transmit or supply electricity or to purposes connected with the generation, transmission or supply of electricity.

(2) References in this paragraph to an agreement include references to a deed, bond or other instrument.

15 The repeal by this Act of any provision by virtue of which any enactment applies in relation to a person carrying on an electricity undertaking shall not affect the continuing validity of anything done under that enactment before the day appointed for the coming into force of that repeal.

16 In this Part of this Schedule "the Electricity Acts" means—

(a) the Electricity Acts 1947 to 1961 and the [M160]Electricity (Scotland) Act 1979; and

(b) such of the provisions of the [M161]Energy Act 1976 and the [M162]Energy Act 1983 as are repealed by this Act;

and expressions which are used in Part I of this Act have the same meanings as in that Part.

Marginal Citations

M160 1979 c. 11.
M161 1976 c. 76.
M162 1983 c. 25.

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PART II

PROVISIONS AND SAVINGS FOR PART II OF ACT

17 Any licence granted under section 6 of this Act to an Electricity Board which is effective on the transfer date shall have effect as if granted to the appropriate successor company.

18 Any tariff fixed, or having effect as if fixed, under section 18(1) of this Act by an Electricity Board which is effective on the transfer date shall have effect as if fixed by its successor company.

19 Any consent given under section 36 of this Act to an Electricity Board which is effective on the transfer date shall have effect as if given to the appropriate successor company.

20 Any consent given under section 37 of this Act to an Electricity Board which is effective on the transfer date shall have effect as if given to the appropriate successor company.

21 Any maximum price fixed, or having effect as if fixed, under section 44 of this Act for the resale of electricity supplied by an Electricity Board which is effective on the transfer date shall have effect as if fixed for the resale of electricity by the appropriate successor company.

22 A direction given under section 96 of this Act to an Electricity Board which is effective on the transfer date shall have effect as if given to the appropriate successor company.

23 (1) Any land compulsorily acquired by an Electricity Board before the transfer date which was so acquired by virtue of Part I of Schedule 3 to this Act, or is treated as so acquired for the purposes of that Part, shall be treated for those purposes as so acquired by the appropriate successor company; but nothing in paragraph 4 of that Schedule (as applied by this sub-paragraph) shall be taken as requiring the consent of the Director to any disposal which is affected in pursuance of a provision included in a transfer scheme by virtue of section 68(2)(c) of this Act or in pursuance of Schedule 10 to this Act.

(2) Any compulsory purchase order made by an Electricity Board which is made, or has effect as if made, by virtue of Part I of Schedule 3 to this Act and is effective on the transfer date shall have effect as if made by the appropriate successor company.

24 (1) Where immediately before the transfer date there is in force an agreement which—

(a) confers or imposes on an Electricity Board or the Electricity Council any rights or liabilities which vest in the appropriate successor company by virtue of this Act; and

(b) refers (in whatever terms and whether expressly or by implication) to a member or officer of that Board or Council,

the agreement shall have effect, in relation to anything falling to be done on or after that date, as if for that reference there were substituted a reference to such person as that company may appoint or, in default of appointment, to the officer of that company who corresponds as nearly as may be to the member or officer of the Board or Council in question.

(2) References in this paragraph to an agreement include references to a deed, bond or other instrument.

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25 (1) Any agreement made, transaction effected or other thing done by, to or in relation to an Electricity Board or the Electricity Council which is in force or effective immediately before the transfer date shall have effect as if made, effected or done by, to or in relation to the appropriate successor company, in all respects as if that company were the same person in law as the Board or Council; and accordingly references to an Electricity Board or the Electricity Council—

(a) in any agreement (whether or not in writing) and in any deed, bond or instrument;

(b) in any process or other document issued, prepared or employed for the purposes of any proceeding before any court or other tribunal or authority; and

(c) in any other document whatsoever (other than an enactment) relating to or affecting any property, right or liability of that Board or Council which is transferred by this Act,

shall be taken as referring to the appropriate successor company.

(2) Nothing in sub-paragraph (1) above shall be taken as applying in relation to any agreement made, transaction effected or other thing done with respect to, or any document relating to or affecting, any rights and liabilities which are excepted rights and liabilities within the meaning of section 66 or 67 of this Act.

26 It is hereby declared for the avoidance of doubt that—

(a) the effect of Part II of this Act in relation to any contract of employment with an Electricity Board or the Electricity Council which is in force immediately before the transfer date is merely to modify the contract by substituting the appropriate successor company as the employer (and not to terminate the contract or vary it in any other way); and

(b) that Part is effective to vest the rights and liabilities of an Electricity Board or the Electricity Council under any agreement or arrangement for the payment of pensions, allowances or gratuities in the appropriate successor company along with all other rights and liabilities of the Board or Council;

and accordingly any period of employment with an Electricity Board or the Electricity Council, or a wholly owned subsidiary of such a Board or that Council, shall count for all purposes as a period of employment with the appropriate successor company or (as the case may be) a wholly owned subsidiary of the appropriate successor company.

27 The [M163]Transfer of Undertakings (Protection of Employment) Regulations 1981 shall apply to any transfer effected by Part II of this Act, being a transfer of—

(a) all property, rights and liabilities comprised in the Electricity Council's undertaking (other than excepted rights and liabilities within the meaning of section 66 of this Act); or

(b) all property, rights and liabilities comprised in a specified part of that undertaking,

whether or not, apart from this paragraph, that undertaking would be treated as an undertaking in the nature of a commercial venture for the purposes of those Regulations.

Marginal Citations

M163 S.I. 1981/1794.

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28 Any agreement made under section 53 of the [M164]Electricity Act 1947 or section 12 of the [M165]Electricity Act 1957 (machinery for settling terms and conditions of employment) which is effective on the transfer date shall have effect as if—

(a) the parties to the agreement on the employers' side were the successor companies and not the Electricity Council and the Scottish Boards; and

(b) each of the parties to the agreement were entitled to withdraw from it on giving the other parties 12 months' notice in writing.

Marginal Citations

M164 1947 c. 54.

M165 1957 c. 48.

[F857]29 . . . . . .

Textual Amendments

F857 Sch. 17 paras. 29-31 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 5** Group 5

[F857]30 . . . . . .

Textual Amendments

F857 Sch. 17 paras. 29-31 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 5** Group 5

[F857]31 . . . . . .

Textual Amendments

F857 Sch. 17 paras. 29-31 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 5** Group 5

32 Notwithstanding the repeal by this Act of sections 10 and 11 of and Schedule 5 to the Electricity (Scotland) Act 1979—

(a) any constructional scheme prepared by a Scottish Board and confirmed by an order of the Secretary of State made under, or having effect as if made under, Schedule 5 to that Act;

(b) the powers conferred by section 11 of that Act for the purpose of carrying out any such scheme; and

(c) any authorisation of a Scottish Board under section 10(3) of that Act to execute works of a minor character without the preparation of a constructional scheme,

shall have effect after the transfer date in relation to the appropriate successor company as they had effect before that date in relation to the Scottish Board.

33 Where by virtue of anything done before the transfer date, any enactment amended by Schedule 16 to this Act has effect in relation to an Electricity Board or the Electricity Council, that enactment shall have effect in relation to the appropriate successor company as if that company were the same person, in law, as the Board or Council.

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34 Without prejudice to the powers conferred by section 112(2) of this Act, every provision contained in a local Act, or in subordinate legislation, which is in force immediately before the transfer date and then applicable to an Electricity Board or the Electricity Council shall have effect as if—

(a) for references therein to the Board or Council there were substituted references to the appropriate successor company; and

(b) for any reference (however worded and whether expressly or by implication) to the undertaking or business, or any part of the undertaking or business, of the Board or Council there were substituted a reference to the undertaking or business, or the corresponding part of the undertaking or business, of the appropriate successor company.

35 (1) Nothing in this Act shall affect the validity of anything done by, or in relation to, an Electricity Board before the transfer date under or by virtue of the [M166]Public Utilities Street Works Act 1950; and anything which, immediately before that date, is in process of being done under, or by virtue of, that Act by or in relation to the Board (including, in particular, any legal proceedings to which it is a party) may be continued by, or in relation to, the appropriate successor company.

(2) Any notice or direction given or other thing whatsoever done under the said Act of 1950 by an Electricity Board shall, if effective at the transfer date, continue in force and have effect as if similarly given or done by the appropriate successor company.

Marginal Citations
M166 1950 c. 30.

36 (1) Where immediately before the transfer date an Electricity Board falls, by virtue of section 34(3) of the [M167]General Rate Act 1967, to be treated for the purposes of that Act as occupying in a rating area a hereditament of a rateable value calculated in accordance with the provisions of Part I of Schedule 7 to that Act, that Board shall, notwithstanding the transfers of property, rights and liabilities effected by Part II of this Act, continue to be so treated until 1st April 1990.

(2) Section 16(1) of the [M168]Valuation and Rating (Scotland) Act 1956 (liability for rates) shall, in relation to such lands and heritages as the Secretary of State may after consultation with the Scottish Boards by regulations prescribe, have effect until 1st April 1990 as if any reference to a rate being payable by occupiers only were a reference to the rate being payable by the Scottish Board from which the lands and heritages were transferred by Part II of this Act.

(3) Any sums which by virtue of this paragraph fall to be paid by an Electricity Board after the transfer date shall be met by the appropriate successor company.

Marginal Citations
M167 1967 c. 9.
M168 1956 c. 60.

37 (1) An application or claim by an Electricity Board for hazardous substances consent which is effective on the transfer date—

(a) shall have effect as if made by the appropriate successor company; and

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[F858(b) in the case of an application or claim made to the Secretary of State, shall be determined by him notwithstanding that the land to which it relates is no longer land to which **[**F859section 2 of the Planning (Hazardous Substances) Act 1990**]** or, as the case may be, section 56B of the M169Town and Country Planning (Scotland) Act 1972 applies.**]**

(2) A hazardous substances consent granted or deemed to be granted to an Electricity Board which is effective on the transfer date shall have effect as if it had been granted to the appropriate successor company.

Textual Amendments

F858 Sch. 17 para. 37(1)(b) repealed (*prosp.*) by Environmental Protection Act 1990 (c. 43, SIF 46:4), ss. 162(2), 164(2)(3), **Sch. 16 Pt. VII**

F859 Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 83(2)**

Marginal Citations

M169 1972 c. 52.

38 (1) Where an asset, or the right to receive an asset, vests in a successor company by virtue of this Act, then for the purposes of Part I of the M170Industry Act 1972 and Part II of the M171Industrial Development Act 1982—

(a) so much of any expenditure incurred by the appropriate Board or Council in providing that asset as is approved capital expenditure (of any description relevant for the purposes of regional development grant) in respect of which no payment of regional development grant has been made to the Board or Council shall be treated as having been incurred by the successor company and not by the Board or Council; and

(b) where the asset itself vests in the successor company by virtue of this Act, it shall be treated as a new asset if it would have fallen to be so treated if it had remained vested in the Board or Council.

(2) In this paragraph "regional development grant" means a grant under Part I of the Industry Act 1972 or Part II of the Industrial Development Act 1982 and "approved capital expenditure" has the same meaning as it has for the purposes of the provisions relating to regional development grant.

Marginal Citations

M170 1972 c. 63.

M171 1982 c. 52.

39 (1) Where a distribution is proposed to be declared during the accounting reference period of a successor company which includes the transfer date or before any accounts are laid or filed in respect of that period, sections 270 to 276 of the M172Companies Act 1985 (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—

(a) references in section 270 to the company's accounts or to accounts relevant under that section; and

(b) references in section 273 to initial accounts,

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included references to such accounts as, on the assumptions stated in sub-paragraph (2) below, would have been prepared under section 227 of that Act in respect of the relevant year.

(2) The said assumptions are—

(a) that the relevant year had been a financial year of the successor company;

(b) that the vesting effected by Part II of this Act had been a vesting of all the property, rights and liabilities (other than excepted rights and liabilities within the meaning of section 66 or 67 of this Act) to which the Board or Council concerned was entitled or subject immediately before the beginning of the relevant year and had been effected immediately after the beginning of that year;

(c) that the value of any asset and the amount of any liabilities of the Board or Council concerned vested in the successor company by virtue of that section had been the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the statement of accounts prepared by that Board or Council in respect of the financial year immediately preceding the relevant year;

(d) that any securities of the successor company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year; and

(e) such other assumptions (if any) as may appear to the directors of the successor company to be necessary or expedient for the purposes of this paragraph.

(3) For the purposes of the said accounts the amount to be included in respect of any item shall be determined as if anything done by the Board or Council concerned (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

Accordingly (but without prejudice to the generality of the preceding provision) the amount to be included in any reserves of the successor company as representing its accumulated realised profits shall be determined as if any profits realised and retained by the Board or Council concerned had been realised and retained by the successor company.

(4) The said accounts shall not be regarded as statutory accounts for the purposes of section 76 of this Act.

(5) In this paragraph—

"complete financial year" means a financial year ending with 31st March;

"the relevant year" means the last complete financial year ending before the transfer date.

Marginal Citations
M172 1985 c. 6.

40 In this Part of this Schedule expressions which are used in Part II of this Act have the same meanings as in that Part.

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SCHEDULE 18

Section 112(4).

REPEALS

Commencement Information

I3 Sch. 18 wholly in force at 9.11.2001; Sch. 18 not in force at Royal Assent see s. 113(2); Sch. 18 in force with the exception of specified repeals at 31.3.1990 by S.I 1990/117, art. 3(b); Sch. 18 in force insofar as not already in force at 9.11.2001 by S.I. 2001/3419, **art. 2(c)**

45 & 46 Vict. c. 56.	The Electric Lighting Act 1882.	The whole Act.
51 & 52 Vict. c. 12.	The Electric Lighting Act 1888.	The whole Act.
62 & 63 Vict. c. 19.	The Electric Lighting (Clauses) Act 1899.	The whole Act.
9 Edw. 7 c. 34.	The Electric Lighting Act 1909.	The whole Act.
9 & 10 Geo. 5 c. 100.	The Electricity (Supply) Act 1919.	The whole Act.
12 & 13 Geo. 5 c. 46.	The Electricity (Supply) Act 1922.	The whole Act.
15 & 16 Geo. 5 c. 71.	The Public Health Act 1925.	In section 7(3), the word “electricity,”.
16 & 17 Geo. 5 c. 51.	The Electricity (Supply) Act 1926.	The whole Act.
17 & 18 Geo. 5 c. 36.	The Landlord and Tenant Act 1927.	In section 25, in the definition of “statutory company”, the word “electricity”.
23 & 24 Geo. 5 c. 14.	The London Passenger Transport Act 1933.	Section 23(9)(b).
25 Geo. 5 and 1 Edw. 8 c. 20.	The Electricity Supply (Meters) Act 1936.	The whole Act.
25 Geo. 5 and 1 Edw. 8 c. 49.	The Public Health Act 1936.	In section 343, in the definition of “statutory undertakers”, the word “electricity”.
2 & 3 Geo. 6 c. 31.	The Civil Defence Act 1939.	In section 90(1), in the definition of “public utility undertakers”, the word “electricity”.
6 & 7 Geo. 6 c. 32.	The Hydro-Electric Development (Scotland) Act 1943.	The whole Act.

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8 & 9 Geo. 6 c. 19.	The Ministry of Fuel and Power Act 1945.	Section 7(3).
8 & 9 Geo. 6 c. 42.	The Water Act 1945.	In section 1(1) of Schedule 3, in the definition of "statutory undertakers", the word "electricity".
9 & 10 Geo. 6 c. 49.	The Acquisition of Land (Authorisation Procedure) Act 1946.	In section 8(1), in the definition of "statutory undertakers", the word "electricity". In Schedule 4, the entry relating to the Electricity (Supply) Act 1919.
10 & 11 Geo. 6 c. 35.	The Finance Act 1947.	In section 57(2), the words from "all stock" to "and to" and the word "other".
10 & 11 Geo. 6 c. 42.	The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.	Section 1(5). In section 7(1), in the definition of "statutory undertakers", the word "electricity".
10 & 11 Geo. 6 c. 54.	The Electricity Act 1947.	The whole Act.
11 & 12 Geo. 6 c. 22.	The Water Act 1948.	In section 15(1), in the definition of "appropriate Minister", the word "electricity" and, in the definition of "statutory undertakers", the word "electricity".
14 Geo. 6 c. 39.	The Public Utilities Street Works Act 1950.	In section 20(3), the words from "Section thirteen" to "subsists, and". In Schedule 5, the entries relating to the Gasworks Clauses Act 1847 as incorporated with the Electric Lighting Act 1882 by section 12 of that Act, the Electric Lighting Act 1882 and the Schedule to the Electric Lighting (Clauses) Act 1899.
2 & 3 Eliz. 2 c.19.	The Civil Defence (Electricity Undertakings) Act 1954.	The whole Act.

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2 & 3 Eliz. 2 c. 21.	The Rights of Entry (Gas and Electricity Boards) Act 1954.	In section 3(1), the definition of "Electricity Board".
2 & 3 Eliz. 2 c. 60.	The Electricity Reorganisation (Scotland) Act 1954.	The whole Act.
4 & 5 Eliz. 2 c. 52.	The Clean Air Act 1956.	Section 10(4).
5 & 6 Eliz. 2 c. 48.	The Electricity Act 1957.	The whole Act.
6 & 7 Eliz. 2 c. 69.	The Opencast Coal Act 1958.	In section 51(1), in the definition of "appropriate Minister", the words "electricity or". In section 52(2), in the definition of "appropriate Minister", the words "electricity or".
9 & 10 Eliz. 2 c. 8.	The Electricity (Amendment) Act 1961.	The whole Act.
10 & 11 Eliz. 2 c. 58.	The Pipe-lines Act 1962.	In section 58(1), paragraphs (c) to (e).
10 & 11 Eliz. 2 c. 58.—*cont.*	The Pipe-lines Act 1962.—*cont.*	In section 66(1), in the definition of "statutory undertakers", the word "electricity".
1963 c. 41.	The Offices, Shops and Railway Premises Act 1963.	Section 90(2).
1963 c. 59.	The Electricity and Gas Act 1963.	The whole Act.
1964 c. 40.	The Harbours Act 1964.	In paragraph 6(2)(c) of Schedule 3, the word "electricity".
1965 c. 6.	The Nuclear Installations (Amendment) Act 1965.	Section 17(2).
1965 c. 36.	The Gas Act 1965.	In section 28(1), in the definition of "statutory undertakers", the word "electricity".
1966 c. 27.	The Building Control Act 1966.	In the Schedule, the entries relating to the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board.
1966 c. 34.	The Industrial Development Act 1966.	In Schedule 2, the entries relating to an Area Electricity Board, the North of Scotland Hydro-Electric Board, the

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		South of Scotland Electricity Board, the Central Electricity Generating Board and the Electricity Council.
1967 c. 10.	The Forestry Act 1967.	In section 40(2)(d), the word "electricity".
1967 c. 86.	The Countryside (Scotland) Act 1967.	Section 64.
		In section 65(5), paragraphs (h) and (i).
1968 c. 13.	The National Loans Act 1968.	In Schedule 1, the entry relating to the Electricity and Gas Act 1963.
1968 c. 16.	The New Towns (Scotland) Act 1968.	In section 47(1), in the definition of "the appropriate Minister", the words "electricity or" and, in the definition of "statutory undertakers", the word "electricity".
1968 c. 39.	The Gas and Electricity Act 1968.	The whole Act.
1968 c. 62.	The Clean Air Act 1968.	In section 6(10), the words from "not being a furnace" to the end.
1969 c. 32.	The Finance Act 1969.	In Schedule 20, paragraph 28(2).
1971 c. 78.	The Town and Country Planning Act 1971.	In section 224(1), the words "electricity or".
		In section 290(1), in the definition of "statutory undertakers", the word "electricity".
1972 c. 17.	The Electricity Act 1972.	The whole Act.
1972 c. 52.	The Town and Country Planning (Scotland) Act 1972.	In section 213(1)(e), the words "electricity or".
		In section 275(1), in the definition of "statutory undertakers", the word "electricity".
1972 c. 70.	The Local Government Act 1972.	Section 271(1)(a).
1973 c. 41.	The Fair Trading Act 1973.	In section 137, in subsection (2), in the

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		definition of "goods", the words "but does not include electricity", and subsection (4).
		In Schedule 5, paragraph 3.
1973 c. 65.	The Local Government (Scotland) Act 1973.	Section 236(1).
		In Schedule 27, paragraphs 13, 14, 49, 55, 68, 87 and 129 to 131.
1974 c. 8.	The Statutory Corporations (Financial Provisions) Act 1974.	In Schedule 2, the entries relating to the Electricity Council, the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board.
1974 c. 40.	The Control of Pollution Act 1974.	In section 21(6), the words "(except the restrictions imposed by subsections (2) and (3))".
		In section 73(1), in the definition of "statutory undertakers", the word "electricity".
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part II, the entries relating to an Area Electricity Board in England and Wales, the Central Electricity Generating Board, the Electricity Council, the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board.
1975 c. 55.	The Statutory Corporations (Financial Provisions) Act 1975.	Section 5(2).
		Section 6(1).
		In Schedule 2, the entries relating to the Electricity Council, the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board.
		In Schedule 3, Part I.
1975 c. 70.	The Welsh Development Agency Act 1975.	In section 27, in the definition of "statutory

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		undertakers", the word "electricity".
1976 c. 57.	The Local Government (Miscellaneous Provisions) Act 1976.	In section 11(7), the definition of "Electricity Board".
1976 c. 61.	The Electricity (Financial Provisions) (Scotland) Act 1976.	The whole Act.
1976 c. 75.	The Development of Rural Wales Act 1976.	In section 34(1), the word "electricity".
		In column (1) of the table to paragraph 56 of Schedule 3, the words "electricity or".
1976 c. 76.	The Energy Act 1976.	Section 7.
		Section 16.
		In Schedule 2, in paragraph 6(1), the words "or 7".
1978 c. 25.	The Nuclear Safeguards and Electricity (Finance) Act 1978.	Section 5.
1978 c. 44.	The Employment Protection (Consolidation) Act 1978.	In Schedule 10, paragraphs 7 and 17.
1979 c. 11.	The Electricity (Scotland) Act 1979.	The whole Act.
1979 c. 14.	The Capital Gains Tax Act 1979.	In Schedule 2, in Part I, in paragraph 1, paragraph (b) and the word "and" immediately preceding paragraph (b).
1979 c. 46.	The Ancient Monuments and Archaeological Areas Act 1979.	In section 61(2)(a), the word "electricity".
		In Schedule 4, paragraph 1.
1980 c. 43.	The Magistrates' Courts Act 1980.	In Schedule 1, paragraph 10.
1980 c. 63.	The Overseas Development and Co-operation Act 1980.	In Schedule 1, in Part I, the entries relating to an Area Electricity Board, the Central Electricity Generating Board, the Electricity Council, the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board.
1980 c. 65.	The Local Government, Planning and Land Act 1980.	In section 108(1)(a), the word "electricity".

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		In section 120(3), in the definition of "statutory undertakers", the word "electricity".
		In section 170(1)(a), the word "electricity".
		In Schedule 16, in the definition of "statutory undertakers", the word "electricity".
		In paragraph 2 of Schedule 19, the word "electricity".
1980 c. 66.	The Highways Act 1980.	In section 121(6)(a), the word "electricity".
		In section 329(1), the definition of "electricity undertakers".
		In section 329(1), in the definition of "public utility undertakers", the word "electricity".
		In section 329(1), in the definition of "statutory undertakers", in paragraph (b), the word "electricity".
1981 c. 64.	The New Towns Act 1981.	In section 78(1)(b), the words "electricity or".
		In section 79(1)(a)(iii) the word "electricity".
1981 c. 67.	The Acquisition of Land Act 1981.	In section 8(1)(a), the word "electricity".
		In Schedule 4, the entry relating to the Electricity Act 1947.
1982 c. 16.	The Civil Aviation Act 1982.	In section 105(1), in the definition of "statutory undertaker", in paragraph (b), the words "electricity or".
1982 c. 30.	The Local Government (Miscellaneous Provisions) Act 1982.	In section 30(1), paragraph (b) and the word "or" immediately preceding it.

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1982 c. 41.	The Stock Transfer Act 1982.	In section 1(3)(c), the words "section 16(3) of the Electricity Act 1957 or".
1982 c. 43.	The Local Government and Planning (Scotland) Act 1982.	In Schedule 3, paragraphs 35 and 36.
1982 c. 48.	The Criminal Justice Act 1982.	In Schedule 15, paragraphs 2 and 22.
1983 c. 25.	The Energy Act 1983.	Part I. Schedules 1 to 3.
1983 c. 29.	The Miscellaneous Financial Provisions Act 1983.	Section 4(3).
1983 c. 44.	The National Audit Act 1983.	In Schedule 4, the entries relating to the Central Electricity Generating Board, the Electricity Council and the Area Boards within the meaning of the Electricity Act 1947, the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board.
1984 c. 12.	The Telecommunications Act 1984.	In Schedule 2, in paragraph 23(10), in the definition of "relevant undertaker", sub-paragraph (a)(ii). In Schedule 4, paragraphs 6, 8, 9, 13, 15, 24, 34 and 70.
1984 c. 54.	The Roads (Scotland) Act 1984.	In Schedule 9, paragraphs 10, 13, 19, 23 and 79.
1984 c. 55.	The Building Act 1984.	In section 126, in the definition of "statutory undertakers" the word "electricity".
1985 c. 51.	The Local Government Act 1985.	In Schedule 4, in Part II, paragraph 46.
1985 c. 68.	The Housing Act 1985.	In section 283(3), the word "electricity". In section 296(4)(a), the word "electricity". In section 611(6)(a), the word "electricity".
1986 c. 44.	The Gas Act 1986.	In Schedule 7, paragraph 2(1)(xxxvi) and, in paragraph 4,

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		sub-paragraphs (1) to (4) and (5)(b).
1986 c. 62.	The Salmon Act 1986.	Section 4.
1986 c. 63.	The Housing and Planning Act 1986.	Section 44.
1987 c. 26.	The Housing (Scotland) Act 1987.	In section 338(1), in the definition of "public undertakers", the word "electricity".
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 511, subsections (1) to (3) and (6).
1988 c. 15.	The Public Utility Transfers and Water Charges Act 1988.	Section 1, so far as relating to electricity boards within the meaning of that section.
1988 c. 37.	The Electricity (Financial Provisions) (Scotland) Act 1988.	The whole Act.

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