



Scotland Act 2016

2016 CHAPTER 11

PART 5

OTHER EXECUTIVE COMPETENCE

59 Energy company obligations

- (1) The Gas Act 1986 is amended as follows.
- (2) After section 33BC (promotion of reduction in carbon emissions) insert—

“33BCA Scottish Ministers' promotion of reductions in carbon emissions: gas suppliers

- (1) Where the Secretary of State under section 33BC imposes on gas suppliers obligations to achieve a target within a specified period, the power to make orders under that section is exercisable by the Scottish Ministers for the purposes of those obligations imposed in relation to Scotland and not, except as provided by subsections (9) and (10), by the Secretary of State.
- (2) An obligation is imposed in relation to Scotland to the extent that measures to meet that obligation may be carried out in Scotland (disregarding any power to elect under section 103 of the Utilities Act 2000).
- (3) For the purposes of the exercise by the Scottish Ministers of the power to make an order under section 33BC, that section applies with the following modifications—
 - (a) for subsection (1) there is substituted a power by order to specify how gas suppliers may meet their obligations to achieve the carbon emissions reduction target through measures carried out in Scotland;
 - (b) subsections (1A), (3), (5)(a), (7)(a) and (10A) are omitted;
 - (c) in subsection (2A) at the beginning of paragraph (b) there is inserted “where the Secretary of State has apportioned the overall carbon

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- emissions reduction target under section 103(2A) of the Utilities Act 2000, and”;
- (d) in subsection (11) “Citizens Advice” and “gas transporters” are omitted;
 - (e) in subsection (12), for the words from “shall not be made” to the end is substituted “ is subject to the affirmative procedure ”;
 - (f) in subsection (12A) for the words from “shall be subject to” to the end is substituted “ is subject to the negative procedure ”;
 - (g) for “Secretary of State” in each place is substituted “ Scottish Ministers ”.
- (4) The power of the Scottish Ministers under section 33BC does not include power to make provision in relation to the subject-matter of sections 88 to 90 of the Energy Act 2008 (smart meters).
- (5) Where an overall carbon emissions reduction target has been apportioned under section 103(2A) of the Utilities Act 2000, the Scottish Ministers must—
- (a) when making any order under section 33BC, comply with the duty in subsection (6), and
 - (b) if the Secretary of State amends any order under that section, make any provision they think necessary, in consequence of the amendment, to comply with that duty.
- (6) The duty of the Scottish Ministers where subsection (5)(a) or (b) applies is to exercise their powers under section 33BC (subject to subsection (8)) in the way they think most likely to secure that the proportion of compliance costs that is represented by costs relating to Scotland is no greater than the proportion of the overall carbon emissions reduction target that is represented by the part of it apportioned to measures carried out in Scotland.
- (7) In subsection (6)—
- (a) “compliance costs” means the total costs to gas suppliers of complying with carbon emissions reduction obligations that, in relation to any period, are imposed by order under section 33BC, and
 - (b) “costs relating to Scotland” means the total costs to gas suppliers of complying with obligations that, in relation to the same period, are imposed in relation to Scotland.
- (8) The Scottish Ministers may not make an order under section 33BC unless—
- (a) they have consulted the Secretary of State about the proposed order, and
 - (b) the Secretary of State has agreed to the order being made.
- (9) Subsection (1) does not prevent the Secretary of State from making provision under—
- (a) section 33BC(1A), (3), (5)(a) or (7)(a), or
 - (b) section 33BC(2A) where an overall carbon emissions reduction target has not been apportioned under section 103(2A) of the Utilities Act 2000.
- (10) Subsection (1) does not prevent the Secretary of State from making any other provision under section 33BC or from varying or revoking an order made by the Scottish Ministers under that section—

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- (a) with the agreement of the Scottish Ministers, or
 - (b) without their agreement, if subsection (11) applies.
 - (11) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed in relation to Scotland (the “Scottish obligations”), taking into account any provision made by the Scottish Ministers, that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed in relation to England and Wales, likely to—
 - (a) cause detriment to the United Kingdom,
 - (b) adversely affect the ability of the United Kingdom to comply with an international agreement or arrangement in relation to climate change or energy efficiency, or
 - (c) result in costs incurred by suppliers that are not broadly equivalent in relation to England and Wales and in relation to Scotland,and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.
 - (12) In determining for the purposes of subsection (11), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of obligations imposed or to be imposed by the Secretary of State under section 33BC or any provision made by the Scottish Ministers under that section.
 - (13) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (11)—
 - (a) must be in writing;
 - (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (11)(a), (b) or (c);
 - (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.”
- (3) After section 33BD (promotion of reductions in home-heating costs) insert—

“33BDA Scottish Ministers' promotion of reductions in home-heating costs: gas suppliers

- (1) Where the Secretary of State under section 33BD imposes on gas suppliers obligations to achieve a target within a specified period, the power to make orders under that section is exercisable by the Scottish Ministers for the purposes of those obligations imposed in relation to Scotland and not, except as provided by subsections (9) and (10), by the Secretary of State.
- (2) An obligation is imposed in relation to Scotland to the extent that measures to meet that obligation may be carried out in Scotland (disregarding any power to elect under section 103A of the Utilities Act 2000).
- (3) For the purposes of the exercise by the Scottish Ministers of the power to make an order under section 33BD, that section applies with the following modifications—

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- (a) for subsection (1) there is substituted a power by order to specify how gas suppliers may meet their obligations to achieve the home-heating cost reduction target through measures carried out in Scotland;
 - (b) subsection (3) is omitted;
 - (c) subsections (3), (5)(a), (7)(a) and (10A) of section 33BC as applied by subsection (4) are omitted;
 - (d) in subsection (2)(a) at the beginning of sub-paragraph (ii) there is inserted “where the Secretary of State has apportioned the overall home-heating cost reduction target under section 103A(3A) of the Utilities Act 2000, and”;
 - (e) in section 33BC(11) as applied by subsection (4) “Citizens Advice” and “gas transporters” are omitted;
 - (f) in section 33BC(12) as applied by subsection (4) for the words from “shall not be made” to the end is substituted “ is subject to the affirmative procedure ”;
 - (g) in section 33BC(12A) as applied by subsection (4) for the words from “shall be subject to” to the end is substituted “ is subject to the negative procedure ”;
 - (h) for “Secretary of State” in each place (including any references in section 33BC that apply by virtue of subsection (4)), is substituted “ Scottish Ministers ”.
- (4) The power of the Scottish Ministers under section 33BD does not include power to make provision in relation to the subject-matter of sections 88 to 90 of the Energy Act 2008 (smart meters).
- (5) Where an overall home-heating cost reduction target has been apportioned under section 103A(3A) of the Utilities Act 2000, the Scottish Ministers must—
- (a) when making any order under section 33BD, comply with the duty in subsection (6), and
 - (b) if the Secretary of State amends any order under that section, make any provision they think necessary, in consequence of the amendment, to comply with that duty.
- (6) The duty of the Scottish Ministers where subsection (5)(a) or (b) applies is to exercise their powers under section 33BD (subject to subsection (8)) in the way they think most likely to secure that the proportion of compliance costs that is represented by costs relating to Scotland is no greater than the proportion of the overall home-heating cost reduction target that is represented by the part of it apportioned to measures carried out in Scotland.
- (7) In subsection (6)—
- (a) “compliance costs” means the total costs to gas suppliers of complying with home-heating cost reduction obligations that, in relation to any period, are imposed by order under section 33BD, and
 - (b) “costs relating to Scotland” means the total costs to gas suppliers of complying with obligations that, in relation to the same period, are imposed in relation to Scotland.
- (8) The Scottish Ministers may not make an order under section 33BD unless—

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- (a) they have consulted the Secretary of State about the proposed order, and
 - (b) the Secretary of State has agreed to the order being made.
 - (9) Subsection (1) does not prevent the Secretary of State from making provision under—
 - (a) section 33BD(3),
 - (b) section 33BC(3), (5)(a) or (7)(a) as applied by section 33BD(4), or
 - (c) section 33BD(2)(a) where an overall home-heating cost reduction target has not been apportioned under section 103A(3A) of the Utilities Act 2000.
 - (10) Subsection (1) does not prevent the Secretary of State from making any other provision under section 33BD or from varying or revoking an order made by the Scottish Ministers under that section—
 - (a) with the agreement of the Scottish Ministers, or
 - (b) without their agreement, if subsection (11) applies.
 - (11) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed in relation to Scotland (the “Scottish obligations”), taking into account any provision made by the Scottish Ministers, that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed in relation to England and Wales, likely to—
 - (a) cause detriment to the United Kingdom,
 - (b) adversely affect the ability of the United Kingdom to comply with an international agreement or arrangement in relation to climate change or energy efficiency, or
 - (c) result in costs incurred by suppliers that are not broadly equivalent in relation to England and Wales and in relation to Scotland,and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.
 - (12) In determining for the purposes of subsection (11), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of obligations imposed or to be imposed by the Secretary of State under section 33BD or any provision made by the Scottish Ministers under that section.
 - (13) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (11)—
 - (a) must be in writing;
 - (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (11)(a), (b) or (c);
 - (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.”
- (4) The Electricity Act 1989 is amended as follows.
- (5) After section 41A (promotion of reductions in carbon emissions) insert—

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“41AA Scottish Ministers' promotion of reductions in carbon emissions: electricity suppliers

- (1) Where the Secretary of State under section 41A imposes on electricity suppliers obligations to achieve a target within a specified period, the power to make orders under that section is exercisable by the Scottish Ministers for the purposes of those obligations imposed in relation to Scotland and not, except as provided by subsections (9) and (10), by the Secretary of State.
- (2) An obligation is imposed in relation to Scotland to the extent that measures to meet that obligation may be carried out in Scotland (disregarding any power to elect under section 103 of the Utilities Act 2000).
- (3) For the purposes of the exercise by the Scottish Ministers of the power to make an order under section 41A, that section applies with the following modifications—
 - (a) for subsection (1) there is substituted a power by order to specify how electricity suppliers may meet their obligations to achieve the carbon emissions reduction target through measures carried out in Scotland;
 - (b) subsections (1A), (3), (5)(a), (7)(a) and (10A) are omitted;
 - (c) in subsection (2A) at the beginning of paragraph (b) there is inserted “where the Secretary of State has apportioned the overall carbon emissions reduction target under section 103(2A) of the Utilities Act 2000, and”;
 - (d) in subsection (11) “Citizens Advice” and “electricity distributors” are omitted;
 - (e) in subsection (12), for the words from “shall not be made” to the end is substituted “ is subject to the affirmative procedure ”;
 - (f) in subsection (12A) for the words from “shall be subject to” to the end is substituted “ is subject to the negative procedure ”;
 - (g) for “Secretary of State” in each place is substituted “ Scottish Ministers ”.
- (4) The power of the Scottish Ministers under section 41A does not include power to make provision in relation to the subject-matter of sections 88 to 90 of the Energy Act 2008 (smart meters).
- (5) Where an overall carbon emissions reduction target has been apportioned under section 103(2A) of the Utilities Act 2000, the Scottish Ministers must—
 - (a) when making any order under section 41A, comply with the duty in subsection (6), and
 - (b) if the Secretary of State amends any order under that section, make any provision they think necessary, in consequence of the amendment, to comply with that duty.
- (6) The duty of the Scottish Ministers where subsection (5)(a) or (b) applies is to exercise their powers under section 41A (subject to subsection (8)) in the way they think most likely to secure that the proportion of compliance costs that is represented by costs relating to Scotland is no greater than the proportion of the overall carbon emissions reduction target that is represented by the part of it apportioned to measures carried out in Scotland.

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- (7) In subsection (6)—
- (a) “compliance costs” means the total costs to electricity suppliers of complying with carbon emissions reduction obligations that, in relation to any period, are imposed by order under section 41A, and
 - (b) “costs relating to Scotland” means the total costs to electricity suppliers of complying with obligations that, in relation to the same period, are imposed in relation to Scotland.
- (8) The Scottish Ministers may not make an order under section 41A unless—
- (a) they have consulted the Secretary of State about the proposed order, and
 - (b) the Secretary of State has agreed to the order being made.
- (9) Subsection (1) does not prevent the Secretary of State from making provision under—
- (a) section 41A(1A), (3), (5)(a) or (7)(a), or
 - (b) section 41A(2A) where an overall carbon emissions reduction target has not been apportioned under section 103(2A) of the Utilities Act 2000.
- (10) Subsection (1) does not prevent the Secretary of State from making any other provision under section 41A or from varying or revoking an order made by the Scottish Ministers under that section—
- (a) with the agreement of the Scottish Ministers, or
 - (b) without their agreement, if subsection (11) applies.
- (11) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed in relation to Scotland (the “Scottish obligations”), taking into account any provision made by the Scottish Ministers, that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed in relation to England and Wales, likely to—
- (a) cause detriment to the United Kingdom,
 - (b) adversely affect the ability of the United Kingdom to comply with an international agreement or arrangement in relation to climate change or energy efficiency, or
 - (c) result in costs incurred by suppliers that are not broadly equivalent in relation to England and Wales and in relation to Scotland,
- and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.
- (12) In determining for the purposes of subsection (11), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of obligations imposed or to be imposed by the Secretary of State under section 41A or any provision made by the Scottish Ministers under that section.
- (13) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (11)—
- (a) must be in writing;

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- (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (11)(a), (b) or (c);
- (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.”

(6) After section 41B (promotion of reductions in home-heating costs) insert—

“41BA Scottish Ministers' promotion of reductions in home-heating costs: electricity suppliers

- (1) Where the Secretary of State under section 41B imposes on electricity suppliers obligations to achieve a target within a specified period, the power to make orders under that section is exercisable by the Scottish Ministers for the purposes of those obligations imposed in relation to Scotland and not, except as provided by subsections (9) and (10), by the Secretary of State.
- (2) An obligation is imposed in relation to Scotland to the extent that measures to meet that obligation may be carried out in Scotland (disregarding any power to elect under section 103A of the Utilities Act 2000).
- (3) For the purposes of the exercise by the Scottish Ministers of the power to make an order under section 41B, that section applies with the following modifications—
 - (a) for subsection (1) there is substituted a power by order to specify how electricity suppliers may meet their obligations to achieve the home-heating cost reduction target through measures carried out in Scotland;
 - (b) subsection (3) is omitted;
 - (c) subsections (3), (5)(a), (7)(a) and (10A) of section 41A as applied by subsection (4) are omitted;
 - (d) in subsection (2)(a) at the beginning of sub-paragraph (ii) there is inserted “where the Secretary of State has apportioned the overall home-heating costs reduction target under section 103A(3A) of the Utilities Act 2000, and”;
 - (e) in section 41A(11) as applied by subsection (4) “Citizens Advice” and “electricity distributors” are omitted;
 - (f) in section 41A(12) as applied by subsection (4) for the words from “shall not be made” to the end is substituted “ is subject to the affirmative procedure ”;
 - (g) in section 41A(12A) as applied by subsection (4) for the words from “shall be subject to” to the end is substituted “ is subject to the negative procedure ”;
 - (h) for “Secretary of State” in each place (including any references in section 41A that apply by virtue of subsection (4)), is substituted “ Scottish Ministers ”.
- (4) The power of the Scottish Ministers under section 41B does not include power to make provision in relation to the subject-matter of sections 88 to 90 of the Energy Act 2008 (smart meters).

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- (5) Where an overall home-heating cost reduction target has been apportioned under section 103A(3A) of the Utilities Act 2000, the Scottish Ministers must—
 - (a) when making any order under section 41B, comply with the duty in subsection (6), and
 - (b) if the Secretary of State amends any order under that section, make any provision they think necessary, in consequence of the amendment, to comply with that duty.
- (6) The duty of the Scottish Ministers where subsection (5)(a) or (b) applies is to exercise their powers under section 41B (subject to subsection (8)) in the way they think most likely to secure that the proportion of compliance costs that is represented by costs relating to Scotland is no greater than the proportion of the overall home-heating cost reduction target that is represented by the part of it apportioned to measures carried out in Scotland.
- (7) In subsection (6)—
 - (a) “compliance costs” means the total costs to electricity suppliers of complying with home-heating cost reduction obligations that, in relation to any period, are imposed by order under section 41B, and
 - (b) “costs relating to Scotland” means the total costs to electricity suppliers of complying with obligations that, in relation to the same period, are imposed in relation to Scotland.
- (8) The Scottish Ministers may not make an order under section 41B unless—
 - (a) they have consulted the Secretary of State about the proposed order, and
 - (b) the Secretary of State has agreed to the order being made.
- (9) Subsection (1) does not prevent the Secretary of State from making provision under—
 - (a) section 41B(3),
 - (b) section 41A(3), (5)(a) or (7)(a) as applied by section 41B(4), or
 - (c) section 41B(2)(a) where an overall home-heating cost reduction target has not been apportioned under section 103A(3A) of the Utilities Act 2000.
- (10) Subsection (1) does not prevent the Secretary of State from making any other provision under section 41B or from varying or revoking an order made by the Scottish Ministers under that section—
 - (a) with the agreement of the Scottish Ministers, or
 - (b) without their agreement, if subsection (11) applies.
- (11) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed in relation to Scotland (the “Scottish obligations”), taking into account any provision made by the Scottish Ministers, that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed in relation to England and Wales, likely to—
 - (a) cause detriment to the United Kingdom,
 - (b) adversely affect the ability of the United Kingdom to comply with an international agreement or arrangement in relation to climate change or energy efficiency, or

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- (c) result in costs incurred by suppliers that are not broadly equivalent in relation to England and Wales and in relation to Scotland, and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.
- (12) In determining for the purposes of subsection (11), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of obligations imposed or to be imposed by the Secretary of State under section 41B or any provision made by the Scottish Ministers under that section.
- (13) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (11)—
- (a) must be in writing;
 - (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (11)(a), (b) or (c);
 - (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.”
- (7) Where an amendment made by this section imposes a requirement to consult or to obtain consent, the requirement may be satisfied by consultation undertaken or consent obtained before this section comes into force.

Commencement Information

- I1** S. 59 in force at 1.12.2017 for specified purposes by [S.I. 2017/1157, reg. 3\(b\)](#)
- I2** S. 59 in force at 1.10.2018 in so far as not already in force by [S.I. 2017/1157, reg. 5\(a\)](#)

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing S.I. 2017/455, reg. 3 by [S.I. 2019/1438 reg. 2](#)