



Electricity Act 1989

1989 CHAPTER 29

PART I

ELECTRICITY SUPPLY

Protection of public interest

[^{F1}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 [^{F2}to 32C], the renewables obligation is that the designated electricity supplier [^{F3}must, by each specified day, have produced] 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.

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- (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—
- (a) the Authority;
 - (b) the Council;
 - (c) the electricity suppliers to whom the proposed order would apply;
 - [^{F4}(d) such generators of electricity from renewable sources as he considers appropriate; 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 ^{M1}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.
- [In this section and in sections 32A to 32C—
- ^{F5}(8A) “generated” means generated at any place whether situated in the United Kingdom or elsewhere, and cognate expressions shall be construed accordingly;
- “Northern Ireland authority” means the Northern Ireland Authority for Energy Regulation;
- “Northern Ireland supplier” means an electricity supplier within the meaning of Part 7 of the Energy (Northern Ireland) Order 2003.]
- (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

- F1** 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)
- F2** Words in s. 32(3) substituted (5.10.2004) by Energy Act 2004 (c. 20), ss. 119(1), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F3** Words in s. 32(3) substituted (5.10.2004) by Energy Act 2004 (c. 20), ss. 115(1), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

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F4 S. 32(7)(d) substituted (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 119(2)**, 198(2); S.I. 2004/2575, art. 2(1), **Sch. 1**

F5 S. 32(8A) inserted (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 119(3)**, 198(2); S.I. 2004/2575, art. 2(1), **Sch. 1**

Modifications etc. (not altering text)

C1 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](#)))

C2 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)**)

C3 S. 32 saved (S.) (1.10.2001) by [S.I. 2001/3269](#), **art. 7**

C4 S. 32(7) modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 115(6)**, 116(8), 117(2), 118(2), 119(7), 198(2); S.I. 2004/2575, art. 2(1), **Sch. 1**

Marginal Citations

M1 1976 c. 76.

[^{F6}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;
 - (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;

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- (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 [^{F7}no supplier would by virtue of the differences be unduly disadvantaged in competing with other suppliers].
- [In subsection (3) “supplier” means an electricity supplier or a Northern Ireland ^{F8}(3A) supplier.]
- (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 [^{F9}matters dealt with] by the order.]

Textual Amendments

- F6** 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)
- F7** Words in s. 32A(3) substituted (5.10.2004) by Energy Act 2004 (c. 20), ss. 119(4), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F8** S. 32A(3A) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. 119(5), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F9** Words in s. 32A(7) substituted (5.10.2004) by Energy Act 2004 (c. 20), ss. 119(6), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

[^{F10}32B 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 [^{F11}, to an electricity supplier or to a Northern Ireland supplier].

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[A certificate is to certify either the matters within subsection (2) or the matters within ^{F12}(1A) subsection (2A).]

(2) [^{F13}The matters within this subsection are]—

- (a) that the generating station or, in the case of a certificate issued to an electricity supplier [^{F14}or to a Northern Ireland 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).

[The matters within this subsection are—

- ^{F15}(2A)
- (a) that the generating station or, in the case of a certificate issued to an electricity supplier or to a Northern Ireland supplier, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate;
 - (b) that the generating station in question is not a generating station mentioned in Article 54(1) of the Energy (Northern Ireland) Order 2003; and
 - (c) that the electricity has been supplied to customers in Northern Ireland.

(2B) An order under section 32 must—

- (a) prohibit the issue of a certificate certifying matters within subsection (2A) where the Northern Ireland authority has notified the Authority that it is not satisfied that the electricity in question has been supplied to customers in Northern Ireland; and
- (b) require the revocation of such a certificate if the Northern Ireland authority so notifies the Authority at a time between the issue of the certificate and its production for the purposes of provision made by virtue of subsection (4).]

(3) If an electricity supplier produces a certificate to the Authority [^{F16}that certifies matters within subsection (2)], it is to count for the purposes of section 32(3) as sufficient evidence of the facts certified.

[An order under section 32 may provide that—

- ^{F17}(4)
- (a) in such cases as may be specified in the order, and
 - (b) subject to such conditions as may be so specified,
- an electricity supplier may (to the extent provided for in accordance with the order) discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a certificate that certifies matters within subsection (2A).

(5) References in this section to the supply of electricity to customers in Northern Ireland shall be construed in accordance with the definition of “supply” in Article 3 of the Electricity (Northern Ireland) Order 1992.]]

Textual Amendments

F10 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)

F11 Words in s. 32B(1) substituted (5.10.2004) by Energy Act 2004 (c. 20), ss. 116(2), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

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- F12** S. 32B(1A) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. **116(3)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F13** Words in s. 32B(2) substituted (5.10.2004) by Energy Act 2004 (c. 20), ss. **116(4)(a)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F14** Words in s. 32B(2)(a) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. **116(4)(b)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F15** S. 32B(2A)(2B) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. **116(5)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F16** Words in s. 32B(3) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. **116(6)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F17** S. 32B(4)(5) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. **116(7)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

Modifications etc. (not altering text)

- C5** 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))

[^{F18}32BA Use of green certificates issued in Northern Ireland

- (1) An order under section 32 may provide that—
- (a) in such cases as may be specified in the order, and
 - (b) subject to such conditions as may be so specified,
- an electricity supplier may (to the extent provided for in accordance with the order) discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a Northern Ireland certificate.
- (2) In this section “Northern Ireland certificate” means a certificate issued by the Northern Ireland authority in accordance with provision included, by virtue of Article 54 of the Energy (Northern Ireland) Order 2003, in an order under Article 52 of that Order (renewables obligations for Northern Ireland suppliers).]

Textual Amendments

- F18** S. 32BA inserted (E.W.S.) (5.10.2004) by Energy Act 2004 (c. 20), ss. **117(1)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

[^{F19}32C Payment as alternative to complying with order under section 32.

- (1) An order under section 32 may provide
- ^{F20}(a) that an electricity supplier may (in whole or in part) discharge its renewables obligation by making a payment to the Authority before the day specified as the day by which evidence must be produced for the purposes of section 32(3); and
 - (b) that an electricity supplier’s renewables obligation that was not discharged in whole or in part before the day so specified is to be treated as having been discharged to the extent specified in the order where the payment for which the order provides is made to the Authority before the end of such period beginning with that day as may be specified in the order.]
- (2) The order may make provision—

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- (a) as to the sum which for the purposes of subsection (1) is to correspond to the supply of a given amount of electricity;
 - [^{F21}(aa) for the sums that must be paid in order for an obligation to be treated as having been discharged to increase at a rate specified in the order for each day after the time by which evidence had to be produced for the purposes of section 32(3);]
 - (b) for different [^{F22}sums or rates falling within paragraph (a) or (aa)] in relation to different periods;
 - (c) for different such sums [^{F23}or rates] 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 [^{F24}or rate] 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 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).
- [^{F25}(2A) An order under section 32 may provide that, where—
- (a) a renewables obligation is one in relation to which provision made by virtue of subsection (1)(b) applies in the case of the electricity supplier who is subject to the obligation, and
 - (b) the period ending with such day (after the day by which the obligation had to be complied with) as may be specified in or determined under the order has not expired,
- the taking of steps under section 27A in respect of a contravention by that supplier of that obligation is prohibited or otherwise restricted to the extent specified in the order.
- (2B) An order under section 32 may provide that, in a case in which the amount received by the Authority, or by the Northern Ireland authority, by way of discharge payments for a period falls short of the amount due in respect of that period, every person who—
- (a) was subject to a renewables obligation for the relevant period or for a subsequent period specified in or determined under the order, and
 - (b) is of a description so specified or determined,
- must, by the time and in the circumstances so specified or determined, make a payment (or further payment) to the Authority of an amount calculated in the manner so specified or determined.
- (2C) An order under section 32 may not by virtue of subsection (2B) confer an entitlement on the Authority to receive a payment in respect of the shortfall for any period—
- (a) in the case of a shortfall in the amount received by the Authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of subsection (2A) applies, in one or more cases, to the taking of steps in relation to contraventions of renewables obligations for that period; or
 - (b) in the case of a shortfall in the amount received by the Northern Ireland authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of a corresponding provision having effect in Northern Ireland applies, in one or more cases, to the taking of steps in relation to contraventions of Northern Ireland obligations for that period.
- (2D) The provision that may be made by virtue of subsection (2B) includes—
- (a) provision for the making of adjustments and repayments at times after a requirement to make payments in respect of a shortfall for a period has already arisen; and

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- (b) provision that sections 25 to 28 are to apply in relation to a requirement imposed by virtue of that subsection on a person who is not a licence holder as if he were a licence holder.
- (3) The amounts received by the Authority by virtue of the preceding provisions of this section must be paid by it to electricity suppliers in accordance with a system of allocation specified in an order under section 32.]
- (4) The system of allocation specified in the order may provide for payments to specified categories of electricity supplier only.]
- [^{F26}(5) The references in subsections (3) and (4) to electricity suppliers include references to persons who are Northern Ireland suppliers.]
- [^{F27}(6) References in this section to an electricity supplier’s renewables obligation include references to its renewables obligation in relation to a particular period.
- (7) For the purposes of this section—
- (a) the amount received by the Authority by way of discharge payments for a period falls short of the amount due in respect of that period, and
- (b) the amount received by the Northern Ireland authority by way of discharge payments for a period falls short of the amount due in respect of that period,
- if, and to the extent that, the Authority or (as the case may be) the Northern Ireland authority would have received more by way of discharge payments if every renewables obligation or (as the case may be) Northern Ireland obligation for that period, so far as it was not otherwise discharged, had been discharged by payment.
- (8) In this section—
- “discharge payment”, in relation to a period, means—
- (a) a payment by virtue of paragraph (a) of subsection (1) for discharging (in whole or in part) an electricity supplier’s renewables obligation for that period;
- (b) so much of a payment by virtue of paragraph (b) of that subsection for securing that such an obligation is treated as discharged to any extent as does not exceed the payment that would have discharged that obligation to the same extent if it had been made before the day mentioned in that paragraph; or
- (c) so much of any payment to the Northern Ireland authority as corresponds, in relation to a Northern Ireland obligation for that period, to anything falling within paragraph (a) or (b) above;
- “Northern Ireland obligation” means a renewables obligation of a Northern Ireland supplier under Article 52 of the Energy (Northern Ireland) Order 2003;
- “the relevant period”—
- (a) in relation to a shortfall in amounts received by the Authority by way of discharge payments for a period, means that period; and
- (b) in relation to a shortfall in amounts received by the Northern Ireland authority by way of discharge payments for a period, means any period that includes the whole or a part of that period.]

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Textual Amendments

- F19** 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)
- F20** S. 32C(1)(a)(b) substituted (5.10.2004) by Energy Act 2004 (c. 20), ss. 115(2), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F21** S. 32C(2)(aa) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. 115(3)(a), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F22** Words in s. 32C(2)(b) substituted (5.10.2004) by Energy Act 2004 (c. 20), ss. 115(3)(b), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F23** Words in s. 32C(2)(c) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. 115(3)(c), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F24** Words in s. 32C(2)(d) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. 115(3)(d), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F25** Ss. 32C(2A)-(3) substituted for s. 32C(3) (5.10.2004) by Energy Act 2004 (c. 20), ss. 115(4), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F26** S. 32C(5) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. 118(1), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F27** Ss. 32C(6)-(8) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. 115(5), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

Modifications etc. (not altering text)

- C6** S. 32C: transfer of functions (1.11.2001) by S.I. 2001/3504, arts. 1(2)(a), 2, Sch. (with art. 4)

F28³³

Textual Amendments

- F28** 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)

- C7** 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)
- C8** 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 ^{M2}Control of Pollution Act 1974.

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- (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.
- (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.

Modifications etc. (not altering text)

- C9** S. 34: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750](#), [arts. 1, 2](#), [Sch. 1](#) (with [art. 7](#))
- C10** 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

- M2** [1974 c. 40](#).

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35 Provisions supplementary to section 34.

(1) The Secretary of State may give a direction requiring [^{F29}the holder of a transmission licence] 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.

[^{F30}(2) The Secretary of State may give a direction requiring any person who is authorised by a licence to participate in the transmission of electricity to carry on the activities which the licence authorises (or any of them), 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; [^{F31}and a person subject to a direction under subsection (2) above shall give effect to it 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 ^{M3}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

F29 Words in s. 35(1) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\), s. 198\(2\), Sch. 19 para. 12\(2\)](#); [S.I. 2004/2184, art. 2\(2\), Sch. 2](#)

F30 S. 35(2) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\), s. 198\(2\), Sch. 19 para. 12\(3\)](#); [S.I. 2004/2184, art. 2\(2\), Sch. 2](#)

F31 Words in s. 35(3) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\), s. 198\(2\), Sch. 19 para. 12\(4\)](#); [S.I. 2004/2184, art. 2\(2\), Sch. 2](#)

Modifications etc. (not altering text)

C11 S. 35: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750, arts. 1, 2, Sch. 1](#) (with art. 7)

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Marginal Citations

M3 1976 c. 76.

36 Consent required for construction etc. of generating stations.

- (1) Subject to subsections (2) and (4) below, a generating station shall not be constructed [^{F32}at a relevant place (within the meaning of section 4), and a generating station at such a place shall not be] 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 [^{F33}or area of waters] (wherever situated) for a purpose directly related to the generation of electricity by that station and “extend” shall be construed accordingly.

Textual Amendments

F32 Words in s. 36(1) inserted (1.3.2005) by [Energy Act 2004 \(c. 20\), s. 93\(1\)\(4\), 198\(2\); S.I. 2005/442, art. 2\(1\), Sch. 1](#)

F33 Words in s. 36(9) inserted (1.3.2005) by [Energy Act 2004 \(c. 20\), s. 93\(3\)\(4\), 198\(2\); S.I. 2005/442, art. 2\(1\), Sch. 1](#)

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Modifications etc. (not altering text)

- C12** S. 36 restricted by [S.I. 1990/442, art. 3\(1\)\(a\)](#)
- C13** S. 36 modified (S.) (27.5.1997) by [1997 c. 8, ss. 57\(2\), 278\(2\)](#) (with ss. 64, 219)
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))
- C14** S. 36: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750, art. 2, Sch. 1](#) (with art. 7)
- C15** S. 36 restricted (21.11.2003) by [The Norfolk Offshore Wind Farm Order 2003 \(S.I. 2003/2830\)](#), arts. 1, [16](#) (with art. 23)
- C16** S. 36 excluded (16.4.2004) by [The Gunfleet Sands Offshore Wind Farm Order 2004 \(S.I. 2004/933\)](#), arts. 1, [16](#)
- C17** S. 36 excluded (19.11.2004) by [The Scarweather Sands Offshore Wind Farm Order 2004 \(S.I. 2004/3054\)](#), arts. 1, [26](#) (with art. 38)
- C18** S. 36(2) modified (S.) by [S.I. 1990/392, art. 2](#)
- C19** S. 36(2) modified (E.W.) (1.12.2001) by [S.I. 2001/3642, art. 2](#)
- C20** 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

[^{F34}36A Declarations extinguishing etc. public rights of navigation

- (1) Where a consent is granted by the Secretary of State or the Scottish Ministers in relation to—
- the construction or operation of a generating station that comprises or is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters, or
 - an extension of a generating station that is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters or an extension of such an installation,
- he or (as the case may be) they may, at the same time, make a declaration under this section as respects rights of navigation so far as they pass through some or all of those places.
- (2) The Secretary of State or the Scottish Ministers may make such a declaration only if the applicant for the consent made an application for such a declaration when making his application for the consent.
- (3) A declaration under this section is one declaring that the rights of navigation specified or described in it—
- are extinguished;
 - are suspended for the period that is specified in the declaration;
 - are suspended until such time as may be determined in accordance with provision contained in the declaration; or
 - are to be exercisable subject to such restrictions or conditions, or both, as are set out in the declaration.
- (4) A declaration under this section—
- has effect, in relation to the rights specified or described in it, from the time at which it comes into force; and
 - continues in force for such period as may be specified in the declaration or as may be determined in accordance with provision contained in it.
- (5) A declaration under this section—

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- (a) must identify the renewable energy installations, or proposed renewable energy installations, by reference to which it is made;
 - (b) must specify the date on which it is to come into force, or the means by which that date is to be determined;
 - (c) may modify or revoke a previous such declaration, or a declaration under section 100 of the Energy Act 2004; and
 - (d) may make different provision in relation to different means of exercising a right of navigation.
- (6) Where a declaration is made under this section by the Secretary of State or the Scottish Ministers, or a determination is made by him or them for the purposes of a provision contained in such a declaration, he or (as the case may be) they must either—
- (a) publish the declaration or determination in such manner as appears to him or them to be appropriate for bringing it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; or
 - (b) secure that it is published in that manner by the applicant for the declaration.
- (7) In this section—
- “consent” means a consent under section 36 above;
 - “extension”, in relation to a renewable energy installation, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004;
 - “relevant waters” means waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea.

Textual Amendments

F34 Ss. 36A, 36B inserted (1.3.2005 for specified purposes, 1.9.2005 for specified purposes, 1.10.2005 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), [ss. 99\(1\), 198\(2\)](#); [S.I. 2005/442](#), [art. 2\(1\)\(3\)](#), [Sch. 1](#), [Sch. 3](#); [S.I. 2005/877](#), [art. 2\(2\)](#), [Sch. 2](#)

36B Duties in relation to navigation

- (1) Neither the Secretary of State nor the Scottish Ministers may grant a consent in relation to any particular offshore generating activities if he considers, or (as the case may be) they consider, that interference with the use of recognised sea lanes essential to international navigation—
- (a) is likely to be caused by the carrying on of those activities; or
 - (b) is likely to result from their having been carried on.
- (2) It shall be the duty both of the Secretary of State and of the Scottish Ministers, in determining—
- (a) whether to give a consent for any particular offshore generating activities, and
 - (b) what conditions to include in such a consent,
- to have regard to the extent and nature of any obstruction of or danger to navigation which (without amounting to interference with the use of such sea lanes) is likely to be caused by the carrying on of the activities, or is likely to result from their having been carried on.
- (3) In determining for the purposes of this section what interference, obstruction or danger is likely and its extent and nature, the Secretary of State or (as the case may be)

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the Scottish Ministers must have regard to the likely overall effect (both while being carried on and subsequently) of—

- (a) the activities in question; and
 - (b) such other offshore generating activities as are either already the subject of consents or are activities in respect of which it appears likely that consents will be granted.
- (4) For the purposes of this section the effects of offshore generating activities include—
- (a) how, in relation to those activities, the Secretary of State and the Scottish Ministers have exercised or will exercise their powers under section 36A above and section 100 of the Energy Act 2004 (extinguishment of public rights of navigation); and
 - (b) how, in relation to those activities, the Secretary of State has exercised or will exercise his powers under sections 95 and 96 and Chapter 3 of Part 2 of that Act (safety zones and decommissioning).
- (5) If the person who has granted a consent in relation to any offshore generating activities thinks it appropriate to do so in the interests of the safety of navigation, he may at any time vary conditions of the consent so as to modify in relation to any of the following matters the obligations imposed by those conditions—
- (a) the provision of aids to navigation (including, in particular, lights and signals);
 - (b) the stationing of guard ships in the vicinity of the place where the activities are being or are to be carried on; or
 - (c) the taking of other measures for the purposes of, or in connection with, the control of the movement of vessels in that vicinity.
- (6) A modification in exercise of the power under subsection (5) must be set out in a notice given by the person who granted the consent to the person whose obligations are modified.
- (7) In this section—
- “consent” means a consent under section 36 above;
 - “offshore generating activities” means—
 - (a) the construction or operation of a generating station that is to comprise or comprises (in whole or in part) renewable energy installations; or
 - (b) an extension of a generating station that is to comprise (in whole or in part) renewable energy installations or an extension of such an installation;
 - “the use of recognised sea lanes essential to international navigation” means—
 - (a) anything that constitutes the use of such a sea lane for the purposes of Article 60(7) of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941); or
 - (b) any use of waters in the territorial sea adjacent to Great Britain that would fall within paragraph (a) if the waters were in a Renewable Energy Zone.
- (8) In subsection (7) “extension”, in relation to a renewable energy installation, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004.]

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Textual Amendments

F34 Ss. 36A, 36B inserted (1.3.2005 for specified purposes, 1.9.2005 for specified purposes, 1.10.2005 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), [ss. 99\(1\), 198\(2\)](#); [S.I. 2005/442](#), [art. 2\(1\)\(3\)](#), [Sch. 1](#), [Sch. 3](#); [S.I. 2005/877](#), [art. 2\(2\)](#), [Sch. 2](#)

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.

Modifications etc. (not altering text)

- C21** S. 37 restricted by [S.I. 1990/442](#), [art. 3\(1\)\(b\)](#)
- C22** S. 37 excluded (16.3.1992) by [Midland Metro Act 1992 \(c. vii\)](#), [s. 10\(3\)](#)
- C23** S. 37 modified (S.) (27.5.1997) by [1997 c. 8](#), [ss. 57\(2\), 278\(2\)](#) (with [ss. 64, 219](#))
- C24** S. 37: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750](#), [art. 2](#), [Sch. 1](#) (with [art. 7](#))
- C25** S. 37 excluded (19.11.2004) by [The Scarweather Sands Offshore Wind Farm Order 2004 \(S.I. 2004/3054\)](#), [arts. 1, 26](#) (with [art. 38](#))
- C26** S. 37(1) excluded (1.1.1993) by [S.I. 1992/3074](#), [reg. 3](#)
- C27** 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.

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