

# ENERGY ACT 2008

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## EXPLANATORY NOTES

### *Chapter 2: Importation and Storage of Combustible Gas*

#### **Commentary on Sections Enforcement**

#### *Section 9: Offences relating to licences*

31. Once a licence has been granted, it will also be an offence to breach certain of its provisions. *Subsection (1)* specifies breaches which will give rise to an offence, and gives the Secretary of State a power to specify by order (subject to negative resolution procedure – see section 105) further kinds of breaches that will amount to an offence. Other enforcement powers will be available in respect of breaches of licences which are not criminal offences: see in particular section 10. The breaches attracting criminal penalties under the present section include:
- the carrying on of an activity such as a drilling operation, without first obtaining the prior consent specified by the licence (whether from the Secretary of State or another person whose consent is required);
  - the breach of any conditions attached to such a consent;
  - the failure to keep records, give a notice, or make a return or report, as required by the licence.
32. The licence holder will be liable for offences under the licence, even where the act or omission in question results from the behaviour of, for example, a contractor. However, *subsection (2)* provides that the licence holder will have a valid defence if it can show that it exercised due diligence in trying to avoid committing the relevant offence. In the case where the contractor was responsible for a breach, the licence holder would have to show that it had exercised due diligence in choosing and supervising the behaviour of the contractor.
33. *Subsections (3) and (4)* make it an offence for a person knowingly or recklessly to make a false statement in order to obtain a licence, or any required consent, or to fail to disclose information which that person knows, or ought to know, to be relevant to a licence application or to that consent.
34. *Subsection (5)* sets out the penalties for the offences in *subsections (1), (3) and (4)*: a fine of up to the statutory maximum (currently £5,000 in England, Wales and Northern Ireland and £10,000 in Scotland) on summary conviction, or an unlimited fine for conviction on indictment.