



Energy Act 2004

2004 CHAPTER 20

PART 4

MISCELLANEOUS AND SUPPLEMENTAL

Imposition of charges

188 Power to impose charges to fund energy functions

- (1) The Secretary of State may by regulations make provision requiring the payment to him of charges in respect of any of the following—
 - (a) services or facilities provided or made available by him in the carrying out of his relevant energy functions;
 - (b) the consideration or supervision by him, for purposes connected with the carrying out of any of those functions, of any matter;
 - (c) the issue by him, in the carrying out of those functions, of a licence;
 - (d) the doing of anything else which is done by him—
 - (i) in the carrying out of any of those functions; or
 - (ii) for purposes which are incidental to, or otherwise connected with, the carrying out of any of those functions.
- (2) The matters in respect of which charges may be imposed under this section include—
 - (a) the performance of a duty imposed on the Secretary of State; and
 - (b) things done in relation to, or to activities carried on in, the territorial sea adjacent to the United Kingdom or an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29).
- (3) The persons who may be made liable for charges imposed by regulations under this section are—
 - (a) any of the persons to whom, or on whose application, the service or facility in question is provided or made available;
 - (b) any of the persons on whose application the matter in question is considered, or to whom that matter relates;

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- (c) any of the persons whose activities are supervised;
 - (d) any of the persons to whom, or on whose application, the licence in question is issued;
 - (e) any of the persons on whose application the other thing is done.
- (4) In exercising his powers under this section to fix the amount of the charge to be paid by a person of a particular description, the Secretary of State may fix any amount that appears to him to be appropriate having regard to the costs that the Secretary of State is likely to incur in the carrying out—
- (a) in relation to persons of that description, or
 - (b) in a manner that benefits persons of that description,
- of the relevant energy functions in respect of which the charge is imposed.
- (5) The provision that may be made by regulations under this section includes—
- (a) provision specifying the times at which charges imposed under such regulations become due;
 - (b) provision specifying the manner in which they are to be paid; and
 - (c) provision for charges that must be paid periodically in respect of any matter.
- (6) Regulations under this section are subject to the negative resolution procedure.
- (7) The references in this section to the Secretary of State’s relevant energy functions are references to the powers and duties of the Secretary of State by or under any of the following—
- (a) the Pipe-lines Act 1962 (c. 58);
 - (b) so much of the Prevention of Oil Pollution Act 1971 (c. 60) as has effect in connection with anything specified in subsection (8);
 - (c) the Energy Act 1976 (c. 76);
 - (d) so much of Part 2 of the Food and Environment Protection Act 1985 (c. 48) as has effect in connection with anything specified in subsection (8);
 - (e) the Gas Act 1986 (c. 44);
 - (f) the 1989 Act;
 - (g) the Gas Act 1995 (c. 45);
 - (h) the Petroleum Act 1998 (c. 17);
 - (i) so much of the Pollution Prevention and Control Act 1999 (c. 24) as has effect in connection with anything specified in subsection (8);
 - (j) Chapters 2 and 3 of Part 2 of this Act;
 - (k) Chapters 2 to 4 of Part 3 of this Act;
 - (l) so much of any Community instrument as has effect in connection with anything specified in subsection (8).
- (8) The matters mentioned in subsection (7) are—
- (a) the carrying out of exploration for petroleum;
 - (b) the winning or production of petroleum;
 - (c) the generation, transmission, distribution or supply of electricity;
 - (d) the conveyance, supply, storage or processing of gas;
 - (e) pipelines for the conveyance of petroleum that are situated in Great Britain;
 - (f) offshore installations and submarine pipelines;
 - (g) Renewable Energy Zones and renewable energy installations;

- (h) the protection of the environment from activities carried on in connection with anything mentioned in the preceding paragraphs.
- (9) In this section—
- “application” includes a requirement, and cognate expressions are to be construed accordingly;
 - “gas” has the same meaning as in the Gas Act 1986 (c. 44);
 - “issue”, in relation to a licence, includes grant and serve, and also refuse, modify, revoke and renew, and cognate expressions are to be construed accordingly;
 - “licence” includes an authorisation, consent, approval, exemption, certificate or notice;
 - “offshore installation” has the same meaning as in Part 4 of the Petroleum Act 1998 (c. 17);
 - “petroleum” has the same meaning as in Part 1 of that Act;
 - “pipeline” means a pipeline within the meaning of Part 3 of that Act or a pipe-line within the meaning of the Pipe-lines Act 1962 (c. 58);
 - “Renewable Energy Zone” and “renewable energy installation” have the same meanings as in Chapter 2 of Part 2 of this Act;
 - “supervision”, in relation to activities, includes the carrying out of an inspection of any premises or thing used or apparently used in connection with those activities.
- (10) The power to make regulations under this section—
- (a) is in addition to every other power to impose charges in connection with the carrying out by the Secretary of State of his relevant energy functions; and
 - (b) is to be disregarded in construing those other powers.
- (11) The Secretary of State must pay sums received by him by virtue of regulations under this section into the Consolidated Fund.

International agreements relating to pipelines and offshore installations

189 Power to modify Petroleum Act 1998

- (1) Her Majesty may by Order in Council make any modifications of the Petroleum Act 1998 (c. 17) that Her Majesty considers appropriate for the purpose of securing that effect is given to an international agreement to which this section applies.
- (2) This section applies to an international agreement (whether entered into before or after the passing of this Act) which relates in whole or in part to the construction, operation, use, decommissioning or abandonment of a pipeline or offshore installation.
- (3) The power under this section to modify the Petroleum Act 1998 includes—
- (a) power to provide for provision made by or under that Act to have effect (with or without modifications) in relation to a foreign area;
 - (b) power to provide for provisions of that Act having effect (with or without modifications) in relation to a foreign area, so far as they apply to individuals, to apply to them whether or not they are British citizens;
 - (c) power to provide for provisions of that Act having effect (with or without modifications) in relation to a foreign area, so far as they apply to bodies

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- corporate, to apply to them whether or not they are incorporated under the law of a part of the United Kingdom; and
- (d) power to provide for modifications of that Act to come into force before the coming into force of the international agreement to which they relate.
- (4) An Order in Council under this section may—
- (a) modify powers under the Petroleum Act 1998 to make subordinate legislation;
 - (b) make provision for a reference in a modification made by the Order to a specified document to operate as a reference to that document as revised or re-issued from time to time; and
 - (c) provide for the delegation of powers exercisable by virtue of modifications made by the Order.
- (5) The power to make an Order in Council containing provision authorised by this section is subject to the affirmative resolution procedure.
- (6) In this section—
- “construction” and “pipeline” have the same meanings as in Part 3 of the Petroleum Act 1998;
- “foreign area” means an area which is not within any of the following—
- (a) the United Kingdom;
 - (b) the territorial sea adjacent to the United Kingdom; or
 - (c) an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29);
- “international agreement” means—
- (a) any international treaty, convention or protocol to which the United Kingdom is a party; or
 - (b) any other agreement between the United Kingdom and another country or territory;
- “offshore installation” has the same meaning as in Part 4 of the Petroleum Act 1998 (c. 17).

Supplementary provision relating to functions of Secretary of State and GEMA

190 Application of general duties to Part 3 functions etc.

- (1) Sections 4AA to 4B of the Gas Act 1986 (c. 44) (principal objectives and general duties) apply to the carrying out as respects—
- (a) activities required to be authorised by gas licences,
 - (b) such licences and the conditions of such licences, or
 - (c) companies holding such licences,
- of functions conferred on the Secretary of State or GEMA by or under Chapters 2 to 4 of Part 3 of this Act as they apply in relation to the carrying out of functions conferred on him, or on it, by or under Part 1 of that Act.
- (2) Sections 3A to 3D of the 1989 Act (principal objectives and general duties) apply to the carrying out as respects—
- (a) activities required to be authorised by electricity licences,
 - (b) such licences and the conditions of such licences, or
 - (c) companies holding such licences,

of functions conferred on the Secretary of State or GEMA by or under section 90 or 91 or Part 3 of this Act (other than section 179(4)) as they apply in relation to the carrying out of functions conferred on him, or on it, by or under Part 1 of that Act.

(3) In section 3A(2)(b) of the 1989 Act (duty to have regard to ability of licence holders to finance obligations under Part 1 or the Utilities Act 2000), for “or the Utilities Act 2000” substitute “, the Utilities Act 2000 or Part 2 or 3 of the Energy Act 2004”.

(4) In this section—

“electricity licence” means a licence for the purposes of section 4 of the 1989 Act (prohibition on unlicensed electricity activities); and

“gas licence” means a licence for the purposes of section 5 of the Gas Act 1986 (prohibition on unlicensed gas activities).

191 Supplementary provision about licence condition powers

(1) This section applies to—

- (a) the Secretary of State’s powers under Chapters 2 to 4 of Part 3 of this Act with respect to the conditions of gas licences; and
- (b) his powers under sections 90 and 91 and Part 3 of this Act with respect to the conditions of electricity licences;

and this section is to be disregarded in determining the generality of those or any other powers conferred on the Secretary of State by this Act or otherwise.

(2) Conditions included in a gas licence, or in an electricity licence, by virtue of a power to which this section applies need not relate to the activities authorised by the licence.

(3) Conditions included in a gas licence by virtue of a power to which this section applies may do any of the things authorised by section 7B(4A) or (5) of the Gas Act 1986 (which apply to GEMA’s power with respect to licence conditions under section 7B(4) (a)).

(4) Conditions included in an electricity licence by virtue of a power to which this section applies may do any of the things authorised by section 7(2) to (4) of the 1989 Act (which apply to GEMA’s power with respect to licence conditions under section 7(1) (a)).

(5) In this section—

“electricity licence” means a licence for the purposes of section 4 of the 1989 Act (prohibition on unlicensed electricity activities); and

“gas licence” means a licence for the purposes of section 5 of the Gas Act 1986 (c. 44) (prohibition on unlicensed gas activities).

Supplemental

192 Powers exercisable by statutory instrument

(1) Every power conferred by this Act on the Secretary of State or the Treasury to make an order or regulations is a power exercisable by statutory instrument.

(2) Where—

- (a) this Act provides for an Order in Council, order or regulations to be subject to the negative resolution procedure, and

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- (b) a draft of the Order in Council, order or regulations has not been required, in accordance with subsection (3) or any other enactment, to be laid before Parliament and approved by a resolution of each House, or by a resolution of the House of Commons,

the statutory instrument containing the Order in Council, order or regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (3) Where this Act specifies that the power to make any provision by Order in Council or other order is subject to the affirmative resolution procedure, no order under this Act containing that provision (with or without other provision) shall be made unless a draft of the Order in Council or other order has been—
 - (a) laid before Parliament; and
 - (b) approved by a resolution of each House.
- (4) Subject to subsection (5), every power under this Act to make an Order in Council and every power conferred by this Act on the Secretary of State or the Treasury to make an order or regulations includes power—
 - (a) to make different provision for different cases (including different provision in respect of different areas);
 - (b) to make provision subject to such exemptions and exceptions as the person exercising the power thinks fit; and
 - (c) to make such incidental, supplemental, consequential and transitional provision as that person thinks fit.
- (5) Subsection (4) does not apply to—
 - (a) the Secretary of State’s power to make an order under section 39(3);
 - (b) the power to make an Order in Council under section 84(4); or
 - (c) so much of the Secretary of State’s power to make an order under section 198 as is exercisable otherwise than by virtue of section 179(4) and (5).

193 Service of notifications and other documents

- (1) This section applies where provision made (in whatever terms) by or under this Act (other than sections 129 to 131 or Chapter 3 of Part 3) authorises or requires—
 - (a) a notification to be given to a person; or
 - (b) a document of any other description (including a copy of a document) to be sent to a person.
- (2) The notification or document may be given or sent to the person in question—
 - (a) by delivering it to him;
 - (b) by leaving it at his proper address; or
 - (c) by sending it by post to him at that address.
- (3) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.
- (4) The notification or document may be given or sent to a firm by being given or sent to—
 - (a) a partner in the firm; or
 - (b) a person having the control or management of the partnership business.

- (5) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.
- (6) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of a person is—
- (a) in the case of a body corporate, the address of the registered or principal office of the body;
 - (b) in the case of a firm, or an unincorporated body or association, the address of the principal office of the firm, body or association;
 - (c) in the case of a person to whom the notification or other document is given or sent in reliance on any of subsections (3) to (5), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and
 - (d) in any other case, the last known address of the person in question.
- (7) In the case of—
- (a) a company registered outside the United Kingdom,
 - (b) a firm carrying on business outside the United Kingdom, or
 - (c) an unincorporated body or association with offices outside the United Kingdom,
- the references in subsection (6) to its principal office include references to its principal office within the United Kingdom (if any).
- (8) In this section “notification” includes notice; and references in this section to sending a document to a person include references to making an application to him.
- (9) This section has effect subject to section 194.

194 Notifications and documents in electronic form

- (1) This section applies where—
- (a) section 193 authorises the giving or sending of a notification or other document by its delivery to a particular person (“the recipient”); and
 - (b) the notification or other document is transmitted to the recipient—
 - (i) by means of an electronic communications network; or
 - (ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.
- (2) The transmission has effect for the purposes of this Act as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this section are complied with.
- (3) Where the recipient is the NDA—
- (a) it must have indicated its willingness to receive the notification or other document in a manner mentioned in subsection (1)(b);
 - (b) the transmission must be made in such manner, and satisfy such other conditions, as it may require; and
 - (c) the notification or other document must take such form as it may require.

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- (4) Where the person making the transmission is the NDA, it may (subject to subsection (5)) determine—
- (a) the manner in which the transmission is made; and
 - (b) the form in which the notification or other document is transmitted.
- (5) Where the recipient is a person other than the NDA—
- (a) the recipient, or
 - (b) the person on whose behalf the recipient receives the notification or other document,
- must have indicated to the person making the transmission the recipient's willingness to receive notifications or documents transmitted in the form and manner used.
- (6) An indication to any person for the purposes of subsection (5)—
- (a) must be given to that person in such manner as he may require;
 - (b) may be a general indication or one that is limited to notifications or documents of a particular description;
 - (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; and
 - (d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.
- (7) An indication, requirement or determination given, imposed or made by the NDA for the purposes of this section is to be given, imposed or made by being published in such manner as it considers appropriate for bringing it to the attention of the persons who, in its opinion, are likely to be affected by it.
- (8) Subsection (8) of section 193 applies for the purposes of this section as it applies for the purposes of that section.

195 Timing and location of things done electronically

- (1) The Secretary of State may, by order, make provision specifying, for the purposes of any enactment or subordinate legislation contained in or made under this Act, the manner of determining—
- (a) the times at which things done under that enactment or subordinate legislation by means of electronic communications networks are done; and
 - (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.
- (2) The provision made by subsection (1) may include provision as to the country or territory in which an electronic address is to be treated as located.
- (3) An order made by the Secretary of State may also make provision about the manner of proving in any legal proceedings—
- (a) that something done by means of an electronic communications network satisfies the requirements of an enactment or subordinate legislation contained in or made under this Act for the doing of that thing; and
 - (b) the matters mentioned in subsection (1)(a) and (b).
- (4) An order under this section may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate.

(5) An order under this section is subject to the negative resolution procedure.

196 General interpretation

(1) In this Act—

“the 1965 Act” means the Nuclear Installations Act 1965 (c. 57);

“the 1989 Act” means the Electricity Act 1989 (c. 29);

“the 1993 Act” means the Radioactive Substances Act 1993 (c. 12);

“affirmative resolution procedure” is to be construed in accordance with section 192(3);

“BNFL” means the Nuclear Fuels Company (within the meaning of the Atomic Energy Authority Act 1971 (c. 11));

“contravention” includes a failure to comply, and cognate expressions are to be construed accordingly;

“documents” includes accounts, drawings, written representations and records of any description;

“electronic communications network” has the same meaning as in the Communications Act 2003 (c. 21);

“enactment” includes Acts of the Scottish Parliament and Northern Ireland legislation;

“financial year” means a period of twelve months ending with 31st March;

“GEMA” means the Gas and Electricity Markets Authority;

“modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly;

“the NDA” means the Nuclear Decommissioning Authority established by section 1;

“negative resolution procedure” is to be construed in accordance with section 192(2);

“nuclear site licence” has the same meaning as in the 1965 Act;

“nuclear transfer scheme” means a scheme under section 38;

“pensions, allowances or gratuities” is to be construed in accordance with subsection (2);

“securities”, in relation to a body corporate, includes shares, debentures, debenture stock, bonds and other securities of the body corporate, whether or not constituting a charge on the assets of the body corporate;

“shares” includes stock;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30);

“subsidiary” and “wholly-owned subsidiary” have the meanings given by section 736 of the Companies Act 1985 (c. 6);

“the UKAEA” means the United Kingdom Atomic Energy Authority.

(2) In this Act—

(a) references to pensions, allowances or gratuities include references to any similar benefits provided on death or retirement; and

(b) references to the payment of pensions, allowances or gratuities to or in respect of a person include references to the making of payments towards the

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provision of the payment of pensions, allowances or gratuities to or in respect of that person.

197 Repeals etc.

- (1) In the Atomic Energy Authority Act 1971 (c. 11), the following provisions shall cease to have effect—
 - (a) section 4(1) (BNFL to make property etc. available to the UKAEA); and
 - (b) section 11(1) to (3) (provisions as to shares in BNFL and the Radiochemical Company).
- (2) In section 11(4) of that Act (subscription for shares by the Secretary of State), for “either of the companies” substitute “the Nuclear Fuels Company”.
- (3) In section 12(1) of that Act (loans to BNFL and the Radiochemical Company), for “either of the companies” and “the company to which the loan is made” substitute, respectively, “the Nuclear Fuels Company” and “that Company”.
- (4) In section 20 of that Act, subsection (4) (powers to exclude employees of BNFL and Amersham from the UKAEA pension scheme) shall cease to have effect.
- (5) In section 1(1) of the Nuclear Industry (Finance) Act 1977 (c. 7) (Government guarantees for BNFL and the Radiochemical Company), the words “or The Radiochemical Centre Limited (“T.R.C.L.”)” shall cease to have effect.
- (6) In subsection (1) of section 2 of that Act (financial limits)—
 - (a) for the words from “financial limits” to “B.N.F.L.,” substitute “financial limit applicable to B.N.F.L. is”;
 - (b) paragraph (b) and the word “and” immediately preceding it shall cease to have effect; and
 - (c) for “either company” substitute “the company”.
- (7) In subsection (2) of that section for “either of the two companies” substitute “B.N.F.L.”.
- (8) In section 11A(10) of the 1989 Act, in paragraph (b) of the definition of “relevant licence holder”, the words “(by virtue of anything done under section 33(2) of the Utilities Act 2000)” shall cease to have effect.
- (9) The enactments in Part 1 of Schedule 23 (which include some that are spent) are repealed to the extent shown in the second column of that Part of that Schedule.
- (10) Those repeals have effect subject to the provisions set out in Part 2 of that Schedule.

198 Short title, commencement and extent

- (1) This Act may be cited as the Energy Act 2004.
- (2) This Act (apart from this section) shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.
- (3) Subject to subsection (4) of this section, this Act extends to Northern Ireland.
- (4) The following provisions of this Act do not extend to Northern Ireland—

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- (a) Chapter 3 of Part 1 (with the exception of section 59 and paragraphs 1, 5, 6, 8, 10(1) and (2) and 11 of Schedule 14);
- (b) so much of Part 2 as amends the 1989 Act;
- (c) sections 82, 90, 91 and 100; and
- (d) Part 3 (with the exception of section 151(5)).