

ENERGY ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Measures for Reducing Carbon Emissions

Section 104: Offshore transmission and distribution of electricity: extension of time for licence modifications and property scheme applications

289. *Subsections (1) and (2)* of this section extend the life of powers available to the Secretary of State under sections 90 and 91 of the Energy Act 2004 to amend offshore transmission and distribution licences and coordination licences. The powers expired in December 2010. The extension is for eighteen months following the passing of this Act and is intended to enable the Secretary of State to finalise the implementation of the licensing regime for the construction and operation of offshore transmission assets.
290. *Subsection (3)* enables the Secretary of State to extend to 2025 the life of the powers of GEMA under Schedule 2A to the Electricity Act 1989 to make property transfer schemes. GEMA's powers may be exercised where there is a tender exercise for the appointment of an offshore transmission owner, and the transmission assets are not constructed or installed by the successful bidder, and affected parties are unable to agree what property or rights need to be transferred to the successful bidder (or the valuation of them). The powers to make such schemes would otherwise have expired in 2013 unless extended by order until 2016.

Section 105: Regulation of security of nuclear construction sites

291. This section amends section 77 of the Anti-terrorism, Crime and Security Act 2001. Section 77 of the 2001 Act enables the Secretary of State to make regulations for the purposes of ensuring security at nuclear sites and nuclear premises.
292. This amendment provides for an additional matter in relation to which the Secretary of State can make regulations. It will enable regulations to be made to ensure the security of civil nuclear sites under construction and which are located within 5km of an existing nuclear site.

Section 106: Agreement about modifying decommissioning programme

293. This section amends the powers that the Secretary of State has under section 46 of the Energy Act 2008 when approving a funded decommissioning programme, by enabling the Secretary of State to enter an agreement which sets out how the Secretary of State will use the power to propose modifications under section 48 of the Energy Act 2008.
294. *Subsection (2)* inserts new subsections (3A) to (3G) into section 46. These new subsections enable the Secretary of State, when approving a programme, to enter into an agreement setting out the manner and also the period in which the Secretary of State will, or will not, exercise the power to propose a modification to an approved funded decommissioning programme under Section 48 of the Energy Act 2008. Such

an agreement may subsequently be amended by the Secretary of State and the other party mutually agreeing to do so.

295. The Secretary of State may not enter into or amend such an agreement unless satisfied that the agreement includes adequate provision for the modification of the funded decommissioning programme in the event that there ceases to be prudent provision for the costs of decommissioning, waste management and waste disposal.
296. The agreement may also include provision for determination by a third party of matters set out in the agreement which relate to the provision made in the funded decommissioning programme for the technical matters and for the Secretary of State to be bound by such a determination.
297. The Secretary of State may enter into such an agreement notwithstanding that any such agreement fetters the discretion of the Secretary of State.
298. The amendment contained in *subsection (3)* ensures that the power to enter into an agreement must be exercised with the aim of securing that prudent provision is made for the technical matters (including prudent financial provision for the designated technical matters).

Section 107: Abandonment: infrastructure converted for CCS demonstration projects

299. *Subsection (1)* provides for the Energy Act 2008 to be amended as described at *subsections (2) to (5)*. *Subsection (2)* inserts two new sections – sections 30A and 30B - into the Energy Act 2008. The new sections 30A(1) and 30B(1) provide the Secretary of State with a discretionary power to designate offshore installations and pipelines.
300. Section 30A(2) provides that the Secretary of State may not make a designation order under section 30A(1) in relation to an installation licensed by Scottish Ministers or located in Scotland. Section 30A(3) provides that, if a designated installation becomes an installation that is licensed by the Scottish Ministers, the designation order ceases to have effect.
301. Sections 30A(4) and 30B(2) provide that designated installations and pipelines qualify for change of use relief if they have been used as part of a CCS demonstration project and the trigger event occurs during the time they were used in that way.
302. Sections 30A(5) and 30B(3) define the trigger event by reference to the point at which captured carbon dioxide is first present at installations or pipelines used in a particular CCS demonstration project. Captured carbon dioxide is defined in section 30A(12) and 30B(7).
303. Sections 30A(6) and 30B(4) set out the consequences where an installation or pipeline has been designated and the trigger event has happened. Section 30A(6)(a) provides that a notice under s.29(1) of the Petroleum Act 1998 (requiring the submission of an abandonment programme for an installation) cannot be served on a person if the only basis for serving such a notice is that one or more of subsections (7) to (9) applies to that person. Sections 30A(6)(b) and 30B(4) provide that a decommissioning obligation may not be imposed under s.34 of the Petroleum Act 1998 on a person if the only basis for proposing such a person for decommissioning obligations is that one or more of sections 30A(7) to (10) or 30B(5) (respectively) apply to that person. This does not prevent an organisation that could have been made liable for decommissioning of a facility when used for oil and gas, also being made liable for decommissioning when it is used for carbon dioxide storage, if a decommissioning obligation could be imposed on it on another basis.
304. Sections 30A(11) and 30B(6) provide that the power to make a designation order does not include a power to revoke it (such a power would otherwise be implied pursuant to section 14 of the Interpretation Act 1978). However, a designation order will only have

effect to qualify an installation or pipeline for change of use relief if it is used as part of a CCS demonstration projects and once the trigger event has taken place.

305. *Subsection (5)* revises section 105(2) of the Energy Act 2008 with the effect that the Secretary of State will be able to make a designation order under subsections 30A (1) and 30B (1) without a further parliamentary process.

Section 108: Carbon dioxide pipelines: powers of compulsory acquisition

306. *Subsection (3)* inserts a new section 12A into the Pipe-lines Act 1962 which provides the Secretary of State with a discretionary power to make an order granting rights over land for pipelines conveying carbon dioxide.
307. The new section 12A(1) defines the circumstances in which the new section 12A applies, namely where an existing pipeline (or part of a pipeline) is intended to be converted to carry carbon dioxide, whether that pipeline is currently in use for another purpose or not in use at all.
308. Section 12A(2) allows an application to be made to the Secretary of State by the owner of a pipeline that is to be converted to carry carbon dioxide for an order for the compulsory acquisition of rights over land that are necessary for the conversion and subsequent use of the pipeline. An order may be sought in relation to part only of the land through which the pipeline runs.
309. Sections 12A(4), 12A(6) and 12A(12) provide that equivalent conditions, procedural provisions and procedures are applied to the making of a compulsory rights order under section 12A as for an order under section 12 of the Pipelines Act 1962.

Section 109: Contribution to carbon budgeting under the Climate Change Act 2008

310. This section sets out that the Secretary of State must prepare and publish an annual report on the extent to which the green deal plans and the energy company obligations have fulfilled the duty in the Climate Change Act 2008 to meet the relevant carbon budget.
311. The first report must be published before the end of 2014.

Section 110: Energy efficiency aim

312. This section sets out that the Secretary of State must take appropriate action to improve the energy efficiency of residential accommodation in England. These improvements will contribute to the Secretary of State fulfilling the duty under section 1(1) of the Climate Change Act 2008.

Section 111: Adjustment of electricity transmission charges

313. This section amends section 185 of the Energy Act 2004, which confers a power on the Secretary of State to make an order establishing a scheme which limits the amounts of charges that authorised transmitters may impose on persons who generate electricity from renewable sources in a specified area of Great Britain. This section amends section 185(11) so that any scheme established by an order under the section may have effect up until 4 October 2034.

Section 112: Electricity from renewable sources: National Park authorities and Broads Authority

314. National Park authorities and the Broads Authority are bodies which have the potential to help the UK meet its climate change targets and renewable energy targets by generating electricity from renewable sources. Section 112 provides both types of bodies with the power to realise this potential and puts each in a similar position to

local authorities who are already able to generate electricity from specified renewable sources.

315. *Subsection (2)* describes the scope of the powers being conferred on the National Park authorities and the Broads Authority. Subsection (2) confers powers on either type of body to produce electricity from a renewable source, to establish and operate generating stations and other installations for the purpose of producing electricity from a renewable source, to make grants or loans to enable other persons to do anything which the body may do and also confers powers on the body to use, sell or otherwise dispose of electricity produced by virtue of the powers conferred.
316. *Subsection (3)* defines a renewable source by reference to those sources listed in existing regulations which apply to local authorities in England and Wales and also in Scotland. This ensures that the sources of renewable electricity production between local authorities, National Park authorities and the Broad Authority are the same and in this respect means that the scope of the power is identical to the power available to local authorities to generate renewable electricity.
317. *Subsections (4) and (5)* enable any regulations which amend those regulations which are referred to in subsection (3) to also amend subsection (3).
318. *Subsection (6)* makes clear that the National Park authorities and the Broad Authority must comply with any applicable requirements in Part I of the Electricity Act 1989 when exercising any of the powers conferred by this section. For example, if either body engages in activity at a scale which causes a licence to be required then it must seek such a licence under the Electricity Act 1989.

Northern Ireland: renewable heat incentives

Section 113: Renewable heat incentives in Northern Ireland

319. This section gives the Department of Enterprise, Trade and Investment powers to make regulations to establish a financial support mechanism for renewable heat in Northern Ireland which will be known as the Northern Ireland Renewable Heat Incentive (the NIRHI).
320. *Subsection (1)* gives powers to the Department to make regulations:
 - to establish a scheme to provide financial incentives to encourage and facilitate the development of renewable heat; and
 - about the administrative and financial arrangements for a RHI scheme.
321. *Subsection (2)* provides further details about the scope of the Department's regulation making power. It also contains provisions relating to the administration of the scheme and concerning the making of payments.
322. *Subsection (2)(a)* specifically enables the Department or NIAUR to make payments (or require designated fossil fuel heat suppliers to make payments) to three listed categories of recipient in specified circumstances.
323. *Subsection (2)(a)(i)* provides that owners of plant used for the generation of renewable heat will be eligible to receive NIRHI payments. The section permits an owner to qualify for the NIRHI payment even in the event that they are not actually operating the plant themselves. This flexibility allows for third parties to operate in the renewable heat market: for example, a landlord who owns plant will be eligible for a payment even if the plant is actually operated by the tenant of the property. "Owner" is defined in subsection (3) to include a person who has acquired plant under a hire purchase agreement, a conditional sale agreement or any similar arrangement where title to the plant does not pass immediately.

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which received Royal Assent on 18 October 2011*

324. *Subsection (2)(a)(ii)* provides that producers of biogas or biomethane will also be eligible to receive payments. This provision therefore allows the regulations to reward the production of renewable fuels as well as the generation of renewable heat itself. This would allow the Department to encourage and facilitate the development of the biogas/biomethane sectors
325. *Subsection (2)(a)(iii)* provides that producers of biofuels for the purpose of generating heat will be eligible to receive payments.
326. *Subsection (2)(b)* provides that the regulations can make provision about the calculation of the NIRHI payments described in subsection 2(a). This is a broad and flexible provision allowing the Department to take account of different circumstances in setting the level of payments to various parties.
327. *Subsection (2)(c)* provides that the regulations can make provision about the circumstances in which payments might be recovered. For example, this would enable the Department or NIAUR to make provision to recover funds that may have been paid out by mistake.
328. *Subsection (2)(d)* provides that the regulations may make provision requiring that specified information from designated fossil fuel suppliers be provided to the Department or NIAUR.
329. *Subsection (2)(e)* provides that the regulations can allow payments to be made to fossil fuel suppliers in specified circumstances.
330. *Subsection (2)(f)* provides that the regulations can make provisions about the enforcement of obligations under the NIRHI. These may include a power allowing the Department or NIAUR to impose financial penalties.
331. *Subsection (2)(g)* provides that the regulations may confer functions on the Department or NIAUR (or both) relating to the establishment, administration or financing of the NIRHI scheme.
332. *Subsection (3)* sets out the definitions of specific terms referred to in this section of the Act and which are central to the NIRHI. In particular, the definitions provide as follows:
- they specify that the administrative Authority will be the NIAUR;
 - they explain what is meant by the terms: biogas, biofuel, and biomethane. Subsection (3) also provides a definition of one of the underlying constituent materials: biomass;
 - they provide a definition of “designated fossil fuel supplier”. The definition provides that they are a specified class of fossil fuel suppliers (as provided by regulations) and, in any other case, (i.e. if not provided by regulations) all fossil fuel suppliers;
 - they define “fossil fuel” by means of a list of fuels, including, for example, coal and petroleum products;
 - they define “fossil fuel supplier” as a person who supplies fossil fuel to consumers for the purpose of generating heat. This will therefore exclude electricity suppliers or suppliers of renewable fuels. It will also exclude those who are supplying fossil fuels for purposes other than generating heat;
 - they define the ‘owner’ of plant (see above). As mentioned above, in some cases third parties, for example large energy companies, may wish to finance the deployment of such heat plant in customers’ properties;
 - “plant” is defined as including any equipment, apparatus or appliance; and

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- the definition of “renewable generation of heat” provides that renewable heat is heat generated by means of a source of energy or technology listed at subsection (4).
333. *Subsection (4)* sets out the sources of energy and technologies referred to above in the definition of renewable generation of heat. These are: biomass, biofuels, fuel cells, water (including waves and tides), solar power, geothermal sources, heat from air, water or the ground and combined heat and power systems – but only if the system’s energy source is from a renewable energy source as defined by Article 55F of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (this has the effect of excluding combined heat and power systems which are powered by fossil fuels). None of the sources of energy or technology are limited by capacity, meaning that all scales of plant which generate renewable heat from such a source or technology may be eligible to receive NIRHI payments.
334. *Subsection (5)(a)* allows for the list of energy sources as defined in subsection (4) to be modified by regulations. The Department’s intention is to modify the list as technological developments bring forward new technologies capable of making a contribution to the renewable heat sector.
335. *Subsection (5)(b)* allows for the definitions of biofuel, biogas or biomass as listed in subsection (4) to be modified by regulations.
336. *Subsection (6)* allows for regulations to specify that particular activities do or do not constitute the generation of heat for the purposes of defining the generation of heat from biofuels in subsection (2)(a)(iii) and the definition of “fossil fuel heat supplier” generally.
337. Regulations made under this section will be in line with requirements set out in the Statutory Rules (Northern Ireland) Order 1979 by virtue of *subsection (7)*.
338. Regulations made under this section are subject to affirmative resolution by virtue of *subsection (8)*.
339. *Subsection (9)* provides that regulations made under this section may include incidental, supplementary and consequential provision and make transitory or transitional provisions and savings.

Section 114: Power for Gas and Electricity Markets Authority to act on behalf of Northern Ireland authority in connection with scheme under section 113

340. This section enables the Department of Enterprise, Trade and Investment or the Northern Ireland Authority for Utility Regulation to enter into arrangements with the Gas and Electricity Markets Authority to carry out any of the functions conferred by regulations made under section 113.