

ENERGY ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 2: Interconnectors for Electricity and Gas

Sections 145 to 148: licensing of electricity interconnectors

354. Section 4 of the Electricity Act provides that it is an offence to generate, transmit, distribute or supply electricity unless authorised by virtue of a licence and section 5 provides that in certain instances the Secretary of State may grant an exemption from this prohibition. Participation in the operation of an electricity interconnector is not addressed in the Act and is currently unregulated. There is no requirement for those participating in this activity to hold a licence or exemption.
355. [Section 145](#) amends section 4 of the Electricity Act to make unauthorised participation in the operation of an electricity interconnector a prohibited activity. As a result, the unauthorised participation in the operation of an electricity interconnector becomes an offence in the same way as the other activities referred to in section 4 of the Electricity Act. It also defines the activity, what is meant by an electricity interconnector and, by amending sections 5 and 6, enables the Secretary of State, or where relevant GEMA, to authorise the activity by either a licence or exemption.
356. [Section 145](#) also prevents an electricity interconnector licence being issued to the holder of any other type of licence under the Act and the latter from holding a licence to participate in the operation of an electricity interconnector. This is to prevent possible conflicts of interest in the allocation of capacity on interconnectors.
357. The procedures for determining standard licence conditions for electricity interconnectors are set out in section 146. These procedures are in line with those for existing licences. The concept of standard licence conditions is designed to ensure that all licences of a particular type contain the same licence conditions as far as appropriate and to facilitate the procedure in section 11A of the Electricity Act whereby licence conditions may be modified collectively. Section 146 gives the Secretary of State the power to draw up and publish the standard conditions of the electricity interconnector licence before the commencement of subsection (6). After that time the Secretary of State will have no further role in relation to the standard licence conditions although he may veto proposals made by GEMA to modify the standard licence conditions either on the grant of a licence or subsequently. Subsection (2) permits the standard conditions to make provision for a standard condition not to be brought into operation, to be suspended or be reactivated in circumstances specified in the condition. This is intended to allow more flexible licensing arrangements.
358. Subsection (6) of section 146 amends section 8A of the Electricity Act so that the standard licence conditions determined under the power in subsection (1) will be incorporated into all licences granted after subsection (6) comes into force. Section 8A also gives GEMA the power to modify the standard conditions determined by the Secretary of State, when granting a licence and sets out the process to achieve this.

359. [Section 147](#) sets out the consequential amendments which the introduction of interconnector licensing will necessitate.
360. [Section 148](#) gives the Secretary of State the power to grant electricity interconnector licences under section 6 of the Electricity Act to persons participating in the operation of an electricity interconnector when the prohibition enters into force. The normal licence application procedure will not apply but the Secretary of State must consult a prospective licence holder, GEMA and such other persons as he considers appropriate before issuing a licence.

Sections 149 to 153: Gas interconnectors

361. Section 5(1)(a) of the Gas Act provides that it is an offence to convey gas through pipes to any premises or to a pipe-line system operated by a gas transporter unless authorised by a licence, exemption, or exception under the Act. Conveying gas through a gas interconnector currently only falls within the prohibition to the extent that the gas is being conveyed to a pipe-line system operated by a gas transporter.
362. [Section 149](#) amends section 5 of the Gas Act to exclude conveyance of gas through a gas interconnector from subsection (1)(a) of that Act and to define and make participation in the operation of a gas interconnector a prohibited activity. As a result, the unauthorised participation in the operation of a gas interconnector becomes an offence in the same way as the other activities referred to in section 5 of the Act. Participation in the operation of a gas interconnector will either be authorised by a licence granted under section 7ZA of the Gas Act (as inserted by this Act) or by an exemption order granted by the Secretary of State under section 6A of the Gas Act.
363. [Section 149](#) also prevents a gas interconnector licence being issued to the holder of any other type of licence under the Gas Act and the latter from holding a licence issued under new section 7ZA. This is to prevent possible conflicts of interest in the allocation of capacity on gas interconnectors.
364. The procedures for determining standard licence conditions for gas interconnectors are set out in section 150. These procedures are in line with those for existing licences. The concept of standard licence conditions is designed to ensure that all licences of a particular type contain the same licence conditions as far as appropriate and to facilitate the procedure in section 23 of the Gas Act whereby licence conditions may be modified collectively. Section 150 gives the Secretary of State the power to draw up and publish the standard conditions of the gas interconnector licence before the commencement of subsection (6). After that time the Secretary of State will have no further role in relation to the standard licence conditions although he may veto proposals made by GEMA to modify the standard licence conditions either on the grant of a licence or subsequently.
365. Subsection (2) of section 150 permits the standard conditions to make provision for a standard condition not to be brought into operation, to be suspended or be reactivated in circumstances specified in the condition. This is intended to allow more flexible licensing arrangements.
366. Subsection (6) of section 150 amends section 8 of the Gas Act so that the standard licence conditions determined under the power in section 150(1) will be incorporated into all licences granted after subsection (6) of section 150 comes into force. Section 8 of the Gas Act also gives GEMA the power to modify the standard conditions determined by the Secretary of State, when granting a licence and sets out the process to achieve this.
367. [Section 151](#) modifies the [Pipe-lines Act 1962 \(c.58\)](#) and the [Petroleum Act 1998 \(c.17\)](#) so that the dispute settlement procedures set out therein no longer apply in relation to access by third parties to gas interconnectors. These will now be covered in the gas interconnector licence conditions.

368. [Section 152](#) gives the Secretary of State the power to grant gas interconnector licences under section 7ZA of the Gas Act to persons participating in the operation of a gas interconnector when GEMA's power to grant such licences enters into force. The normal licence application procedure will not apply but the Secretary of State must consult a prospective licence holder, GEMA and such other persons as he considers appropriate before issuing a licence.
369. [Section 153](#) amends the Gas Act so that where an act or omission taking place outside GB constitutes an offence under the Act it may be prosecuted in GB. Provisions made by or under the Act in relation to places outside GB apply to individuals and companies whether or not they are British citizens or incorporated under the law of a part of the UK.