

ENERGY ACT 2008

EXPLANATORY NOTES

Part 5: Miscellaneous

Transmission Systems

Summary and Background

438. Electricity generators (including new renewable energy generators) are facing significant delays in obtaining access to the transmission system and the system is not being used as efficiently as possible. The backlog of generators waiting for a connection date is affecting Great Britain's ability to meet security of supply concerns and sustainability targets including the 2020 renewable energy targets set by Europe. There is currently in excess of 45GW of new generating capacity in the transmission grid access queue (compared to around 80GW already connected) with some generators being informed that they must wait until 2022 for connection to the transmission system.
439. The Government has been undertaking work to address these problems. The 2007 Energy White Paper committed the Government and the Authority to consider these issues in a review of transmission access. The final report of the Transmission Access Review was published in June 2008. It concluded that there was a need for significant reform of the licence conditions and industry codes which set the framework for the running of the transmission system by National Grid in Great Britain.¹ The main industry code which regulates access to the transmission network is the Connection and Use of System Code (CUSC) and at present it does not facilitate timely access to the network. The Security and Quality of Supply Standard (SQSS) and CUSC together regulate the planning and operation of the transmission system and at present do not ensure efficient use of the system.²
440. As a result of the Transmission Access Review report, industry has been tasked with developing proposals to reform industry codes to improve the allocation of access rights and the efficient use of the network. The current aim is for the changes to be implemented from April 2009, with some of the more complex reforms being made from April 2010.
441. Due to the importance of these negotiations being completed in a timely manner, the Government made clear in the Transmission Access Review report that if Industry and the Authority did not make sufficient progress by the end of the year then Government would "*consider options for wider reform (including legislation) to bring about the necessary changes in the context of its Renewable Energy Strategy and wider energy policy goals*". The following sections provide the Secretary of State with powers to amend the appropriate licences and industry codes should the industry process fail.

Commentary on Sections

¹ <http://www.berr.gov.uk/files/file46774.pdf>

² Note that there are no significant problems in terms of physical connection to the network i.e. connecting a line between a wind farm and the grid, the problems instead relate to getting the subsequent commercial right to access and use the transmission network from National Grid.

Section 84: Power to amend licence conditions etc: transmission systems

442. This section gives the Secretary of State the power to modify, for the purposes described below:
- a particular electricity generation, transmission, distribution or supply licence (*subsection (1)(a)*);
 - standard licence conditions of those types of electricity licence (*subsection (1)(b)*); and
 - documents maintained under the licence conditions of relevant electricity licences – for example, industry codes (*subsection (1)(c)*).
443. *Subsection (2)* sets out the scope of the modification power. The power may only be exercised for the purpose of facilitating access to and/or efficient use of a transmission system in Great Britain or offshore waters.
444. *Subsections (3)(a) and (c)* allow the modification power to be exercised differently in different cases or circumstances. This could, for example, allow the Secretary of State to make different modifications in relation to generation under development and generation that is already connected to the network.
445. *Subsection (3)(d)* makes provision for the Secretary of State to make any incidental, supplementary, consequential or transitional modifications to licence conditions or documents of the kind mentioned in *subsection (1)(c)*.
446. By virtue of *subsection (4)* the modification power may not be exercised after the end of the period of 2 years beginning with the day on which *subsection (1)* comes into force. *Subsection (1)* comes into force on such day as is appointed by order of the Secretary of State (see *section 110(2)*).
447. *Subsection (5)* ensures that, where the power under *subsection (1)* to make modifications is exercised, certain general provisions of the Electricity Act 1989 which are relevant to this power are applicable. For example, the modifications can require the licence holder to comply with directions by the Secretary of State or the Authority as to specified matters.

Section 85 Power to amend licence conditions etc: transmission systems: Procedure

448. This section sets out the procedure that the Secretary of State must comply with in order to exercise the modification powers conferred by section 84 (Power to amend licence conditions etc: transmission systems). *Subsection (1)* obliges the Secretary of State, before making modifications, to consult the holders of licences being modified, the Authority and others as appropriate. *Subsection (3)* requires the Secretary of State to publish any modifications which are made.

Section 86 Power to amend licence conditions etc: transmission systems: supplemental

449. This section makes three supplemental provisions in relation to the modification power conferred by section 84 (Power to amend licence conditions etc: transmission systems). *Subsection (1)* ensures that any modifications made to a standard licence condition under the new power would not affect the remainder of that standard licence condition.
450. *Subsection (2)* ensures that where licence modifications are made to standard licence conditions, the Authority must make the same modifications for the purpose of future licences, and also must publish those modifications. Schedule 4 amends sections 33(1) of the Utilities Act 2000 so that any standard conditions which are modified under section 84 (Power to amend licence conditions etc: transmission systems) are incorporated as standard conditions for licences of that type.

*These notes refer to the Energy Act 2008 (c.32)
which received Royal Assent on 26 November 2008*

451. *Subsection (3)* is an order making power for the Secretary of State to make consequential amendments to provisions made by or under an Act (including Acts of the Scottish Parliament) as he considers appropriate. Section 105(2) provides that such orders will be subject to the affirmative procedure.