



# Electricity Act 1989

## 1989 CHAPTER 29

### PART I

#### ELECTRICITY SUPPLY

##### Modifications etc. (not altering text)

- C1** Pt. I (ss. 1-64): definition of "electric line" applied (E.W.) (14.7.1992) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59\)](#), ss. 63(1), [Sch. 4 para. 7\(4\)](#); S.I. 1992/1686, [art. 3](#), Sch.
- C2** Pt. I (ss. 1-64): definition of "electric line" applied (S.) (14.7.1992) by [New Roads and Street Works Act 1991 \(c. 22, SIF 108\)](#), ss. 122(1), [Sch. 6 para. 7\(4\)](#); S.I. 1992/1671, [art.2](#), Sch.
- C3** Pt. I (ss. 1-64) applied (1.10.2001) by S.I. 2001/3264, [regs. 4\(2\)](#), 5(2)
- C4** Pt. I (ss. 1-64) amended (E.W.) (27.10.2000) by S.I. 2000/2727, [art. 10](#)  
Pt. I (ss. 1-64) amended (7.11.2000) by [2000 c. 27, s. 105\(1\)\(a\)](#); S.I. 2000/2974, [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-12](#))  
Pt. I (ss. 1-64) amended (E.W.) (1.10.2001) by S.I. 2000/2727, [art. 10](#) (as substituted (1.10.2001) by S.I. 2001/3268, [art. 2\(13\)](#))

#### *Introductory*

**F1** .....

##### Textual Amendments

- F1** S. 1 repealed (1.10.2001) by [2000 c. 27, s. 108](#), [Sch. 8](#); S.I. 2001/3266, [art. 2](#), Sch. (subject to transitional provisions in [arts. 3-20](#))

**F2** .....

*Status: Point in time view as at 16/04/2004.*

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#### Textual Amendments

- F2** S. 2 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

### **F3** General duties of Secretary of State and Director.

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#### Textual Amendments

- F3** S. 3A substituted for s. 3 (20.12.2000) by 2000 c. 27, s. 13; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

### **[F4]3A The principal objective and general duties of the Secretary of State and the Authority.**

- (1) The principal objective of the Secretary of State and the Gas and Electricity Markets Authority (in this Act referred to as “the Authority”) in carrying out their respective functions under this Part is to protect the interests of consumers in relation to electricity conveyed by distribution systems, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity.
- (2) The Secretary of State and the Authority shall carry out those functions in the manner which he or it considers is best calculated to further the principal objective, having regard to—
  - (a) the need to secure that all reasonable demands for electricity are met; and
  - (b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under this Part or the Utilities Act 2000.
- (3) In performing that duty, the Secretary of State or the Authority shall have regard to the interests of—
  - (a) individuals who are disabled or chronically sick;
  - (b) individuals of pensionable age;
  - (c) individuals with low incomes; and
  - (d) individuals residing in rural areas;
 but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.
- (4) The Secretary of State and the Authority may, in carrying out any function under this Part, have regard to—
  - (a) the interests of consumers in relation to gas conveyed through pipes (within the meaning of the <sup>M1</sup>Gas Act 1986); and
  - (b) any interests of consumers in relation to—
    - <sup>F5</sup>(i) communications services and electronic communications apparatus, or]
    - (ii) water services or sewerage services (within the meaning of the <sup>M2</sup>Water Industry Act 1991),

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which are affected by the carrying out of that function.

- (5) Subject to subsection (2), the Secretary of State and the Authority shall carry out their respective functions under this Part in the manner which he or it considers is best calculated—
- (a) to promote efficiency and economy on the part of persons authorised by licences or exemptions to transmit, distribute or supply electricity and the efficient use of electricity conveyed by distribution systems;
  - (b) to protect the public from dangers arising from the generation, transmission, distribution or supply of electricity; and
  - (c) to secure a diverse and viable long-term energy supply,
- and shall, in carrying out those functions, have regard to the effect on the environment of activities connected with the generation, transmission, distribution or supply of electricity.
- (6) In this section “consumers” includes both existing and future consumers.
- (7) In this section and sections 3B and 3C, references to functions of the Secretary of State or the Authority under this Part include a reference to functions under the Utilities Act 2000 which relate to electricity conveyed by distribution systems.
- (8) In this Part, unless the context otherwise requires—
- “exemption” means an exemption granted under section 5;
  - “licence” means a licence under section 6 and “licence holder” shall be construed accordingly.

#### Textual Amendments

- F4** S. 3A substituted for s. 3 (20.12.2000) by 2000 c. 27, s. 13; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F5** S. 3A(4)(b)(i) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), Sch. 17 para. 98 (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

#### Marginal Citations

- M1** 1986 c. 44.  
**M2** 1991 c. 56.

### [<sup>F6</sup>3B Guidance on social and environmental matters.]

- (1) The Secretary of State shall from time to time issue guidance about the making by the Authority of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.
- (2) The Authority shall, in carrying out its functions under this Part, have regard to any guidance issued under this section.
- (3) Before issuing guidance under this section the Secretary of State shall consult—
- (a) the Authority;
  - (b) the Gas and Electricity Consumer Council (in this Act referred to as “the Council”);

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- (c) licence holders; and
  - (d) such other persons as the Secretary of State considers it appropriate to consult in relation to the guidance.
- (4) A draft of any guidance proposed to be issued under this section shall be laid before each House of Parliament.
- (5) Guidance shall not be issued under this section until after the period of forty days beginning with—
- (a) the day on which the draft is laid before each House of Parliament; or
  - (b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days.
- (6) If, before the end of that period, either House resolves that the guidance should not be issued, the Secretary of State must not issue it.
- (7) In reckoning any period of forty days for the purposes of subsection (5) or (6), no account shall be taken of any time during which—
- (a) Parliament is dissolved or prorogued; or
  - (b) both Houses are adjourned for more than four days.
- (8) The Secretary of State shall arrange for any guidance issued under this section to be published in such manner as he considers appropriate.]

#### Textual Amendments

- F4** S. 3A substituted for s. 3 (20.12.2000) by 2000 c. 27, s. 13; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F6** S. 3B inserted (20.12.2000) by 2000 c. 27, s. 14; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

#### [<sup>F7</sup> **Health and safety.**]

[<sup>F7</sup> **3C**

- (1) The Secretary of State and the Authority shall consult the Health and Safety Commission about all electricity safety issues which may be relevant to the carrying out of any of their respective functions under this Part.
- (2) The Secretary of State may require the Authority also to consult him about electricity safety issues of particular descriptions.
- (3) The Secretary of State and the Authority shall, in carrying out their respective functions under this Part, take into account any advice given by the Health and Safety Commission about any electricity safety issue (whether or not in response to consultation under subsection (1)).
- (4) The Authority shall, in carrying out its functions under this Part, take into account any advice given by the Secretary of State about any electricity safety issue (whether or not in response to consultation under subsection (2)).
- (5) For the purposes of this section an electricity safety issue is anything concerning the generation, transmission, distribution or supply of electricity which may affect the health and safety of—
- (a) members of the public; or

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(b) persons employed in connection with any of those activities.]

#### Textual Amendments

- F4** S. 3A substituted for s. 3 (20.12.2000) by 2000 c. 27, s. 13; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F7** S. 3C inserted (20.12.2000) by 2000 c. 27, s. 15; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

#### [<sup>F8</sup>3D] [<sup>F8</sup> Exceptions from sections 3A to 3C.]

- (1) Section 3A does not apply in relation to the issuing by the Secretary of State of guidance under section 3B.
- (2) Sections 3A to 3C do not apply in relation to functions of the Secretary of State under section 36 or 37.
- (3) Sections 3A to 3C do not apply in relation to anything done by the Authority—
- (a) in the exercise of functions relating to the determination of disputes;
  - (b) in the exercise of functions under section 43(3).
- (4) The Authority may nevertheless, when exercising any function under section 43(3), have regard to any matter in respect of which a duty is imposed by sections 3A to 3C (“a general matter”), if it is a matter to which [<sup>F9</sup>the Office of Fair Trading] could have regard when exercising that function (but that is not to be taken as implying that, in relation to functions mentioned in subsection (2), regard may not be had to any general matter).
- (5) The duties imposed by sections 3A to 3C do not affect the obligation of the Authority or the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment, by virtue of any Community obligation or otherwise).]]

#### Textual Amendments

- F4** S. 3A substituted for s. 3 (20.12.2000) by 2000 c. 27, s. 13; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F8** S. 3D inserted (20.12.2000) by 2000 c. 27, s. 16; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F9** Words in s. 3D(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(2); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

#### Modifications etc. (not altering text)

- C5** S. 3D(4) excluded (20.12.2000) by S.I. 2000/3343, art. 10(1)(b) (subject to transitional provisions in arts. 3-15)

*Licensing of supply etc.*

## 4 Prohibition on unlicensed supply etc.

- (1) A person who—

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- (a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- (b) transmits electricity for that purpose; or
- [<sup>F10</sup>(bb) distributes electricity for that purpose;]
- (c) supplies electricity to any premises,
- shall be guilty of an offence unless he is authorised to do so by a licence <sup>F11</sup> . . .
- (2) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.
- (3) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State or the Director.
- (4) In this Part, unless the context otherwise requires—
- [<sup>F12</sup>“distribute”, in relation to electricity, means distribute by means of a distribution system, that is to say, a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system;]
- [<sup>F13</sup>“supply”, in relation to electricity, means supply of electricity conveyed by a distribution system to premises other than premises occupied by a licence holder for the purpose of carrying on the activities which he is authorised by his licence to carry on;]
- “transmit”, in relation to electricity, means transmit by means of a transmission system, that is to say, a system which consists (wholly or mainly) of high voltage lines and electrical plant and is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another.

#### Textual Amendments

- F10** S. 4(1)(bb) inserted (1.10.2001) by 2000 c. 27, s. 28(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F11** Words in s. 4(1) repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 8; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F12** S. 4(4): definition of “distribute” inserted (7.11.2000 for specified purposes, 20.12.2000 for further specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 28(3)(a); S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F13** S. 4(4): definition of “supply” substituted (1.10.2001) by 2000 c. 27, s. 28(3)(b); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

- C6** S. 4(1)(a)(c) excluded by S.I. 1990/193, art. 3(1)
- C7** S. 4(1)(a) excluded (1.10.2001) by S.I. 2001/3270, art. 3(1)(a) (with art. 4(1)(2), Sch. 2)
- C8** S. 4(1)(bb) excluded (1.10.2001) by S.I. 2001/3270, art. 3(1)(b) (with art. 4(3)(4), Sch. 3)
- C9** S. 4(1)(c) excluded (1.10.2001) by S.I. 2001/3270, art. 3(1)(c) (with art. 4(5)(8), Sch. 4)

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## **[<sup>F14</sup>5 Exemptions from prohibition.**

- (1) The Secretary of State may by order grant exemption from paragraph (a), (b), (bb) or (c) of section 4(1)—
  - (a) either to a person or to persons of a class;
  - (b) either generally or to such extent as may be specified in the order; and
  - (c) either unconditionally or subject to such conditions as may be so specified.
- (2) Before making an order under subsection (1) the Secretary of State shall give notice—
  - (a) stating that he proposes to make such an order and setting out the terms of the proposed order;
  - (b) stating the reasons why he proposes to make the order in the terms proposed; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made,and shall consider any representations which are duly made in respect of the proposals and not withdrawn.
- (3) The notice required by subsection (2) shall be given—
  - (a) by serving a copy of it on the Authority and the Council; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order.
- (4) Notice of an exemption granted to a person shall be given—
  - (a) by serving a copy of the exemption on him; and
  - (b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.
- (5) Notice of an exemption granted to persons of a class shall be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—
  - (a) persons of that class; and
  - (b) other persons who may be affected by it.
- (6) An exemption may be granted—
  - (a) indefinitely; or
  - (b) for a period specified in, or determined by or under, the exemption.
- (7) Conditions subject to which an exemption is granted may (in particular) require any person carrying on any activity in pursuance of the exemption—
  - (a) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;
  - (b) except in so far as the Secretary of State or the Authority consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and
  - (c) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.

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- (8) The Secretary of State may by order revoke an order by which an exemption was granted to a person or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) at the person's request;
  - (b) in accordance with any provision of the order by which the exemption was granted; or
  - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (9) The Secretary of State may by order revoke an order by which an exemption was granted to persons of a class or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) in accordance with any provision of the order by which the exemption was granted; or
  - (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (10) The Secretary of State may by direction withdraw an exemption granted to persons of a class from any person of that class—
- (a) at the person's request;
  - (b) in accordance with any provision of the order by which the exemption was granted; or
  - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.
- (11) Before—
- (a) making an order under subsection (8)(b) or (c) or (9); or
  - (b) giving a direction under subsection (10)(b) or (c),
- the Secretary of State shall consult the Authority and give notice of his proposal to do so (with reasons) and of a period within which representations may be made to him.
- (12) The notice under subsection (11) shall be given—
- (a) where the Secretary of State is proposing to make an order under subsection (8)(b) or (c), by serving a copy of it on the person to whom the exemption was granted;
  - (b) where he is proposing to make an order under subsection (9), by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and
  - (c) where he is proposing to give a direction under subsection (10)(b) or (c), by serving a copy of it on the person from whom he proposes to withdraw the exemption.]

#### Textual Amendments

**F14** S. 5 substituted (1.10.2001) by [2000 c. 27, s. 29](#); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))



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**Modifications etc. (not altering text)**

**C10** S. 5: functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, **Sch.** (with art. 6)

[<sup>F156</sup> **Licences authorising supply, etc.**

- (1) The Authority may grant any of the following licences—
  - (a) a licence authorising a person to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given (“a generation licence”);
  - (b) a licence authorising a person to transmit electricity for that purpose in that person’s authorised area (“a transmission licence”);
  - (c) a licence authorising a person to distribute electricity for that purpose (“a distribution licence”); or
  - (d) a licence authorising a person to supply electricity to premises (“a supply licence”).
- (2) The same person may not be the holder of both a distribution licence and a supply licence.
- (3) A supply licence may authorise the holder to supply electricity—
  - (a) to any premises;
  - (b) only to premises specified in the licence, or to premises of a description so specified; or
  - (c) only to any premises situated in a specified area, or to premises of a specified description which are so situated.
- (4) The Authority may, with the consent of the holder of a supply licence, modify terms included in the licence in pursuance of subsection (3) so as to extend or restrict the premises to which the licence holder may give a supply of electricity.
- (5) A distribution licence may authorise the holder to distribute electricity in any area, or only in an area specified in the licence.
- (6) The Authority may, with the consent of the holder of a distribution licence, modify terms included in the licence in pursuance of subsection (5) so as to extend or restrict the area within which the licence holder may distribute electricity.
- (7) A licence and any extension or restriction of a licence under subsection (4) or (6) shall be in writing.
- (8) A licence shall, unless previously revoked in accordance with any term of the licence, continue in force for such period as may be specified in or determined by or under the licence.
- (9) In this Part—
  - “authorised area”, in relation to the holder of a transmission licence, means so much of the area designated as such in the licence as is not for the time being designated in a subsequent transmission licence;
  - “electricity distributor” means any person who is authorised by a distribution licence to distribute electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence;

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“electricity supplier” means any person who is authorised by a supply licence to supply electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.]

#### Textual Amendments

**F15** Ss. 6, 6A, 6B substituted for s. 6 (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 30; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

**C11** S. 6 applied (1.10.2001) by S.I. 2001/3266, art. 3(3)

**C12** S. 6(1) modified (16.5.2001) by 2000 c. 27, s. 33(1); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10)

#### [<sup>F16</sup>6A Procedure for licence applications.

- (1) This section applies to any application—
  - (a) for a licence; or
  - (b) for the extension or restriction of a licence under section 6(4) or (6).
- (2) The application shall be made in such form and manner, and shall contain, or be accompanied by, such information and documents and such fee (if any), as may be prescribed.
- (3) Within the prescribed period after the making of the application the applicant shall publish a notice of the application in the prescribed manner.
- (4) Where the Authority proposes to refuse the application, it shall give to the applicant a notice—
  - (a) stating that it proposes to refuse the application;
  - (b) stating the reasons why it proposes to refuse the application; and
  - (c) specifying the time within which representations with respect to the proposed refusal may be made,
 and shall consider any representations which are duly made and not withdrawn.
- (5) Where the Authority grants the licence, extension or restriction applied for, it shall as soon as practicable thereafter send a notice of the grant to any person who holds a licence and whose interests may, in the opinion of the Authority, be affected by the grant.
- (6) In this section “prescribed” means prescribed in regulations made by the Authority.
- (7) Any sums received by the Authority under this section shall be paid into the Consolidated Fund.]

#### Textual Amendments

**F16** Ss. 6, 6A, 6B substituted for s. 6 (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 30; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

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## [<sup>F17</sup>6B Applications for transmission licences.

- (1) This section applies to applications for a transmission licence (in addition to the requirements of section 6A).
- (2) The applicant shall give notice of the application to any person who holds a transmission licence and whose authorised area includes the whole or any part of the area to which the application relates.
- (3) Before granting the transmission licence applied for, the Authority shall give notice—
  - (a) stating that it proposes to grant the licence;
  - (b) stating the reasons why it proposes to grant the licence; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) shall be given by publication in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (5) The Authority shall send a copy of a notice under subsection (3) to—
  - (a) the applicant;
  - (b) the Secretary of State; and
  - (c) any person who holds a transmission licence and whose authorised area includes the whole or any part of the area to which the application relates.]

### Textual Amendments

**F17** Ss. 6, 6A, 6B substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) for s. 6 by 2000 c. 27, s. 30; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 7 Conditions of licences: general.

- (1) A licence may include—
  - (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the [<sup>F18</sup>Authority] to be requisite or expedient having regard to the duties imposed by [<sup>F19</sup>section 3 above]; and
  - (b) conditions requiring the rendering to the [<sup>F18</sup>Authority] of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.
- (2) Without prejudice to the generality of paragraph (a) of subsection (1) above, conditions included in [<sup>F20</sup>a transmission licence or distribution licence] by virtue of that paragraph—
  - (a) may require the licence holder to enter into agreements with other persons for the use of any electric lines and electrical plant of his (wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions; and

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- (b) may include provision for determining the terms on which such agreements are to be entered into.
- (3) [<sup>F21</sup>Without prejudice to the generality of paragraph (a) of subsection (1), conditions included in a licence by virtue of that paragraph] may require the licence holder—
- (a) to comply with any direction given by the [<sup>F22</sup>Authority or Secretary of State] as to such matters as are specified in the licence or are of a description so specified;
  - (b) except in so far as the [<sup>F22</sup>Authority or Secretary of State] consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;
  - (c) to refer for determination by the [<sup>F22</sup>Authority or Secretary of State] such questions arising under the licence [<sup>F23</sup>, or under any document referred to in the licence,] as are specified in the licence or are of a description so specified; and
  - (d) to refer for approval by the [<sup>F22</sup>Authority or Secretary of State] such things falling to be done under the licence, and such contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified.
- [<sup>F24</sup>(3A) Conditions included in a transmission licence or a distribution licence by virtue of subsection (1)(a) may require the holder, in such circumstances as are specified in the licence—
- (a) so to increase his charges for the transmission or distribution of electricity as to raise such amounts as may be determined by or under the conditions; and
  - (b) to pay the amounts so raised to such licence holders as may be so determined.]
- (4) Conditions included in a licence by virtue of subsection (1)(a) above may—
- (a) instead of specifying or describing any contracts or agreements to which they apply, refer to contracts or agreements designated (whether before or after the imposition of the conditions) by the Secretary of State or the Director; and
  - (b) instead of containing any provisions which fall to be made, refer to provisions set out in documents so designated and direct that those provisions shall have such effect as may be specified in the conditions.
- [<sup>F25</sup>(5) Conditions included in a licence may contain provision for the conditions—
- (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or
  - (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.]
- (6) Any provision included by virtue of subsection (5) above in a licence shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.
- [<sup>F26</sup>(6A) Conditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time.]
- (7) Any sums received by the [<sup>F27</sup>Authority] in consequence of the provisions of any condition of a licence shall be paid into the Consolidated Fund.

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### Textual Amendments

- F18** Words in s. 7(1) substituted (20.12.2000) by 2000 c. 27, s. 32(2); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F19** Words in s. 7(1)(a) substituted (20.12.2000) by 2000 c. 27, s. 32(2); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F20** Words in s. 7(2) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 32(3); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F21** Words in s. 7(3) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 32(4)(a); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F22** Words in s. 7(3) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 32(4)(b); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F23** Words in s. 7(3)(c) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 32(4)(c); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F24** S. 7(3A) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 32(5); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F25** S. 7(5) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 32(6); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F26** S. 7(6A) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 32(7); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F27** Words in s. 7(7) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 32(8); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

### Modifications etc. (not altering text)

- C13** S. 7 applied (1.10.2001) by S.I. 2001/3266, art. 3(3)

## [<sup>F28</sup>7A Transfer of licences.

- (1) A licence—
  - (a) is capable of being transferred by the licence holder, with the consent of the Authority, in accordance with this section but subject to any term as to transfer contained in the licence;
  - (b) may include conditions which must be complied with before the licence can be transferred.
- (2) A transfer may relate to the whole or any part of the licence.
- (3) The reference in subsection (2) to part of a licence is a reference to a part of the activities authorised by the licence (whether described by reference to activities being carried on by the licence holder or to activities which he is authorised by the licence to carry on).
- (4) Such consent may be given subject to compliance with such modification or other conditions as the Authority considers appropriate.

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- (5) In the case of a partial transfer, conditions imposed under subsection (4) may make as respects so much of the licence as is proposed to be retained by the transferor provision different from that made as respects so much of the licence as is proposed to be transferred.
- (6) In deciding whether to give its consent to a proposed transfer, the Authority shall apply the same criteria as it would apply if the Authority were deciding whether—
- (a) in the case of a general transfer, to grant a corresponding licence to the transferee; or
  - (b) in the case of a partial transfer—
    - (i) to grant to the transferee a licence corresponding to so much of the licence as is proposed to be transferred; and
    - (ii) to grant to the transferor a licence corresponding to so much of the licence as is proposed to be retained.
- (7) The Authority shall give the Secretary of State not less than 28 days' notice of any proposal to impose a modification condition.
- (8) If, before the expiry of the time specified in a notice under subsection (7), the Secretary of State directs the Authority not to impose the condition, the Authority shall comply with the direction.
- (9) Before giving consent to the transfer of a licence, the Authority shall give notice—
- (a) stating that it proposes to grant consent to the transfer;
  - (b) stating the reasons why it proposes to give consent; and
  - (c) specifying the time from the date of publication of the notice (not being less than two months) within which representations or objections with respect to the transfer may be made,
- and shall consider any representations or objections that are duly made and not withdrawn.
- (10) A notice under subsection (9) shall be given by publishing the notice in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the transfer.
- (11) A purported transfer of a licence shall be void—
- (a) if the licence is not capable of transfer or the Authority has not given its consent;
  - (b) if the purported transfer is in breach of a condition of the licence; or
  - (c) if there has, before the purported transfer, been a contravention of a condition subject to compliance with which the Authority's consent is given.
- (12) In this section—
- “transfer” includes any form of transfer or assignment or, in Scotland, assignation;
  - “modification condition” means a condition requiring or otherwise providing for the making of modifications to the conditions of a licence.

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#### Textual Amendments

**F28** S. 7A inserted (1.10.2001) by 2000 c. 27, s. 41; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### [<sup>F29</sup>7B Uniform prices etc. in certain areas of Scotland.]

- (1) The Secretary of State may, by an order made under this section, require the holder of—
- (a) a transmission licence; or
  - (b) a distribution licence,
- to apply in respect of the use of the transmission or, as the case may be, distribution system, or any part of the system, in a specified area charges which do not distinguish (whether directly or indirectly) between users in different parts of the area.
- (2) The Secretary of State may, by such an order, require the holder of a supply licence—
- (a) to charge prices; or
  - (b) to offer conditions of contract,
- in respect of a comparable supply of electricity in a specified area which do not distinguish (whether directly or indirectly) between consumers in different parts of the area.
- (3) The Secretary of State shall not specify in such an order any particular or maximum charge or price or any particular condition of contract.
- (4) Such an order may make different provision for different cases or descriptions of case.
- (5) For the purposes of this section—
- (a) a specified area is an area of Scotland specified in such an order; and
  - (b) supplies of electricity are comparable if they are—
    - (i) at the same or similar voltages; and
    - (ii) are in accordance with the same or similar demand characteristics.]

#### Textual Amendments

**F28** S. 7A inserted (1.10.2001) by 2000 c. 27, s. 41; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F29** S. 7B inserted (1.10.2001) by 2000 c. 27, s. 72; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

### 8 Conditions for funding certain companies engaged in nuclear generation in Scotland.]

- (1) Without prejudice to section 7(1)(a) above, it may be a condition of a licence granted to a company (“the licence holder”) that it shall from time to time provide any company to which subsection (2) below applies, comes to apply or has at any time applied with such funds as may be determined by or under the condition in respect of such of that company’s liabilities as may be so determined.

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- (2) This subsection applies to any company engaging in the operation of a nuclear generating station in Scotland while—
  - (a) deemed for the purposes of the <sup>M3</sup>Companies Act 1985 to be a subsidiary of the licence holder; or
  - (b) a related company of the licence holder (as defined in paragraph 92 of Schedule 4 to that Act).
- (3) Subsection (3) of section 7 above applies in respect of a condition included in a licence by virtue of this section as it applies in respect of a condition so included by virtue of subsection (1)(a) of that section.

#### Textual Amendments

**F28** S. 7A inserted (1.10.2001) by 2000 c. 27, s. 41; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

**M3** 1985 c. 6.

### <sup>F30</sup>8A Standard conditions of licences.

- (1) Subject to subsection (2), each condition which by virtue of section 33(1) of the Utilities Act 2000 is a standard condition for the purposes of any of the types of licence mentioned in section 6(1) (that is to say, generation licences, transmission licences, distribution licences or supply licences) shall be incorporated by reference in each licence of that type granted after the commencement of this section.
- (2) Subject to the following provisions of this section, the Authority may, in granting a licence of any type, modify any of the standard conditions for licences of that type in its application to the licence to such extent as it considers requisite to meet the circumstances of the particular case.
- (3) Before making any modifications under subsection (2), the Authority shall give notice—
  - (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) shall be given—
  - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by sending a copy of the notice to the Secretary of State and the Council.
- (5) If, within the time specified in the notice under subsection (3), the Secretary of State directs the Authority not to make any modification, the Authority shall comply with the direction.



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- (6) The Authority shall not under subsection (2) make any modifications of a condition of a licence of any type unless it is of the opinion that the modifications are such that—
  - (a) the licence holder would not be unduly disadvantaged in competing with other holders of licences of that type; and
  - (b) no other holder of a licence of the same type would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).
- (7) The modification under subsection (2) of part of a condition of a licence shall not prevent any other part of the condition which is not so modified being regarded as a standard condition for the purposes of this Part.
- (8) In this section “modify” includes fail to incorporate and “modification” shall be construed accordingly.

**Textual Amendments**

**F30** S. 8A inserted (1.10.2001) by 2000 c. 27, s. 33(3); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**9 General duties of licence holders.]**

- [<sup>F31</sup>(1) It shall be the duty of an electricity distributor—
  - (a) to develop and maintain an efficient, co-ordinated and economical system of electricity distribution;
  - (b) to facilitate competition in the supply and generation of electricity.]
- (2) It shall be the duty of the holder of a licence authorising him to transmit electricity—
  - (a) to develop and maintain an efficient, co-ordinated and economical system of electricity transmission; and
  - (b) <sup>F32</sup> . . . , to facilitate competition in the supply and generation of electricity.

<sup>F33</sup>(3) . . . . .

<sup>F33</sup>(4) . . . . .

**Textual Amendments**

**F30** S. 8A inserted (1.10.2001) by 2000 c. 27, s. 33(3); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F31** S. 9(1) substituted (1.10.2001) by 2000 c. 27, s. 50; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F32** Words in s. 9(2)(b) repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 8; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F33** S. 9(3)(4) repealed (1.10.2001) by 2000 c. 27, ss. 71, 108, Sch. 8; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**Modifications etc. (not altering text)**

**C14** S. 9(1)(b): functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, Sch. (with art. 6)

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## 10 Powers etc. of licence holders.

(1) Subject to subsection (2) below, Schedule 3 to this Act (which provides for the compulsory acquisition of land) and Schedule 4 to this Act (which confers other powers and makes other provision) shall have effect—

- (a) in relation to <sup>F34</sup> . . . a person authorised by a licence to transmit electricity; and
- (b) to the extent that his licence so provides, in relation to [<sup>F35</sup>an electricity distributor or] any other licence holder;

and references in those Schedules to a licence holder shall be construed accordingly.

(2) Where any provision of either of the Schedules mentioned in subsection (1) above is applied to a licence holder by his licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it.

(3) [<sup>F36</sup>A generation licence] may provide that Schedule 4 to this Act shall have effect in relation to the licence holder as if—

- (a) any reference to any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on included a reference to any purpose connected with the supply to any premises of heat produced in association with electricity and steam produced from and air and water heated by such heat; and
- (b) any reference to electric lines or electrical plant included a reference to pipes and associated works used or intended to be used for conveying heat so produced, and steam produced from and air and water heated by such heat;

and in this subsection “associated works”, in relation to pipes, means any of the following connected with the pipes, namely, any valve, filter, stopcock, pump, meter, inspection chamber and manhole and such other works as may be prescribed.

[<sup>F37</sup>(3A) Subsection (3) applies in relation to any purpose connected with the supply to any premises of any gas or liquid subjected to a cooling effect produced in association with electricity as it applies to a purpose mentioned in that subsection.]

(4) [<sup>F38</sup>A transmission licence] may provide that, where any part of the licence holder’s authorised area is designated in a subsequent licence under that paragraph, Schedule 4 to this Act shall have effect in relation to the licence holder as if any reference to the activities which he is authorised by his licence to carry on included a reference to the activities which he was previously so authorised to carry on.

(5) The provisions of Schedule 5 to this Act (which provide for the acquisition of water rights for hydro-electric stations in Scotland) shall have effect.

### Textual Amendments

- F34** Words in s. 10(1)(a) repealed (1.10.2001) by 2000 c. 27, s. 53(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F35** Words in s. 10(1)(b) inserted (1.10.2001) by 2000 c. 27, s. 53(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F36** Words in s. 10(3) substituted (1.10.2001) by 2000 c. 27, s. 53(3); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F37** S. 10(3A) inserted (1.10.2001) by 2000 c. 27, s. 53(4); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

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**F38** Words in s. 10(4) substituted (1.10.2001) by 2000 c. 27, s. 53(5); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**Modifications etc. (not altering text)**

**C15** S. 10(1)(a)(2): functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, Sch. (with art. 6)

*Modification of licences*

**11 Modification by agreement.**

[<sup>F39</sup>(1) Subject to the following provisions of this section, the Authority may modify the conditions of a particular licence.

(1A) The Authority may not make any modifications under this section unless the licence holder has consented to the modifications and, in the case of standard conditions of the licence, the Authority is of the opinion that the modifications—

- (a) are requisite to meet the circumstances of the particular case; and
- (b) are such that—
  - (i) the licence holder would not be unduly disadvantaged in competing with other holders of licences of that type; and
  - (ii) no other holder of a licence of the same type would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).]

(2) Before making modifications under this section, the Director shall give notice—

- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(3) A notice under subsection (2) above shall be given—

- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy of the notice on the holder of the licence.

(4) The Director shall also send a copy of a notice under subsection (2) above to the Secretary of State; and if, within the period specified in the notice, the Secretary of State directs the Director not to make any modifications, the Director shall comply with the direction.

[<sup>F40</sup>(5) The modification under this section of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.]

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### Textual Amendments

- F39** S. 11(1)(1A) substituted for s. 11(1) (1.10.2001) by 2000 c. 27, s. 34(1); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F40** S. 11(5) inserted (1.10.2001) by 2000 c. 27, s. 34(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

### [<sup>F41</sup>11A Modification of standard conditions of licences.

- (1) Subject to the following provisions of this section, the Authority may modify the standard conditions of licences of any type mentioned in section 6(1).
- (2) Where at any time the Authority modifies the standard conditions of licences of any type under this section the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of any licence of that type.
- (3) Before making any modifications under this section, the Authority shall give notice—
  - (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made;
 and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) shall be given—
  - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by sending a copy of the notice to each relevant licence holder, to the Secretary of State and to the Council.
- (5) If, within the time specified in the notice under subsection (3), the Secretary of State directs the Authority not to make any modification, the Authority shall comply with the direction.
- (6) The Authority may not under this section make any modifications of the standard conditions of licences of any type unless—
  - (a) no notice of objection to those modifications is given to the Authority within the time specified in the notice under subsection (3) by any relevant licence holder;
  - (b) if one or more relevant licence holders give notice of objection to the Authority within that time—
    - (i) the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection is less than such percentage as may be prescribed; and
    - (ii) the percentage given by subsection (7) is less than such percentage as may be prescribed; or
  - (c) subsection (8) applies to the case.

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- (7) The percentage given by this subsection is the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection, weighted according to their market share in such manner as may be prescribed.
- (8) This subsection applies where the Authority is satisfied that—
- (a) the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
  - (b) the modifications would remove or reduce the burden without removing any necessary protection; and
  - (c) the modifications are such that no holder of a licence of the type in question would be unduly disadvantaged in competing with other holders of such licences.
- (9) Where the Authority modifies the standard conditions of licences of any type—
- (a) the Authority shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) the Authority shall publish the modifications in such manner as it considers appropriate.
- (10) In this section—
- “prescribed” means prescribed in an order made by the Secretary of State; and
  - “relevant licence holder”, in relation to proposed modifications of standard conditions of licences of any type, means the holder of a licence of that type—
    - (a) which is to be modified under the proposals by the inclusion of any new standard condition; or
    - (b) which includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect (by virtue of anything done under section 33(2) of the Utilities Act 2000) at the time specified in the notice under subsection (3).
- (11) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.]

#### Textual Amendments

- F41** S. 11A inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 35; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 12 Modification references to Monopolies Commission.

- [<sup>F42</sup>(1) The Authority may make to the Competition Commission a reference which is so framed as to require the Commission to investigate and report on the questions—
- (a) whether any matters which relate to the carrying on of activities authorised or regulated by a particular licence and which are specified in the reference operate, or may be expected to operate, against the public interest; and

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- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the licence.
- (1A) The Authority may make to the Competition Commission a reference which is so framed as to require the Commission to investigate and report on the questions—
- (a) whether any matters which relate to the carrying on of activities authorised or regulated by licences of any type mentioned in section 6(1), and which are specified in the reference operate, or may be expected to operate, against the public interest; and
  - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the standard conditions of licences of that type.]
- (2) The Director may, at any time, by notice given to the [<sup>F43</sup>Competition Commission] vary a reference under this section by adding to the matters specified in the reference or by excluding from the reference some <sup>F44</sup>... of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.
- (3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the [<sup>F43</sup>Competition Commission] in carrying out the investigation on the reference—
- (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
  - (b) any modifications of the [<sup>F45</sup>relevant conditions] by which, in his opinion, those effects could be remedied or prevented.
- (4) As soon as practicable after making a reference under this section or a variation of such a reference, the Director—
- (a) shall serve a copy of the reference or variation on the holder of the licence [<sup>F46</sup>or, as the case may be, the relevant licence holders and the Council]; and
  - (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- (5) The Director shall also send a copy of a reference under [<sup>F47</sup>subsection (1A)], or a variation of such a reference, to the Secretary of State; and if, before the end of the period of 28 days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the [<sup>F43</sup>Competition Commission] not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.
- (6) It shall be the duty of the Director, for the purpose of assisting the [<sup>F43</sup>Competition Commission] in carrying out an investigation on a reference under this section [<sup>F48</sup>or in carrying out functions under section 14A], to give to the Commission—
- (a) any information in his possession which relates to matters falling within the scope of the investigation [<sup>F48</sup>or the carrying out of those functions] and—
    - (i) is requested by the Commission for that purpose; or
    - (ii) is information which, in his opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;

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and the Commission, for the purpose of carrying out any such investigation [<sup>F48</sup>or such functions], shall take account of any information given to them for that purpose under this subsection.

[<sup>F49</sup>(6A) In this section and sections [<sup>F50</sup>12A,] 13, 14 and 14A—

“relevant conditions”—

(a) in relation to a reference under subsection (1), means the conditions of the licence to which the reference relates; and

(b) in relation to a reference under subsection (1A), means the standard conditions of the licences to which the reference relates; and

“relevant licence holder” means the holder of a licence to which a reference under subsection (1A) relates.]

(7) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the [<sup>F43</sup>Competition Commission] shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by section [<sup>F51</sup>3A to 3C].

<sup>F52</sup>(8) .....

<sup>F52</sup>(8A) .....

<sup>F53</sup>(9) .....

<sup>F53</sup>(9A) .....

#### Textual Amendments

- F42** S. 12(1)(1A) substituted for s. 12(1) (1.10.2001) by 2000 c. 27, s. 36(2); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F43** Words in S. 12(2)(3)(5)(6)(7) substituted (1.4.1999) by S.I. 1999/506, art. 24(b)
- F44** Words in s. 12(2) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F45** Words in s. 12(3)(b) substituted (1.10.2001) by 2000 c. 27, s. 36(3); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F46** Words in s. 12(4)(a) inserted (1.10.2001) by 2000 c. 27, s. 36(4); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F47** Words in s. 12(5) substituted (1.10.2001) by 2000 c. 27, s. 36(5); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F48** Words in s. 12(6) inserted (1.10.2001) by 2000 c. 27, s. 36(6); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F49** S. 12(6A) inserted (1.10.2001) by 2000 c. 27, s. 36(7); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F50** Word in s. 12(6A) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(3)(a)**; S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)
- F51** Words in s. 12(7) substituted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 25**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F52** S. 12(8)(8A) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(3)(b)**, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)
- F53** S. 12(9)(9A) repealed (1.10.2001) by 2000 c. 27, ss. 104(4), 108, **Sch. 8** (with s. 104(5)(6)); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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#### **Modifications etc. (not altering text)**

**C16** S. 12 amended (16.5.2001) by 2000 c. 27, s. 104(1)(b)(2) (with s. 104(6)); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10)

### **[<sup>F54</sup>12A References under section 12: time limits**

- (1) Every reference under section 12 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 12 above shall not have effect (and no action shall be taken in relation to it under section 14 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall, in the case of an extension made by it under subsection (3) above—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.

#### **Textual Amendments**

**F54** Ss. 12A, 12B inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(4); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

### **12B References under section 12: powers of investigation**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 12 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).



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- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

#### Textual Amendments

**F54** Ss. 12A, 12B inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 20\(4\)](#); [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 8)

### 13 Reports on modification references.

- (1) In making a report on a reference under section 12 above, the [<sup>F55</sup>Competition Commission]—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions;
  - (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
  - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the [<sup>F56</sup>relevant conditions], shall specify in the report modifications by which those effects could be remedied or prevented.

[<sup>F57</sup>(1A) For the purposes of sections 14 and 14A below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

(1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 12 above as the conclusions of

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the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]

<sup>F58</sup>(2) .....

[<sup>F59</sup>(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 12 above.

(3A) In making any report on a reference under section 12 above the Competition Commission must have regard to the following considerations before disclosing any information.

(3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.

(3C) The second consideration is the need to exclude from disclosure (so far as practicable)

- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.

(3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.]

(4) A report of the [<sup>F55</sup>Competition Commission] on a reference under section 12 above shall be made to the Director.

(5) Subject to subsection (6) below, the Director—

- (a) shall, on receiving [<sup>F60</sup>a report on a reference under section 12(1), send a copy of it to the licence holder] and to the Secretary of State; and
- (b) shall, not less than 14 days after that copy is received by the Secretary of State, [<sup>F61</sup>send another copy to the Council and publish that other copy] in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

[<sup>F62</sup>(5A) Subject to subsection (6), the Authority shall—

- (a) on receiving a report on a reference under section 12(1A), send a copy of it to the Secretary of State; and
- (b) not less than 14 days after that copy is received by the Secretary of State—
  - (i) send another copy to the Council and to each relevant licence holder; and
  - (ii) not less than 24 hours after complying with sub-paragraph (i) above, publish the copy sent to the Council in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.]

(6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in [<sup>F63</sup>subsection (5) or (5A), direct the Authority to exclude that matter from the copy of the report, or (as the case may

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be) each copy of the report, to be sent and published as mentioned in paragraph (b) of that subsection]

#### Textual Amendments

- F55** Words in S. 13(1)(2)(3)(4) substituted (1.4.1999) by S.I. 1999/506, **art. 24(b)**
- F56** Words in s. 13(1)(c) substituted (1.10.2001) by 2000 c. 27, **s. 37(2)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)
- F57** S. 13(1A)(1B) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(5)(a)**; S.I. 2003/1397, **art. 2(1), Sch.** (with **art. 8**)
- F58** S. 13(2) repealed (1.3.2000) by 1998 c. 41, ss. 54(3), 66(5), 74(3), **Sch. 10 Pt. IV para. 12(3), Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, **art. 2, Sch.**
- F59** S. 13(3)-(3D) substituted for s. 13(3) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(5)(b)**; S.I. 2003/1397, **art. 2(1), Sch.** (with **art. 8**)
- F60** Words in s. 13(5)(a) substituted (1.10.2001) by 2000 c. 27, **s. 37(3)(a)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)
- F61** Words in s. 13(5)(b) substituted (1.10.2001) by 2000 c. 27, **s. 37(3)(b)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)
- F62** S. 13(5A) inserted (1.10.2001) by 2000 c. 27, **s. 37(4)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)
- F63** Words in s. 13(6) substituted (1.10.2001) by 2000 c. 27, **s. 37(5)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

#### 14 Modification following report.

- (1) Where a report of the [<sup>F64</sup>Competition Commission] on a reference under section 12 above—
- includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
  - specifies effects adverse to the public interest which those matters have or may be expected to have;
  - includes conclusions to the effect that those effects could be remedied or prevented by modifications of [<sup>F65</sup>the relevant conditions]; and
  - specifies modifications by which those effects could be remedied or prevented,

the Director shall, subject to the following provisions of this section, make such modifications of [<sup>F65</sup>the relevant conditions] as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

- [<sup>F66</sup>(1A) Where at any time it modifies under subsection (1) the standard conditions of licences of any type in consequence of a reference under section 12(1A), the Authority may make such incidental and consequential modifications as it considers necessary or expedient of any conditions of licences of that type granted before that time.]
- (2) Before making modifications under this section, the Director shall have regard to the modifications specified in the report.
- (3) Before making modifications under this section, the Director shall give notice—
- stating that he proposes to make the modifications and setting out their effect;
  - stating the reasons why he proposes to make the modifications; and

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- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on the holder of the licence [<sup>F67</sup>or, as the case may be, the relevant licence holders].
- [<sup>F68</sup>(5) After considering any representations or objections made in response to proposals set out in a notice under subsection (3), the Authority shall give notice to the Competition Commission—
- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
  - (b) stating the reasons for making the modifications.
- (6) The Authority shall include with the notice under subsection (5) a copy of any representations or objections received in relation to the notice under subsection (3).
- (7) If the period of four weeks from the date on which the notice under subsection (5) is given elapses without a direction under section 14A(1)(a) having been given to it, the Authority shall—
- (a) make the modifications set out in the notice; or
  - (b) if a direction under section 14A(1)(b) has been given, make the modifications which are not specified in the direction.
- (8) The modification under subsection (1) of part of a standard condition of a particular licence in consequence of a reference under section 12(1) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (9) Where the Authority modifies the standard conditions of licences of any type as mentioned in subsection (1A), the Authority—
- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) shall publish the modifications made for those purposes in such manner as it considers appropriate.]

#### Textual Amendments

- F64** Words in S. 14(1) substituted (1.4.1999) by S.I. 1999/506, **art. 24(b)**
- F65** Words in s. 14(1) substituted (1.10.2001) by 2000 c. 27, **s. 38(2)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)
- F66** S. 14(1A) inserted (1.10.2001) by 2000 c. 27, **s. 38(3)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)
- F67** Words in s. 14(4)(b) inserted (1.10.2001) by 2000 c. 27, **s. 38(4)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

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**F68** S. 14(5)-(9) inserted (1.10.2001) by 2000 c. 27, s. 38(5); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### **[<sup>F69</sup>14A Competition Commission’s power to veto modifications following report.**

- (1) The Competition Commission (in this section referred to as “the Commission”) may, within the period of four weeks after the date on which it is given a notice under section 14(5), direct the Authority—
  - (a) not to make the modifications set out in that notice; or
  - (b) not to make such of the modifications as may be specified in the direction; and the Authority shall comply with any such direction.
- (2) The Secretary of State may, within the period of four weeks after the date on which the Commission is given a notice under section 14(5) and on the application of the Commission, direct that the period for giving a direction under subsection (1) (and, accordingly, the period mentioned in section 14(7)) shall be extended by 14 days.
- (3) The power to give a direction under subsection (1) may only be exercised in respect of such of the modifications set out in the notice under section 14(5)(a) as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.
- (4) If the Commission gives a direction under subsection (1), the Commission—
  - (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
  - (b) shall itself make such modifications of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—
    - (i) if the direction was given under subsection (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
    - (ii) if the direction was given under subsection (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 14(7)(b).
- (5) In exercising its function under subsection (4)(b) the Commission shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a licence.
- (6) Before making modifications under subsection (4)(b) the Commission shall give notice—
  - (a) stating that it proposes to make the modifications and setting them out;
  - (b) stating the reason why it proposes to make them;
  - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under subsection (4)(a) or (6) shall be given—

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- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy on the Authority and the holder of the licence in question or, as the case may be, the relevant licence holders.
- (8) After making modifications under this section the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.
- (9) Where, in consequence of a reference under section 12(1A), the Commission modifies under subsection (4)(b) the standard conditions of licences of any type, the Authority may make such incidental and consequential modifications as it considers necessary or expedient of any conditions of licences of that type granted before that time.
- (10) Where the Commission modifies the standard conditions of licences of any type as mentioned in subsection (9), the Authority—
- (a) shall make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) shall publish the modifications made for those purposes in such manner as it considers appropriate.
- (11) The modification under this section of part of a standard condition of a particular licence in consequence of a reference under section 12(1) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- [ For the purposes of the law relating to defamation, absolute privilege attaches to any
- <sup>F70</sup>(11A) notice under subsection (4)(a), (6) or (8).
- (11B) In giving any notice under subsection (4)(a) or (6), or publishing any notice under subsection (8), the Commission must have regard to the following considerations before disclosing any information.
- (11C) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
- (11D) The second consideration is the need to exclude from disclosure (so far as practicable)
- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (11E) The third consideration is the extent to which the disclosure of the information mentioned in subsection (11D)(a) or (b) is necessary for the purposes of the notice.
- (11F) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (11G) and (11H), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under this section, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);

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- (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (11G) Section 110 shall, in its application by virtue of subsection (11F), have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under section 14A(8) of the Electricity Act 1989 in connection with the reference concerned or, if no direction has been given by the Commission under section 14A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period;” and
  - (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (11H) Section 111(5)(b) shall, in its application by virtue of subsection (11F), have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a notice is published by the Commission under section 14A(8) of the Electricity Act 1989 in connection with the reference concerned or, if no direction is given by the Commission under section 14A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”
- (11I) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (11F) above, have effect in relation to those sections as applied by virtue of that subsection.
- (11J) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]
- <sup>F71</sup>(12) . . . . .
- <sup>F71</sup>(13) . . . . .
- (14) This section does not apply to the modification of a licence following a report of the Commission made before the commencement of section 39 of the Utilities Act 2000.]

**Textual Amendments**

- F69** S. 14A inserted (1.10.2001) by 2000 c. 27, ss. 39, 104(1)(b)(2) (with s. 104(6)); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F70** Ss. 14A(11A)-(11J) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(6) (a); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

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**F71** S. 14A(12)(13) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 25 para. 20(6)(b), [Sch. 26](#); [S.I. 2003/1397](#), art. 2(1), Sch. (with art. 8)

## 15 Modification by order under other enactments.

[<sup>F72</sup>(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a particular licence, or the standard conditions of licences of any type mentioned in section 6(1), to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.]

[<sup>F72</sup>(2) In subsection (1) above “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
  - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or
  - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the generation, transmission, distribution or supply of electricity.]

[<sup>F73</sup>(2A) The modification under subsection (1) of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

[<sup>F74</sup>(2B) Where the relevant authority modifies under subsection (1) the standard conditions of licences of any type, the relevant authority—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
- (b) may, after consultation with the Authority, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of any licence of that type granted before that time.]

(2C) Where at any time the [<sup>F75</sup>relevant authority] modifies standard conditions under subsection (2B)(a) for the purposes of their incorporation in licences granted after that time, [<sup>F76</sup>the relevant authority] shall publish those modifications in such manner as [<sup>F76</sup>the relevant authority] considers appropriate.]

[<sup>F77</sup>(3) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.]

### Textual Amendments

**F72** S. 15(1)(2) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 9 para. 5\(2\)](#); [S.I. 2003/1397](#), art. 2(1), Sch.



*Status: Point in time view as at 16/04/2004.*

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- F73** S. 15(2A)-(2C) inserted (1.10.2001) by 2000 c. 27, s. 40(3); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F74** S. 15(2B) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 5(3); S.I. 2003/1397, art. 2(1), Sch.
- F75** Words in s. 15(2C) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 5(4)(a); S.I. 2003/1397, art. 2(1), Sch.
- F76** Words in s. 15(2C) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 5(4)(b); S.I. 2003/1397, art. 2(1), Sch.
- F77** S. 15(3) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 5(5); S.I. 2003/1397, art. 2(1), Sch.

**Modifications etc. (not altering text)**

- C17** S. 15(1): functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, Sch. (with art. 6)

**[<sup>F78</sup>15A Licence modifications relating to new electricity trading arrangements.**

- (1) The Secretary of State may, in accordance with this section, modify—
  - (a) the conditions of a particular licence; or
  - (b) the standard conditions of licences of any type mentioned in section 6(1), where he considers it necessary or expedient to do so for the purpose of implementing, or facilitating the operation of, new arrangements relating to the trading of electricity.
- (2) The power to modify licence conditions under paragraph (a) or (b) of subsection (1) includes power—
  - (a) to make modifications relating to the operation of transmission systems and distribution systems; and
  - (b) to make incidental or consequential, or transitional, modifications.
- (3) Before making modifications under this section the Secretary of State shall consult the holder of any licence being modified and such other persons as he considers appropriate.
- (4) Any consultation undertaken by the Secretary of State before the commencement of this section shall be as effective, for the purposes of subsection (3), as if undertaken after that commencement.
- (5) Any modification of part of a standard condition of a licence under subsection (1)(a) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (6) Where the standard conditions of licences of any type are modified under subsection (1)(b), the Secretary of State shall make (as nearly as may be) the same modifications of the standard conditions for the purposes of their incorporation in licences of that type granted after that time.
- (7) The Secretary of State shall publish any modifications under this section in such manner as he considers appropriate.
- (8) The power of the Secretary of State under this section may not be exercised after the end of the period of two years beginning with the passing of the Utilities Act 2000.]

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#### Textual Amendments

**F78** S. 15A inserted (28.7.2000) by 2000 c. 27, s. 68(1)(2)

### *[<sup>F79</sup>Duties of electricity distributors]*

#### Textual Amendments

**F79** Ss. 16, 16A, 17 and cross-heading substituted for ss. 16, 17 (1.10.2001) by 2000 c. 27, s. 44; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

### **[<sup>F80</sup>16 Duty to connect on request.**

- (1) An electricity distributor is under a duty—
  - (a) to make a connection between a distribution system of his and any premises, when required to do so by—
    - (i) the owner or occupier of the premises; or
    - (ii) an authorised supplier acting with the consent of the owner or occupier of the premises,
 for the purpose of enabling electricity to be conveyed to or from the premises;
  - (b) to make a connection between a distribution system of his and any distribution system of another authorised distributor, when required to do so by that authorised distributor for the purpose of enabling electricity to be conveyed to or from that other system.
- (2) Any duty under subsection (1) includes a duty to provide such electric lines or electrical plant as may be necessary to enable the connection to be used for the purpose for which it is required.
- (3) The duties under this section shall be performed subject to such terms as may be agreed under section 16A for so long as the connection is required.
- (4) In this section and sections 16A to 23—
  - (a) any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant);
  - (b) any reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines and electrical plant); and
  - (c) any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical plant either by the installation of a new one or by the modification of an existing one.
- (5) The duties under this section are subject to the following provisions of this Part and any regulations made under those provisions.]

#### Textual Amendments

**F80** Ss. 16, 16A, 17 and cross-heading substituted for ss. 16, 17 (1.10.2001) by 2000 c. 27, s. 44; S.I. 2001/3266, art. 2, Sch.(subject to transitional provisions in art. 3-20)

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**Modifications etc. (not altering text)**

**C18** S. 16 applied (1.10.2001) by [S.I. 2001/3264, reg. 4\(2\)](#)

**[<sup>F81</sup>16A Procedure for requiring a connection.**

- (1) Where a person requires a connection to be made by an electricity distributor in pursuance of section 16(1), he shall give the distributor a notice requiring him to offer terms for making the connection.
- (2) That notice must specify—
  - (a) the premises or distribution system to which a connection to the distributor's system is required;
  - (b) the date on or by which the connection is to be made; and
  - (c) the maximum power at which electricity may be required to be conveyed through the connection.
- (3) The person requiring a connection shall also give the distributor such other information in relation to the required connection as the distributor may reasonably request.
- (4) A request under subsection (3) shall be made as soon as practicable after the notice under subsection (1) is given (if not made before that time).
- (5) As soon as practicable after receiving the notice under subsection (1) and any information requested under subsection (3) the distributor shall give to the person requiring the connection a notice—
  - (a) stating the extent (if any) to which his proposals are acceptable to the distributor and specifying any counter proposals made by him;
  - (b) specifying any payment which that person will be required to make under section 19(1) or regulations under section 19(2);
  - (c) specifying any security which that person will be required to give under section 20; and
  - (d) stating any other terms which that person will be required to accept under section 21.
- (6) A notice under subsection (5) shall also contain a statement of the effect of section 23.]

**Textual Amendments**

**F81** Ss. 16, 16A, 17 and cross-heading substituted for ss. 16, 17 (1.10.2001) by [2000 c. 27, s. 44; S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

**[<sup>F82</sup>17 Exceptions from duty to connect.**

- (1) Nothing in section 16(1) requires an electricity distributor to make a connection if and to the extent that—
  - (a) he is prevented from doing so by circumstances not within his control;
  - (b) circumstances exist by reason of which his doing so would or might involve his being in breach of regulations under section 29, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or
  - (c) it is not reasonable in all the circumstances for him to be required to do so.

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- (2) Without prejudice to the generality of subsection (1) an electricity distributor is not required to make a connection if—
- (a) making the connection involves the distributor doing something which, without the consent of another person, would require the exercise of a power conferred by any provision of Schedule 3 or 4;
  - (b) the distributor’s licence does not provide for that provision to have effect in relation to him; and
  - (c) any necessary consent has not, at the time the request is made, been given.
- (3) Subsection (1)(c) does not permit an electricity distributor to disconnect any premises or distribution system to which a connection is being maintained by him unless the distributor gives—
- (a) where the connection is to premises, to the occupier or to the owner if the premises are not occupied;
  - (b) where the connection is to another distribution system, to the person who is authorised by a licence or exemption to run that system,
- not less than seven working days’ notice of his intention to disconnect the premises or distribution system.]

#### Textual Amendments

**F82** Ss. 16, 16A, 17 and cross-heading substituted for ss. 16, 17 (1.10.2001) by 2000 c. 27, s. 44; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

<sup>F83</sup>18 .....

#### Textual Amendments

**F83** S. 18 repealed (1.10.2001) by 2000 c. 27, ss. 45, 108, Sch. 8; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

### 19 Power to recover expenditure.

- (1) Where any electric line or electrical plant is provided by [<sup>F84</sup>an electricity distributor] in pursuance of section 16(1) above, the [<sup>F84</sup>distributor] may require any expenses reasonably incurred in providing it to be defrayed by the person requiring the [<sup>F84</sup>connection] to such extent as is reasonable in all the circumstances.
- [<sup>F85</sup>(2) The Secretary of State may, after consultation with the Authority, make provision by regulations for entitling an electricity distributor to require a person requiring a connection in pursuance of section 16(1) to pay to the distributor, in respect of any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of making the connection, such amount as may be reasonable in all the circumstances if—
- (a) the connection is required within the prescribed period after the provision of the line or plant; and
  - (b) a person (“the initial contributor”) has made a payment to the distributor in respect of those expenses, the line or plant having been provided for the

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purpose of making a connection to any premises or distribution system as required by that person.]

- (3) Regulations under subsection (2) above may require [<sup>F86</sup>an electricity distributor] who, in pursuance of this section or the regulations, has recovered any amount in respect of expenses reasonably incurred in providing any electric line or electrical plant—
- (a) to exercise his rights under the regulations in respect of those expenses; and
  - (b) to apply any payments received by him in the exercise of those rights in making such payments as may be appropriate towards reimbursing the initial contributor and any persons previously required to make payments under the regulations.
- (4) Any reference in this section to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in [<sup>F87</sup>continuing to provide it]

#### Textual Amendments

- F84** Words in s. 19(1) substituted (1.10.2001) by 2000 c. 27, s. 46(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F85** S. 19(2) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 46(3); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F86** Words in s. 19(3) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 46(4); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F87** Words in s. 19(4) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 46(5); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 20 Power to require security.

[<sup>F88</sup>(1) Subject to the following provisions of this section, an electricity distributor may require any person who requires a connection in pursuance of section 16(1) to give him reasonable security for the payment to him under section 19 in respect of the provision of any electric line or electrical plant.

(1A) If a person fails to give any security required under subsection (1), or the security given has become invalid or insufficient, and he fails to provide alternative or additional security, the electricity distributor may if he thinks fit—

- (a) if the connection has not been made, refuse to provide the line or plant for so long as the failure continues; or
- (b) if the connection is being maintained, disconnect the premises or distribution system in question.]

(2) .....

(3) Where any money is deposited with [<sup>F89</sup>an electricity distributor] by way of security in pursuance of this section, the [<sup>F89</sup>distributor] shall pay interest, at such rate as may from time to time be fixed by the [<sup>F89</sup>distributor] with the approval of the Director, on every sum of 50p so deposited for every three months during which it remains in the hands of the [<sup>F89</sup>distributor].

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<sup>F90</sup>(4) .....

#### Textual Amendments

- F88** S. 20(1)(1A) substituted for s. 20(1) (1.10.2001) by 2000 c. 27, s. 47(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F89** Words in s. 20(3) substituted (1.10.2001) by 2000 c. 27, s. 47(3); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F90** S. 20(2)(4) repealed (1.10.2001) by 2000 c. 27, ss. 47(4), 108, Sch. 8; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### [<sup>F91</sup>21 Additional terms of connection.

An electricity distributor may require any person who requires a connection in pursuance of section 16(1) above to accept in respect of the making of the connection—

- (a) any restrictions which must be imposed for the purpose of enabling the distributor to comply with regulations under section 29;
- (b) any terms which it is reasonable in all the circumstances for that person to be required to accept; and
- (c) without prejudice to the generality of paragraph (b), any terms restricting any liability of the distributor for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept.]

#### Textual Amendments

- F91** S. 21 substituted (1.10.2001) by 2000 c. 27, s. 48; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### [<sup>F92</sup>22 Special agreements with respect to connection.

- (1) Notwithstanding anything in sections 16 to 21, a person who requires a connection in pursuance of section 16(1) may enter into an agreement with the electricity distributor (referred to in this Part as a “special connection agreement”) for the making of the connection on such terms as may be agreed by the parties.
- (2) So long as a special connection agreement is effective, the rights and liabilities of the parties shall be those arising under the agreement and not those provided for by sections 16 to 21.
- (3) Nothing in subsection (2) prevents the giving of a notice under section 16A(1) requiring a connection to be made as from the time when a special connection agreement ceases to be effective.]

#### Textual Amendments

- F92** S. 22 substituted (1.10.2001) by 2000 c. 27, s. 49; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

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**Modifications etc. (not altering text)**

C19 S. 22 applied (1.10.2001) by S.I. 2001/3264, reg. 5(2)

**23 Determination of disputes.**

[<sup>F93</sup>(1) This section applies (in addition to any disputes to which it applies by virtue of any other provision of this Act) to any dispute arising under sections 16 to 21 between an electricity distributor and a person requiring a connection.

(1A) A dispute to which this section applies—

- (a) may be referred to the Authority by either party, or with the agreement of either party, by the Council; and
- (b) on such a reference, shall be determined by order made either by the Authority or, if the Authority thinks fit, by an arbitrator (or in Scotland an arbiter) appointed by the Authority.

(1B) The practice and procedure to be followed in connection with any such determination shall be such as the Authority may consider appropriate. .

(1C) No dispute arising under sections 16 to 21 which relates to the making of a connection between any premises and a distribution system may be referred to the Authority after the end of the period of 12 months beginning with the time when the connection is made..

(2) Where a dispute arising under sections 16 to 21 between an electricity distributor and a person requiring a connection falls to be determined under this section, the Authority may give directions as to the circumstances in which, and the terms on which, the distributor is to make or (as the case may be) to maintain a connection pending the determination of the dispute.]

(3) Where any dispute arising under section 20(1) above falls to be determined under this section, the Director may give directions as to the security (if any) to be given pending the determination of the dispute.

(4) Directions under subsection (2) or (3) above may apply either in cases of particular descriptions or in particular cases.

[<sup>F94</sup>(4A) A person making an order under this section shall include in the order his reasons for reaching his decision with respect to the dispute.]

(5) An order under this section—

- (a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order) as that person considers appropriate; and
- (b) shall be final and—
  - (i) in England and Wales, shall be enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of the county court;
  - (ii) in Scotland, shall be enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.

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- (6) In including in an order under this section any such provision as to costs or expenses as is mentioned in subsection (5) above, the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

[<sup>F95</sup>(7) Section 16(4)(a) does not apply to the references in this section to making a connection.]

#### Textual Amendments

- F93** S. 23(1)(1A)-(1C)(2) substituted for s. 23(1)(2) (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 26(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F94** S. 23(4A) inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 26(3)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F95** S. 23(7) inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 26(4)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

- C20** S. 23 applied (with modifications) (1.10.2001) by S.I. 2001/3266, **arts. 1(2), 6(3)**
- C21** S. 23 applied (1.10.2001) by S.I. 2001/3266, **arts. 1(2), 11(3)**

## 24 The public electricity supply code.

The provisions of Schedule 6 to this Act (which relate to the [<sup>F96</sup>distribution and supply of electricity]) shall have effect.

#### Textual Amendments

- F96** Words in s. 24 substituted (1.10.2001) by 2000 c. 27, s. 51(1); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

### *Enforcement of preceding provisions*

## 25 Orders for securing compliance.

- (1) Subject to subsections (2) [<sup>F97</sup>, (5) and (5A)] and section 26 below, where the Director is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, he shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.
- (2) Subject to [<sup>F98</sup>subsections (5) and (5A)] below, where it appears to the Director—
- that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement; and
  - that it is requisite that a provisional order be made,
- he shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with that condition or requirement.
- (3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional order be made, the Director shall have regard, in particular—



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- (a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made; and
  - (b) to the fact that the effect of the provisions of this section and section 27 below is to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition or requirement.
- (4) Subject to [<sup>F98</sup>subsections (5) and (5A)] and section 26 below, the Director shall confirm a provisional order, with or without modifications, if—
- (a) he is satisfied that the licence holder to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement; and
  - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- (5) The Director shall not make a final order or make or confirm a provisional order in relation to a licence holder if he is satisfied—
- (a) that the duties imposed on him by section [<sup>F99</sup>3A to 3C] preclude the making or, as the case may be, the confirmation of the order;
  - <sup>F100</sup>(b) .....
  - <sup>F100</sup>(c) .....
  - (d) that the most appropriate way of proceeding is under the Competition Act 1998.
- [<sup>F101</sup>(5A) The Authority is not required to make a final order or make or confirm a provisional order if it is satisfied—
- (a) that the licence holder has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
  - (b) that the contraventions were or the apprehended contraventions are of a trivial nature.]
- (6) Where the Director is satisfied as mentioned in [<sup>F98</sup>subsections (5) and (5A)] above, he shall—
- (a) serve notice that he is so satisfied on the licence holder; and
  - (b) publish the notice in such manner as he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (7) A final or provisional order—
- (a) shall require the licence holder to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
  - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
  - (c) may be revoked at any time by the Director.
- (8) In this Part—
- “final order” means an order under this section other than a provisional order;

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“provisional order” means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order;

“relevant condition”, in relation to a licence holder, means any condition of his licence;

“relevant requirement”, in relation to a licence holder, means any duty or other requirement imposed on him by or under section 9 or sections 16 to 23 above [<sup>F102</sup>, or sections 32 to 32C, section 40, 40A, 42, 42A, 42C, 43A or 43B below or section 27(4)(b) of the Utilities Act 2000 (order to comply with a direction under section 24 of that Act)].

#### Textual Amendments

- F97** Words in s. 25(1) substituted (1.10.2001) by 2000 c. 27, s. 60(2)(7); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F98** Words in s. 25(2)(4)(6) substituted (1.10.2001) by 2000 c. 27, s. 60(3)(7); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F99** Words in s. 25(5)(a) substituted (20.12.2000) by 2000 c. 27, ss. 108, 110(2), Sch. 6 Pt. II para. 27; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F100** S. 25(5)(b)(c) repealed (1.10.2001) by 2000 c. 27, ss. 60(4)(7), 108, Sch. 8; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F101** S. 25(5A) inserted (1.10.2001) by 2000 c. 27, s. 60(5)(7); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F102** Words in s. 25(8) substituted (7.11.2000 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 28; S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 26 Procedural requirements.

- (1) Before he makes a final order or confirms a provisional order, the Director shall give notice—
- (a) stating that he proposes to make or confirm the order and setting out its effect;
  - (b) setting out—
    - (i) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
    - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and
    - (iii) the other facts which, in his opinion, justify the making or confirmation of the order; and
  - (c) specifying the period (not being less than [<sup>F103</sup>21] days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made, and shall consider any representations or objections which are duly made and not withdrawn.
- (2) A notice under subsection (1) above shall be given—

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- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the licence holder to whom the order relates.
- (3) The Director shall not make a final order with modifications, or confirm a provisional order with modifications, except—
  - (a) with the consent to the modifications of the licence holder to whom the order relates; or
  - (b) after complying with the requirements of subsection (4) below.
- (4) The requirements mentioned in subsection (3) above are that the Director shall—
  - (a) serve on the licence holder to whom the order relates such notice as appears to him requisite of his proposal to make or confirm the order with modifications;
  - (b) in that notice specify the period (not being less than [<sup>F103</sup>21] days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
  - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making a final order or making or confirming a provisional order, the Director shall—
  - (a) serve a copy of the order on the licence holder to whom the order relates; and
  - (b) publish the order in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (6) Before revoking a final order or a provisional order which has been confirmed, the Director shall give notice—
  - (a) stating that he proposes to revoke the order and setting out its effect; and
  - (b) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under subsection (6) above, the Director decides not to revoke the order to which the notice relates, he shall give notice of his decision.
- (8) A notice under subsection (6) or (7) above shall be given—
  - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (b) by serving a copy of the notice on the licence holder to whom the order relates.

#### Textual Amendments

**F103** Words in s. 26(1)(c)(4)(b) substituted (1.10.2001) by 2000 c. 27, s. 60(6)(7); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

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## 27 Validity and effect of orders.

- (1) If the licence holder to whom a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—
  - (a) that its making or confirmation was not within the powers of section 25 above; or
  - (b) that any of the requirements of section 26 above have not been complied with in relation to it,
 he may, within 42 days from the date of service on him of a copy of the order, make an application to the court under this section.
- (2) On any such application the court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the licence holder have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.
- (3) Except as provided by this section, the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.
- (4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order.
- (5) Where a duty is owed by virtue of subsection (4) above to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.
- (6) In any proceedings brought against a licence holder in pursuance of subsection (5) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.
- (7) Without prejudice to any right which any person may have by virtue of subsection (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the Director for an injunction or for interdict or for any other appropriate relief.
- (8) In this section and section 28 below “the court” means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

### [<sup>F104</sup>27A Penalties.

- (1) Where the Authority is satisfied that a licence holder—
  - (a) has contravened or is contravening any relevant condition or requirement; or
  - (b) has failed or is failing to achieve any standard of performance prescribed under section 39 or 39A,
 the Authority may, subject to section 27C, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.
- (2) The Authority shall not impose a penalty on a licence holder under subsection (1) where it is satisfied that the most appropriate way of proceeding is under the <sup>M4</sup>Competition Act 1998.
- (3) Before imposing a penalty on a licence holder under subsection (1) the Authority shall give notice—

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- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
- (b) setting out the relevant condition or requirement or the standard of performance in question;
- (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and
- (d) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (4) Before varying any proposal stated in a notice under subsection (3)(a) the Authority shall give notice—
  - (a) setting out the proposed variation and the reasons for it; and
  - (b) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (5) As soon as practicable after imposing a penalty, the Authority shall give notice—
  - (a) stating that it has imposed a penalty on the licence holder and its amount;
  - (b) setting out the relevant condition or requirement or the standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of the penalty and its amount; and
  - (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty is required to be paid.

- (6) The licence holder may, within 21 days of the date of service on him of a notice under subsection (5), make an application to the Authority for it to specify different dates by which different portions of the penalty are to be paid.

- (7) Any notice required to be given under this section shall be given—
  - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;
  - (b) by serving a copy of the notice on the licence holder; and
  - (c) by serving a copy of the notice on the Council.

- (8) No penalty imposed by the Authority under this section may exceed 10 per cent. of the turnover of the licence holder (determined in accordance with provisions specified in an order made by the Secretary of State).

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- (9) An order under subsection (8) shall not be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (10) Any sums received by the Authority by way of penalty under this section shall be paid into the Consolidated Fund.
- (11) The power of the Authority under subsection (1) is not exercisable in respect of any contravention or failure before the commencement of section 59 of the Utilities Act 2000.]

#### Textual Amendments

**F104** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 59(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

**M4** 1998 c. 41.

### [<sup>F105</sup>27B Statement of policy with respect to penalties.

- (1) The Authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure the Authority shall have regard to its statement of policy most recently published at the time when the contravention or failure occurred.
- (3) The Authority may revise its statement of policy and where it does so shall publish the revised statement.
- (4) Publication under this section shall be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The Authority shall undertake such consultation as it considers appropriate when preparing or revising its statement of policy.]

#### Textual Amendments

**F105** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 59(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

### [<sup>F106</sup>27C Time limits on the imposition of financial penalties.

- (1) Where no final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure later than the end of the period of 12 months from the time of the contravention or failure, unless before the end of that period—

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- (a) the notice under section 27A(3) relating to the penalty is served on the licence holder under section 27A(7), or
  - (b) a notice relating to the contravention or failure is served on the licence holder under section 28(2).
- (2) Where a final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under section 27A(3) was served on the licence holder under section 27A(7)—
- (a) within three months from the confirmation of the provisional order or the making of the final order, or
  - (b) where the provisional order is not confirmed, within six months from the making of the provisional order.]

#### Textual Amendments

**F106** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 59(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### [<sup>F107</sup>27D Interest and payment of instalments.

- (1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the <sup>M5</sup>Judgments Act 1838.
- (2) If an application is made under subsection (6) of section 27A in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the Authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the Authority under that subsection, the Authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.]

#### Textual Amendments

**F107** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 59(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

**M5** 1838 c. 110.

#### [<sup>F108</sup>27E Appeals.

- (1) If the licence holder on whom a penalty is imposed is aggrieved by—
  - (a) the imposition of the penalty;
  - (b) the amount of the penalty; or
  - (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,

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the licence holder may make an application to the court under this section.

- (2) An application under subsection (1) must be made—
- (a) within 42 days from the date of service on the licence holder of a notice under section 27A(5), or
  - (b) where the application relates to a decision of the Authority on an application by the licence holder under section 27A(6), within 42 days from the date the licence holder is notified of the decision.
- (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within subsection (4), the court—
- (a) may quash the penalty;
  - (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or
  - (c) in the case of an application under subsection (1)(c), may substitute for the date or dates imposed by the Authority an alternative date or dates.
- (4) The grounds falling within this subsection are—
- (a) that the imposition of the penalty was not within the power of the Authority under section 27A;
  - (b) that any of the requirements of subsections (3) to (5) or (7) of section 27A have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance; or
  - (c) that it was unreasonable of the Authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.
- (5) If an application is made under this section in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.
- (8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.
- (9) In this section “the court” means—
- (a) in relation to England and Wales, the High Court; and
  - (b) in relation to Scotland, the Court of Session.]

#### Textual Amendments

**F108** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 59(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)



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## [<sup>F109</sup>27F Recovery of penalties.

Where a penalty imposed under section 27A(1), or any portion of it, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under section 27E during the period within which such an application can be made, or
- (b) an application has been made under that section and determined,

the Authority may recover from the licence holder, as a civil debt due to it, any of the penalty and any interest which has not been paid.]

### Textual Amendments

**F109** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 59(1); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 28 Power to require information etc.

(1) Where it appears to [<sup>F110</sup>the Authority that a licence holder—

- (a) may be contravening, or may have contravened, any relevant condition or requirement; or
- (b) may be failing, or may have failed, to achieve any standard of performance prescribed under section 39 or 39A,

the Authority may, for any purpose connected with such of its functions under section 25 or 27A to 27F] as are exercisable in relation to that matter, serve a notice under subsection (2) below on any person.

(2) A notice under this subsection is a notice signed by the Director and—

- (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Director or to any person appointed by the Director for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
- (b) requiring that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Director such information as may be specified or described in the notice.

[<sup>F111</sup>(2A) Where a licence has been or is to be revoked or suspended, or has expired or is about to expire by effluxion of time, and it appears to the Authority, having regard to the duties imposed by section 3A, 3B or 3C, to be requisite or expedient to do so for any purpose connected with the revocation, suspension or expiry, the Authority may, with the consent of the Secretary of State, by notice in writing—

- (a) require the licence holder to produce, at a time and place specified in the notice, to the Authority, or to any person so specified, any records which are specified or described in the notice and are in the licence holder's custody or under his control; or
- (b) require the licence holder to furnish to the Authority, or to any person specified in the notice, such information as may be specified or described in the notice, and specify the time, the manner and the form in which any such information is to be furnished.]

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- (3) No person shall be required under this section to produce any documents [<sup>F112</sup>or records] which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.
- (4) A person who without reasonable excuse fails to do anything required of him by notice under subsection (2) [<sup>F113</sup>or (2A)] above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person who intentionally alters, suppresses or destroys any document [<sup>F114</sup>or record] which he has been required by any notice under subsection (2) [<sup>F115</sup>or (2A)] above to produce shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (6) If a person makes default in complying with a notice under subsection (2) [<sup>F116</sup>or (2A)] above, the court may, on the application of the Director, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

#### Textual Amendments

- F110** Words and s. 28(1)(a)(b) substituted for words in s. 28(1) (1.10.2001) by 2000 c. 27, s. 59(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F111** S. 28(2A) inserted (20.12.2000) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 29(2); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F112** Words in s. 28(3) inserted (20.12.2000) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 29(3); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F113** Words in s. 28(4) inserted (20.12.2000) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 29(4); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F114** Words in s. 28(5) inserted (20.12.2000) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 29(5)(a); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F115** Words in s. 28(5) inserted (20.12.2000) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 29(5)(b); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F116** Words in s. 28(6) inserted (20.12.2000) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 29(6); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

#### *Provisions with respect to supply generally*

### 29 Regulations relating to supply and safety.

- (1) The Secretary of State may make such regulations as he thinks fit for the purpose of—
- (a) securing that supplies of electricity are regular and efficient;

*Status: Point in time view as at 16/04/2004.*

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- (b) protecting the public from dangers arising from the generation, transmission [<sup>F117</sup>, distribution] or supply of electricity, from the use of electricity supplied or from the installation, maintenance or use of any electric line or electrical plant; and
  - (c) without prejudice to the generality of paragraph (b) above, eliminating or reducing the risks of personal injury, or damage to property or interference with its use, arising as mentioned in that paragraph.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may—
- (a) prohibit the [<sup>F118</sup>distribution] or transmission of electricity except by means of a system approved by the Secretary of State;
  - (b) make provision requiring notice in the prescribed form to be given to the Secretary of State, in such cases as may be specified in the regulations, of accidents and of failures [<sup>F119</sup>in the distribution or transmission] of electricity;
  - (c) make provision as to the keeping, by persons authorised by a licence or exemption to [<sup>F120</sup>distribute] or transmit electricity, of maps, plans and sections and as to their production (on payment, if so required, of a reasonable fee) for inspection or copying;
  - (d) make provision for relieving [<sup>F121</sup>electricity distributors from any duty under section 16 or authorising them to disconnect any premises or distribution system] in such cases as may be prescribed;
  - (e) make provision requiring compliance with notices given by the Secretary of State specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer, for the purpose of—
    - (i) preventing or ending a breach of regulations under this section; or
    - (ii) eliminating or reducing a risk of personal injury or damage to property or interference with its use;
  - (f) provide for particular requirements of the regulations to be deemed to be complied with in the case of any electric line or electrical plant complying with specified standards or requirements;
  - (g) provide for the granting of exemptions from any requirement of the regulations for such periods as may be determined by or under the regulations.
- (3) Regulations under this section may provide that any person—
- (a) who contravenes any specified provision of the regulations; or
  - (b) who does so in specified circumstances,
- shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; but nothing in this subsection shall affect any liability of any such person to pay compensation in respect of any damage or injury which may have been caused by the contravention.
- (4) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State or the Director of Public Prosecutions.

#### Textual Amendments

**F117** Words in s. 29(1)(b) inserted (1.10.2001) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 30(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

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- F118** Words in s. 29(2)(a) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(3)(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F119** Words in s. 29(2)(b) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(3)(b)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F120** Words in s. 29(2)(c) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(3)(c)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F121** Words in s. 29(2)(d) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(3)(d)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

### 30 Electrical inspectors.

- (1) The Secretary of State may appoint competent and impartial persons to be electrical inspectors under this Part.
- (2) The duties of an electrical inspector under this Part shall be as follows—
- (a) to inspect and test, periodically and in special cases, electric lines and electrical plant belonging to persons authorised by a licence or exemption to generate, transmit or [<sup>F122</sup>distribute] electricity;
  - (b) to examine, periodically and in special cases, the generation, transmission [<sup>F123</sup>, distribution] or supply of electricity by such persons;
  - (c) to inspect and test, if and when required by any consumer, any such lines and plant on the consumer's premises, for the purpose of determining whether any requirement imposed by or under this Part in respect of the lines or plant or the [<sup>F124</sup>conveyance of electricity through] them has been complied with; and
  - (d) such other duties as may be imposed by regulations under this section or as the Secretary of State may determine.
- (3) The Secretary of State may by regulations—
- (a) prescribe the manner in which and the times at which any duties are to be performed by electrical inspectors;
  - (b) require persons authorised by a licence or exemption to [<sup>F125</sup>carry on licensable activities]—
    - (i) to furnish electrical inspectors with records or other information; and
    - (ii) to allow such inspectors access to premises and the use of electrical plant and other facilities;
  - (c) make provision for relieving [<sup>F126</sup>electricity distributors from any duty under section 16 or authorising them to disconnect any premises or distribution system] in such cases as may be prescribed; and
  - (d) prescribe the amount of the fees which are to be payable to such inspectors.
- (4) Any fees received by electrical inspectors shall be paid to the Secretary of State; and any sums received by him under this subsection shall be paid into the Consolidated Fund.

#### Textual Amendments

- F122** Words in s. 30(2)(a) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 31(2)(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F123** Words in s. 30(2)(b) inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 31(2)(b)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

*Status: Point in time view as at 16/04/2004.*

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- F124** Words in s. 30(2)(c) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 31(2)(c)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F125** Words in s. 30(3)(b) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 31(3)(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F126** Words in s. 30(3)(c) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 31(3)(b)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

### **31 Use etc. of meters.**

The provisions of Schedule 7 to this Act (which relate to the use, certification, testing and maintenance of electricity meters) shall have effect.

#### *Protection of public interest*

### **[<sup>F127</sup>32] Obligation in connection with electricity from renewable sources.**

- (1) The Secretary of State may by order impose on each electricity supplier falling within a specified description (a “designated electricity supplier”) an obligation to do what is set out in subsection (3) (and that obligation is referred to in this section and sections 32A to 32C as the “renewables obligation”).
- (2) The descriptions of electricity supplier upon which an order may impose the renewables obligation are those supplying electricity—
  - (a) in Great Britain;
  - (b) in England and Wales; or
  - (c) in Scotland,excluding such categories of supplier (if any) as are specified.
- (3) Subject to the provisions of this section and sections 32A and 32C, the renewables obligation is that the designated electricity supplier must, before a specified day (or before each of several specified days, or before a specified day in each year), produce to the Authority evidence of a specified kind showing—
  - (a) that it has supplied to customers in Great Britain during a specified period such amount of electricity generated by using renewable sources as is specified in relation to such a supplier; or
  - (b) that another electricity supplier has done so (or that two or more others have done so); or
  - (c) that, between them, they have done so.
- (4) If the order applies only to electricity suppliers in part of Great Britain, it may specify that the only electricity supplied which counts towards discharging the renewables obligation is electricity supplied to customers in that part of Great Britain.
- (5) Evidence of the supply of electricity may not be produced more than once in relation to the same electricity.
- (6) In the case of electricity generated by a generating station fuelled or driven partly by renewable sources and partly by fossil fuel, only the proportion attributable to the renewable sources can count towards discharging the renewables obligation (but this is subject to section 32A(1)(g)).
- (7) Before making an order, the Secretary of State must consult—

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- (a) the Authority;
  - (b) the Council;
  - (c) the electricity suppliers to whom the proposed order would apply;
  - (d) the generators of electricity from renewable sources; and
  - (e) such other persons, if any, as he considers appropriate.
- (8) In this section—
- “fossil fuel” means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products (and “natural gas” and “petroleum products” have the same meanings as in the <sup>M6</sup>Energy Act 1976);
- “renewable sources” means sources of energy other than fossil fuel or nuclear fuel, but includes waste of which not more than a specified proportion is waste which is, or is derived from, fossil fuel;
- “specified” means specified in the order.
- (9) An order under this section shall not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.]

#### Textual Amendments

**F127** S. 32 substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 62; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

**C22** S. 32 functions transferred to Scottish Ministers (S.) by virtue of S.I. 2000/3253, arts. 1(3)(a), 2, Sch. (with art. 6) (as amended (15.12.2006) by S.I. 2006/3258, arts. 1(2), 3(3) (with art. 5))

**C23** S. 32 saved (E.W.) (1.10.2001) by S.I. 2000/2727, art. 8A (as inserted (1.10.2001) by S.I. 2001/3268, art. 2(11))

**C24** S. 32 saved (S.) (1.10.2001) by S.I. 2001/3269, art. 7

#### Marginal Citations

**M6** 1976 c. 76.

### [<sup>F128</sup>32A Orders under section 32: supplementary.

- (1) An order under section 32 may make provision generally in relation to the renewables obligation imposed by the order, and may in particular specify—
- (a) different obligations for successive periods of time;
  - (b) that only electricity generated using specified descriptions of renewable source is to count towards discharging the obligation (or that such electricity is to count only up to a specified amount);
  - (c) that only electricity generated by specified descriptions of generating station is to count towards discharging the obligation (or that such electricity is to count only up to a specified amount);
  - (d) that a specified minimum amount of electricity generated as mentioned in paragraph (b) or (c) is to be counted towards the discharge of the renewables obligation;

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- (e) how the amount of electricity supplied by an electricity supplier (whether generally or to particular customers or descriptions of customer) is to be determined;
  - (f) how the proportion referred to in section 32(6) or in the definition of “renewable sources” in section 32(8) is to be determined;
  - (g) the consequences for the discharge of the renewables obligation if a generating station of the type mentioned in section 32(6) uses more than a specified proportion of fossil fuel during a specified period (which may include the consequence that none of the electricity generated by that generating station during that period is to count towards discharging the obligation);
  - (h) that specified information, or information of a specified nature, is to be given to the Authority (in addition to the evidence referred to in section 32(3)), and the form in which it is to be given.
- (2) An order may, in relation to any specified period (“the current period”)—
- (a) provide that evidence of electricity supplied in a later period may, when available, be counted towards discharging the renewables obligation for the current period;
  - (b) provide that evidence of electricity supplied in the current period may, in a later period, be counted towards discharging the renewables obligation for that period;
  - (c) specify how much later the later period referred to in paragraph (a) or (b) may be;
  - (d) specify a maximum proportion of the renewables obligation for any period which may be discharged as mentioned in paragraph (a) or (b);
  - (e) specify a maximum proportion of electricity supplied in any period evidence of which may be counted towards discharging the renewables obligation for a different period.
- (3) An order may make—
- (a) different provision for different cases or circumstances; and
  - (b) different provision in relation to different suppliers,
- if the Secretary of State is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers.
- (4) An order may provide for the Authority to require an electricity supplier to provide it with information, or with information of a particular kind, which is in its opinion relevant to the question whether the supplier is discharging, or has discharged, the renewables obligation.
- (5) That information must be given to the Authority in whatever form it requires.
- (6) No person shall be required by virtue of this section to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.
- (7) An order may make further provision as to the functions of the Authority in relation to the obligation imposed by the order.

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#### Textual Amendments

**F128** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### [<sup>F129</sup> 32B] [<sup>F129</sup> Green certificates.]

- (1) An order under section 32 may provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate to the operator of a generating station or to an electricity supplier.
- (2) A certificate is to certify—
  - (a) that the generating station or, in the case of a certificate issued to an electricity supplier, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate; and
  - (b) that it has been supplied to customers in Great Britain (or the part of Great Britain stated in the certificate).
- (3) If an electricity supplier produces a certificate to the Authority, it is to count for the purposes of section 32(3) as sufficient evidence of the facts certified.]

#### Textual Amendments

**F128** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F129** S. 32B inserted (1.10.2001) by 2000 c. 27, s. 64; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

**C25** S. 32B: transfer of functions (1.11.2001) by S.I. 2001/3504, arts. 1(2)(a), 2, Sch. (with art. 4) (as amended (15.12.2006) by S.I. 2006/3258, arts. 1(2), 3(4) (with art. 5))

#### [<sup>F130</sup> 32C] [<sup>F130</sup> Payment as alternative to complying with order under section 32.]

- (1) An order under section 32 may provide that instead of producing evidence under section 32(3), an electricity supplier may discharge (in whole or in part) its renewables obligation (or its obligation in relation to a particular period) by making a payment to the Authority.
- (2) The order may make provision—
  - (a) as to the sum which for the purposes of subsection (1) is to correspond to the supply of a given amount of electricity;
  - (b) for different such sums in relation to different periods;
  - (c) for different such sums in relation to electricity generated in different ways specified in the order (such as those referred to in section 32A(1)(b) and (c)); and
  - (d) for any such sum to be adjusted from time to time for inflation by a method specified in the order (which may refer to a specified scale or index or to other specified data of any description, including such a scale or index or such data



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in a form not current when the order was made, but in a subsequent form attributable to revision or any other cause and taking effect afterwards).

- (3) The Authority must pay the amounts received to electricity suppliers in accordance with a system of allocation specified in the order.
- (4) The system of allocation specified in the order may provide for payments to specified categories of electricity supplier only.]

#### Textual Amendments

- F128** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F130** S. 32C inserted (1.10.2001) by 2000 c. 27, s. 65; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

- C26** S. 32C: transfer of functions (1.11.2001) by S.I. 2001/3504, arts. 1(2)(a), 2, Sch. (with art. 4)

**F131** **33** .....

#### Textual Amendments

- F128** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F131** S. 33 ceased to have effect (21.11.2000) by virtue of 2000 c. 27, s. 66; S.I. 2000/2414, art. 2 (subject to saving in art. 3(2)) and s. 33 repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 8; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

- C27** S. 33 saved (with modifications) (27.10.2000 with effect on 21.11.2000) by S.I. 2000/2727, art. 11; and, as so saved, further modified (E.W.) (1.10.2001) by S.I. 2001/3268, art. 3 and (S.) (1.10.2001) by S.I. 2001/3269, art. 9; and, as so saved, further modified (E.W.) (30.12.2001) by S.I. 2001/3914, art. 2; and, as so saved, further modified (S.) (31.3.2002) by S.S.I. 2002/92, art. 2(2)
- C28** S. 33 applied (2.10.2001) by S.I. 1990/266, reg. 2(1) (as inserted (2.10.2001) by S.I. 2001/3286, reg. 3(4))

### **34 Fuel stocks etc. at generating stations.**

- (1) This section applies to any generating station which—
  - (a) is of a capacity not less than 50 megawatts; and
  - (b) is fuelled otherwise than by waste or manufactured gases;and in this subsection “waste” has the same meaning as in the <sup>M7</sup>Control of Pollution Act 1974.
- (2) The Secretary of State may by order provide that subsection (1) above shall have effect as if for the capacity mentioned in paragraph (a) there were substituted such other capacity (not exceeding 100 megawatts) as may be specified in the order.

*Status: Point in time view as at 16/04/2004.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) In respect of any generating station to which this section applies, the Secretary of State may give a direction requiring the person who operates it—
- (a) to make such arrangements with respect to stocks of fuel and other materials held at or near that generating station for the purposes of its operation as will—
    - (i) enable those stocks to be brought within a specified time to, and thereafter maintained at, a specified level; and
    - (ii) ensure that they do not fall below that level, except as may be permitted by the terms of the direction or by a direction under subsection (4) below;
  - (b) to create such stocks and make such arrangements with respect to them;
- and the amount of any stocks may be specified by reference to the period for which it would enable the generating station to be maintained in operation.
- (4) In respect of any generating station to which this section applies, the Secretary of State may give a direction—
- (a) authorising or requiring the person who operates it to make such use as may be specified of any stocks held at or near that generating station; and
  - (b) requiring that person to operate, or not to operate, that generating station for specified periods, at specified levels of capacity or using specified fuels.
- (5) In subsections (3) and (4) above “specified” means specified by or under the Secretary of State’s direction; and a direction may—
- (a) specify the cases and circumstances in which any stocks are to be treated as held at or near any generating station;
  - (b) specify the extent to which the direction may be treated as complied with where, under arrangements made or approved by the Secretary of State, access can be had to stocks held for the use of a number of consumers;
  - (c) specify the manner in which any period mentioned in subsection (3) or (4) above is to be determined;
  - (d) require anything falling to be specified under the direction to be specified by such persons and by reference to such matters as may be specified.
- (6) A direction under subsection (3) or (4) above which confers on any person the function of specifying anything falling to be specified under the direction may require that person to exercise that function in such manner as may be specified by the direction.

#### Textual Amendments

**F128** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

**C29** S. 34: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

**C30** By S.I. 1990/1066, art. 2 it is provided that s. 34(1) shall have effect as if for the capacity of 50 megawatts mentioned in para. (a), there were substituted the capacity of 10 megawatts

#### Marginal Citations

**M7** 1974 c. 40.

*Status: Point in time view as at 16/04/2004.*

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### 35 Provisions supplementary to section 34.

- (1) The Secretary of State may give a direction requiring any person authorised by a licence to transmit electricity to give to the Secretary of State, after consultation with specified persons, any information or advice which the Secretary of State may reasonably require for purposes connected with the exercise of his functions under section 34 above.
- (2) The Secretary of State may give a direction requiring any person authorised by a licence to transmit electricity to operate his transmission system, at any time when a direction under section 34(4) above is in force, either in a specified manner or with a view to achieving specified objectives.
- (3) In subsections (1) and (2) above “specified” means specified by or under the Secretary of State’s direction; and a person authorised by a licence to transmit electricity shall give effect to any direction given to him under subsection (2) above notwithstanding any other duty imposed on him by or under this Part.
- (4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under section 34 above or this section unless he is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.
- (5) A person who, without reasonable excuse, contravenes or fails to comply with a direction of the Secretary of State under section 34 above or this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (6) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.
- (7) Paragraphs 1 to 4, 7 and 8 of Schedule 2 to the <sup>M8</sup>Energy Act 1976 (administration of Act and other matters) shall have effect as if—
  - (a) section 34 above were contained in that Act;
  - (b) the powers of paragraph 1 were exercisable for any purpose connected with securing compliance with a direction under that section;
  - (c) information obtained by virtue of that paragraph could lawfully be disclosed to any person by whom anything falls to be specified under such a direction; and
  - (d) the powers conferred by sub-paragraph (1)(c) of that paragraph included power to direct that information and forecasts be furnished to any such person.

#### Textual Amendments

**F128** S. 32A inserted (1.10.2001) by [2000 c. 27, s. 63](#); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

#### Modifications etc. (not altering text)

**C31** S. 35: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750, arts. 1, 2, Sch. 1](#) (with [art. 7](#))

#### Marginal Citations

**M8** [1976 c. 76.](#)

*Status: Point in time view as at 16/04/2004.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### 36 Consent required for construction etc. of generating stations.

- (1) Subject to subsections (2) and (4) below, a generating station shall not be constructed, extended or operated except in accordance with a consent granted by the Secretary of State.
- (2) Subsection (1) above shall not apply to a generating station whose capacity—
  - (a) does not exceed the permitted capacity, that is to say, 50 megawatts; and
  - (b) in the case of a generating station which is to be constructed or extended, will not exceed the permitted capacity when it is constructed or extended;
 and an order under this subsection may make different provision for generating stations of different classes or descriptions.
- (3) The Secretary of State may by order provide that subsection (2) above shall have effect as if for the permitted capacity mentioned in paragraph (a) there were substituted such other capacity as may be specified in the order.
- (4) The Secretary of State may by order direct that subsection (1) above shall not apply to generating stations of a particular class or description, either generally or for such purposes as may be specified in the order.
- (5) A consent under this section—
  - (a) may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Secretary of State to be appropriate; and
  - (b) shall continue in force for such period as may be specified in or determined by or under the consent.
- (6) Any person who without reasonable excuse contravenes the provisions of this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.
- (8) The provisions of Schedule 8 to this Act (which relate to consents under this section and section 37 below) shall have effect.
- (9) In this Part “extension”, in relation to a generating station, includes the use by the person operating the station of any land (wherever situated) for a purpose directly related to the generation of electricity by that station and “extend” shall be construed accordingly.

#### Textual Amendments

**F128** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

**C32** S. 36 restricted by S.I. 1990/442, art. 3(1)(a)

**C33** S. 36 restricted (21.11.2003) by The Norfolk Offshore Wind Farm Order 2003 (S.I. 2003/2830), arts. 1, 16 (with art. 23)

**C34** S. 36 excluded (16.4.2004) by The Gunfleet Sands Offshore Wind Farm Order 2004 (S.I. 2004/933), arts. 1, 16

**C35** S. 36 modified (S.) (27.5.1997) by 1997 c. 8, ss. 57(2), 278(2) (with ss. 64, 219)

*Status: Point in time view as at 16/04/2004.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- S. 36 modified (S.) (27.5.1997) by 1997 c. 10, ss. 10(2), 31, 40(2) (with ss. 9(3), 10(5), 38(6))
- C36** S. 36: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, art. 2, **Sch. 1** (with art. 7)
- C37** S. 36(2) modified (S.) by S.I. 1990/392, **art. 2**
- C38** S. 36(2) modified (E.W.) (1.12.2001) by S.I. 2001/3642, **art. 2**
- C39** S. 36(2) modified (S.) (26.9.2002) by The Electricity Act 1989 (Requirement of Consent for Offshore Generating Stations) (Scotland) Order 2002 (S.S.I. 2002/407), **art. 3**

### 37 Consent required for overhead lines.

- (1) Subject to subsection (2) below, an electric line shall not be installed or kept installed above ground except in accordance with a consent granted by the Secretary of State.
- (2) Subsection (1) above shall not apply—
- (a) in relation to an electric line which has a nominal voltage not exceeding 20 kilovolts and is used or intended to be used for supplying a single consumer;
  - (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or
  - (c) in such other cases as may be prescribed.
- (3) A consent under this section—
- (a) may include such conditions (including conditions as to the ownership and operation of the line) as appear to the Secretary of State to be appropriate;
  - (b) may be varied or revoked by the Secretary of State at any time after the end of such period as may be specified in the consent; and
  - (c) subject to paragraph (b) above, shall continue in force for such period as may be specified in or determined by or under the consent.
- (4) Any person who without reasonable excuse contravenes the provisions of this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.

#### Textual Amendments

- F128** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

- C40** S. 37 restricted by S.I. 1990/442, **art. 3(1)(b)**
- C41** S. 37 excluded (16.3.1992) by Midland Metro Act 1992 (c. vii), s. 10(3)
- C42** S. 37 modified (S.) (27.5.1997) by 1997 c. 8, ss. 57(2), 278(2) (with ss. 64, 219)
- C43** S. 37: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, art. 2, **Sch. 1** (with art. 7)
- C44** S. 37(1) excluded (1.1.1993) by S.I. 1992/3074, **reg.3**
- C45** S. 37(1) excluded (18.12.1996) by 1996 c. 61, s. 50(1)

### 38 Preservation of amenity and fisheries.

The provisions of Schedule 9 to this Act (which relate to the preservation of amenity and fisheries) shall have effect.]

*Status: Point in time view as at 16/04/2004.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F128** S. 32A inserted (1.10.2001) by 2000 c. 27, s. 63; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

### *Consumer protection: standards of performance*

## 39 Electricity supply: performance in individual cases.

[<sup>F132</sup>(1) The Authority may, with the consent of the Secretary of State, make regulations prescribing such standards of performance in connection with the activities of electricity suppliers, so far as affecting customers or potential customers of theirs, as in the Authority’s opinion ought to be achieved in individual cases.]

(2) Regulations under this section may—

- (a) prescribe circumstances in which [<sup>F133</sup>electricity suppliers] are to inform persons of their rights under this section [<sup>F134</sup>or their rights under section 39A];
- (b) prescribe such standards of Performance in relation to any duty arising under paragraph (a) above as, in the Director’s opinion, ought to be achieved in all cases; and
- (c) prescribe circumstances in which [<sup>F133</sup>electricity suppliers] are to be exempted from any requirements of the regulations or this section,

[<sup>F135</sup>and, if the Authority is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers, may make different provision for different electricity suppliers.]

(3) If [<sup>F136</sup>an electricity supplier] fails to meet a prescribed standard, he shall make to any person who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.

(4) The making of compensation under this section in respect of any failure by [<sup>F136</sup>an electricity supplier] to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.

<sup>F137</sup>(5) .....

<sup>F137</sup>(5A) .....

<sup>F137</sup>(6) .....

(7) In this section “prescribed” means prescribed by regulations under this section.

### Textual Amendments

**F132** S. 39(1) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, Sch. 6 para. 32(a); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F133** Words in s. 39(2)(a)(c) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, Sch. 6 para. 32(c); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F134** Words in s. 39(2)(a) inserted (1.10.2001) by 2000 c. 27, s. 54(1)(a); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

*Status: Point in time view as at 16/04/2004.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F135** Words in s. 39(2) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 para. 32(b)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F136** Words in s. 39(3)(4) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 para. 32(d)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F137** S. 39(5)(5A)(6) repealed (1.10.2001) by 2000 c. 27, ss. 54(1)(b), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

[<sup>F138</sup>**39A Standards of performance in individual cases: electricity distributors.**

- (1) The Authority may with the consent of the Secretary of State make regulations prescribing such standards of performance in connection with the activities of electricity distributors, so far as affecting customers or potential customers of electricity suppliers, as in the Authority's opinion ought to be achieved in individual cases.
- (2) If an electricity distributor fails to meet a prescribed standard, he shall make to any person who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.
- (3) The regulations may—
  - (a) prescribe circumstances in which electricity distributors are to inform customers or potential customers of electricity suppliers of their rights under this section;
  - (b) prescribe such standards of performance in relation to any duty arising under paragraph (a) as, in the Authority's opinion, ought to be achieved in all cases;
  - (c) make provision as to the manner in which compensation under this section is to be made;
  - (d) prescribe circumstances in which electricity distributors are to be exempted from any requirements of the regulations or this section; and
  - (e) if the Authority is of the opinion that the differences are such that no electricity distributor would be unduly disadvantaged in competing with other electricity distributors, make different provision with respect to different electricity distributors.
- (4) Provision made under subsection (3)(c) may—
  - (a) require or permit compensation to be made on behalf of electricity distributors by electricity suppliers to customers or potential customers; and
  - (b) require electricity suppliers to provide services to electricity distributors in connection with the making of compensation under this section.
- (5) The making of compensation under this section in respect of any failure to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.
- (6) In this section “prescribed” means prescribed by regulations under this section.]

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*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F138** Ss. 39A, 39B inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 54(2); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

### [<sup>F139</sup>39B Standards of performance in individual cases: disputes.

- (1) Any dispute arising under section 39 or 39A or regulations made under either of those sections—
  - (a) may be referred to the Authority by either party or, with the agreement of either party, by the Council; and
  - (b) on such a reference, shall be determined by order made by the Authority or, if it thinks fit, by such person (other than the Council) as may be prescribed.
- (2) A person making an order under subsection (1) shall include in the order his reasons for reaching his decision with respect to the dispute.
- (3) The practice and procedure to be followed in connection with any such determination shall be such as may be prescribed.
- (4) An order under subsection (1) shall be final and shall be enforceable—
  - (a) in England and Wales, as if it were a judgment of a county court; and
  - (b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (5) In this section “prescribed” means prescribed by regulations made by the Authority with the consent of the Secretary of State.]

#### Textual Amendments

**F139** Ss. 39A, 39B inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 54(2); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

### 40 Electricity supply: overall performance.

- (1) The Director may, <sup>F140</sup> . . . from time to time—
  - (a) determine such standards of overall performance in connection with the provision of electricity supply services as, in his opinion, ought to be achieved by [<sup>F141</sup>electricity] suppliers; and
  - (b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.

<sup>F142</sup>(1A) . . . . .

- (2) Different standards may be determined under this section for different [<sup>F143</sup>electricity suppliers][<sup>F144</sup>if the Authority is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers].



*Status: Point in time view as at 16/04/2004.*

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[<sup>F145</sup>(3) It shall be the duty of every [<sup>F146</sup>electricity supplier]] to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under this section.

#### Textual Amendments

- F140** Words in s. 40(1) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), ss. 20(2), 56(7), [Sch. 2](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I.
- F141** Words in s. 40(1)(a) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, [Sch. 6 Pt. II para. 33\(a\)](#); S.I. 2001/1781, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-20)
- F142** S. 40(1A) repealed (1.10.2001) by 2000 c. 27, s. 108, [Sch. 8](#); S.I. 2001/3266, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-20)
- F143** Words in s. 40(2) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, [Sch. 6 Pt. II para. 33\(c\)](#); S.I. 2001/1781, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-20)
- F144** Words in s. 40(2) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, [Sch. 6 Pt. II para. 33\(b\)](#); S.I. 2001/1781, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-20)
- F145** S. 40(3) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 24; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I
- F146** Words in s. 40(3) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, [Sch. 6 Pt. II para. 33\(d\)](#); S.I. 2001/1781, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-20)

#### [<sup>F147</sup>40A Overall standards of performance: electricity distributors.

- (1) The Authority may from time to time—
  - (a) determine such standards of overall performance in connection with the activities of electricity distributors as, in its opinion, ought to be achieved by them; and
  - (b) arrange for the publication, in such form and in such manner as it considers appropriate, of the standards so determined.
- (2) Different standards may be determined for different electricity distributors if the Authority is of the opinion that the differences are such that no electricity distributor would be unduly disadvantaged in competing with other electricity distributors.
- (3) It shall be the duty of every electricity distributor to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under this section.

#### Textual Amendments

- F147** S. 40A inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 55; S.I. 2001/1781, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-20)

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**[<sup>F148</sup> Procedures for prescribing or determining standards of performance.]**

**[<sup>F148</sup> 40B**

- (1) Before prescribing standards of performance in regulations under section 39 or 39A, or determining standards of performance under section 40 or 40A, the Authority shall—
  - (a) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results;
  - (b) publish a notice of its proposals in accordance with subsections (2) and (3) and consider any representations which are duly made in respect of those proposals; and
  - (c) consult the Council and other persons or bodies mentioned in subsection (4).
- (2) The notice required by subsection (1)(b) is a notice—
  - (a) stating that the Authority proposes to prescribe or determine standards of performance and setting out the standards of performance proposed;
  - (b) stating the reasons why it proposes to prescribe or determine those standards of performance; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made.
- (3) A notice required by subsection (1)(b) shall be published in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of those likely to be affected by the proposals.
- (4) The persons or bodies to be consulted by the Authority under subsection (1)(c) are—
  - (a) electricity suppliers (in the case of standards of performance under section 39 or 40) or electricity distributors and electricity suppliers (in the case of standards of performance under section 39A or 40A); and
  - (b) persons or bodies appearing to the Authority to be representative of persons likely to be affected by the regulations or determination.
- (5) The Authority shall make arrangements for securing that notices under subsection (1)(b), regulations under section 39 or 39A and determinations under section 40 or 40A are made available to the public by whatever means it considers appropriate.]

**Textual Amendments**

**F147** S. 40A inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 55; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F148** S. 40B inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 56; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**41A Promotion of the efficient use by consumers of electricity.]**

- (1) The Secretary of State may by order impose—
  - (a) on each electricity distributor (or each electricity distributor of a specified description); and
  - (b) on each electricity supplier (or each electricity supplier of a specified description),

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- an obligation to achieve, within a specified period and in accordance with the order, the energy efficiency target to be determined by the Authority under the order for that distributor or supplier (and that obligation is referred to in this section as an “energy efficiency obligation”).
- (2) In this section “energy efficiency target” means a target for the promotion of improvements in energy efficiency, that is to say, efficiency in the use by consumers of electricity, gas conveyed through pipes or any other source of energy which is specified in the order.
  - (3) An order under this section may specify criteria by reference to which the Authority is to determine energy efficiency targets for the electricity distributors or electricity suppliers on whom obligations are imposed by the order.
  - (4) The Secretary of State and the Authority shall carry out their respective functions under this section in the manner he or it considers is best calculated to ensure that no electricity distributor is unduly disadvantaged in competing with other electricity distributors and no electricity supplier is unduly disadvantaged in competing with other electricity suppliers.
  - (5) The order may make provision generally in relation to the energy efficiency obligations which it imposes, including in particular provision—
    - (a) as to the treatment of persons who become electricity distributors or electricity suppliers after the beginning of the period to which the order relates;
    - (b) as to the action which qualifies for the purpose of meeting the whole or any part of an energy efficiency target;
    - (c) as to the method by which improvements in energy efficiency attributable to any qualifying action are to be assessed;
    - (d) requiring distributors and suppliers to give to the Authority specified information, or information of a specified nature, about their proposals for complying with their energy efficiency obligations;
    - (e) requiring the Authority to determine—
      - (i) whether any proposed action qualifies for the purpose of achieving the whole or any part of a person’s energy efficiency target; and
      - (ii) if so, what improvement in energy efficiency is to be attributed for that purpose to the proposed action or to any result of that action specified in the determination; and
    - (f) requiring distributors or suppliers to produce to the Authority evidence of a specified kind demonstrating that they have complied with their energy efficiency obligations.
  - (6) The order may make provision authorising the Authority to require a distributor or supplier to provide it with specified information, or information of a specified nature, relating to—
    - (a) his proposals for complying with his energy efficiency obligation; or
    - (b) the question whether he has complied with that obligation.
  - (7) The order may make provision as to circumstances in which—
    - (a) a person’s energy efficiency target may be altered during the period to which the order relates;
    - (b) the whole or any part of a person’s energy efficiency target may be treated as having been achieved by action taken otherwise than by or on behalf of that person;

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- (c) any action taken before the period to which the order relates may be treated as qualifying action taken during that period;
  - (d) the whole or any part of a person's energy efficiency target may be transferred to another electricity distributor or electricity supplier or to a gas transporter or gas supplier (within the meaning of Part I of the <sup>M9</sup>Gas Act 1986); or
  - (e) a person may carry forward the whole or any part of his energy efficiency target for the period to which the order relates to a subsequent period.
- (8) The order may—
- (a) provide for exceptions from any requirement of the order;
  - (b) provide that any specified requirement contained in it is to be treated as a relevant requirement for the purposes of this Part;
  - (c) make supplementary, incidental and transitional provision; and
  - (d) subject to subsection (4), make different provision for different cases (including different provision in relation to different distributors or suppliers).
- (9) The order may include provision for treating the promotion of the supply to premises of—
- (a) electricity generated by a generating station which is operated for the purposes of producing heat, or a cooling effect, in association with electricity;
  - (b) heat produced in association with electricity or steam produced from (or air or water heated by) such heat;
  - (c) any gas or liquid subjected to a cooling effect produced in association with electricity,
- as promotion of energy efficiency.
- (10) No person shall be required by virtue of this section to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.
- (11) Before making an order under this section the Secretary of State shall consult the Authority, the Council, electricity distributors and electricity suppliers and such other persons as he considers appropriate.
- (12) An order under this section shall not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

#### Textual Amendments

**F147** S. 40A inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 55; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

**C46** S. 41A(2) modified (15.12.2001) by S.I. 2001/4011, art. 5

#### Marginal Citations

**M9** 1986 c. 44.

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## 42 Information with respect to levels of performance.

- (1) The Director shall from time to time collect information with respect to—
- (a) the compensation made by [<sup>F149</sup>electricity suppliers] under section 39 above;
  - (b) the levels of overall performance achieved by such suppliers in connection with the provision of electricity supply services; <sup>F150</sup> . . .
  - (c) . . . . .
- [<sup>F151</sup>(1A) The Authority shall from time to time collect information with respect to—
- (a) the compensation made by electricity distributors under section 39A above;
  - (b) the levels of overall performance achieved by electricity distributors.]
- (2) [<sup>F152</sup>At such times] as may be specified in a direction given by the Director, each [<sup>F153</sup>electricity supplier] shall furnish to the Director the following information, namely—
- (a) as respects each standard prescribed by regulations under section 39 above, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
  - (b) as respects each standard determined under section 40 <sup>F154</sup> . . . , such information with respect to the level of performance achieved by the supplier as may be so specified.
- [<sup>F155</sup>(2A) At such times as may be specified in a direction given by the Authority, each electricity distributor shall furnish to the Authority the following information, namely—
- (a) as respects each standard prescribed by regulations under section 39A, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
  - (b) as respects each standard determined under section 40A, such information with respect to the level of performance achieved by the distributor as may be so specified.]
- (3) . . . . .
- <sup>F156</sup>(4) . . . . .
- <sup>F156</sup>(5) . . . . .

### Textual Amendments

- F149** Words in s. 42(1)(a) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 34(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F150** S. 42(1)(c) and the word “and” immediately preceding it repealed (1.10.2001) by 2000 c. 27, ss. 57(2), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F151** S. 42(1A) inserted (1.10.2001) by 2000 c. 27, s. 57(3); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F152** Words in s. 42(2) substituted (1.10.2001) by 2000 c. 27, s. 57(4); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F153** Words in s. 42(2) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 34(b)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F154** Words in s. 42(2)(b) repealed (1.10.2001) by 2000 c. 27, ss. 57(4), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F155** S. 42(2A) inserted (1.10.2001) by 2000 c. 27, s. 57(5); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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**F156** S. 42(4)(5) repealed (1.10.2001) by 2000 c. 27, ss. 20(7), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in **arts. 3-20**)

**Modifications etc. (not altering text)**

**C47** S. 42: functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, **arts. 1(1), 2, Sch.** (with **art. 6**)

[<sup>F157</sup>**42A Information to be given to customers about overall performance.**

- (1) The Authority may make regulations requiring such information as may be specified or described in the regulations about—
  - (a) the standards of overall performance determined under section 40 or 40A; and
  - (b) the levels of performance achieved as respects those standards,
 to be given by electricity suppliers or electricity distributors to customers or potential customers of electricity suppliers.
- (2) Regulations under this section may include provision—
  - (a) specifying the form and manner in which and the frequency with which information is to be given; and
  - (b) requiring information about the matters mentioned in subsection (1)(a) or (b) and relating to electricity distributors to be given by electricity distributors to electricity suppliers and by electricity suppliers to their customers or potential customers.]

**Textual Amendments**

**F157** S. 42A substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, **s. 58**; S.I. 2001/1781, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-10**); S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

**Modifications etc. (not altering text)**

**C48** S. 42A continued (with modifications) (1.10.2001) by S.I. 2001/3266, **arts. 1(2), 9(1)**

[<sup>F158</sup>**42A Publication of statistical information about standards of performance.**

- (1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate relating to—
  - (a) the levels of performance achieved by electricity suppliers and electricity distributors in respect of—
    - (i) standards of performance prescribed or determined under sections 39, 39A, 40 and 40A; and
    - (ii) energy efficiency obligations imposed by order under section 41A; and
  - (b) complaints made by consumers about any matter relating to the activities of such suppliers or distributors and the handling of such complaints.
- (2) In subsection (1)(b) “complaints” includes complaints made directly to electricity suppliers and electricity distributors (or anyone carrying on activities on their behalf) and complaints to the Authority or the Council.

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### Textual Amendments

**F158** S. 42AA inserted (7.11.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 20(6); S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

### [<sup>F159F160</sup>42B Procedures for dealing with complaints.]

- (1) Each public electricity supplier shall establish a procedure for dealing with complaints made by his customers or potential customers in connection with the provision of electricity supply services.
- (2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—
  - <sup>F161</sup>(a) .....
  - (b) the proposed procedure or modification has been approved by the Director.
- (3) The supplier shall—
  - (a) publicise the procedure in such manner as may be approved by the Director; and
  - (b) send a description of the procedure, free of charge, to any person who asks for one.
- (4) The Director may give a direction to any public electricity supplier requiring the supplier to review his procedure or the manner in which it operates.
- (5) A direction under subsection (4) above—
  - (a) may specify the manner in which the review is to be conducted; and
  - (b) shall require a written report of the review to be made to the Director.
- (6) Where the Director receives a report under subsection (5)(b) above, he may, after consulting the supplier, direct him to make such modifications of—
  - (a) the procedure; or
  - (b) the manner in which the procedure operates,as may be specified in the direction.
- (7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.]

### Textual Amendments

**F158** S. 42AA inserted (7.11.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 20(6); S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F159** S. 42B ceased to have effect (7.11.2000) by virtue of 2000 c. 27, s. 108, Sch. 6 Pt. II para. 35; S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12)

**F160** S. 42B inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 22; Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I

**F161** S. 42B(2)(a) repealed (7.11.2000) by 2000 c. 27, s. 108, Sch. 8; S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12)

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## [<sup>F162</sup>42C Remuneration and service standards.

- (1) This section applies to any company which is authorised by a licence to carry on activities subject to price regulation.
- (2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—
  - (a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3); and
  - (b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.
- (3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors of the company to levels of performance as respects service standards in connection with activities subject to price regulation.
- (4) A description under subsection (2)(b) must include in particular—
  - (a) a statement of when the arrangements were made;
  - (b) a description of the service standards in question;
  - (c) an explanation of the means by which the levels of performance as respects those service standards are assessed; and
  - (d) an explanation of how the remuneration was calculated.
- (5) The statement required by subsection (2) must also state—
  - (a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3); or
  - (b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,
 and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.
- (6) A description under subsection (5) must—
  - (a) include in particular the matters listed in subsection (4)(a), (b) and (c); and
  - (b) where the arrangements described are different from any arrangements described under subsection (2)(b), state the likely effect of those differences on the remuneration of each director of the company.
- (7) The statement required by subsection (2) must be made to the Authority in such manner as may be required by the Authority.
- (8) The statement required by subsection (2)—
  - (a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and
  - (b) may be published by the Authority in such manner as it may consider appropriate.
- (9) The duty of a company under this section applies in respect of any person who has at any time been a director of the company.
- (10) In this section—
 

“activities subject to price regulation”, in relation to any company, are activities for which—



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- (a) a maximum price which may be charged by the company, or a method for calculating such a maximum price; or
- (b) a maximum revenue which may be received by the company, or a method for calculating such a maximum revenue,

is determined by or under the licence granted under this Part;

“company” means a company within the meaning of the <sup>M10</sup>Companies Act 1985 which is limited by shares;

“remuneration” in relation to a director of a company—

- (a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and
- (b) includes remuneration in respect of any of his services while a director of the company;

“service standards” in relation to any company, means standards relating to the quality of service received by customers or potential customers of the company, including any such standards which are—

- (a) set by or under any conditions included in a licence granted under this Part;
- (b) prescribed by the Authority in regulations made under section 39 or 39A;
- (c) determined by the Authority under section 40 or 40A; or
- (d) set or agreed to by the company.]

#### Textual Amendments

**F162** S. 42C inserted (1.10.2001) by 2000 c. 27, s. 61; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Marginal Citations

**M10** 1985 c. 6.

### *Consumer protection: miscellaneous*

#### **43 Functions with respect to competition.**

<sup>F163</sup>(1) . . . . .

[<sup>F164</sup>(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Authority and the Office of Fair Trading.

(2A) This subsection applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to commercial activities connected with the generation, transmission or supply of electricity.

(2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the Act of 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to the Authority (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).]

<sup>F165</sup>(3) The Director shall be entitled to exercise, concurrently with [<sup>F166</sup>the Office of Fair Trading, the functions of the Office of Fair Trading] under the provisions of Part I of

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the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to commercial activities connected with the generation, transmission or supply of electricity.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to [<sup>F167</sup>the Office of Fair Trading] are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]

[<sup>F168</sup>(4) Before the Office of Fair Trading or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, it shall consult the other.

(4A) Neither the Office of Fair Trading nor the Authority shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.]

(5) It shall be the duty of the Director, for the purpose of assisting the [<sup>F169</sup>Competition Commission] in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) <sup>F170</sup> . . . above, to give to the Commission—

- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation and—
  - (i) is requested by the Commission for that purpose; or
  - (ii) is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require and which it is within his power to give, in relation to any such matters,

and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

(6) If any question arises [<sup>F171</sup>in any particular case as to the jurisdiction of the Director under any of the provisions mentioned in] subsection [<sup>F172</sup>(2A)] or (3) above <sup>F173</sup> . . . . , that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—

- (a) [<sup>F174</sup>Part 4 of the Enterprise Act 2002]; or
- <sup>F175</sup>[(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),] by or in relation to the Director on the ground that it should have been done by or in relation to [<sup>F176</sup>the Office of Fair Trading].

[<sup>F177</sup>(6A) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Authority by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to the Authority.]

<sup>F178</sup>(7) . . . . .

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### Textual Amendments

- F163** S. 43(1) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(7)(a), Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F164** S. 43(2)-(2B) substituted for s. 43(2) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 18(2); S.I. 2003/1397, art. 2(1), Sch.
- F165** S. 43(3)(3A) substituted for s. 43(3) (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), Sch. 10 Pt. II para. 4(4)(5) (with s. 73); S.I. 1998/2750, art. 2(1)(b) (with art. 2(2)); S.I. 2000/344, art. 2, Sch.
- F166** Words in s. 43(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(7)(b); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F167** Words in s. 43(3A) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(7)(c); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F168** S. 43(4)(4A) substituted for s. 43(4) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 18(3); S.I. 2003/1397, art. 2(1), Sch.
- F169** Words in S. 43(5) substituted (1.4.1999) by S.I. 1999/506, art. 24(b)
- F170** Words in s. 43(5) repealed (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, ss. 66(5), 74(3), Sch. 10 Pt. II para. 4(7), Sch. 14 Pt. I (with s. 73); S.I. 1998/2750, art. 2(1)(b) (with art. 2(2)); S.I. 2000/344, art. 2, Sch.
- F171** Words in s. 43(6) substituted (3.1.1995) by 1994 c. 40, ss. 12(7), 82(2)(a)(b), Sch. 4 para. 3(b)
- F172** Word in s. 43(6) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 18(4)(a); S.I. 2003/1397, art. 2(1), Sch.
- F173** Words in s. 43(6) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 18(4)(b); S.I. 2003/1397, art. 2(1), Sch.
- F174** Words in s. 43(6)(a) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 18(4)(c); S.I. 2003/1397, art. 2(1), Sch.
- F175** S. 43(6)(b) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), Sch. 10, Pt. II para. 4(8) (with s. 73); S.I. 1998/2750, art. 2(1)(b) (with art. 2(2)); S.I. 2000/344, art. 2, Sch.
- F176** Words in s. 43(6) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(7)(d); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F177** S. 43(6A) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 18(5); S.I. 2003/1397, art. 2(1), Sch.
- F178** S. 43(7) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 18(6), Sch. 26; S.I. 2003/1397, art. 2(1), Sch.

### Modifications etc. (not altering text)

- C49** S. 43(2) applied (3.1.1995) by 1994 c. 40, ss. 7(2), 82(2)(a)(b), Sch. 2 para. 4(2)
- C50** S. 43(3) restricted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), Sch. 10 Pt. II para. 4(1) (with s. 73); S.I. 1998/2750, art. 2(1)(b) (with art. 2(2)); S.I. 2000/344, art. 2, Sch.

### [<sup>F179</sup>43A Adjustment of charges to help disadvantaged groups of customers.

- (1) If the Secretary of State considers that members of any group (a “disadvantaged group”) of customers of authorised suppliers are treated less favourably than other customers of theirs as respects charges for electricity, he may make an order containing a scheme for the adjustment of charges for electricity with a view to eliminating or reducing the less favourable treatment.
- (2) The scheme may include—

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- (a) provision for the adjustment of charges by authorised distributors or authorised transmitters (as well as by suppliers);
  - (b) in relation to charges payable to suppliers, provision for the adjustment of charges payable by customers who are not members of the disadvantaged group (as well as by persons who are).
- (3) The scheme shall—
- (a) describe the disadvantaged group;
  - (b) specify the persons whose charges are covered by the scheme; and
  - (c) set out the basis of the adjustment of the charges.
- (4) If the scheme does not relate to the whole of Great Britain, it shall specify the area or areas to which it relates.
- (5) The scheme may—
- (a) require authorised suppliers, authorised distributors or authorised transmitters to supply information of any specified description, in any specified form, to any other such persons; and
  - (b) provide for the modification of the conditions of licences, for the purpose of facilitating the implementation of the scheme.
- (6) An order shall not be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.]

#### Textual Amendments

**F179** Ss. 43A, 43B inserted (1.10.2001) by 2000 c. 27, s. 69; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### [<sup>F180</sup> 43B Orders: supplementary.

- (1) Before making an order under section 43A, the Secretary of State shall give notice—
- (a) stating that he proposes to make an order and setting out its effect;
  - (b) stating the reasons why he proposes to make the order; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed order may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (2) The notice shall be given—
- (a) by serving a copy of it on the persons whose charges are covered by the proposed order; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing the proposed order to the attention of other persons likely to be affected by it.
- (3) An order under section 43A shall continue in force for such period not exceeding three years as is specified in the order; but that does not prevent the making of another order to come into force at the end of that period.

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- (4) The Secretary of State may by order require authorised suppliers, authorised distributors or authorised transmitters to supply information of any specified description, in any specified form, to any other such persons for the purpose of enabling the making of an order under section 43A.
- (5) The Authority—
  - (a) shall monitor the effect of orders under section 43A and report its findings to the Secretary of State whenever he directs it to do so; and
  - (b) may require authorised suppliers, authorised distributors or authorised transmitters to supply to the Authority, in any specified form, such information as it requires for carrying out that duty.
- (6) In section 43A references to customers do not include customers of a description excluded by an order made by the Secretary of State.
- (7) In this section and section 43A “authorised transmitter” means a person authorised by a licence or exemption to transmit electricity.]

#### Textual Amendments

**F180** Ss. 43A, 43B inserted (1.10.2001) by 2000 c. 27, s. 69; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### [<sup>F181</sup>44 Maximum prices for reselling electricity.

- (1) The Authority may from time to time direct that the maximum prices at which electricity supplied by authorised suppliers may be resold—
  - (a) shall be such as may be specified in the direction; or
  - (b) shall be calculated by such method and by reference to such matters as may be so specified;and shall publish directions under this section in such manner as in its opinion will secure adequate publicity for them.
- (2) A direction under this section may—
  - (a) require any person who resells electricity supplied by an authorised supplier to furnish the purchaser with such information as may be specified or described in the direction; and
  - (b) provide that, in the event of his failing to do so, the maximum price applicable to the resale shall be such as may be specified in the direction, or shall be reduced by such amount or such percentage as may be so specified.
- (3) Different directions may be given under this section as respects different classes of cases, which may be defined by reference to areas or any other relevant circumstances.
- (4) If any person resells electricity supplied by an authorised supplier at a price exceeding the maximum price determined by or under a direction under this section and applicable to the resale—
  - (a) the amount of the excess; and
  - (b) if the direction so provides, interest on that amount at a rate specified or described in the direction,shall be recoverable by the person to whom the electricity was resold.]

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#### Textual Amendments

**F181** S. 44 substituted (1.10.2001) by 2000 c. 27, s. 73(1) (with s. 73(2)); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Modifications etc. (not altering text)

**C51** S. 44(1)(2)(b): functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, Sch. (with art. 6)

### *Investigation of complaints*

<sup>F182</sup>45 .....

#### Textual Amendments

**F182** S. 45 repealed (7.11.2000) by 2000 c. 27, ss. 22(3), 108, Sch. 8 (with Sch. 7 para. 32); S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12)

#### [<sup>F183</sup>46 Consumer complaints.

- (1) This section applies to a complaint which any customer or potential customer of, or user of electricity supplied by, an authorised supplier (“the complainant”) has in his capacity as such against—
  - (a) the supplier, in respect of any matter connected with the services provided by him in the course of carrying on regulated activities; or
  - (b) any other person authorised by a licence or exemption, in respect of any matter affecting those services which is connected with the carrying on by that other person of regulated activities.
- (2) Where a complaint to which this section applies (other than one appearing to it to be frivolous or vexatious) is referred to the Council by or on behalf of the complainant, the Council shall (subject to subsection (5)) investigate the complaint for the purpose of determining whether it is appropriate to take any action under subsection (6).
- (3) Where it appears to the Council that the complaint relates to a matter in respect of which any enforcement function is or may be exercisable the Council shall (unless it considers that the Authority already has notice of that matter) inform the Authority of the matter.
- (4) Where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority under any provision of this Act, the Council shall inform the complainant that he may have the right to refer the dispute to the Authority.
- (5) The Council is not required by this section—
  - (a) to investigate a complaint, until the complainant has taken such steps as appear to the Council to be reasonable for him to take for the purpose of giving the person against whom the complaint is made a reasonable opportunity to deal with the complaint;

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- (b) to investigate any matter to which subsection (3) applies, until the Authority has had a reasonable opportunity to exercise any enforcement function in respect of that matter; and
  - (c) to investigate any matter constituting a dispute which has been referred to the Authority under any provision of this Act.
- (6) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this section, the Council shall make representations on behalf of the complainant to the person against whom the complaint is made about anything to which the complaint relates.
- (7) After investigating a complaint the Council may make a report to the Authority; and such a report may include information about—
- (a) any representations made by the Council under subsection (6); and
  - (b) the response of the person against whom the complaint is made to the complaint or any such representations.
- (8) No report under subsection (7), or information about a complaint referred to the Council under this section from which the complainant may be identified, shall be published or disclosed by the Council or the Authority in the exercise of any power under the Utilities Act 2000 or this Act, without the consent of the complainant.
- (9) Where a representation made to the Authority about any matter (other than one appearing to it to be frivolous or vexatious) appears to the Authority—
- (a) to be about a matter which is or amounts to a complaint to which this section applies; and
  - (b) to have been made by or on behalf of the complainant,
- the Authority shall refer the complaint to the Council.
- (10) In this section—
- “enforcement function” means a function under section 25 or 27A; and
  - “regulated activities” means activities which are authorised or regulated by a licence or exemption.]

#### Textual Amendments

**F183** S. 46 substituted (7.11.2000) by 2000 c. 27, s. 22(2); S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12)

#### [<sup>F184</sup>46A Power of Council to investigate other matters.

- (1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers in relation to electricity conveyed by distribution systems.
- (2) Where the Council has investigated a matter under this section it may make a report on that matter to the Authority, the Secretary of State, [<sup>F185</sup>the Office of Fair Trading] or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.
- (3) Subject to subsection (4), the Council may—

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- (a) send a report on any matter investigated under this section to any person who appears to the Council to have an interest in that matter; and
  - (b) publish any such report in such manner as the Council thinks appropriate.
- (4) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate)—
- (a) shall not be included in a report which is to be sent to any person under subsection (3)(a), unless one or more of paragraphs (a) to (c) of subsection (5) applies; and
  - (b) shall be excluded from any such report which is to be published under subsection (3)(b), unless one or more of paragraphs (a) to (c) of subsection (6) applies.
- (5) Information relating to a particular individual or body may be included in a report to be sent under subsection (3)(a) if—
- (a) that individual or body has consented to the disclosure;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (6) Information relating to a particular individual or body may be included in a report to be published under subsection (3)(b) if—
- (a) that individual or body has consented to the publication;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (7) Before deciding to include in such a report any information relating to a particular individual or body in pursuance of subsection (5)(c) or (6)(c), the Council shall—
- (a) consult that individual or body; and
  - (b) have regard to any opinion expressed by the Authority as to the application of subsection (5)(c) or (6)(c) to the information or as to the desirability or otherwise of its inclusion in the report;
- and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.]

#### Textual Amendments

**F184** S. 46A inserted (7.11.2000) by 2000 c. 27, s. 23(2); S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12)

**F185** Words in s. 46A(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(8); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)



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### *Other functions of Director*

#### **47 General functions.**

- (1) It shall be the duty of the Director, so far as it appears to him practicable from time to time to do so—
- (a) to keep under review the carrying on both in Great Britain and elsewhere of activities to which this subsection applies; and
  - (b) to collect information with respect to those activities, and the persons by whom they are carried on, with a view to facilitating the exercise of his functions under this Part;
- and this subsection applies to any activities connected with the generation, transmission and supply of electricity, including in particular activities connected with the supply to any premises of heat produced in association with electricity and steam produced from and air and water heated by such heat.
- (2) The Secretary of State may give general directions indicating—
- (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under subsection (1)(a) or (b) above; and
  - (b) considerations to which, in cases where it appears to the Director that any of his functions under this Part are exercisable, he should have particular regard in determining whether to exercise those functions.
- (3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or [<sup>F186</sup>the Office of Fair Trading] to do so, to give information, advice and assistance to the Secretary of State or [<sup>F187</sup>the Office of Fair Trading] with respect to any matter in respect of which any function of the Director under this Part is exercisable.

<sup>F188</sup>(4) .....

#### **Textual Amendments**

- F186** Words in s. 47(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 20\(9\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F187** Words in s. 47(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 20\(9\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F188** S. 47(4) repealed (7.11.2000) by [2000 c. 27, s. 108, Sch. 8](#); [S.I. 2000/2974, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-12](#))

#### **48 Publication of information and advice.**

- [<sup>F189</sup>(1) If it appears to the Authority that the publication of any advice and information would promote the interests of consumers in relation to electricity conveyed by distribution systems, the Authority may publish that advice or information in such manner as it thinks fit.
- (2) In publishing advice or information under this section the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where

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publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.

(2A) Before deciding to publish under this section any advice or information relating to a particular individual or body of persons the Authority shall consult that individual or body.]

(3) [<sup>F190</sup>The Office of Fair Trading] shall consult the Director before publishing under [<sup>F191</sup>section 6 of the Enterprise Act 2002] any information or advice which may be published by the Director under this section.

[<sup>F192</sup>(4) In this section “consumers” includes both existing and future consumers.]

#### Textual Amendments

**F189** S. 48(1)(2)(2A) substituted for s. 48(1)(2) (20.12.2000) by 2000 c. 27, s. 6(2); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

**F190** Words in s. 48(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(10) (a); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F191** Words in s. 48(3) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(10) (b); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

**F192** S. 48(4) inserted (20.12.2000) by 2000 c. 27, s. 6(2); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

#### 49 Keeping of register.

(1) The Director shall, at such premises and in such form as he may determine, maintain a register for the purposes of this Part.

(2) Subject to subsection (3) and to any direction given under subsection (4) below, the Director shall cause to be entered in the register the provisions of—

- (a) every licence and every exemption granted to a particular person;
- (b) every modification or revocation of a licence;
- (c) every direction or consent given or determination made under a licence; <sup>F193</sup> . . .
- (d) every final or provisional order, every revocation of such an order and every notice under section 25(6) above [<sup>F194</sup>; and
- (e) every penalty imposed under section 27A(1) and every notice under section 27A(5)].

(3) In entering any provision in the register, the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 42(5)(a) and (b) above.

(4) If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest or the commercial interests of any person, he may direct the Director not to enter that provision in the register.

(5) The contents of the register shall be available for inspection by the public during such hours and subject to the payment of such fee as may be specified in an order made by the Secretary of State.

(6) Any person may, on the payment of such fee as may be specified in an order so made, require the Director to supply him with a copy of, or extract from, any part of the

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register, being a copy or extract which is certified by the Director to be a true copy or extract.

- (7) Any sums received by the Director under this section shall be paid into the Consolidated Fund.

#### Textual Amendments

**F193** Word in s. 49(2)(c) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

**F194** S. 49(2)(e) and the word “; and” immediately preceding it inserted (1.10.2001) by 2000 c. 27, s. 59(3); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

#### [<sup>F195</sup>49A Reasons for decisions.

- (1) This section applies to the following decisions of the Authority or the Secretary of State, namely—
- (a) the revocation of a licence;
  - (b) the modification of the conditions of a licence;
  - (c) the giving of any directions or consent in pursuance of a condition included in a licence by virtue of section 7(3)(a) or (b);
  - (d) the determination of a question referred in pursuance of a condition included in a licence by virtue of section 7(3)(c);
  - (e) the determination of a dispute referred under section 23(1);
  - (f) the making of a final order, the making or confirmation of a provisional order or the revocation of a final order or of a provisional order which has been confirmed.
- (2) As soon as reasonably practicable after making such a decision the Authority or the Secretary of State shall publish a notice stating the reasons for the decision in such manner as it or he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.
- (3) The Authority shall send a copy of a notice published in respect of a decision mentioned in paragraph (a), (b), (c), (d) or (f) of subsection (1) to the licence holder to whose licence, or to whom, the decision relates.
- (4) In preparing a notice under subsection (2) the Authority or the Secretary of State shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where it or he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.
- (5) This section does not apply to a decision resulting in any provision which the Secretary of State has under section 49(4) directed the Authority not to enter in the register required to be kept under that section.

#### Textual Amendments

**F195** S. 49A inserted (1.10.2001) by 2000 c. 27, s. 42; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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F196 **50** .....

**Textual Amendments**

**F195** S. 49A inserted (1.10.2001) by 2000 c. 27, s. 42; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

**F196** S. 50 repealed (20.12.2000 subject to saving in Sch. of commencing S.I.) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/3343, art. 2 (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2) and subject to an amendment (1.10.2001) by 2000 c. 27, s. 108, **Sch. 7 Pt. IV para. 29(5)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

*Provisions with respect to committees*

F197 **51** .....

**Textual Amendments**

**F197** S. 51 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

F198 **52** .....

**Textual Amendments**

**F198** S. 52 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

F199 **53** .....

**Textual Amendments**

**F199** S. 53 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

*Provisions with respect to Consumers' etc. Councils*

F200 **54** .....

**Textual Amendments**

**F200** S. 54 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

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**F201** 55 .....

**Textual Amendments**

**F201** S. 55 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

**56 Continuity of employment of officers of abolished Councils.**

- (1) This section applies to any person who—
- (a) immediately before the date on which section 54 above comes into force is an officer of one of the Councils ceasing to exist by virtue of that section (in this section referred to as his “former employer”); and
  - (b) within four weeks after that date, is employed by one of the successor companies or the Director (in this section referred to as his “new employer”) in pursuance of an offer made before that date;
- and in this subsection “successor company” has the same meaning as in Part II.

**F202** (2) .....

- (3) [<sup>F203</sup>Chapter I of Part XIV of the Employment Rights Act 1996] (computation of period of employment) shall have effect in relation to a person to whom this section applies as if it included the following provisions, that is to say—
- (a) the period of his employment with his former employer shall count as a period of employment with his new employer; and
  - (b) the change of employer shall not break the continuity of the period of employment.
- (4) Where this section applies to a person, the period of his employment with his former employer shall count as a period of employment with his new employer for the purposes of any provision of his contract of employment with his new employer which depends on his length of service with that employer.

**Textual Amendments**

**F202** S. 56(2) repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

**F203** Words in s. 56(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 43(2)** (with ss. 191-195, 202)

*[<sup>F204</sup> Alteration of activities requiring licence*

**Textual Amendments**

**F204** Ss. 56A-56F and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 43; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

**F205** 56A Power to alter activities requiring licence.

- (1) The Secretary of State may by order provide—

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- (a) that specified activities are to become licensable activities; or
  - (b) that specified activities are to cease to be licensable activities.
- (2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 4(1).
- (3) An order under this section may make consequential, transitional, incidental or supplementary provision including—
- (a) amendments (or repeals) in any provision of this Act or any other enactment; and
  - (b) provision modifying any standard conditions of licences or (in the case of an order under subsection (1)(a)) provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities.
- (4) An order under this section may only provide for activities to become licensable activities if they are activities connected with the generation, transmission, distribution or supply of electricity.
- (5) An order under this section providing for activities to become licensable activities may only be made on the application of the Authority made in accordance with section 56B.
- (6) An order under this section providing for activities to cease to be licensable activities may be made either—
- (a) on the application of the Authority made in accordance with section 56E; or
  - (b) following consultation by the Secretary of State in accordance with section 56F.
- (7) An order under this section may provide that it is to remain in force only for a period specified in the order.
- (8) An order shall not be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

#### Textual Amendments

**F205** Ss. 56A-56F and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 43; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### <sup>F206</sup> **56B Application by Authority for order including new activities.**

- (1) If the Authority proposes to make an application for an order providing for activities to become licensable activities, it shall give notice—
- (a) stating that it proposes to make an application for an order providing for the activities to become licensable activities;
  - (b) setting out the conditions which it would expect such an order to determine to be standard conditions for the purposes of licences authorising the undertaking of the activities and any other conditions which it would expect to be included in such licences; and

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- (c) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,  
and shall consider any representations or objections which are duly made and not withdrawn.
- (2) The notice shall be given by serving a copy on the Council and by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of—
- (a) persons appearing to it to be carrying on, or be intending to carry on, the activities; and
- (b) any other persons appearing to it to be likely to be affected by an order providing for the activities to become licensable activities.
- (3) If an objection has been duly made (and not withdrawn) by a person who is carrying on or intends to carry on the activities, the Authority shall make a reference to the Competition Commission under section 56C before making the application.
- (4) In any other case where the Authority considers it appropriate to make a reference to the Commission under section 56C before making the application, the Authority may make such a reference.
- (5) If a reference is made to the Commission, the application shall not be made unless the Commission has reported on the reference that the fact that the activities to which the application relates are not licensable activities operates, or may be expected to operate, against the public interest.
- (6) The application shall set out—
- (a) the activities which the Authority considers should become licensable activities; and
- (b) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities in question and any other conditions which it would expect to be included in such licences.

#### **Textual Amendments**

**F206** Ss. 56A-56F and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 43; S.I. 2001/3266, art. 2, Sch.  
(subject to transitional provisions in arts. 3-20)

#### **<sup>F207</sup>56C References to Competition Commission.**

- (1) A reference to the Competition Commission under this section shall require the Commission to investigate and report on whether the fact that the activities specified in the reference are not licensable activities operates, or may be expected to operate, against the public interest.
- (2) The Authority may, at any time, by notice given to the Commission vary the reference by adding to the activities specified in the reference or by excluding from the reference some of the activities so specified; and on receipt of such notice the Commission shall give effect to the variation.

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- (3) The Authority shall specify in the reference, or a variation of the reference, for the purpose of assisting the Commission in carrying out the investigation on the reference—
- (a) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities specified in the reference and any other conditions which it would expect to be included in such licences; and
  - (b) any effects adverse to the public interest which, in its opinion, the fact that the activities so specified are not licensable activities has or may be expected to have.
- (4) As soon as practicable after making the reference, or a variation of the reference, the Authority shall serve a copy of it on the Council and publish particulars of it in such manner as the Authority considers appropriate for bringing it to the attention of—
- (a) persons appearing to the Authority to be carrying on, or be intending to carry on, the activities specified in it; and
  - (b) any other persons appearing to the Authority to be likely to be affected by it.
- (5) The Authority shall, for the purpose of assisting the Commission in carrying out the investigation on the reference, give to the Commission—
- (a) any information which is in its possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in its opinion it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within its power to give, in relation to any such matters,
- and the Commission shall take account of the information for the purpose of carrying out the investigation.
- (6) In determining for the purposes of this section whether the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, the Commission shall have regard to—
- (a) the matters referred to in section 3A;
  - (b) any social or environmental policies set out or referred to in guidance issued under section 3B; and
  - (c) any advice given by the Health and Safety Commission or the Secretary of State under section 3C (advice about health and safety in relation to electricity).

F208(7) .....

F208(8) .....

#### Textual Amendments

**F207** Ss. 56A-56F and cross-heading inserted (1.10.2001) by [2000 c. 27, s. 43](#); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

**F208** S. 56C(7)(8) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 20\(11\), Sch. 26](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))



*Status: Point in time view as at 16/04/2004.*

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#### **Modifications etc. (not altering text)**

**C52** S. 56C amended (16.5.2001) by 2000 c. 27, s. 104(1)(b)(2) (with s. 104(6)); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10)

#### **[<sup>F209</sup>56C] References under section 56C: time limits**

- (1) Every reference under section 56C above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 56C above shall not have effect (in particular for the purposes of section 56B(5) above) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall publish an extension under subsection (3) above in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

#### **Textual Amendments**

**F209** Ss. 56CA, 56CB inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(12); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### **56CB References under section 56C: application of Enterprise Act 2002**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 56C above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

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- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 56C above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words [<sup>F210</sup>“the OFT, OFCOM,”] and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4) above, have effect in relation to those sections as applied by virtue of those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.]

#### Textual Amendments

- F209** Ss. 56CA, 56CB inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 20\(12\)](#); [S.I. 2003/1397](#), art. 2(1), [Sch. \(with art. 8\)](#)
- F210** Words in s. 56CB(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 16 para. 3](#) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1 \(with art. 11\)](#)

#### [<sup>F204</sup>56D Reports on references.

- (1) In making a report on a reference under section 56C, the Competition Commission shall include in the report definite conclusions on whether the fact that the activities specified in the reference (or the reference as varied) are not licensable activities operates, or may be expected to operate, against the public interest.
- (2) The Commission shall also include in the report such an account of its reasons for those conclusions as in its opinion is expedient for facilitating proper understanding of the questions raised by the reference and of its conclusions.
- (3) Where the Commission concludes that the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, it shall specify in the report—
  - (a) the effects adverse to the public interest which that fact has or may be expected to have; and
  - (b) any modifications to the conditions specified in the reference in accordance with section 56C(3)(a) which they consider appropriate.

[ For the purposes of section 56B(5), a conclusion contained in a report of the <sup>F211</sup>(3A) Competition Commission is to be disregarded if the conclusion is not that of at least

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- two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (3B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 56C as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]
- [<sup>F212</sup>(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 56C.
- (4A) In making any report on a reference under section 56C the Competition Commission must have regard to the following considerations before disclosing any information.
- (4B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (4C) The second consideration is the need to exclude from disclosure (so far as practicable)
- 
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (4D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4C)(a) or (b) is necessary for the purposes of the report.]
- (5) A report of the Commission on a reference under section 56C shall be made to the Authority.
- (6) On receiving the report, the Authority shall send a copy of it to the Secretary of State.
- (7) Subject to subsection (8), the Authority shall, not less than 14 days after the copy is received by the Secretary of State, send another copy to the Council and publish that other copy in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (8) If it appears to the Secretary of State that the publication of any matter in the report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in subsection (7), direct the Authority to exclude that matter from the copy of the report to be sent to the Council and published under that subsection.]

#### Textual Amendments

**F211** S. 56D(3A)(3B) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 20\(13\)\(a\)](#); [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 8)

**F212** S. 56D(4)-(4D) substituted for s. 56D(4) (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 20\(13\)\(b\)](#); [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 8)

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**<sup>F213</sup>56E Application by Authority for order excluding activities.**

- (1) Before making an application for an order providing for activities to cease to be licensable activities, the Authority shall give notice—
  - (a) stating that it proposes to make an application for an order providing for the activities to cease to be licensable activities; and
  - (b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (2) The notice shall be given—
  - (a) by serving a copy on the Secretary of State and the Council; and
  - (b) by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons appearing to the Authority to be likely to be affected by such an order.
- (3) An application under this section shall set out—
  - (a) the activities which the Authority considers should cease to be licensable activities; and
  - (b) the Authority’s reasons for proposing that the order be made.

**Textual Amendments**

**F213** Ss. 56A-56F and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 43; S.I. 2001/3266, art. 2, **Sch.**  
(subject to transitional provisions in [arts. 3-20](#))

**<sup>F214</sup>56F Consultation by Secretary of State about order excluding activities.**

- (1) If the Secretary of State proposes to make an order providing for activities to cease to be licensable activities (otherwise than on an application by the Authority under section 56E), he shall give notice—
  - (a) stating that he proposes to make an order providing for the activities to cease to be licensable activities; and
  - (b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,
 and shall consider any representations or objections duly made (and not withdrawn).
- (2) The notice shall be given—
  - (a) by serving a copy on the Authority and the Council; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons appearing to him to be likely to be affected by such an order.]

**Textual Amendments**

**F214** Ss. 56A-56F and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 43; S.I. 2001/3266, art. 2, **Sch.**  
(subject to transitional provisions in [arts. 3-20](#))

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*Miscellaneous*

**[<sup>F215</sup>56G Service by Authority of certain notices on Council.**

Where the Authority is required by any provision of this Part to publish a notice or any other document, the Authority shall send a copy of the document to the Council.

**Textual Amendments**

**F215** S. 56G inserted (20.12.2000) by 2000 c. 27, s. 18(6); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

**[<sup>F216</sup>57** .....

**Textual Amendments**

**F215** S. 56G inserted (20.12.2000) by 2000 c. 27, s. 18(6); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

**F216** S. 57 repealed (7.11.2000) by 2000 c. 27, s. 108, Sch. 8; S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12)

**58 Directions restricting the use of certain information.**

- (1) The Secretary of State may give to any person who is authorised by a licence to transmit electricity (“the authorised person”) such directions as appear to the Secretary of State to be requisite or expedient for the purpose of securing that, in any case where subsection (2) below applies, neither the person by whom the information mentioned in that subsection is acquired nor any other person obtains any unfair commercial advantage from his possession of the information.
- (2) This subsection applies where, in the course of any dealings with an outside person who is, or is an associate of, a person authorised by a licence or exemption to generate, transmit or supply electricity, the authorised person or any associate of his is furnished with or otherwise acquires any information which relates to the affairs of that outside person or any associate of his.
- (3) As soon as practicable after giving any directions under subsection (1) above, the Secretary of State shall publish a copy of the directions in such manner as he considers appropriate for the purpose of bringing the directions to the attention of persons likely to be affected by a contravention of them.
- (4) The obligation to comply with any directions under subsection (1) above is a duty owed to any person who may be affected by a contravention of them.
- (5) Where a duty is owed by virtue of subsection (4) above to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.
- (6) In any proceedings brought against any person in pursuance of subsection (5) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the directions.

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- (7) Without prejudice to any right which any person may have by virtue of subsection (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of any directions under this section, compliance with any such directions shall be enforceable by civil proceedings by the Secretary of State for an injunction or interdict or for any other appropriate relief.
- (8) In this section—  
“dealings” includes dealings entered into otherwise than for purposes connected with the transmission of electricity;  
“outside person”, in relation to any person, means any person who is not an associate of his;  
and for the purposes of this section a person is an associate of another if he and that other are connected with each other within the meaning of section 839 of the<sup>M11</sup>Income and Corporation Taxes Act 1988.

#### Textual Amendments

**F215** S. 56G inserted (20.12.2000) by 2000 c. 27, s. 18(6); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

#### Modifications etc. (not altering text)

**C53** S. 58: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

#### Marginal Citations

**M11** 1988 c. 1.

## 59 Making of false statements etc.

- (1) If any person, in giving any information or making any application under or for the purposes of any provision of this Part, or of any regulations made under this Part, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be liable—  
(a) on summary conviction, to a fine not exceeding the statutory maximum;  
(b) on conviction on indictment, to a fine.
- (2) Any person who seeks to obtain entry to any premises by falsely pretending to be—  
(a) an employee of [<sup>F217</sup>, or other person acting on behalf of, an electricity distributor or electricity supplier];  
(b) an electrical inspector; or  
(c) a meter examiner,  
shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) No proceedings shall be instituted in England and Wales in respect of an offence under subsection (1) above except by or with the consent of the Secretary of State or the Director of Public Prosecutions.]

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#### Textual Amendments

- F215** S. 56G inserted (20.12.2000) by 2000 c. 27, s. 18(6); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F217** Words in s. 59(2)(a) substituted (1.10.2001) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 37; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### Supplemental

### 60 Powers to make regulations.

- (1) Regulations made under any provision of this Part may provide for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision—
- as to the mode of proof of any matter;
  - as to parties and their representation;
  - for the right to appear before and be heard by the Secretary of State, the Director and other authorities; and
  - as to awarding costs or expenses of proceedings for the determination of such questions, including the amount of the costs or expenses and the enforcement of the awards.
- (2) Regulations made under any provision of this Part which prescribe a period within which things are to be done may provide for extending the period so prescribed.
- (3) Regulations made under any provision of this Part may—
- provide for anything falling to be determined under the regulations to be determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be prescribed by the regulations;
  - make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - make such supplemental, consequential and transitional provision as the Secretary of State or, as the case may be, the Director considers appropriate.

#### Modifications etc. (not altering text)

- C54** S. 60 applied (29.9.2000 for specified purposes and otherwise 7.11.2000) by 2000 c. 27, s. 27(6); S.I. 2000/2412, art. 2, Sch.; S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12)
- C55** S. 60: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

### 61 Concurrent proceedings.

- (1) Subsection (2) below applies where a licence holder makes an application to the Secretary of State for his consent under section 36 above for the construction or extension of a generating station and, for a purpose connected with the proposed

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construction or extension of that station, makes either or both of the following, namely—

- (a) a compulsory purchase order; and
- (b) an application to the Secretary of State for authorisation under paragraph 1 of Schedule 5 to this Act (water rights for hydro-electric generating stations in Scotland).

(2) The proceedings which—

- (a) in the case of a compulsory purchase order, are required by Part II of the <sup>M12</sup>Acquisition of Land Act 1981 or Schedule 1 to the <sup>M13</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to be taken for the purpose of confirming that order;
- (b) in the case of an application under paragraph 1 of Schedule 5 to this Act, are required by paragraphs 7 to 12 of that Schedule to be taken in relation to that application,

may be taken concurrently (so far as practicable) with the proceedings required by Schedule 8 to this Act to be taken in relation to the application for consent under section 36 above.

(3) Subsection (4) below applies where a licence holder makes an application to the Secretary of State for his consent under section 37 above for the installation of an electric line above ground and, for a purpose connected with the proposed installation of that line, makes one or more of the following, namely—

- (a) a compulsory purchase order;
- (b) an application to the Secretary of State under paragraph 6 of Schedule 4 to this Act for a necessary wayleave; and
- (c) a reference to the Secretary of State under paragraph 9 (felling and lopping of trees) of that Schedule.

(4) The proceedings which—

- (a) in the case of a compulsory purchase order, are required by Part II of the Acquisition of Land Act 1981 or Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to be taken for the purpose of confirming that order;
- (b) in the case of an application under paragraph 6 of Schedule 4 to this Act, are required by that paragraph to be taken in relation to that application;
- (c) in the case of a reference under paragraph 9 of that Schedule, are required by that paragraph to be taken in relation to that reference,

may be taken concurrently (so far as practicable) with the proceedings required by Schedule 8 to this Act to be taken in relation to the application for consent under section 37 above.

(5) Where, for a purpose connected with the proposed installation of an electric line, a licence holder makes—

- (a) an application to the Secretary of State under paragraph 6 of Schedule 4 to this Act for the necessary wayleave; and
- (b) a reference to the Secretary of State under paragraph 9 of that Schedule,

the proceedings required by the said paragraph 9 to be taken in relation to the reference under that paragraph may be taken concurrently (so far as practicable) with the proceedings required by the said paragraph 6 to be taken in relation to the application under that paragraph.



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**Modifications etc. (not altering text)**

**C56** S. 61: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

**Marginal Citations**

**M12** 1981 c. 67.

**M13** 1947 c. 42.

**62 Public inquiries.**

- (1) The Secretary of State may cause an enquiry to be held in any case where he considers it advisable to do so in connection with any matter arising under this Part other than a matter in respect of which any functions of the Director under section 25 above are or may be exercisable [<sup>F218</sup> or a matter relating to a function which is exercisable by the Scottish Ministers].
- [<sup>F219</sup>(1A) The Scottish Ministers may cause an inquiry to be held in any case where they consider it advisable to do so in connection with any matter relating to the exercise by them of a function under this Part.]
- (2) The provisions of subsections (2) to (5) of section 250 of the<sup>M14</sup> Local Government Act 1972 or subsections (2) to (8) of section 210 of the<sup>M15</sup> Local Government (Scotland) Act 1973 (which relate to the giving of evidence at, and defraying the cost of, local enquiries) shall apply in relation to any inquiry held under this Part as they apply in relation to a local inquiry which a Minister causes to be held under subsection (1) of that section.
- (3) Where—
- (a) an enquiry is to be [<sup>F220</sup> caused to be held by the Secretary of State] under this Part in connection with any matter; and
  - (b) in the case of some other matter required or authorised (whether by this Part or by any other enactment) to be the subject of an enquiry (“the other enquiry”), it appears to the relevant Minister or Ministers that the matters are so far cognate that they should be considered together,
- the relevant Minister or Ministers may direct that the two inquiries be held concurrently or combined as one inquiry.
- (4) In subsection (3) above “the relevant Minister or Ministers” means the Secretary of State or, where causing the other inquiry to be held is a function of some other Minister of the Crown, the Secretary of State and that other Minister acting jointly.
- [<sup>F221</sup>(5) Where—
- (a) an inquiry is to be caused to be held by the Scottish Ministers under this Part in connection with any matter; and
  - (b) in the case of some other matter required or authorised (whether by this Part or by any other enactment) to be the subject of an inquiry which is to be caused to be held by the Scottish Ministers, it appears to the Scottish Ministers that the matters are so far cognate that they should be considered together,
- the Scottish Ministers may direct that the two inquiries be held concurrently or combined as one inquiry.]

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#### Textual Amendments

- F218** Words in s. 62(1) added (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(1)(2)** (with art. 7)  
**F219** S. 62(1A) inserted (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(3)** (with art. 7)  
**F220** Words in s. 62(1) substituted (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(4)** (with art. 7)  
**F221** S. 62(5) added (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(5)** (with art. 7)

#### Marginal Citations

- M14** 1972 c. 70.  
**M15** 1973 c. 65.

### 63 Application to Crown land.

- (1) No power (whether a power of compulsory acquisition or other compulsory power, a power to carry out works or a power of entry) which is conferred by or under this Part shall, except with the consent of the appropriate authority, be exercisable in relation to any land in which there is a Crown or Duchy interest, that is to say, an interest—
- (a) belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall; or
  - (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department.
- (2) A consent given for the purposes of subsection (1) above may be given on such financial and other conditions as the appropriate authority giving the consent may consider appropriate.
- (3) Subject to subsection (1) above, the provisions of this Part shall have effect in relation to land in which there is a Crown or Duchy interest as they have effect in relation to land in which there is no such interest.
- (4) In this section “the appropriate authority”—
- (a) in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
  - (b) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of the land;
  - (c) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of that Duchy;
  - (d) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of that Duchy, appoints;
  - (e) in relation to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

### 64 Interpretation etc. of Part I.

- (1) In this Part, unless the context otherwise requires—  
“the 1973 Act” means the <sup>M16</sup> Fair Trading Act 1973;

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“the 1980 Act” means the <sup>M17</sup> Competition Act 1980;

“authorised area” has the meaning given by section 6(9) above;

[<sup>F222</sup>“authorised distributor” means a person who is authorised by a licence or exemption to distribute electricity;]

[<sup>F223</sup>“authorised supplier” means a person who is authorised by a licence or exemption to supply electricity;]

[<sup>F222</sup>“distribute” in relation to electricity, has the meaning given by section 4(4), and cognate expressions shall be construed accordingly;]

“electrical plant” means any plant equipment, apparatus or appliance used for, or for purposes connected with the generation, transmission [<sup>F224</sup>, distribution] or supply of electricity, other than—

- (a) an electric line;
- (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or
- (c) an electrical appliance under the control of a consumer;

“electric line” means any line which is used for carrying electricity for any purpose and includes, unless the context otherwise requires—

- (a) any support of any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;
- (b) any apparatus connected to any such line for the purpose of carrying electricity; and
- (c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

[<sup>F225</sup>“electricity distributor” and “electricity supplier” have the meanings given by section 6(9);]

“exemption” means an exemption under section 5 above;

“extension”, in relation to a generating station, has the meaning given by section 36(8) above and “extend” shall be construed accordingly;

“final order” and “provisional order” have the meanings given by section 25(8) above;

“generating station”, in relation to a generating station wholly or mainly driven by water, includes all structures and works for holding or channelling water for a purpose directly related to the generation of electricity by that station;

“high voltage line” means—

- (a) in relation to England and Wales, an electric line of a nominal voltage exceeding 132 kilovolts;
- (b) in relation to Scotland, an electric line of a nominal voltage not less than 132 kilovolts,

and “low voltage line” shall be construed accordingly;

“information” includes accounts, estimates and returns;

“licence” means a licence under section 6 above and “licence holder” shall be construed accordingly;

[<sup>F226</sup>“licensable activity” means an activity which, if carried on without the authority of a licence or exemption, constitutes an offence under section 4(1);]

*Status: Point in time view as at 16/04/2004.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“line” means any wire, cable, tube, pipe or any other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity;

“ F227 . . .

“notice” means notice in writing;

“premises” includes any land, building or structure;

“prescribed”, [F228 means prescribed by regulations made, unless the context otherwise requires,] by the Secretary of State;

F229 . . .

F229 . . .

“relevant condition” and “relevant requirement” have the meanings given by section 25(8) above;

[F230 “special connection agreement” means a special agreement under section 22;]

“supply”, in relation to electricity, has the meaning given by section 4(4) above, and cognate expressions shall be construed accordingly;

F229 . . .

“transmit”, in relation to electricity, has the meaning given by section 4(4) above, and cognate expressions shall be construed accordingly;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the M18 Banking and Financial Dealings Act 1971.

- (2) The provision of section 3 of the M19 Administration of Justice (Scotland) Act 1972 (power of arbiter to state case to Court of Session) shall not apply in relation to any determination under this Part made by an arbiter.

### Textual Amendments

- F222** S. 64(1): definitions of “authorised distributor” and “distribute” inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F223** S. 64(1): definition of “authorised supplier” inserted (7.11.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(2)**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F224** S. 64(1): words in definition of “electrical plant” inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(3)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F225** S. 64(1): definitions of “electricity distributor” and “electricity supplier” inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(4)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F226** S. 64(1): definition of “licensable activity” inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(5)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F227** S. 64(1): definition of “Monopolies Commission” repealed (1.4.1999) by S.I. 1999/506, art. 24(c)
- F228** S. 64(1): words in definition of “prescribed” substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(6)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F229** S. 64(1): definitions of “private electricity supplier”, “public electricity supplier” and “tariff customer” repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(8)**, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F230** S. 64(1): definition of “special connection agreement” inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(7)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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**Modifications etc. (not altering text)**

**C57** S. 64: definitions applied by [Heathrow Express Railway Act 1991 \(c. vii\)](#), **s. 37(1)(a)**

**Marginal Citations**

**M16** 1973 c. 41.

**M17** 1980 c. 21.

**M18** 1971 c. 80.

**M19** 1972 c. 59.

**Status:**

Point in time view as at 16/04/2004.

**Changes to legislation:**

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