



# Energy Act 2004

## 2004 CHAPTER 20

### PART 1

#### THE CIVIL NUCLEAR INDUSTRY

### CHAPTER 1

#### NUCLEAR DECOMMISSIONING

##### *Establishment of NDA*

## 1 The Nuclear Decommissioning Authority

- (1) There shall be a body corporate to be known as the Nuclear Decommissioning Authority (“the NDA”).
- (2) The NDA is not to be treated—
  - (a) except so far as necessary for the purposes of its function under section 7(2), as performing any duty or exercising any power on behalf of the Crown; or
  - (b) as enjoying any status, immunity or privilege of the Crown;and the NDA’s property is not to be regarded as property of the Crown, or as held on behalf of the Crown.

### Commencement Information

- II S. 1 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

## 2 Constitution of NDA

- (1) The NDA—
  - (a) shall consist of not fewer than seven and not more than thirteen members; and

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- (b) shall have a membership comprising both non-executive members and executive members.
- (2) The non-executive members shall be—
- (a) a chairman appointed by the Secretary of State; and
  - (b) a number of other persons appointed by the Secretary of State (after consultation with the chairman);
- and (subject to subsection (1)) it is for the Secretary of State to determine how many non-executive members there are to be in addition to the chairman.
- (3) The executive members shall be—
- (a) a person appointed by the non-executive members to be the NDA’s chief executive; and
  - (b) the other persons (if any) appointed by them (after consultation with the chief executive) to be executive members in addition to the chief executive;
- and it is for the non-executive members to determine (subject to subsection (8)) whether there are to be executive members in addition to the chief executive, and (if so) how many.
- (4) The approval of the Secretary of State is required for the appointment of the chief executive.
- (5) Before—
- (a) appointing a person to be the chairman or otherwise to be a non-executive member of the NDA, or
  - (b) approving the appointment of a person to be the chief executive,
- the Secretary of State must consult the Scottish Ministers.
- (6) Subsection (5) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (7) If there are executive members in addition to the chief executive, each must be a member of the staff of the NDA.
- (8) Where the Secretary of State so provides by a direction to the NDA, the non-executive members must secure that the number of executive members in addition to the chief executive—
- (a) is not less than the minimum set by the direction; and
  - (b) does not exceed the maximum so set;
- and the direction must not set a maximum of more than three.
- (9) The Secretary of State must exercise his powers under this section to secure, so far as practicable, that the number of executive members is at all times less than the number of non-executive members.
- (10) Schedule 1 (which contains further provision about the constitution, staffing and proceedings of the NDA) has effect; and subsections (1) to (9) have effect subject to paragraph 4 of that Schedule.

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**Commencement Information**

**I2** S. 2 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

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### *Principal function of NDA*

## **3 Designated responsibilities**

- (1) The principal function of the NDA shall be to have responsibility for securing—
  - (a) the operation, pending the commencement of their decommissioning, of designated nuclear installations;
  - (b) the decommissioning of those and other designated nuclear installations;
  - (c) the cleaning-up of designated nuclear sites;
  - (d) the operation of designated facilities for treating, storing, transporting or disposing of hazardous material;
  - (e) the treatment, storage, transportation and disposal, in designated circumstances, of hazardous material; and
  - (f) the decommissioning of designated installations comprised in NDA facilities.
- (2) The responsibilities of the NDA under this section are responsibilities to be discharged by the performance of its duties under sections 15 and 16.
- (3) A designation for the purposes of this section—
  - (a) of an installation, site or facility, and
  - (b) of the circumstances in which the NDA is to have responsibility for securing the treatment, storage, transportation or disposal of matter or waste,has (subject to section 6) to be in the form of a direction given by the Secretary of State to the NDA.
- (4) A direction must not give the NDA a responsibility mentioned in this section in relation to an installation, site or facility unless the person with control of it at the time when the direction is given is—
  - (a) a Crown appointee;
  - (b) the UKAEA;
  - (c) a publicly owned company;
  - (d) the NDA itself; or
  - (e) a person who has consented to the giving of the direction.
- (5) A direction designating an installation, site or facility must specify the paragraph or paragraphs of subsection (1) for the purposes of which it is being designated.
- (6) But, except in so far as the direction containing the designation otherwise provides, the designation of a principal nuclear site for cleaning-up is to have effect for the purposes of this Chapter as including a designation, as an installation to be decommissioned, of every installation situated in or on that site.
- (7) The Secretary of State must—
  - (a) lay before Parliament a copy of every direction containing a designation;
  - (b) publish the contents of every such direction in the manner which, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it; and
  - (c) send a copy of every direction giving the NDA a responsibility in relation to an installation, site or facility to the person with control of that installation, site or facility.

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- (8) The Scottish Ministers must lay before the Scottish Parliament a copy of every direction which by virtue of section 6 is given jointly by them and the Secretary of State.
- (9) The Secretary of State may exclude—
- (a) from what he lays before Parliament and publishes under this section, and
  - (b) from what is to be laid before the Scottish Parliament by the Scottish Ministers,
- anything the publication of which he considers to be against the interests of national security.

**Commencement Information**

**I3** S. 3 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

**4 Additional responsibilities under designating directions**

- (1) Where the NDA is given a responsibility for securing the operation of an installation or facility, a direction may also give the NDA further responsibilities in relation to the management of the site where that installation or facility is situated.
- (2) Where the NDA is given a responsibility in relation to a principal nuclear site, a direction may give the NDA further responsibilities in relation to the operation or management of any one or more of the following—
- (a) research facilities situated in or on that site;
  - (b) facilities other than research facilities which are situated in or on that site and are neither nuclear installations nor NDA facilities;
  - (c) other land (whether or not adjacent to that site) which is owned or occupied, together with it, by the person with control of the principal nuclear site; and
  - (d) facilities of any description situated in or on such other land.
- (3) The NDA is not to be given further responsibilities under subsection (1) or (2) except where the Secretary of State considers it appropriate to do so—
- (a) for the purpose of facilitating the carrying out by the NDA of any of its functions; or
  - (b) for a purpose otherwise incidental to the carrying out of those functions.
- (4) Where a direction gives the NDA a responsibility for securing the treatment, storage, transportation or disposal of matter or waste, it may also give the NDA responsibility for securing the design, construction and operation of a facility for that purpose.
- (5) Subsection (4) of section 3 applies to giving the NDA a responsibility mentioned in this section as it applies to giving it a responsibility mentioned in that section.
- (6) In this section “direction” means a direction under section 3.

**Commencement Information**

**I4** S. 4 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

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## 5 Supplemental provisions of designating directions

- (1) A direction comes into force at the time which is specified in the direction or determined in accordance with provision contained in it.
- (2) A direction giving the NDA responsibilities in relation to an installation, site or facility which—
  - (a) is a nuclear installation, a principal nuclear site or a facility situated in or on a principal nuclear site, but
  - (b) is not one in relation to which the NDA is to have a financial responsibility under section 21,may require the person with control of the installation, site or facility to make payments to the Secretary of State.
- (3) A direction may also impose requirements with respect to the charges which (subject to section 21) are to be imposed by the NDA in connection with the discharge of responsibilities given to the NDA by the direction.
- (4) Subject to subsections (5) and (6), a direction may be modified or revoked by a subsequent direction.
- (5) A direction must not modify or revoke a direction relating to the responsibility of the NDA in relation to an installation, site or facility unless the person with control of the installation, site or facility is, at the time when the modification or revocation comes into force—
  - (a) a Crown appointee;
  - (b) the UKAEA;
  - (c) a publicly owned company;
  - (d) the NDA itself; or
  - (e) a person who has consented to the modification or revocation.
- (6) A direction in so far as it gives the NDA responsibility—
  - (a) for the decommissioning of an installation, or
  - (b) for the cleaning-up of a principal nuclear site,may be revoked only if the condition set out in subsection (7) is satisfied.
- (7) The condition is—
  - (a) in the case of a direction given by the Secretary of State, that he is satisfied that the NDA has discharged all its responsibilities in relation to the decommissioning or cleaning-up of the installation or site; and
  - (b) in the case of a direction given jointly by the Secretary of State and the Scottish Ministers, that he and those Ministers are so satisfied.
- (8) The Secretary of State must pay sums received by him by virtue of subsection (2) into the Consolidated Fund.
- (9) In this section “direction” means a direction under section 3.

### Commencement Information

- I5** S. 5(1) in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1  
**I6** S. 5(2)-(9) in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## 6 Designations relating to Scotland

- (1) A direction under section 3 which—
- (a) gives the NDA responsibilities falling within subsection (2), or
  - (b) removes or varies any such responsibilities,
- may be given only by the Secretary of State and the Scottish Ministers, acting jointly.
- (2) The following responsibilities fall within this subsection—
- (a) responsibility for the cleaning-up of a site in Scotland which is a principal nuclear site without being a licensable site;
  - (b) responsibility for the cleaning-up of a contaminated site in Scotland;
  - (c) responsibility for the operation of facilities for treating or storing hazardous material in or on a site in Scotland which is a principal nuclear site without being a licensable site;
  - (d) responsibility for the operation in or on a nuclear site in Scotland of a facility for the disposal of hazardous material;
  - (e) responsibility, in specified circumstances, for the disposal at a site in Scotland of hazardous material;
  - (f) responsibility for the treatment or storage of hazardous material that may, in the discharge of that responsibility, be treated or stored in or on a site in Scotland which is not a licensable site;
  - (g) responsibility for the decommissioning of an installation comprised in NDA facilities that are situated in or on a site in Scotland which is a principal nuclear site without being a licensable site.
- (3) Before giving a direction under section 3 which—
- (a) gives the NDA responsibilities for the operation in or on a licensable site in Scotland of a facility for the non-processing treatment of hazardous material;
  - (b) gives it responsibilities not falling within subsection (2)(f) for the non-processing treatment or the storage of hazardous material the treatment or storage of which, in the discharge of those responsibilities, may take place in or on a site in Scotland;
  - (c) gives it responsibilities for the operation in or on a licensable site in Scotland of a facility for the storage of hazardous material; or
  - (d) removes or varies any responsibilities mentioned in paragraph (a) or (c),
- the Secretary of State must consult the Scottish Ministers.
- (4) In this section—
- “licensable site” means a site that falls within paragraph (a), (b) or (d) of the definition of a “principal nuclear site” in section 36(2);
- “non-processing treatment” means treatment that does not consist in the processing or reprocessing of spent or irradiated nuclear fuel.

### Commencement Information

I7 S. 6 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

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### *Other functions of NDA*

## **7 Supplemental functions**

- (1) In addition to its function under section 3, the NDA shall have the function, to the extent that it considers it appropriate to do so, of—
  - (a) carrying out research into matters relating to the decommissioning of nuclear installations, the cleaning-up of nuclear sites and the other activities in relation to which it has functions;
  - (b) promoting the carrying out of research by others into those matters;
  - (c) distributing information about those matters;
  - (d) educating and training persons about those matters;
  - (e) giving encouragement and other support to activities that benefit the social or economic life of communities living near designated installations, designated sites or designated facilities or that produce other environmental benefits for such communities.
- (2) The NDA shall also have the function, to the extent that it is required to do so by the Secretary of State, of acting on his behalf in relation to agreements to which he is a party and which relate to expenditure incurred, or to be incurred, by him or by others—
  - (a) on the decommissioning of nuclear installations;
  - (b) on the cleaning-up of nuclear sites; or
  - (c) on the treatment, storage, transportation or disposal of hazardous material.
- (3) A requirement of the Secretary of State under subsection (2) may require the NDA to meet, in whole or part, the cost of discharging liabilities of his under the agreements in relation to which the NDA acts on his behalf.
- (4) The NDA's functions further include—
  - (a) to the extent that it is required to do so by the Secretary of State, giving advice to the Secretary of State or to others (whether generally or in relation to a particular installation, site or facility, or particular hazardous material) about any of the things in which the NDA requires an expertise for the purpose of carrying out its functions;
  - (b) to the extent that it is required to do so by the Scottish Ministers, giving advice to them (whether generally or in relation to a particular installation, site or facility, or particular hazardous material) about any of those things (so far as they concern Scotland); and
  - (c) giving to the Secretary of State and the Scottish Ministers such further general advice about the things in which the NDA requires an expertise for the purpose of carrying out its functions as it considers appropriate.
- (5) The references in subsection (4) to the things in which the NDA requires an expertise for the purpose of carrying out its functions include, in particular—
  - (a) the operation and decommissioning of nuclear installations;
  - (b) the cleaning-up of nuclear sites; and
  - (c) the treatment, storage, transportation and disposal of hazardous material.
- (6) It shall be the duty of the NDA to secure that the discharge of its responsibilities under section 3(1) is not adversely affected—
  - (a) by the doing of anything mentioned in subsection (1); or
  - (b) by the carrying out of its functions by virtue of subsection (4)(c).

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- (7) Where—
- (a) the NDA provides advice to the Scottish Ministers in pursuance of a requirement imposed by them under this section, and
  - (b) the requirement is not one imposed with the agreement of the Secretary of State,
- the NDA may charge for the provision of the advice.
- (8) The amount of the charge shall be such sum as may be—
- (a) agreed between the NDA and the Scottish Ministers; or
  - (b) in the absence of agreement, determined by the Secretary of State.

**Commencement Information**

**I8** S. 7 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**8 Special functions in relation to pensions etc.**

- (1) The NDA shall have the function, to the extent that it considers it appropriate to do so, of—
- (a) establishing schemes for the payment of pensions, allowances or gratuities to or in respect of one or more different descriptions of relevant employees;
  - (b) maintaining such schemes (whether or not established by the NDA); and
  - (c) administering a scheme for the payment of compensation in respect of personal injuries or death caused to relevant employees or to others employed in the nuclear industry.
- (2) In this section “relevant employees” means—
- (a) employees of the UKAEA;
  - (b) persons the duties of whose employment with any other person relate (in whole or in part) to activities carried on for purposes connected with the carrying out by the NDA of any of its functions; or
  - (c) a person employed in the nuclear industry who is of such a description as may be designated for the purposes of this subsection by the Secretary of State.
- (3) Before making a designation for the purposes of subsection (2)(c), the Secretary of State must consult the NDA.

**Commencement Information**

**I9** S. 8 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*General duties and powers of NDA*

**9 General duties when carrying out functions**

- (1) It shall be the duty of the NDA, in carrying out its functions, to have particular regard to each of the following—
- (a) relevant Government policy;



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- (b) the need to safeguard the environment;
  - (c) the need to protect persons from risks to their health and safety from activities involving the use, treatment, storage, transportation or disposal of hazardous material; and
  - (d) the need to preserve nuclear security.
- (2) It shall also be the duty of the NDA, in carrying out its functions—
- (a) to promote, and to ensure, the maintenance and development in the United Kingdom of a skilled workforce able to undertake the work of decommissioning nuclear installations and of cleaning up nuclear sites;
  - (b) to promote effective competition for contracts to provide it with the services it must secure in order to discharge its responsibilities;
  - (c) to secure the adoption of what it considers to be good practice by the persons with control of designated installations, designated sites and designated facilities; and
  - (d) subject to subsection (1) and to paragraphs (a) to (c) of this subsection, to secure value for money in all its dealings with others.
- (3) In the carrying out of its functions with respect to—
- (a) the operation of the installations and facilities designated as installations or facilities whose operation is to be secured by the NDA, and
  - (b) the management of designated sites,
- the NDA shall have the further duty to act in the manner that it considers is most beneficial to the public.
- (4) In the case of each designated installation, designated site or designated facility, it shall be the duty of the NDA, in carrying out its function by virtue of section 7(1)(e)—
- (a) to have regard, in particular, to the extent to which the person with control of the installation, site or facility was doing anything falling within subsection (5) prior to its designation; and
  - (b) to consider what obligations in relation to the doing of anything falling within that subsection should be imposed on any person with whom the NDA is proposing, in connection with the discharge of any of its responsibilities in relation to the installation, site or facility, to enter into a contract for that person to provide services.
- (5) What falls within this subsection is anything that is done for the purpose of giving encouragement and other support to—
- (a) activities benefiting the social or economic life of communities living near the installation, site or facility; or
  - (b) activities producing other environmental benefits for those communities.
- (6) Where the NDA is proposing, in connection with the discharge of any of its responsibilities in relation to a designated installation, designated site or designated facility, to enter into a contract with any person for him to provide any services, it shall be the duty of the NDA, before entering into that contract—
- (a) to require that person to produce his proposed strategy for the procurement of the goods and services that he will need to procure for the purpose of carrying out his obligations under the contract; and
  - (b) to consider the likely effect of the implementation of that strategy on the economic life of communities living near the installation, site or facility.

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- (7) In this section “relevant Government policy” means all current policies which—
- (a) relate to the decommissioning of nuclear installations, the cleaning-up of nuclear sites or other activities in relation to which the NDA has functions; and
  - (b) have been published by or on behalf of Her Majesty’s Government in the United Kingdom or a devolved administration, have been notified to the NDA by the Secretary of State or have been notified both to the NDA and to the Secretary of State by a devolved administration.
- (8) In subsection (7) “devolved administration” means the Scottish Ministers, the National Assembly for Wales or a department in Northern Ireland.
- (9) In this Chapter “nuclear security” means the security of each of the following—
- (a) nuclear installations and nuclear sites;
  - (b) hazardous material;
  - (c) apparatus and software used or stored in or on a nuclear installation or nuclear site;
  - (d) apparatus and software used in connection with the treatment, storage, transportation or disposal of hazardous material;
  - (e) sensitive nuclear information.
- (10) In subsection (9) “sensitive nuclear information” means—
- (a) information relating to a treatment of uranium that increases the proportion of the isotope 235 contained in the uranium;
  - (b) information capable of being used in connection with such a treatment of uranium;
  - (c) information relating to activities carried out in, on or in relation to—
    - (i) nuclear installations or nuclear sites, or
    - (ii) hazardous material,
 which the NDA has been notified by the Secretary of State is information that needs to be protected in the interests of national security; and
  - (d) information about nuclear security.

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**Commencement Information**

**I10** S. 9 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

## 10 Powers for carrying out functions

- (1) The NDA shall have power, for the purpose of carrying out its functions, to do all such things as appear to it to be likely to facilitate the carrying out of its functions, or to be incidental to carrying them out.
- (2) The powers of the NDA include, in particular—
- (a) power to operate electricity generating stations;
  - (b) power to apply for and hold nuclear site licences, registrations under section 7 of the 1993 Act and authorisations under sections 13 and 14 of that Act;
  - (c) power to make grants or loans to persons undertaking activities that benefit the social or economic life of communities living near designated installations, designated sites or designated facilities or that produce other environmental benefits for such communities;

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- (d) power to make grants or loans to persons carrying out research into matters relating to the decommissioning of nuclear installations, the cleaning-up of nuclear sites or other activities in relation to which the NDA has functions;
  - (e) power to use its facilities, and facilities on designated sites, for the carrying out of research on behalf of others into any matter whatever;
  - (f) power to use those facilities for the carrying on of any activities, in addition to such research, that it considers appropriate for generating funds for application towards the carrying out of its functions;
  - (g) power to delegate to the UKAEA the maintenance of any such scheme as is referred to in section 8(1)(a) and (b);
  - (h) power itself to do anything that the NDA has a function of securing others to do;
  - (i) power to enter into contracts for others to secure the things that it has a function of securing;
  - (j) power to enter into contracts for others to do anything else that it may do for the purpose of, or in connection with, the carrying out of its functions;
  - (k) power to acquire or establish subsidiaries and to carry out its functions through subsidiaries.
- (3) The NDA may impose charges in respect of the things that it does or secures in the discharge of its responsibilities—
- (a) on persons with control of installations, sites and facilities in the case of which it does not have a financial responsibility under section 21; and
  - (b) on other persons for whom it does or secures the doing of anything for which it does not have a financial responsibility under that section.
- (4) Charges imposed under subsection (3) must not be imposed except—
- (a) in accordance with a direction under section 3; or
  - (b) with the approval of the Secretary of State.

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**Commencement Information**

**III** S. 10 in force at 27.7.2004 by [S.I. 2004/1973](#), art. 2, [Sch.](#)

*Strategies, plans and reports*

VALID FROM 31/03/2005

**11 Strategy for carrying out functions**

- (1) It shall be the duty of the NDA—
- (a) to prepare its strategy for carrying out its functions; and
  - (b) from time to time to revise that strategy.
- (2) On the NDA being given a new responsibility for securing the decommissioning or cleaning-up of an installation or site, it must consider—
- (a) whether the objectives and policy already contained in its current strategy apply in the case of that installation or site in a manner that it considers appropriate; and

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- (b) if it considers that they do not, what revision of its strategy is required.
- (3) Schedule 2 (which makes provision about the preparation and revision of the NDA's strategy, about consultation and about the approval and publication of the strategy) has effect.

VALID FROM 31/03/2005

## 12 Contents of strategy

- (1) The strategy prepared under section 11 must include both—
- (a) the NDA's strategy for decommissioning and cleaning up the installations and sites designated as installations or sites to be decommissioned or cleaned up; and
  - (b) its strategy for the operation of the installations and facilities designated as installations or facilities whose operation it is to secure.
- (2) The strategy must set out—
- (a) the priorities the NDA has adopted with respect to the discharge of its responsibilities;
  - (b) how it proposes to ensure the maintenance and development in the United Kingdom of a skilled workforce able to undertake the work of decommissioning nuclear installations and of cleaning up nuclear sites;
  - (c) how it proposes to promote effective competition for contracts to provide it with the services it must secure in order to discharge its responsibilities;
  - (d) its proposals for ensuring the adoption of what it considers to be good practice by the persons with control of designated installations, designated sites and designated facilities;
  - (e) how it proposes to give encouragement or other support to activities that benefit the social or economic life of communities living near designated installations, designated sites or designated facilities or that produce other environmental benefits for such communities; and
  - (f) an explanation of how and why it arrived at the decisions and proposals which are set out in the strategy.
- (3) The strategy must also set out the steps that the NDA proposes to take—
- (a) for giving appropriate publicity to its responsibilities and strategy;
  - (b) for explaining them both to persons having a particular interest in matters relating to the carrying out by the NDA of its functions and to the general public;
  - (c) for ensuring that the NDA is kept informed at all times of the opinions about such matters of persons having such a particular interest; and
  - (d) for facilitating the communication by such persons of their opinions to the NDA.
- (4) The strategy required by subsection (1)(a) must contain—
- (a) objectives describing what the NDA intends decommissioning or cleaning-up to achieve in the case of different installations and sites; and
  - (b) the NDA's policy as to the means by which it intends those objectives to be achieved.

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- (5) In the case of a site which is to be cleaned up, those objectives must include, in particular, a statement of the condition to which the site needs to be restored.
- (6) In setting out its policy as to the means of achieving the objectives mentioned in subsection (4), the NDA must describe—
  - (a) the procedure it proposes to adopt for ensuring the preparation, and revision from time to time, of plans for the identification and carrying out of the decommissioning or cleaning-up work that is or continues to be needed in the case of each designated installation or designated site;
  - (b) the manner in which it proposes to secure that the work identified by such plans is carried out in accordance with them;
  - (c) an outline of the work that has been identified as needed in the case of each designated installation or designated site for which plans have been prepared;
  - (d) the period over which that work is to be carried out in the case of each installation or site; and
  - (e) the expenses it expects to incur in respect of the carrying out of the decommissioning and cleaning-up work for which it has a responsibility.
- (7) The strategy required by subsection (1)(b) must set out—
  - (a) the expenditure that the NDA expects to incur on the running costs of installations and facilities whose operation it has a responsibility to secure, and on the management of the sites where they are located;
  - (b) capital expenditure that the NDA expects to incur in connection with the discharge of its responsibilities in relation to those installations and facilities, and with the management of those sites; and
  - (c) the income that it considers it is likely to secure from the operation of those installations and facilities and from the management of those sites.
- (8) An objective or policy set out in the NDA's strategy may be framed in one or more of the following ways—
  - (a) by reference to a particular installation or site;
  - (b) by reference to different descriptions of installation or site;
  - (c) so as to become applicable to an installation or site of a particular description on the NDA being given responsibility for an installation or site of that description.
- (9) In this section references, in relation to the preparation of a strategy, to a site, installation or facility designated for any purpose include references to a site, installation or facility designated by a direction which is not yet in force.

## 13 Annual plans

- (1) The NDA must, for each financial year, prepare a plan—
  - (a) for the carrying out, during that year, of work towards decommissioning the installations designated as installations to be decommissioned;
  - (b) for the carrying out, during that year, of work towards cleaning up the sites designated as sites to be cleaned up;
  - (c) for the operation, during that year, of the installations and facilities designated as installations or facilities whose operation is to be secured by the NDA; and

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- (d) for the carrying out during that year of its other functions.
- (2) The plan must be prepared and, not less than three months before the commencement of the financial year to which it relates, submitted for approval—
- (a) in a case where it contains anything relating to responsibilities of the NDA falling within section 6(2), to the Secretary of State and the Scottish Ministers; and
  - (b) in any other case, to the Secretary of State.
- (3) The plan for a financial year, so far as it relates to decommissioning and cleaning-up, must set out—
- (a) a summary of the decommissioning and cleaning-up work which the NDA is intending should be carried out during that year;
  - (b) the arrangements that have been made, or are to be made, for securing that agreements for the carrying out of that work are entered into;
  - (c) the agreements (if any) that have already been entered into for that purpose or under which that work is to be carried out;
  - (d) an estimate of the expenditure that will be incurred by the NDA during that year in respect of decommissioning or cleaning-up work carried out during that year or previously or in respect of decommissioning and cleaning-up work to be carried out in subsequent years;
  - (e) any proposals to which it intends to give effect during that year that relate to, or will affect, the management of installations or sites designated as installations or sites to be decommissioned or cleaned up; and
  - (f) the extent to which its plans for the year contribute to the achievement of the objectives set out in its strategy.
- (4) The plan for a financial year, so far as it relates to the operation of installations and facilities, must set out—
- (a) an estimate of the expenditure that will be incurred during that year on the running costs of the installations and facilities and on the management of the sites where they are located;
  - (b) an estimate of the capital expenditure that will be incurred during that year in connection with the discharge of the NDA's responsibilities in relation to those installations and facilities and with the management of those sites;
  - (c) an estimate of the income it is likely to secure during that year from the operation of the installations and facilities and from the management of those sites; and
  - (d) any proposals to which the NDA intends to give effect during that year that relate to or will affect the operation of the installations or facilities, or the management of the sites where they are located.
- (5) The plan for a financial year, so far as it relates to the NDA's other functions, must—
- (a) set out all the activities of significance that the NDA proposes to carry on during that year in the carrying out of those other functions; and
  - (b) an estimate of the expenditure that will be incurred in the carrying out of those other functions.
- (6) The plan for a financial year must also set out any other matters that the Secretary of State directs the NDA to include in its plan for that year.

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- (7) In this section references, in relation to the preparation of a plan for a financial year, to a site, installation or facility designated for any purpose include references to a site, installation or facility designated by a direction which—
- (a) is not yet in force; but
  - (b) is to come into force during that financial year.
- (8) Schedule 3 (which makes provision about consultation and about the approval and publication of the NDA's annual plan) has effect.

**Commencement Information**

**I12** S. 13 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

## 14 Annual reports

- (1) As soon as reasonably practicable after the end of each financial year, the NDA must prepare and send to the Secretary of State a report on—
- (a) the discharge of its responsibilities during that year; and
  - (b) the carrying out of its other functions.
- (2) If during the year to which the report relates the NDA has had responsibilities which—
- (a) fall within subsection (2) of section 6, or
  - (b) are mentioned in subsection (3) of that section,
- it must also send a copy of that report to the Scottish Ministers.
- (3) The report must contain—
- (a) a description of what has been done, during the year to which it relates, towards achieving the NDA's objectives, as set out in the approved strategy in force during that year;
  - (b) a general description of the work carried out during that year for the purpose of decommissioning the installations designated as installations to be decommissioned;
  - (c) a general description of the work carried out during that year for the purpose of cleaning up the sites designated as sites to be cleaned up;
  - (d) a report on every change occurring during that year in the identity of persons with control of designated installations, designated sites and designated facilities;
  - (e) a report of every significant change during that year to the contractual arrangements of the NDA that are in force with respect to the carrying out (whether or not during that year) of decommissioning or cleaning-up work;
  - (f) a report on the extent to which the NDA has implemented its plan for that year;
  - (g) a report of the NDA's dealings during that year with the Health and Safety Executive, the Environment Agency and the Scottish Environment Protection Agency;
  - (h) a report containing an assessment of the performance in relation to safety and environmental matters of the persons (other than the NDA itself) who have control of designated installations, designated sites and designated facilities;

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- (i) a report of the NDA's dealings during that year with such persons with responsibilities in relation to nuclear security as have been nominated for the purposes of this subsection by the Secretary of State; and
  - (j) any other matters which the NDA is directed by the Secretary of State to include in that report.
- (4) Before giving a direction for the purposes of subsection (3)(j) the Secretary of State must consult the Scottish Ministers.
- (5) The report must deal separately with—
- (a) activities relating to the decommissioning of installations or the cleaning-up of sites; and
  - (b) the NDA's other activities.
- (6) The Secretary of State must lay a copy of every report received by him under this section before Parliament.
- (7) The Secretary of State must also arrange for a copy of the report to be published in the manner which, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it.
- (8) The Scottish Ministers must lay a copy of every report received by them under this section before the Scottish Parliament.
- (9) The Secretary of State may exclude—
- (a) from what he lays before Parliament or arranges to be published under this section, and
  - (b) from what is to be laid before the Scottish Parliament by the Scottish Ministers,
- anything falling within subsection (10).
- (10) The following falls within this subsection—
- (a) anything the publication of which the Secretary of State considers to be against the interests of national security;
  - (b) anything relating to the private affairs of an individual the publication of which the Secretary of State considers would seriously and prejudicially affect the interests of that individual; and
  - (c) anything of a commercial nature relating specifically to the affairs of a particular body of persons the publication of which the Secretary of State considers would seriously and prejudicially affect the interests of that body.

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**Commencement Information**

**I13** S. 14 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Implementation of strategies and plans*

**15 Duty to decommission and clean up installations and sites**

- (1) This section applies where the NDA has a responsibility for securing the decommissioning of an installation or the cleaning-up of a site.



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- (2) It shall be the duty of the NDA to take all such steps as it considers appropriate—
  - (a) for securing the implementation in the case of that installation or site of the NDA's approved strategy for decommissioning and cleaning-up;
  - (b) for the achievement of the objectives set out in that strategy that are applicable to that installation or site; and
  - (c) for giving effect in each financial year to its approved plan for that year, so far as it relates to the decommissioning of that installation or the cleaning-up of that site.
- (3) In the case of a designated site which is a contaminated site, that duty has effect subject to such general and specific directions relating to the manner in which the NDA is to discharge its responsibilities in relation to that site as may be given to it—
  - (a) in the case of a site in Scotland, by the Secretary of State and the Scottish Ministers, acting jointly; and
  - (b) in any other case, by the Secretary of State.
- (4) The NDA must comply with all such directions.

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**Commencement Information**

**I14** S. 15 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 16 Duties to operate installations and to provide treatment etc.

- (1) This section applies where the NDA has a responsibility for securing—
  - (a) the operation of a nuclear installation;
  - (b) the operation of a facility for treating, storing, transporting or disposing of hazardous material;
  - (c) the operation of any other facility;
  - (d) the treatment, storage, transportation or disposal, in designated circumstances, of hazardous material; or
  - (e) the management of any land not comprised in a site designated as a site to be cleaned up.
- (2) That responsibility is an obligation to secure that—
  - (a) the installation or facility is operated,
  - (b) the hazardous material is treated, stored, transported or disposed of, or
  - (c) the land is managed,in accordance with general and specific directions.
- (3) The power to give directions under subsection (2) is exercisable—
  - (a) in relation to any matter connected with responsibilities of the NDA falling within section 6(2), by the Secretary of State and the Scottish Ministers, acting jointly; and
  - (b) in relation to any other matter, by the Secretary of State.
- (4) In discharging that responsibility the NDA must also act—
  - (a) in accordance with the NDA's approved strategy for the operation of designated installations and designated facilities; and

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- (b) in each financial year, in accordance with the NDA's approved plan for that year.

**Commencement Information**

**I15** S. 16 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**17 Duty to use installations etc. for purposes of NDA**

- (1) This section applies—
- (a) in the case of every designated nuclear installation and every designated installation comprised in an NDA facility;
  - (b) in the case of every designated site which is a principal nuclear site; and
  - (c) in the case of every designated facility situated in or on a principal nuclear site.
- (2) The person with control of the installation, site or facility must secure that neither the installation, site or facility nor any interest or right in relation to it is used or disposed of except for purposes which—
- (a) facilitate the discharge of the NDA's responsibilities in relation to designated installations, designated sites and designated facilities; and
  - (b) secure that there is no contravention, in relation to the discharge of those responsibilities, of any obligations imposed by or under any enactment on the person with control of the installation, site or facility.
- (3) Subsection (2) does not prevent the use or disposal of an installation, site or facility where the NDA has consented to that use or disposal.
- (4) Where the NDA has an interest in the installation, site or facility, the person with control of it shall have the right, as against the NDA, to use it for the purposes authorised by subsection (2) and to put it to any use to which the NDA has consented.
- (5) Except—
- (a) where the NDA otherwise directs, or
  - (b) where the person with control of the installation, site or facility is, has been or will be subject to charges by the NDA in respect of the discharge of its responsibilities in relation to that installation, site or facility,
- that person must account for, and pay, to the NDA all sums and other benefits received by him in respect of the use or disposal by him of an interest or right in relation to the installation, site or facility.
- (6) A reference in this section to facilitating the discharge of the NDA's responsibilities in relation to an installation, site or facility includes a reference to doing anything which is required or authorised by or for the purposes of—
- (a) an agreement between the NDA and the person with control of the installation, site or facility; or
  - (b) an agreement between the NDA and a body corporate of which that person is a subsidiary.
- (7) Nothing in subsection (5) prohibits the inclusion in such an agreement of provision for sums and benefits mentioned in that subsection to be accounted for and paid to the NDA in a case falling within paragraph (b) of that subsection.

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- (8) A reference in this section to an interest or right in relation to an installation or site includes a reference to any interest or right in relation to—
- (a) anything located in or on the installation or site;
  - (b) a facility operated from the installation or site;
  - (c) a process carried on in or on the installation or site; or
  - (d) information or documents relating to the installation or site or to anything mentioned in paragraphs (a) to (c).
- (9) References in this section to the disposal of an interest in a site include references to—
- (a) the granting of an estate or interest in the site, or of a licence to use it; or
  - (b) entering into an agreement to grant such an estate, interest or licence;
- and references to sums received in respect of such a disposal include references to sums that are paid periodically (by way of rent or otherwise) by a tenant or licensee or by a party to such an agreement.

#### Commencement Information

**I16** S. 17 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 18 Directions by NDA to the person with control

- (1) This section applies in every case where one of the following is designated—
- (a) a nuclear installation or an installation comprised in an NDA facility;
  - (b) a principal nuclear site; or
  - (c) a facility situated in or on a principal nuclear site.
- (2) It shall be the duty of the person with control of the installation, site or facility—
- (a) to prepare such plans for the decommissioning or operation of the installation, for the cleaning-up or management of the site or for the operation of the facility as the NDA may direct;
  - (b) to prepare such plans for the cleaning-up of any related sites as the NDA may direct;
  - (c) to submit his plans to the NDA for approval;
  - (d) to comply with all such further directions falling within subsection (3) as the NDA may give him from time to time with respect to the installation, site or facility; and
  - (e) to comply with such directions as the NDA may give him for the purpose of securing or facilitating the discharge by the NDA of such of its responsibilities by virtue of section 3(1)(e) or 4(1), (2) or (4) or any direction under section 16(2) as—
    - (i) were conferred on it by reference to the site, installation or facility; or
    - (ii) fall to be discharged in relation to it, or to anything in or on it.
- (3) The directions that may be given by the NDA are—
- (a) directions (in the case of an installation or site) requiring the carrying out, pending the preparation and approval of plans required by the NDA, of specified decommissioning or cleaning-up work in or on the installation or site or related sites;

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- (b) directions requiring the installation, site or facility to be operated or managed, pending the preparation and approval of such plans, in the specified manner;
  - (c) directions to modify in the specified manner, and to resubmit, a plan submitted to the NDA for approval, or approved by it, under this section;
  - (d) directions (in the case of an installation or site) requiring the carrying out, pending the preparation and approval of modifications of a plan, of specified decommissioning or cleaning-up work in or on the installation or site or related sites;
  - (e) directions requiring the implementation of a plan that the NDA has approved;
  - (f) directions requiring specified transactions to be entered into, and other specified steps to be taken, for the purposes of or in connection with the implementation of such a plan;
  - (g) directions requiring the provision to the NDA of all the information that it requires in order—
    - (i) to discharge its responsibilities in relation to the installation, site or facility and in relation to related sites; or
    - (ii) to enter into an agreement for the purpose of discharging those responsibilities.
- (4) It shall be the duty of the person holding the majority of the voting rights in a company with control of the installation, site or facility to comply with such directions as may be given to it by the NDA for the purpose of securing that the company with control of the installation, site or facility complies with its obligations under this section.
- (5) Directions must not be given by the NDA under this section except for the purpose—
- (a) of giving effect to its plan under section 13 for a particular financial year; or
  - (b) of otherwise giving effect to its strategy under section 11 or achieving the objectives set out in that strategy.
- (6) A person required to prepare plans for the purposes of this section must comply with the directions of the NDA as to—
- (a) the persons with whom, and
  - (b) the manner in which,
- he must consult before preparing the plans, or before submitting them to the NDA for approval.
- (7) A direction under this section cannot authorise a contravention in relation to an installation, site or facility of any obligation to which the person with control of it is subject by or under an enactment.
- (8) In this section “related site”, in relation to a designated installation, designated site or designated facility, means a site the designation of which specifies, in accordance with section 19, that it is to be treated, by reference to that installation, site or facility, as a related site for the purposes of this section.

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**Commencement Information**

**I17** S. 18 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## 19 Designation as a related site for the purposes of s. 18

- (1) A direction designating a contaminated site—
  - (a) may specify that the site is to be treated for the purposes of section 18 as a related site; and
  - (b) if it does so, must specify the installation, site or facility by reference to which the Secretary of State is satisfied as mentioned in subsection (2)(a).
- (2) A direction must not specify that a site is to be treated as a related site unless—
  - (a) the Secretary of State is satisfied that it has become contaminated (whether radioactively or chemically) as a result of nuclear activities in or on a particular installation, site or facility;
  - (b) that installation, site or facility was at the time of the contamination, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
  - (c) the installation, site or facility is also designated (whether by that direction or as a consequence of a previous direction); and
  - (d) the person with control of that installation, site or facility—
    - (i) is a Crown appointee, the UKAEA, a publicly owned company or the NDA itself; or
    - (ii) has consented to the specification of the installation, site or facility for the purposes of subsection (1)(b).
- (3) On the giving by the Secretary of State of a direction specifying that a site is to be treated as a related site, he must send a copy of the direction to every person with control of an installation, site or facility by reference to which it is to be so treated.
- (4) For the purposes of this section something is contaminated as a result of nuclear activities in or on a particular installation, site or facility if the contamination (whenever occurring), or any of it, is the direct or indirect result of one or more of the following—
  - (a) activities carried on in or on that installation, site or facility;
  - (b) the storage or disposal of any matter or substance in or on that installation, site or facility;
  - (c) an incident occurring in or on that installation, site or facility;
  - (d) the discharge of anything from that installation, site or facility;
  - (e) the transportation of hazardous material to or from that installation, site or facility;
  - (f) an incident affecting hazardous material being transported to or from that installation, site or facility.

### Commencement Information

**I18** S. 19 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 20 Duty to comply with directions under s. 18

- (1) The duty of a person to whom a direction is given under section 18 to comply with that direction is a duty owed to the NDA, and to no one else.
- (2) That duty is to be enforceable by the NDA in civil proceedings—

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- (a) for an injunction or interdict;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
  - (c) for any other appropriate remedy or relief.
- (3) That duty is subject to the obligation of the NDA to discharge its financial responsibilities under section 21.
- (4) A person with control of an installation, site or facility is not to be subject to that duty to the extent that he is relieved of it by the provisions of an agreement—
- (a) between the NDA and that person; or
  - (b) between the NDA and a body corporate of which that person is a subsidiary.
- (5) The Secretary of State may by order provide, in the case of an installation, site or facility the person with control of which is a Crown appointee, that the Crown appointee is not to be subject, to the extent specified in the order, to the duty to comply with directions under section 18.
- (6) An order for the purposes of subsection (5) is subject to the negative resolution procedure.

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**Commencement Information**

**I19** S. 20 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Financial provisions*

**21 Financial responsibilities of NDA**

- (1) The NDA's responsibility for securing—
- (a) the decommissioning or operation of an installation or facility to which this section applies, or
  - (b) the cleaning-up of a site to which this section applies, or of a related site,
- includes the financial responsibility for the decommissioning or operation of the installation or facility, or for the cleaning-up.
- (2) This section applies to an installation, site or facility which becomes a designated installation, site or facility at a time when the person with control of it is—
- (a) a Crown appointee;
  - (b) the UKAEA;
  - (c) a wholly-owned subsidiary of the UKAEA;
  - (d) any other publicly owned company which was so owned on 4th July 2002; or
  - (e) a wholly-owned subsidiary of such a company.
- (3) Where—
- (a) the NDA has financial responsibility for decommissioning, operating or cleaning up an installation, site or facility, and
  - (b) a person other than the NDA is the person with control of it,

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that other person is not to be, or to be capable of becoming, liable to meet any of the costs of doing the things that are required to be secured by the NDA in the discharge of its responsibilities in relation to that installation, site or facility.

- (4) Accordingly, where the NDA has the financial responsibility in the case of an installation, site or facility—
- (a) it must not impose charges on the person with control of the installation, site or facility in respect of anything mentioned in subsection (3);
  - (b) it must meet the costs of the doing by that person of anything that he is authorised or required to do by virtue of section 17;
  - (c) it must also meet the costs of the performance by him of his duty to comply with directions under section 18; and
  - (d) that person is not to be required for any purpose to make, or to continue to make, financial provision for meeting costs which fall, by virtue of its financial responsibility, to be met by the NDA.
- (5) Nothing in so much of this section as—
- (a) restricts the extent to which a person is, or may become, liable to meet any costs in relation to a site, installation or facility, or
  - (b) requires any costs in relation to an installation, site or facility to be reimbursed or otherwise met by the NDA,
- is to be construed as restricting the extent to which the person with control of the installation, site or facility may be or become subject, in relation to a person other than the NDA, to the liability or obligation in respect of which the costs arise.
- (6) It shall be the duty of the NDA for the purpose of discharging its financial responsibilities to make all such arrangements as it thinks fit for securing that the person with control of the installation, site or facility is able to meet, as they become due, all his liabilities to persons other than the NDA in respect of matters for which the NDA has financial responsibility or that those liabilities are otherwise discharged.
- (7) It shall also be the duty of the NDA to make all such arrangements as it thinks fit for securing that amounts paid under this section to that person include such sums (if any) as the NDA considers it appropriate to pay by way of incentives to that person to discharge his duty to comply with directions under section 18 in the manner that the NDA thinks most effective.
- (8) The NDA is to be taken to have discharged its responsibility for meeting costs under this section if it is satisfied that those costs—
- (a) have been met by another person directly or indirectly out of money provided by Parliament; or
  - (b) are to be so met.
- (9) The preceding provisions of this section have effect in relation to an installation, site or facility subject to the terms of—
- (a) any agreement between the NDA and the person with control of the installation, site or facility; or
  - (b) any agreement between the NDA and a body corporate of which that person is a subsidiary.
- (10) The NDA's financial responsibilities under this section are in addition to its financial responsibilities apart from this section.

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(11) In this section “related site” has the same meaning as in section 18.

**Commencement Information**

**I20** S. 21 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 22 Expenditure and receipts of NDA

- (1) The Secretary of State may make grants to the NDA.
- (2) Grants made under this section are to be on such terms as the Secretary of State may determine.
- (3) The NDA must pay to the Secretary of State all sums received by it otherwise than under subsection (1).
- (4) The Secretary of State must pay sums received by him under subsection (3) into the Consolidated Fund.
- (5) In determining—
  - (a) whether to make a grant under this section to the NDA, and
  - (b) the amount of such a grant,
 the Secretary of State must have regard, in particular, to the extent to which he considers that the NDA should exercise its power to make grants or loans of the kind mentioned in section 10(2)(c) in order to mitigate the effects of the cessation (whether before or after designation) of the operation of a designated installation.

**Commencement Information**

**I21** S. 22 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

## 23 Borrowing by the NDA

- (1) The NDA has no power to borrow money except in accordance with this section.
- (2) The NDA may borrow from the Secretary of State, and the Secretary of State may lend to the NDA, sums in sterling that it requires for or in connection with the carrying out of its functions.
- (3) Where a loan is made to the NDA by the Secretary of State—
  - (a) the loan must be repaid to him at such times and by such methods as he may determine; and
  - (b) interest on the loan must be paid to him at such rates and at such times as he may determine;
 and nothing in section 22(3) requires the repayment of sums received by way of such a loan otherwise than in accordance with a determination under this subsection.
- (4) The NDA may also borrow temporarily (by overdraft or otherwise) from persons other than the Secretary of State sums in sterling that it requires for or in connection with the carrying out of its functions.
- (5) The consent of the Secretary of State is required for borrowing under subsection (4).



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- (6) The approval of the Treasury is required—
  - (a) for a loan to the NDA by the Secretary of State;
  - (b) for a determination by the Secretary of State under subsection (3); and
  - (c) for a consent by the Secretary of State to any borrowing under subsection (4).
- (7) The powers conferred by this section are subject to section 24.

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**Commencement Information**

**I22** S. 23 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 24 Limit on NDA borrowing

- (1) The NDA may not borrow if the effect would be—
  - (a) to take the aggregate amount mentioned in subsection (2) over its borrowing limit; or
  - (b) to increase the amount by which the aggregate amount so outstanding exceeds that limit.
- (2) That amount is the aggregate of—
  - (a) amounts outstanding from the NDA in respect of the principal of sums borrowed by the NDA; and
  - (b) the amount of every outstanding liability of the NDA that is a liability to which it is subject by virtue of a nuclear transfer scheme and is a liability in respect of the principal of a sum borrowed by another person before the transfer took effect.
- (3) The NDA's borrowing limit is £2,000 million.
- (4) The Secretary of State may by order increase the NDA's borrowing limit.
- (5) An order under subsection (4) shall not be made unless a draft of the order has been—
  - (a) laid before Parliament; and
  - (b) approved by a resolution of the House of Commons.
- (6) The reference in this section to a nuclear transfer scheme includes a reference to a modification agreement (within the meaning of Schedule 5) in relation to such a scheme.

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**Commencement Information**

**I23** S. 24 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 25 Government guarantees for NDA borrowing

- (1) The Secretary of State may guarantee—
  - (a) the repayment of the principal of any sum borrowed by the NDA from a person other than the Secretary of State;
  - (b) the payment of interest on such a sum; and

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- (c) the discharge of any other financial obligation of the NDA in connection with the borrowing of such a sum.
- (2) The Secretary of State may give a guarantee under this section in such manner, and on such terms, as he thinks fit.
- (3) As soon as practicable after giving a guarantee under this section, the Secretary of State must lay a statement of the guarantee before Parliament.
- (4) If sums are paid out by the Secretary of State under a guarantee given under this section, the NDA must pay him—
  - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
  - (b) interest, at such rates as he may direct, on amounts outstanding under this subsection.
- (5) Payments to the Secretary of State under subsection (4) must be made at such times, and in such manner, as he may from time to time direct.
- (6) Where a sum has been paid out by the Secretary of State under a guarantee given under this section, he must lay a statement relating to that sum before Parliament—
  - (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
  - (b) as soon as practicable after the end of each subsequent relevant financial year.
- (7) In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for the purposes of subsection (6) unless—
  - (a) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under subsection (4); and
  - (b) the NDA is not at any time during that year subject to a liability to pay interest on amounts that became due under that subsection in respect of that sum.
- (8) The approval of the Treasury is required—
  - (a) for the giving of a guarantee under this section; and
  - (b) for the giving by the Secretary of State of a direction under subsection (4) or (5).
- (9) The Secretary of State must pay sums received by him by virtue of subsection (4) into the Consolidated Fund.

#### **Commencement Information**

**I24** S. 25 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **26 Accounts of NDA**

- (1) The NDA must—
  - (a) keep proper accounts and proper accounting records; and
  - (b) in respect of each of its accounting years, prepare a statement of its accounts.
- (2) A statement of accounts prepared under this section must give a true and fair view of—
  - (a) the income and expenditure of the NDA for the accounting year in question; and

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- (b) its state of affairs.
- (3) Such a statement of accounts must comply with every requirement which has been notified by the Secretary of State to the NDA.
- (4) Those requirements may include, in particular, requirements relating to—
  - (a) the information to be contained in the statement;
  - (b) the manner in which that information is to be presented; or
  - (c) the methods and principles according to which the statement is to be prepared.
- (5) The approval of the Treasury is required for the imposition of a requirement under subsection (3).
- (6) The accounts of the NDA relating to each of its accounting years, including the statement of accounts prepared for the year under this section, must be audited by the Comptroller and Auditor General.
- (7) The Comptroller and Auditor General must send a copy of his report on what is audited to the NDA.
- (8) The NDA must send to the Secretary of State and to the Scottish Ministers, in respect of each of its accounting years—
  - (a) a copy of the accounts for that year that are required to be audited under this section; and
  - (b) a copy of the Comptroller and Auditor General’s report on those accounts.
- (9) The NDA must comply with any directions given to it by the Secretary of State about the times by which it must have complied with its obligations under subsections (1) (b), (6) and (8).
- (10) The Secretary of State must lay a copy of whatever is sent to him under subsection (8) before Parliament.
- (11) The Scottish Ministers must lay a copy of whatever is sent to them under subsection (8) before the Scottish Parliament.
- (12) In this section—
  - “accounting records” includes all books, papers and other records of the NDA relating to—
    - (a) the accounts which it is required to keep; or
    - (b) matters dealt with in those accounts;
  - “accounting year”, in relation to the NDA, means—
    - (a) the NDA’s first accounting year; or
    - (b) a financial year after the end of the NDA’s first accounting year;
  - “the NDA’s first accounting year” means—
    - (a) where the NDA is established at the beginning of a financial year, that financial year; and
    - (b) in any other case, the period which begins with the day on which the NDA is established and ends—
      - (i) if no direction is given under sub-paragraph (ii), with 31st March in the financial year current on that day; and
      - (ii) if the Secretary of State so directs, with 31st March at the end of the following financial year.

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### Commencement Information

**I25** S. 26 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 27 Tax exemption for NDA activities

- (1) For the purposes of corporation tax—
  - (a) trading income arising or accruing to the NDA or an NDA company from the carrying on of exempt activities shall be disregarded in computing the total profits of the NDA or that company; and
  - (b) trading losses incurred by the NDA or an NDA company in the carrying on of exempt activities shall be disregarded in determining the amounts that may be set off under section 393 or 393A of the Income and Corporation Taxes Act 1988 (c. 1) (trading losses) or surrendered as trading losses for the purposes of section 403 of that Act (group relief).
- (2) Schedule 4 (which makes further provision for the purposes of the exemption granted by this section) has effect.
- (3) Activities are exempt for the purposes of this section and Schedule 4 if they—
  - (a) are activities carried on in connection with anything mentioned in section 3(1); and
  - (b) are specified for the purposes of this section in regulations made by the Treasury.
- (4) In this section and Schedule 4 “NDA company” means—
  - (a) a company the whole of the ordinary share capital in which is owned directly or indirectly by the NDA; or
  - (b) a company that is a relevant site licensee.
- (5) A company is a relevant site licensee for the purposes of subsection (4) if—
  - (a) it is not a company falling within paragraph (a) of that subsection;
  - (b) it holds a nuclear site licence for a site the whole or part of which is either a designated site or a site in or on which there is a designated installation or designated facility;
  - (c) in a case where there is in force a management contract relating to the whole or a part of the site to which that licence relates, or to an installation or facility in or on that site, the parties to the contract include either—
    - (i) the company in question; or
    - (ii) a company which owns directly or indirectly at least 90 per cent of the ordinary share capital of that company; and
  - (d) such further conditions that are required by regulations made by the Treasury to be satisfied have been satisfied.
- (6) The concurrence of the Secretary of State is required for the making of any regulations under this section by the Treasury.
- (7) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (8) In this section—

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“management contract” means a contract between the NDA and another person under which the other person is required to do or secure anything that the NDA is required to secure for the purpose of discharging its responsibilities;

“owned directly or indirectly” has the same meaning as in section 838 of the Income and Corporation Taxes Act 1988 (c. 1) (subsidiaries), and “owns directly or indirectly” is to be construed accordingly;

“trading income”, in relation to the NDA or an NDA company, means (subject to subsection (9)) income which falls or (apart from this section) would fall to be included—

- (a) in respect of a trade, and
- (b) as chargeable to tax under Case I of Schedule D,

in the total profits for the purposes of corporation tax of the NDA or that company;

“trading losses”, in relation to the NDA or an NDA company, means losses incurred in a trade in respect of which the NDA or that company is or (apart from this section) would be within the charge to corporation tax under Case I of Schedule D.

- (9) For the purposes of this section income consisting in—
- (a) anything giving rise to a credit that would fall to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships), or
  - (b) a credit falling to be brought into account under Schedule 26 to the Finance Act 2002 (c. 23) (derivative contracts),

is to be treated as trading income accruing to the NDA or an NDA company from the carrying on of exempt activities to the extent only that it would fall (apart from this section) to be taken into account as trading income from a trade consisting in the carrying on of such activities by the NDA or that company.

- (10) This section and Schedule 4 are to be construed as one with the Corporation Tax Acts.

#### Commencement Information

**I26** S. 27 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 28 Taxation of NDA activities chargeable under Case VI of Schedule D

- (1) For the purposes of the Corporation Tax Acts so much of any activity of the NDA as—
- (a) is an activity the profits and gains from which would (apart from this section) be chargeable to tax under Case VI of Schedule D, and
  - (b) is not excluded from the operation of this section by subsection (2),
- shall be treated as an activity carried on by it as part of a trade in respect of which it is within the charge to tax under Case I of Schedule D.
- (2) Any activity is excluded from the operation of this section if—
- (a) it is carried on by the NDA otherwise than in connection with something mentioned in section 3(1)(a), (d) or (e) of this Act; and
  - (b) the profits and gains from it would, in the NDA’s case, be chargeable to tax under Case VI of Schedule D by virtue of an enactment other than just section 18 of the Income and Corporation Taxes Act 1988 (c. 1).

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- (3) All activities treated under this section as carried on by the NDA as part of a trade—
  - (a) shall be treated as carried on as part of the same trade; and
  - (b) may be treated as carried on as part of another trade carried on by the NDA.
- (4) Subsection (3) is subject to any other provision made by or under the Corporation Tax Acts that requires an activity to be treated as carried on as part of a separate trade (with or without any other activity).
- (5) This section is to be construed as one with the Corporation Tax Acts.

**Commencement Information**

**I27** S. 28 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**29 Disregard for tax purposes of cancellation etc. of provisions**

- (1) This section applies where—
  - (a) a relevant provision is recognised in the accounts of a relevant company in accordance with generally accepted accounting practice;
  - (b) that provision relates to decommissioning or cleaning-up which the NDA acquires responsibility for securing by virtue of a direction under section 3; and
  - (c) that responsibility includes the financial responsibility under section 21.
- (2) In computing the profits, gains or losses of the company for the purposes of corporation tax, no amount shall be brought into account in respect of a credit or debit to which subsection (3) applies.
- (3) This subsection applies to a credit or debit if—
  - (a) it arises on the occurrence of an event mentioned in subsection (4); and
  - (b) it relates to the effect of that event on the relevant provision or the subject matter of the provision.
- (4) The events referred to in subsection (3) are—
  - (a) the coming into force of the direction mentioned in subsection (1)(b); and
  - (b) a transfer of property, rights or liabilities of the company to the NDA or a subsidiary of the NDA in accordance with a nuclear transfer scheme authorised by section 39.
- (5) In this section—
 

“BNFL company” means BNFL or a wholly-owned subsidiary of BNFL;

“relevant company” means a BNFL company that is publicly owned;

“relevant provision” means a provision for liabilities or charges as defined in paragraph 89 of Schedule 4 to the Companies Act 1985 (c. 6).
- (6) This section is to be construed as one with the Corporation Tax Acts.

**Commencement Information**

**I28** S. 29 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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### **30 Disregard for tax purposes of provisions recognised by NDA**

- (1) This section applies where—
  - (a) by virtue of a direction under section 3 the NDA acquires the responsibility for securing the cleaning-up of a site falling within subsection (2), or the decommissioning of an installation or facility in or on such a site;
  - (b) that responsibility includes the financial responsibility under section 21; and
  - (c) on the coming into force of the direction mentioned in paragraph (a), the NDA recognises in its accounts, in accordance with generally accepted accounting practice, a relevant provision that relates to that responsibility.
- (2) A site falls within this subsection if—
  - (a) at the time the direction mentioned in subsection (1)(a) comes into force there is a nuclear site licence in force in relation to the site; and
  - (b) the holder of that licence at that time is a BNFL company that is publicly owned.
- (3) In computing the profits, gains or losses of the NDA for the purposes of corporation tax, no amount shall be brought into account in connection with the recognition of the relevant provision in the accounts of the NDA.
- (4) But subsection (3) shall not affect the amount (if any) to be brought into account in computing the profits, gains or losses of the NDA in connection with an adjustment at a time after the first recognition of the relevant provision in the accounts of the NDA.
- (5) In this section—

“BNFL company” means BNFL or a wholly-owned subsidiary of BNFL;  
“relevant provision” means a provision for liabilities or charges as defined in paragraph 89 of Schedule 4 to the Companies Act 1985.
- (6) This section is to be construed as one with the Corporation Tax Acts.

#### **Commencement Information**

**I29** S. 30 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### *Nuclear Decommissioning Funding Account*

### **31 Establishment and maintenance of the Account**

- (1) For the purpose of ensuring transparency as respects the funding of the carrying out of the NDA’s functions, it shall be the duty of the Secretary of State to establish and maintain an account (to be known as the “Nuclear Decommissioning Funding Account”).
- (2) The Account, when first established, is to have an opening balance of such amount as the Secretary of State may determine.
- (3) Every amount paid to the NDA by way of grant under section 22(1) must be shown in the Account as a debit.
- (4) The following amounts are to be shown in the Account as credits—

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- (a) every amount received by the Secretary of State in pursuance of a requirement under section 5(2);
  - (b) every amount received by the NDA that is required to be paid by it to the Secretary of State under section 22(3);
  - (c) such amount in respect of each financial year as the Secretary of State may determine; and
  - (d) amounts representing interest, at such rate and in respect of such periods as the Secretary of State may determine, on outstanding credit balances of the Account.
- (5) The Secretary of State—
- (a) may make a single determination for the purposes of subsection (4)(c) in relation to more than one financial year;
  - (b) must make every determination for those purposes in accordance with the policy most recently published under subsection (6);
  - (c) must revise a determination made for those purposes if he considers it necessary to do so in order to take account of any revision of the policy in accordance with which it was made, or last revised; and
  - (d) must publish every determination made for those purposes, and every revision of such a determination, in such manner as, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it.
- (6) The Secretary of State—
- (a) must prepare, and may from time to time revise, a statement of his policy with respect to the determination of amounts for the purposes of subsection (4)(c); and
  - (b) must publish that statement, and every revision of it, in such manner as, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it.
- (7) The policy contained in the statement under subsection (6) must—
- (a) set out the basis on which determinations for the purposes of subsection (4)(c) are to be made;
  - (b) secure that amounts credited to the Account in accordance with subsection (4)(c) are at least enough to prevent the credit balance of the Account falling at any time below such level as the Secretary of State determines to be appropriate; and
  - (c) set out the basis on which the Secretary of State’s determination for the purposes of paragraph (b) has been made.
- (8) The time at which an amount is to be debited or credited to the Account in accordance with this section is to be the time determined by the Secretary of State.
- (9) The consent of the Treasury is required for every determination by the Secretary of State for the purposes of this section.

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**Commencement Information**

**I30** S. 31 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1



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### 32 Examination of the Account

- (1) As soon as practicable after the end of each relevant financial year, the Secretary of State must prepare a statement of the Nuclear Decommissioning Funding Account.
- (2) The statement must show—
  - (a) the credits and debits made to the account during the period for which it is prepared; and
  - (b) the determinations made or revised during that period for the purposes of section 31(4)(c).
- (3) The period for which each statement is to be prepared is the period which—
  - (a) begins—
    - (i) in the case of the first statement, with the establishment of the Account; and
    - (ii) in any other case, immediately after the end of the period for which the previous statement was prepared; and
  - (b) ends with the last day of the last relevant financial year to end before the statement's preparation.
- (4) A statement prepared under this section must be sent to the Comptroller and Auditor General before the 30th September in the financial year in which it is prepared.
- (5) The Comptroller and Auditor General must, before 31st December in the financial year in which he receives a statement under this section—
  - (a) examine and report on it; and
  - (b) lay copies of it, and of his report on it, before Parliament.
- (6) In this section “relevant financial year” means a financial year in the course of which the Secretary of State has made or revised a determination for the purposes of section 31(4)(c).

#### Commencement Information

**I31** S. 32 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Supplementary provisions of Chapter 1 of Part 1*

### 33 Validity of transactions

- (1) A person who enters into a transaction with the NDA is not required to see or to enquire whether the transaction constitutes or involves—
  - (a) conduct by the NDA which is for the purposes of, or conducive or incidental to, the carrying out of its functions;
  - (b) a contravention of section 7(6) or 9; or
  - (c) a contravention of a direction given by the Secretary of State.
- (2) A transaction entered into by the NDA is not invalidated because the transaction constitutes or involves—
  - (a) conduct by the NDA which is neither for the purposes of, nor conducive or incidental to, the carrying out of its functions;

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- (b) a contravention of section 7(6) or 9; or
- (c) a contravention of a direction given by the Secretary of State.

**Commencement Information**

**I32** S. 33 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**34 Amendment of Schedule 12 to the 1989 Act**

- (1) In sub-paragraph (1) of paragraph 1 of Schedule 12 to the 1989 Act (financial assistance by the Secretary of State in respect of nuclear liabilities), for paragraph (c) and the word “or” immediately preceding it substitute—

- “(ba) the cleaning-up of a principal nuclear site; or
- (c) the decommissioning of a nuclear installation.”

- (2) After sub-paragraph (4) of paragraph 1 of that Schedule insert—

“(5) In this paragraph “cleaning-up”, “decommissioning”, “nuclear installation” and “principal nuclear site” have the same meanings as in Chapter 1 of Part 1 of the Energy Act 2004.”

- (3) After paragraph 3 of that Schedule insert—

“3A The Secretary of State shall not—

- (a) make any grant or loan under this Schedule for the purpose of meeting any expenditure, or
- (b) give any guarantee in respect of borrowing undertaken for the purpose of meeting any expenditure,

if the expenditure is expenditure on anything for which the Nuclear Decommissioning Authority has a financial responsibility under section 21 of the Energy Act 2004.”

**Commencement Information**

**I33** S. 34 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**35 Power to modify Chapter 1 of Part 1**

- (1) The Secretary of State may by order modify the following provisions of this Chapter—

- (a) section 2 and Schedule 1;
- (b) sections 11 and 12 and Schedule 2; and
- (c) section 13 and Schedule 3.

- (2) Before making an order under this section the Secretary of State must consult the Scottish Ministers.

- (3) The consent of the Scottish Ministers is required for the making of an order under this section that modifies any of those Ministers' functions under this Chapter.

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- (4) The power to make an order containing provision authorised by this section is subject to the affirmative resolution procedure.

**Commencement Information**

**I34** S. 35 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**36 Meaning of “nuclear site” etc. and “person with control”**

- (1) In this Chapter “nuclear site” means a principal nuclear site or a contaminated site.
- (2) In this Chapter—
- “contaminated site” means the whole or a part of a site which is not a principal nuclear site but—
- (a) has been and remains contaminated (whether radioactively or chemically) as a result of nuclear activities; or
  - (b) is the location of hazardous material;
- “principal nuclear site” means the whole or a part of a site of any of the following descriptions—
- (a) a site in respect of which a nuclear site licence is or is required to be in force;
  - (b) a site in respect of which such a licence would be required to be in force if the licensing requirements of the 1965 Act applied to the Crown;
  - (c) a site not falling within paragraph (a) or (b) in or on which there is an NDA facility;
  - (d) a site on which there is an installation used for practical research into the production of energy by the fusion of atomic nuclei;
  - (e) a site which has been a site falling within paragraphs (a) to (d) but which, without being such a site, remains contaminated (whether radioactively or chemically) as a result of nuclear activities carried on while it was such a site or before it became one.
- (3) References in this Chapter to the person with control of an installation, site or facility are references—
- (a) in the case of—
    - (i) a site in relation to which a nuclear site licence is held by a person whose period of responsibility (within the meaning of the 1965 Act) is still current, or
    - (ii) a nuclear installation in or on such a site,to that person;
  - (b) in the case of an installation or site which—
    - (i) is an installation in or on a site occupied by or on behalf of the Crown or is itself such a site, and
    - (ii) is an installation or site in the case of which there is a person appointed by an order made by the Secretary of State to be the person with control,to that person;
  - (c) in the case of a facility which—

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- (i) is not an installation to which paragraph (a) or (b) applies; but
    - (ii) is operated on a single site to which one of those paragraphs does apply,
  - to the person with control of the site;
  - (d) in the case of an installation or facility which—
    - (i) is not an installation or facility to which paragraph (a), (b) or (c) applies; but
    - (ii) is operated on a single site by a person who (without being the owner of the site) is in occupation of it,
  - to the occupier of the site;
  - (e) in the case of a facility which is operated otherwise than on a single site, to the operator of the facility;
  - (f) in the case of anything in or under the territorial sea adjacent to the United Kingdom, to the Secretary of State;
  - (g) in the case of a site to which none of the preceding paragraphs applies, to the owner of the site;
  - (h) in the case of an installation or facility to which none of those paragraphs applies, to the occupier of the site where the installation or facility is located.
- (4) An order for the purposes of subsection (3)(b) is subject to the negative resolution procedure.
- (5) For the purposes of this section something is contaminated as a result of nuclear activities if the contamination (whenever occurring), or any of it, is the direct or indirect result of one or more of the following—
- (a) activities carried on in or on an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
  - (b) the storage or disposal of any matter or substance in or on an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
  - (c) an incident occurring in or on an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
  - (d) the discharge of anything from an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
  - (e) the transportation of hazardous material to or from a principal nuclear site or an installation or facility in or on such a site;
  - (f) an incident affecting hazardous material being transported to or from a principal nuclear site or an installation or facility in or on such a site.

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**Commencement Information**

**I35** S. 36 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I36** S. 36 in force at 5.10.2004 in so far as not already in force by S.I. 2004/2575, art. 2(1), Sch. 1

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## 37 General interpretation of Chapter 1 of Part 1

(1) In this Chapter—

“apparatus” includes machinery, equipment, appliances, tanks, containers, pipes and conduits;

“cleaning-up” and “decommissioning”, in relation to a site or installation, includes—

(a) the treatment, storage, transportation and disposal of hazardous material and of other matter and substances that need to be dealt with or removed in or towards making the site or installation suitable to be used for other purposes; and

(b) the construction of buildings and other structures to be used in connection with the cleaning-up or decommissioning of the site or installation;

“contaminated site” has the meaning given by section 36(2);

“control”, in relation to an installation, site or facility, is to be construed in accordance with section 36(3);

“Crown appointee”, in relation to an installation, site or facility, means—

(a) a Minister of the Crown; or

(b) a person for the time being holding an appointment under section 36(3)

(b) as the person with control of it;

“designated”, in relation to an installation, site or facility, is to be construed in accordance with subsection (2);

“facility” includes a business or other undertaking and installations, vehicles or other property comprised in or used for the purposes of a business or other undertaking;

“hazardous material” means—

(a) nuclear matter;

(b) radioactive waste; and

(c) any other article or substance that has been and remains contaminated (whether radioactively or chemically) as a result (within the meaning of section 36) of nuclear activities;

“installation” includes buildings, structures and apparatus (whether or not fixed to land);

“NDA facility” means a facility which—

(a) is being or has been used for or in connection with the storage, disposal or treatment of hazardous material; and

(b) is a facility for the operation of which the NDA has or has had a responsibility;

“nuclear installation” means—

(a) an installation which is situated in or on a principal nuclear site but is not comprised in an NDA facility;

(b) pipes, conduits and other apparatus which are not situated in or on a principal nuclear site but are connected to an installation falling within paragraph (a);

“nuclear security” has the meaning given by section 9(9);

“nuclear site” has the meaning given by section 36(1);

“principal nuclear site” has the meaning given by section 36(2);

“publicly owned”, in relation to a company, is to be construed in accordance with subsection (3);

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“site” includes—

- (a) land within the United Kingdom;
- (b) an area of territorial waters adjacent to the United Kingdom;
- (c) the seabed and subsoil in any such area;

“treat”, in relation to any matter or substance, includes processing and reprocessing (including any use as a material in a process for the manufacture of nuclear fuel), and cognate expressions are to be construed accordingly;

“vehicle” includes vessel;

“voting rights” is to be construed in accordance with subsection (5).

- (2) An installation, site or facility is designated for the purposes of this Chapter if—
  - (a) it is designated by a direction under section 3; or
  - (b) the NDA otherwise has responsibilities in relation to it by virtue of such a direction.
- (3) For the purposes of this Chapter a body corporate is a publicly owned company if it is a company limited by shares and that company is one in which—
  - (a) a person specified in subsection (4) holds all the shares; or
  - (b) two or more persons so specified, taken together, hold all the shares.
- (4) The persons mentioned in subsection (3) are—
  - (a) the Treasury;
  - (b) a Minister of the Crown;
  - (c) the NDA;
  - (d) the UKAEA;
  - (e) a publicly owned company; or
  - (f) a nominee of a person falling within paragraphs (a) to (e).
- (5) Section 736A of the Companies Act 1985 (c. 6) (meaning of “voting rights” etc.) applies for construing references in this Chapter to holding voting rights in a company as it applies for construing section 736(1)(a) of that Act.
- (6) Sections 17 to 20 bind the Crown.
- (7) In this section—
  - “company” has the same meaning as in the Companies Act 1985;
  - “nuclear matter” means material which—
    - (a) is nuclear matter within the meaning of the 1965 Act; or
    - (b) would be such matter if it did not fall within an exception prescribed by regulations under that Act;
  - “radioactive waste” has the same meaning as in the 1993 Act.

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**Commencement Information**

**I37** S. 37 in force at 24.8.2004 for specified purposes by [S.I. 2004/2184](#), [art. 2\(1\)](#), [Sch. 1](#)

**I38** S. 37 in force at 5.10.2004 in so far as not already in force by [S.I. 2004/2575](#), [art. 2\(1\)](#), [Sch. 1](#)

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## CHAPTER 2

### TRANSFERS RELATING TO NUCLEAR UNDERTAKINGS

*Transfer by scheme of property etc.*

#### 38 Nuclear transfer schemes

- (1) The Secretary of State may make a scheme providing for one or more transfers authorised by this Chapter (a “nuclear transfer scheme”).
- (2) Nothing in this Chapter authorises the transfer in accordance with a nuclear transfer scheme of a nuclear site licence.
- (3) Before making—
  - (a) a nuclear transfer scheme which transfers property, rights or liabilities to or from the NDA or a subsidiary of the NDA, or
  - (b) a nuclear transfer scheme not falling within paragraph (a) which he is proposing to make for purposes connected with the carrying out of the NDA’s functions,the Secretary of State must consult the NDA.
- (4) Before making a nuclear transfer scheme which transfers property, rights or liabilities to any person—
  - (a) from BNFL, or
  - (b) from a wholly-owned subsidiary of BNFL,the Secretary of State must consult BNFL.
- (5) Before making a nuclear transfer scheme that transfers property, rights or liabilities to any person—
  - (a) from the UKAEA, or
  - (b) from a wholly-owned subsidiary of the UKAEA,the Secretary of State must consult the UKAEA.
- (6) The consent of the Treasury is required for the making of a nuclear transfer scheme.
- (7) A nuclear transfer scheme shall come into force at such time as the Secretary of State may appoint, whether in the scheme or subsequently.
- (8) Schedule 5 (which makes further provision about nuclear transfer schemes) has effect.

#### Commencement Information

**I39** S. 38 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### 39 Transfers of publicly owned assets

- (1) A nuclear transfer scheme may provide for a transfer to—
  - (a) a publicly owned company,
  - (b) the NDA, or
  - (c) a consenting person,

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of property, rights and liabilities falling within subsection (2) that are set out in the scheme.

- (2) The property, rights and liabilities that may be transferred are—
- (a) securities of BNFL;
  - (b) securities of a company falling within subsection (3);
  - (c) property, rights and liabilities of BNFL or the UKAEA;
  - (d) property, rights and liabilities of a company falling within subsection (3);
  - (e) property, rights and liabilities of a wholly-owned subsidiary of BNFL, of the UKAEA or of a company falling within that subsection.
- (3) A company falls within this subsection if—
- (a) it is a nuclear company that is publicly owned; or
  - (b) it is a company designated for the purposes of this section by an order made by the Secretary of State.
- (4) The Secretary of State may designate a company for the purposes of this section only if it is a publicly owned company to which—
- (a) securities of BNFL,
  - (b) property, rights or liabilities of BNFL, or
  - (c) property, rights or liabilities of a wholly-owned subsidiary of BNFL,
- were transferred (whether in accordance with a nuclear transfer scheme or otherwise) at a time when both the company and BNFL were publicly owned.
- (5) The Secretary of State must lay a copy of every order under subsection (3) before Parliament.
- (6) Nothing in this section authorises—
- (a) a transfer of securities of BNFL, or
  - (b) a transfer of property, rights or liabilities of BNFL or of a wholly-owned subsidiary of BNFL,
- at a time when BNFL is no longer publicly owned.
- (7) Nothing in this section authorises—
- (a) a transfer of securities of a company designated for the purposes of this section, or
  - (b) a transfer of property, rights or liabilities of such a company or of a wholly-owned subsidiary of such a company,
- at a time when the company is no longer publicly owned.
- (8) Schedule 6 (which makes provision about the structure etc. of publicly owned companies to which transfers are made that are authorised by this section) has effect.
- (9) For the purposes of this section a person is a consenting person, in relation to a nuclear transfer scheme, if he has consented to the provisions of the scheme so far as they relate to him.

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**Commencement Information**

**I40** S. 39 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1



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#### 40 Transfers with the consent of the transferor

- (1) A nuclear transfer scheme may provide for a transfer to—
  - (a) a publicly owned company, or
  - (b) the NDA,of property, rights and liabilities falling within subsection (3) that are set out in the scheme.
- (2) But property, rights and liabilities may be transferred by virtue of this section only if the person who is entitled or subject to them has consented to their transfer in accordance with a nuclear transfer scheme.
- (3) The property, rights and liabilities that may be transferred are—
  - (a) securities of a nuclear company that is not publicly owned;
  - (b) property and rights of such a company in or in relation to a nuclear site or an installation in or on such a site; or
  - (c) property, rights and liabilities to which such a company is entitled or subject—
    - (i) in respect of such a site or installation;
    - (ii) in connection with or by reference to activities carried on in or on such a site or installation; or
    - (iii) for purposes connected with that site or installation or with any such activities.
- (4) In subsection (3) references to the property, rights and liabilities of a company, or to which a company is entitled or subject, include references to the property, rights and liabilities of any of its wholly-owned subsidiaries.

#### Commencement Information

**I41** S. 40 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### 41 Recovery of property from private ownership

- (1) This section applies in the case of a nuclear company (“the transferred company”) all the shares in which were transferred for the purposes of a management contract to the contractor or to a subsidiary of the contractor where—
  - (a) the contractor is in breach of that contract; or
  - (b) that contract has come to an end, whether by the expiry of the period for which it was in force or otherwise.
- (2) A nuclear transfer scheme may provide for the transfer to—
  - (a) a publicly owned company,
  - (b) the NDA, or
  - (c) a consenting contractor,of the property, rights and liabilities falling within subsection (3) that are set out in the scheme.
- (3) The property, rights and liabilities that may be transferred are—
  - (a) securities of the transferred company (whether transferred as mentioned in subsection (1) or issued afterwards);

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- (b) property, rights and liabilities to which the transferred company was entitled or subject immediately before the transfer so mentioned;
  - (c) property, rights and liabilities transferred for the purposes of the management contract, to the contractor, to a subsidiary of the contractor or to the transferred company or a wholly-owned subsidiary of the transferred company;
  - (d) property, rights and liabilities to which the transferred company or a wholly-owned subsidiary of the transferred company first became entitled or subject while that contract was in force.
- (4) Subsection (3) does not apply to property, rights or liabilities to the extent that they have been excluded from that subsection by—
- (a) provision contained in an agreement between the NDA and the person entitled to or subject to them; or
  - (b) provision contained in a nuclear transfer scheme by virtue of which the property, rights and liabilities or the shares mentioned in subsection (1) were vested in any person.
- (5) A transfer is authorised by this section notwithstanding that what is transferred has ceased, before the transfer, to be the property or a right or liability—
- (a) of a person to whom anything was transferred for the purposes of the management contract mentioned in subsection (1);
  - (b) of the transferred company or of a wholly-owned subsidiary of that company; or
  - (c) in the case of securities issued after the transfer mentioned in that subsection, of the person to whom they were issued.
- (6) Nothing in this section authorises the transfer of property, rights or liabilities from a company at a time when it is publicly owned.
- (7) For the purposes of this section a person is a consenting contractor, in relation to a nuclear transfer scheme, if—
- (a) he is a contractor under a management contract other than the one that has been broken or come to an end; and
  - (b) he has consented to the provisions of the scheme so far as they relate to him.
- (8) In this section—
- “contractor”, in relation to a management contract, means a party to the contract who is not the NDA;
- “management contract” means a contract between the NDA and another person under which the other person is required to do or secure anything that the NDA is required to secure for the purpose of discharging its responsibilities; and
- “transferred”, in relation to shares, property, rights or liabilities, means transferred in accordance with a nuclear transfer scheme.

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**Commencement Information**

**I42** S. 41 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## 42 Transfer of Nuclear Liabilities Investment Portfolio

- (1) A nuclear transfer scheme may provide for the transfer from BNFL to the Secretary of State of—
  - (a) the Nuclear Liabilities Investment Portfolio; or
  - (b) so much of that Portfolio as may be specified in the scheme.
- (2) Nothing in this section authorises a transfer at a time when BNFL is no longer publicly owned.
- (3) Where cash is transferred to the Secretary of State by a transfer authorised by this section, he must pay it into the Consolidated Fund.
- (4) Where the Secretary of State receives—
  - (a) sums by way of income on property or rights transferred to him by a transfer authorised by this section, or
  - (b) sums in respect of the disposal of any such property or rights,he must pay those sums into the Consolidated Fund.
- (5) The Secretary of State must comply with every direction given to him by the Treasury with respect to—
  - (a) the disposal of property or rights transferred to him by a transfer authorised by this section; or
  - (b) the exercise of any other right attached to, or arising in respect of, such property;and (in a case where there is no applicable direction) the Secretary of State must not dispose of or exercise any property or rights with respect to which he may be given a direction except with the consent of the Treasury.
- (6) In this section “the Nuclear Liabilities Investment Portfolio” means property and rights to which BNFL is entitled and which appear to the Secretary of State, from BNFL’s published accounts, to represent assets held by BNFL for the purpose of being able to meet costs or liabilities for which the NDA has a financial responsibility under Chapter 1 of this Part.

### Commencement Information

**I43** S. 42 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### *Extinguishment of undertakings and tax losses*

## 43 Undertakings given by the Secretary of State

- (1) This section applies where—
  - (a) the Secretary of State has given an undertaking to a publicly owned company to make payments to that company or a subsidiary of that company; and
  - (b) it appears to him that (apart from section 21(8)) the financial responsibilities of the NDA under Chapter 1 of this Part would make it unnecessary for those amounts to be paid.

**Status:** Point in time view as at 05/10/2004. This version of this Act contains provisions that are not valid for this point in time.

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- (2) The Secretary of State may extinguish the undertaking, and every liability of his that has arisen under the undertaking, with effect from such date as he may notify to the other parties to it.
- (3) Nothing in this section authorises the extinguishment of an undertaking at a time when the company to whom payments would fall to be made under the undertaking is not publicly owned.
- (4) The extinguishment of an undertaking under this section shall neither require nor enable any sum to be brought into account in any person's case for the purposes of corporation tax.
- (5) In this section "undertaking" includes any agreement in which an undertaking to make payments is contained.

#### Commencement Information

**I44** S. 43 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### 44 Extinguishment of BNFL losses for tax purposes

- (1) In relation to accounting periods beginning on or after the trigger date, all the relevant losses of every BNFL company arising before that date shall be treated for the purposes of corporation tax as extinguished.
- (2) The following are relevant losses of a BNFL company for the purposes of this section—
  - (a) losses incurred by the company in a trade;
  - (b) losses incurred by the company in a transaction a profit or gain from which would have been chargeable to tax under Case VI of Schedule D;
  - (c) excesses to be carried forward in the company's case under [F1section 75(9)] of the Income and Corporation Taxes Act 1988 (c. 1);
  - (d) Schedule A losses (within the meaning of section 392A of that Act) incurred by the company;
  - (e) losses to be carried forward in the company's case under section 392B(1) of that Act;
  - (f) any tax loss of the company falling within section 400(2)(d) of that Act;
  - (g) allowable losses (within the meaning of section 8 of the Taxation of Chargeable Gains Act 1992 (c. 12)) that have accrued to the company;
  - (h) deficits of the kind mentioned in subsection (1) of section 83 of the Finance Act 1996 (c. 8) to the extent that they are to be carried forward in the company's case under subsection (3A) of that section;
  - (i) excesses of the kind mentioned in section 260 of the Capital Allowances Act 2001 (c. 2) in relation to the company;
  - (j) losses of the kind mentioned in paragraph 35(1) of Schedule 29 to the Finance Act 2002 (c. 23) incurred by the company;
  - (k) unrelieved surplus advance corporation tax of the company (within the meaning of section 32 of the Finance Act 1998 (c. 36)).
- (3) This section applies to the relevant losses of a BNFL company only if it is publicly owned on the day before the trigger date.

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(4) In this section—

“BNFL company” means—

- (a) BNFL;
- (b) a company that is a 75 per cent subsidiary of BNFL at a time during the qualifying period; or
- (c) a company (other than BNFL) that is a 75 per cent subsidiary of a BNFL parent company at a time during the qualifying period;

“BNFL parent company” means a company of which BNFL is a 75 per cent subsidiary;

“qualifying period” means the period beginning with 16th March 2004 and ending with the trigger date;

“trigger date” means whichever is the earlier of the following—

- (a) the date of the first occasion on which section 21 operates so as to confer financial responsibilities on the NDA in relation to an installation, site or facility the person with control of which is a BNFL company that is publicly owned; and
- (b) the date of the first occasion on which a transfer takes effect which is a transfer to the NDA or a subsidiary of the NDA in accordance with a nuclear transfer scheme authorised by section 39 of property, rights or liabilities of a BNFL company.

(5) This section is to be construed as one with the Corporation Tax Acts.

**Textual Amendments**

- F1** Words in s. 44(2)(c) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendments of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 72(2)**

**Commencement Information**

- I45** S. 44 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), **Sch. 1**

*Provisions relating to transfers*

**45 Further provision applying to transferee companies**

- (1) Schedule 7 (which makes provision about the finances and accounts of publicly controlled companies to which property, rights and liabilities are transferred) has effect.
- (2) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (other disqualifying offices), insert (at the appropriate place)— “ Director of a publicly controlled company (within the meaning of Chapter 2 of Part 1 of the Energy Act 2004) to which transfers have been made in accordance with provisions of nuclear transfer schemes authorised by that Chapter. ”;

and the corresponding amendment shall also be made in Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25).

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**Commencement Information**

**I46** S. 45 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**46 Pensions**

Schedule 8 (which makes provision about pensions in connection with transfers affecting nuclear undertakings) has effect.

**Commencement Information**

**I47** S. 46 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**47 Taxation**

Schedule 9 (which makes taxation provision in relation to nuclear transfer schemes) has effect.

**Commencement Information**

**I48** S. 47 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**48 Supplementary powers of the Secretary of State, the NDA and the UKAEA**

- (1) The Secretary of State shall have power to enter into agreements for the purpose of accepting or imposing such contractual obligations as he thinks fit with respect to—
  - (a) nuclear transfer schemes and proposals for such schemes;
  - (b) anything connected with such a scheme or proposal; or
  - (c) the exercise of powers conferred on the Secretary of State or any other person by or under this Chapter.
- (2) The NDA and the UKAEA shall each have power to enter into agreements for the purpose of accepting or imposing such contractual obligations as it or they think fit with respect to—
  - (a) nuclear transfer schemes and proposals for such schemes;
  - (b) anything connected with such a scheme or proposal; or
  - (c) the exercise of powers conferred on it or them, or any other person, by or under this Chapter.
- (3) The NDA and the UKAEA shall also each have power to do anything else which, in its or their opinion, is appropriate for facilitating—
  - (a) a transfer which is or is proposed to be effected in accordance with a nuclear transfer scheme; or
  - (b) any other transfer of property, rights or liabilities of the NDA or (as the case may be) the UKAEA which is or is proposed to be effected for purposes connected with the carrying out by any person of any functions conferred on that person by or under this Part.

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- (4) Agreements entered into in exercise of the powers conferred by subsection (1) or (2) may, in particular, include provision for the making of payments (whether by way of consideration or otherwise)—
- (a) to the Secretary of State, or
  - (b) to the NDA or the UKAEA,
- in respect of anything transferred or created in accordance with a nuclear transfer scheme.
- (5) The consent of the Treasury is required for the Secretary of State or the UKAEA to enter into an agreement in exercise of those powers.
- (6) The consent of the Secretary of State is also required for the UKAEA to enter into an agreement in exercise of those powers.
- (7) Before making any disposal of securities of a company in a case in which—
- (a) the disposal is made in accordance with arrangements entered into by the UKAEA for purposes connected with the carrying out of its functions by the NDA,
  - (b) those arrangements are not arrangements to which the Secretary of State has consented under subsection (6), and
  - (c) in the opinion of the UKAEA, the disposal is one which they would not have power to make but for section 1(2) of the Atomic Energy (Miscellaneous Provisions) Act 1981 (c. 48) (disposal otherwise inconsistent with UKAEA functions),
- the UKAEA must consult the Secretary of State.
- (8) Subsection (4) of section 1 of the Atomic Energy (Miscellaneous Provisions) Act 1981 (which limits the cases in which the UKAEA may make share disposals that are inconsistent with its functions) shall not apply—
- (a) to anything done by the UKAEA in exercise of powers conferred on them by or under this Chapter; or
  - (b) to any disposal of securities in accordance with arrangements entered into by the UKAEA for purposes connected with the carrying out of its functions by the NDA.
- (9) Sums received by the Secretary of State in pursuance of an agreement under this section must be paid into the Consolidated Fund.
- (10) The powers conferred on the Secretary of State, the NDA and the UKAEA by this section—
- (a) are in addition to their powers apart from this section; and
  - (b) are to be disregarded in determining the extent of those powers.

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**Commencement Information**

**I49** S. 48 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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### *Supplementary provisions of Chapter 2 of Part 1*

#### **49 Duty to assist the Secretary of State**

- (1) This section applies where the Secretary of State proposes to make a nuclear transfer scheme.
- (2) The transferor shall have the duty, within such period as the Secretary of State may allow—
  - (a) to provide the Secretary of State, and
  - (b) to secure, so far as practicable, that its subsidiaries provide the Secretary of State,
 with all such information and other assistance as the Secretary of State may require for the purposes of, or in connection with, the making of the scheme.
- (3) The duties of the transferor under this section are duties owed to the Secretary of State.
- (4) Those duties are to be enforceable by the Secretary of State in civil proceedings—
  - (a) for an injunction;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
  - (c) for any other appropriate remedy or relief.
- (5) In this section “the transferor”, in relation to a nuclear transfer scheme, means a person from whom it is proposed that property, rights or liabilities are transferred by the scheme.

#### **Commencement Information**

**I50** S. 49 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### **50 Interpretation of Chapter 2 of Part 1**

- (1) In this Chapter —
 

“nuclear company” means a body corporate with control of a designated installation, designated site or designated facility;

“publicly controlled” is to be construed in accordance with subsection (3).
- (2) Expressions used in this Chapter and in Chapter 1 of this Part have the same meanings in this Chapter as in that Chapter.
- (3) For the purposes of this Chapter a body corporate is a publicly controlled company if it is a company limited by shares that is either publicly owned or is otherwise a company in which—
  - (a) a person specified in subsection (4) holds a majority of the voting rights; or
  - (b) two or more persons so specified, taken together, hold a majority of the voting rights.
- (4) The persons mentioned in subsection (3) are—
  - (a) the Treasury;
  - (b) a Minister of the Crown;
  - (c) the NDA;



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- (d) the UKAEA;
- (e) a publicly owned company; or
- (f) a nominee of a person falling within paragraphs (a) to (e).

(5) In this section “company” has the same meaning as in the Companies Act 1985 (c. 6).

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**Commencement Information**

**I51** S. 50 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

VALID FROM 01/03/2005

**CHAPTER 3**

CIVIL NUCLEAR CONSTABULARY

*Civil Nuclear Police Authority*

**51 The Civil Nuclear Police Authority**

- (1) There shall be a body corporate to be known as the Civil Nuclear Police Authority (“the Police Authority”).
- (2) Schedule 10 (which makes further provision about the Police Authority) has effect.

*Civil Nuclear Constabulary*

**52 The Civil Nuclear Constabulary**

- (1) It shall be the function of the Police Authority to secure the maintenance of an efficient and effective constabulary, to be known as the Civil Nuclear Constabulary (“the Constabulary”).
- (2) The primary function of the Constabulary is—
  - (a) the protection of licensed nuclear sites which are not used wholly or mainly for defence purposes; and
  - (b) safeguarding nuclear material in Great Britain and elsewhere.
- (3) The Police Authority may allocate to the Constabulary the function of carrying on such other activities relating to, or connected with, the security of—
  - (a) nuclear material, or
  - (b) sites where such material is being, has been or is to be used, processed or stored,as the Police Authority thinks fit.
- (4) The Constabulary shall have the function of carrying on such other activities as may be allocated to it by the Police Authority in accordance with directions given to that Authority for the purposes of this section by the Secretary of State.

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- (5) The Secretary of State may give the Police Authority directions restricting the exercise of its powers under subsection (3).
- (6) Subject to the provisions of this Chapter, the Police Authority may do anything which appears to it to be likely to facilitate the carrying out of its functions, or to be incidental to carrying them out.
- (7) Nothing in this section limits what a member of the Constabulary may do in the exercise of the powers and privileges conferred on him by section 56.

### **53 Chief constable and other senior officers**

- (1) The Police Authority—
  - (a) must appoint a chief constable of the Constabulary and a deputy chief constable of the Constabulary; and
  - (b) may appoint one or more assistant chief constables of the Constabulary.
- (2) Before appointing the deputy chief constable or an assistant chief constable, the Police Authority must consult the chief constable.
- (3) The chief constable, the deputy chief constable and every assistant chief constable are to be members of the Constabulary.
- (4) The approval of the Secretary of State is required for the making of an appointment under this section.
- (5) Schedule 11 (which makes provision about the removal and suspension of the chief constable and other senior officers) has effect.

VALID FROM 01/04/2005

### **54 Functions of senior officers**

- (1) In carrying out his functions in any financial year, the chief constable must have regard to—
  - (a) the annual policing plan for that year issued by the Police Authority under paragraph 2 of Schedule 12; and
  - (b) the three-year strategy plan most recently issued by the Police Authority under paragraph 3 of that Schedule for a period that includes that year.
- (2) The deputy chief constable may perform a function of the chief constable—
  - (a) while the chief constable is unable to act or unavailable;
  - (b) during a vacancy in the office of chief constable; or
  - (c) with the consent of the chief constable.
- (3) A consent for the purposes of subsection (2)(c) may be either general or specific.
- (4) The Police Authority may authorise an assistant chief constable to perform a function of the chief constable—
  - (a) while both the chief constable and the deputy chief constable are unable to act or unavailable; or

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- (b) while the offices of chief constable and deputy chief constable are both vacant.
- (5) At any one time, only one person may be authorised to act under subsection (4).
- (6) No person shall be entitled by virtue of subsection (2)(a) or (b) or an authorisation under subsection (4) to act for a continuous period exceeding three months, except with the consent of the Secretary of State.

VALID FROM 01/04/2005

## **55 Members of the Constabulary**

- (1) The Police Authority may appoint persons to be members of the Constabulary.
- (2) Members of the Constabulary are to be employees of the Police Authority and (apart from the chief constable himself) under the direction and control of the chief constable.
- (3) A person appointed as a member of the Constabulary must, on appointment—
  - (a) be attested as a constable by making the required declaration before a justice of the peace in England and Wales; or
  - (b) make the required declaration before a sheriff or a justice of the peace in Scotland.
- (4) The required declaration is—
  - (a) in the case of a declaration before a justice of the peace in England and Wales, the declaration required by section 29 of the Police Act 1996 (c. 16) in the case of a member of a police force maintained under that Act; and
  - (b) in the case of a declaration before a sheriff or a justice of the peace in Scotland, a declaration faithfully to execute the duties of the office of a member of the Civil Nuclear Constabulary.

VALID FROM 01/04/2005

### *Jurisdiction and powers of Constabulary*

## **56 Jurisdiction of Constabulary**

- (1) A member of the Constabulary shall have the powers and privileges of a constable—
  - (a) at every place comprised in a relevant nuclear site; and
  - (b) everywhere within 5 kilometres of such a place.
- (2) A member of the Constabulary shall have the powers and privileges of a constable at every trans-shipment site where it appears to him expedient to be in order to safeguard nuclear material while it is at the site.

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- (3) A member of the Constabulary shall have the powers and privileges of a constable at every other place where it appears to him expedient to be in order to safeguard nuclear material which is in transit.
- (4) A member of the Constabulary shall have the powers and privileges of a constable at every place where it appears to him expedient to be in order to pursue or to detain a person whom he reasonably believes—
- (a) to have unlawfully removed or interfered with nuclear material being safeguarded by members of the Constabulary; or
  - (b) to have attempted to do so.
- (5) A member of the Constabulary shall have the powers and privileges of a constable throughout Great Britain for purposes connected with—
- (a) a place mentioned in subsections (1) to (4);
  - (b) anything that he or another member of the Constabulary is proposing to do, or has done, at such a place; or
  - (c) anything which he reasonably believes to have been done, or to be likely to be done, by another person at or in relation to such a place.
- (6) This section has effect in United Kingdom waters adjacent to Great Britain as it has effect in Great Britain, but as if references to the powers and privileges of a constable were references to the powers and privileges of a constable in the nearest part of Great Britain.
- (7) In this section—
- “detain”, in relation to a person, includes transferring him to the custody of another or to a place where he may be held in custody;
- “relevant nuclear site” means a licensed nuclear site other than a designated defence site;
- “trans-shipment site” means a place which a member of the Constabulary reasonably believes to be—
- (a) a place where a consignment of nuclear material in transit is trans-shipped or stored; or
  - (b) a place to which a consignment of nuclear material may be brought to be trans-shipped or stored while it is in transit;
- “United Kingdom waters” means waters within the seaward limits of the territorial sea;
- and nuclear material is “in transit” for the purposes of this section if it is being carried (or is being trans-shipped or stored incidentally to carriage) before its delivery at its final destination.
- (8) In subsection (7) “designated defence site” means a site designated by order made by the Secretary of State as a site which appears to him to be used wholly or mainly for defence purposes.
- (9) An order under subsection (8) must be laid before Parliament after being made.
- (10) Where an order designating a site for the purposes of section 76(2) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (jurisdiction of Atomic Energy Authority special constables) is in force immediately before the commencement of this section, that order shall have effect after the commencement of this section as an order made under and for the purposes of subsection (8).

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## **57 Stop and search under Terrorism Act 2000**

- (1) The Terrorism Act 2000 (c. 11) is amended as follows.
- (2) In section 44 (authorisation to stop and search in connection with terrorism)—
  - (a) after subsection (4B) insert—

“(4BA) In a case in which the specified area or place is a place in which members of the Civil Nuclear Constabulary have the powers and privileges of a constable, an authorisation may also be given by a member of that Constabulary who is of at least the rank of assistant chief constable.”;
  - (b) in subsection (4C), after paragraph (b) insert “or
  - (c) a member of the Civil Nuclear Constabulary,”.
- (3) In section 46 (duration of authorisation), after subsection (2) insert—

“(2A) An authorisation under section 44(4BA) does not have effect except in relation to times when the specified area or place is a place where members of the Civil Nuclear Constabulary have the powers and privileges of a constable.”

VALID FROM 01/04/2005

### *Administration of Constabulary*

## **58 Government, administration and conditions of service**

- (1) Where—
  - (a) the Police Authority makes provision about the government, administration or conditions of service of the Constabulary or its members, and
  - (b) the provision relates to matters which are the subject of regulations under section 50 of the Police Act 1996 (c. 16) (regulations about the government, administration and conditions of service of police forces),the provision made by the Police Authority may differ from those regulations only so far as necessary to take account of differences relating to the structure and circumstances of the Constabulary.
- (2) Before making provision about the government, administration or conditions of service of the Constabulary or its members, the Police Authority must consult—
  - (a) the chief constable;
  - (b) the Civil Nuclear Police Federation; and
  - (c) if the proposed provision relates to members of a rank-related association, that association.

## **59 Members of Constabulary serving with other forces**

- (1) This section applies where a member of the Constabulary serves with a relevant force under arrangements made between the chief officer of that force and the chief constable.

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- (2) The member of the Constabulary—
- (a) shall be under the direction and control of the chief officer of the relevant force; and
  - (b) shall have the same powers and privileges as a member of that force.
- (3) In this section—
- “chief officer” means—
- (a) a chief officer of police of a police force for a police area in Great Britain;
  - (b) the Chief Constable of the Police Service of Northern Ireland;
  - (c) the Director General of the National Criminal Intelligence Service;
  - (d) the Director General of the National Crime Squad;
  - (e) the chief constable of the British Transport Police Force; or
  - (f) the chief constable of the Ministry of Defence Police;
- “relevant force” means—
- (a) a police force for a police area in Great Britain;
  - (b) the Police Service of Northern Ireland;
  - (c) the National Criminal Intelligence Service;
  - (d) the National Crime Squad;
  - (e) the British Transport Police Force; or
  - (f) the Ministry of Defence Police.

## 60 Charges

- (1) A person falling within subsection (2) must pay to the Police Authority such charges (if any) in respect of services provided by the Constabulary as are—
- (a) agreed between that person and the Police Authority; or
  - (b) in the absence of agreement, determined by the Secretary of State.
- (2) A person falls within this subsection if—
- (a) he is the owner or occupier of a site in respect of which services are provided by the Constabulary;
  - (b) he is a person with an interest in, or with custody or control of, nuclear material in respect of which services are so provided; or
  - (c) he is a person not falling within paragraph (a) or (b) who is the recipient of services provided by the Constabulary.
- (3) The Secretary of State may pay to the Police Authority such sums as are—
- (a) agreed between him and that Authority, or
  - (b) in the absence of agreement, determined by the Secretary of State,
- in respect of services provided by the Constabulary to such persons as he may determine.
- (4) The services in respect of which charges or sums may be imposed or paid under this section include—
- (a) services which it is the duty of the Constabulary to provide; and
  - (b) services which it is the duty of the person charged to have provided.

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*Supervision and inspection etc.*

VALID FROM 01/04/2005

**61 Planning and reports**

Schedule 12 (which makes provision about planning and reporting) has effect.

VALID FROM 01/04/2005

**62 Inspection**

- (1) Her Majesty's Inspectors of Constabulary must inspect the Constabulary from time to time.
- (2) Her Majesty's Inspectors of Constabulary must also inspect the Constabulary if requested to do so by the Secretary of State either—
  - (a) generally; or
  - (b) in respect of a particular matter.
- (3) Before carrying out an inspection under this section wholly or partly in Scotland, Her Majesty's Inspectors of Constabulary must consult the Scottish inspectors—
  - (a) in the case of any inspection by virtue of subsection (1) or (2)(a), about the scope and conduct in Scotland of the proposed inspection; and
  - (b) in any other case, about its conduct in Scotland.
- (4) Following an inspection under this section, Her Majesty's Inspectors of Constabulary must report to the Secretary of State on the efficiency and effectiveness of the Constabulary either—
  - (a) generally; or
  - (b) in the case of an inspection under subsection (2)(b), in respect of the matter to which the inspection related.
- (5) A report under subsection (4) must be in such form as the Secretary of State may direct.
- (6) The Secretary of State must arrange for every report which he receives under subsection (4) to be published in such manner as appears to him to be appropriate.
- (7) The Secretary of State may exclude from publication under subsection (6) any part of a report if, in his opinion, the publication of that part—
  - (a) would be against the interests of national security; or
  - (b) might jeopardise the safety of any person.
- (8) The Secretary of State must send a copy of the published report—
  - (a) to the Police Authority; and
  - (b) to the chief constable.
- (9) The Police Authority must pay to the Secretary of State such amounts as he may determine in respect of an inspection carried out under this section.

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- (10) The Secretary of State must pay sums received by him under subsection (9) into the Consolidated Fund.
- (11) In this section “the Scottish inspectors” means the inspectors of constabulary appointed under section 33(1) of the Police (Scotland) Act 1967 (c. 77).

### **63 Supervision by Secretary of State**

- (1) The Police Authority must comply with directions given by the Secretary of State under Schedule 13.
- (2) The Secretary of State must exercise his powers under this Chapter in such manner, and to such extent, as appears to him best calculated to promote the efficiency and effectiveness of the Constabulary.
- (3) The Police Authority must pay to the Secretary of State such amounts as he may determine in respect of things done by him for or in relation to the Authority or its employees in connection with matters relating to security.
- (4) The Secretary of State must pay sums received by him under subsection (3) into the Consolidated Fund.

VALID FROM 01/04/2005

### *Rights etc. of members of the Constabulary*

### **64 Civil Nuclear Police Federation**

- (1) The Secretary of State may approve a body (whether corporate or unincorporate) as the body approved to carry out the functions conferred by this section.
- (2) The body approved by the Secretary of State shall be known as the Civil Nuclear Police Federation.
- (3) The function of the Civil Nuclear Police Federation shall be to represent members of the Constabulary (other than senior officers) in all matters affecting their welfare and efficiency.
- (4) Those matters do not include—
- (a) the promotion in rank of particular individuals; or
  - (b) (except to the extent provided in subsection (5)) discipline matters affecting particular individuals.
- (5) The Civil Nuclear Police Federation may represent a member of the Constabulary (other than a senior officer)—
- (a) at disciplinary proceedings conducted in accordance with arrangements made by the Police Authority; or
  - (b) on an appeal under any such arrangements from a decision in such proceedings.
- (6) But representation under subsection (5) must comply with any restrictions imposed by section 66.



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- (7) Except so far as otherwise authorised by the Secretary of State, the Civil Nuclear Police Federation must be entirely independent of, and unassociated with, bodies and other persons who are without appropriate police connections.
- (8) But it may employ in an administrative or advisory capacity persons who are without appropriate police connections.
- (9) An authorisation for the purposes of subsection (7)—
  - (a) may be given either conditionally or unconditionally; and
  - (b) may be varied or revoked at any time.
- (10) Only the following have appropriate police connections for the purposes of this section—
  - (a) persons within the service of the Constabulary, of the Ministry of Defence Police, of the British Transport Police Force, of a police force for a police area in Great Britain or of the Police Service of Northern Ireland;
  - (b) persons not falling within paragraph (a) who are members of or employed by the Police Authority;
  - (c) a federation referred to in section 59 of the Police Act 1996 (c. 16), section 3 of the Ministry of Defence Police Act 1987 (c. 4) or section 39 of the Railways and Transport Safety Act 2003 (c. 20) (police federations);
  - (d) the Police Association for Northern Ireland;
  - (e) a rank-related association;
  - (f) a body recognised under, and for the purposes specified in, section 64(5) of the Police Act 1996 or section 35(4) of the Police (Northern Ireland) Act 1998 (c. 32) (recognition of other bodies for trade union purposes).

## **65 Rank-related associations**

- (1) The Secretary of State may approve one or more bodies (whether corporate or unincorporate) as bodies approved to carry out the functions conferred by this section.
- (2) A body approved by the Secretary of State under this section shall be known as a rank-related association.
- (3) The function of a rank-related association shall be to represent, in all matters affecting their welfare and efficiency, members of the Constabulary who—
  - (a) are not members of the Civil Nuclear Police Federation or of another rank-related association; and
  - (b) hold such ranks as may be specified in the approval given for the purposes of this section by the Secretary of State.
- (4) Those matters do not include—
  - (a) the promotion in rank of particular individuals; or
  - (b) (except to the extent provided in subsection (5)) discipline matters affecting particular individuals.
- (5) A rank-related association may represent a member of the association—
  - (a) at disciplinary proceedings conducted in accordance with arrangements made by the Police Authority; or

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- (b) on an appeal under any such arrangements from a decision in such proceedings.
- (6) But representation under subsection (5) must comply with any restrictions imposed by section 66.
- (7) Except so far as otherwise authorised by the Secretary of State, a rank-related association must be entirely independent of, and unassociated with, bodies and other persons who are without appropriate police connections.
- (8) But it may employ in an administrative or advisory capacity persons who are without appropriate police connections.
- (9) An authorisation for the purposes of subsection (7)—
  - (a) may be given either conditionally or unconditionally; and
  - (b) may be varied or revoked at any time.
- (10) In relation to a rank-related association, only the following have appropriate police connections for the purposes of this section—
  - (a) persons within the service of the Constabulary, of the Ministry of Defence Police, of the British Transport Police Force, of a police force for a police area in Great Britain or of the Police Service of Northern Ireland;
  - (b) persons not falling within paragraph (a) who are members of or employed by the Police Authority;
  - (c) the Civil Nuclear Police Federation;
  - (d) another rank-related association;
  - (e) a federation referred to in section 59 of the Police Act 1996 (c. 16), section 3 of the Ministry of Defence Police Act 1987 (c. 4) or section 39 of the Railways and Transport Safety Act 2003 (c. 20) (police federations);
  - (f) the Police Association for Northern Ireland;
  - (g) a body recognised under, and for the purposes specified in, section 64(5) of the Police Act 1996 or section 35(4) of the Police (Northern Ireland) Act 1998 (c. 32) (recognition of other bodies for trade union purposes).

## **66 Representation at certain disciplinary proceedings**

- (1) This section applies where disciplinary proceedings conducted in accordance with arrangements made by the Police Authority may lead to a member of the Constabulary who is not a senior officer being—
  - (a) dismissed;
  - (b) required to resign; or
  - (c) reduced in rank.
- (2) The member of the Constabulary must be given an opportunity to elect to be legally represented—
  - (a) in those proceedings; and
  - (b) on any appeal under the arrangements.
- (3) If he so elects, he may be represented, at his option, by counsel or by a solicitor.
- (4) The member of the Constabulary, if he is not legally represented, may be represented in the proceedings or on an appeal only by a person who is—
  - (a) a member of the Constabulary;

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- (b) a member of a police force maintained under the Police Act 1996 (c. 16);
- (c) a constable of a police force maintained under the Police (Scotland) Act 1967 (c. 77);
- (d) a constable of the British Transport Police Force; or
- (e) a member of the Ministry of Defence Police.

#### **67 Trade union membership**

- (1) A member of the Constabulary must not be a member of—
  - (a) a trade union; or
  - (b) an association whose objects are or include controlling or influencing the pay, pensions or conditions of service of members of the Constabulary.
- (2) Subsection (1) does not prevent a member of the Constabulary—
  - (a) from being a member of the Civil Nuclear Police Federation;
  - (b) from being a member of a rank-related association; or
  - (c) with the consent of the chief constable, from continuing to be a member of a trade union to which he belonged before becoming a member of the Constabulary.
- (3) In this section “trade union” has the meaning given by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52).

#### *Supplementary provisions of Chapter 3 of Part 1*

VALID FROM 01/04/2005

#### **68 Application of offences etc. applying to constables**

- (1) The references in section 89(1) and (2) of the Police Act 1996 and section 41(1) and (2) of the Police (Scotland) Act 1967 (assaults on constables) to a constable in the execution of his duty shall have effect as if they included references to a member of the Constabulary who—
  - (a) is exercising any of the powers or privileges conferred on him by section 56; or
  - (b) is otherwise performing his duties under the direction and control of the chief constable or as an employee of the Police Authority.
- (2) Section 90 of the Police Act 1996 (impersonation of member of a police force) shall have effect as if the references to a member of a police force included references to a member of the Constabulary.
- (3) In section 91 of the Police Act 1996 (causing disaffection), for subsection (2) substitute—
  - “(2) This section applies in the case of—
    - (a) special constables appointed for a police area,
    - (b) members of the Civil Nuclear Constabulary, and
    - (c) members of the British Transport Police Force,

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as it applies in the case of members of a police force.”

(4) In section 42 of the Police (Scotland) Act 1967 (c. 77) (causing disaffection), after subsection (2) insert—

“(3) In this section—

- (a) references to the constables of any police force include references to the members of the Civil Nuclear Constabulary; and
- (b) references to a constable include references to a member of that Constabulary.”

(5) In section 43 of the Police (Scotland) Act 1967 (impersonation of police)—

- (a) in subsection (1)(b) (wearing a police uniform without permission), after “without” insert “ being a member of the Civil Nuclear Constabulary or having ”; and
- (b) in subsection (3), after “police authority” insert “ or by the Civil Nuclear Police Authority ”.

(6) After subsection (3) of that section insert—

“(3A) In its application to articles of the uniform of the Civil Nuclear Constabulary, subsection (1)(b) has effect as if for the words “or having the permission of the police authority for the police area in which he is” there were substituted the words “ and in circumstances where it gives him an appearance so nearly resembling that of a constable as to be calculated to deceive ”.

(3B) For the purposes of this section—

- (a) “constable” includes a member of the Civil Nuclear Constabulary; and
- (b) any reference to “police” includes a reference to that Constabulary.”

(7) In any enactment—

- (a) references to a person’s being in the custody of a constable, or to his being detained in the charge of a constable, include references to his being detained by a member of the Constabulary in the exercise of any of the powers or privileges conferred on him by section 56; and
- (b) references to a person’s accompanying a constable include references to his accompanying a member of the Constabulary.

## 69 Minor amendments relating to the Constabulary

(1) Schedule 14 (which contains minor amendments relating to the Constabulary) has effect.

(2) The Secretary of State may by order make such modifications of subordinate legislation as appear to him to be appropriate in consequence of any provision of this Chapter.

(3) Orders under subsection (2) are subject to the negative resolution procedure.

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VALID FROM 01/04/2005

## **70 Nuclear transfer scheme for UKAEA Constabulary**

- (1) The Secretary of State must make a nuclear transfer scheme providing for the transfer to the Police Authority of—
  - (a) the employees of the UKAEA who are members of the UKAEA Constabulary;
  - (b) such other persons employed by the UKAEA for purposes connected with that Constabulary as he considers appropriate;
  - (c) such property held by the UKAEA for purposes connected with the activities of members of the UKAEA Constabulary as he considers appropriate; and
  - (d) such rights and liabilities of the UKAEA relating to any of those activities, or to any such property, as he considers appropriate.
- (2) The nuclear transfer scheme that provides for the transfer of members of the UKAEA Constabulary to the Police Authority must provide for the transfer to the Police Authority, at the same time, of everyone who immediately before that time is employed by the UKAEA exclusively for purposes connected with that Constabulary.
- (3) Chapter 2 of this Part shall have effect as if the nuclear transfer scheme required by this section were a scheme authorised by section 39 but did not require the consent of the Police Authority to any of its provisions.
- (4) From the date on which the nuclear transfer scheme required by this section comes into force, the members of the UKAEA Constabulary who are transferred by the scheme shall hold office as members of the Constabulary as if they had—
  - (a) been appointed by the Police Authority in accordance with section 55; and
  - (b) on appointment made the declaration required by that section.
- (5) In this section “members of the UKAEA Constabulary”, in relation to a nuclear transfer scheme, means persons who, on the date on which the scheme comes into force, are special constables appointed on the nomination of the UKAEA under section 3 of the Special Constables Act 1923 (c. 11).

## **71 Interpretation of Chapter 3 of Part 1**

- (1) In this Chapter—
  - “chief constable” means the chief constable of the Constabulary;
  - “the Civil Nuclear Police Federation” is to be construed in accordance with section 64(2);
  - “the Constabulary” means the Civil Nuclear Constabulary;
  - “licensed nuclear site” means a site in respect of which a nuclear site licence is or is required to be in force;
  - “nuclear material” means—
    - (a) any fissile material in the form of—
      - (i) uranium metal, alloy or chemical compound; or
      - (ii) plutonium metal, alloy or chemical compound;

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- (b) any other fissile material prescribed by regulations made by the Secretary of State;  
 “the Police Authority” means the Civil Nuclear Police Authority;  
 “rank-related association” is to be construed in accordance with section 65(2);  
 “senior officer” means the chief constable or the deputy chief constable or an assistant chief constable of the Constabulary.
- (2) References in this Chapter to the functions of the Police Authority include references to securing that the functions of the Constabulary are carried out.
- (3) Any power of the Secretary of State under this Chapter to give directions—
- (a) restricting the exercise by the Police Authority of its powers,
  - (b) requiring functions to be carried out or objectives to be met by the Constabulary or the Police Authority, or
  - (c) imposing obligations on the Police Authority or any of its members or employees,
- includes power to impose restrictions, confer functions, require objectives to be met or impose obligations at or in relation to places outside Great Britain.
- (4) Regulations under subsection (1) are subject to the negative resolution procedure.
- (5) Where regulations under subsection (7) of section 76 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (jurisdiction of Atomic Energy Authority special constables) prescribing material to be treated as nuclear material for the purposes of that section are in force immediately before the commencement of this section, those regulations shall have effect after the commencement of this section as regulations made under and for the purposes of subsection (1).

## CHAPTER 4

### AUTHORISATIONS RELATING TO RADIOACTIVE WASTE

#### 72 **Transfer of authorisations**

After section 16 of the 1993 Act (grant of authorisations) insert—

##### **“16A Transfer of authorisations**

- (1) This section applies where—
- (a) a person (“the transferor”) holds an authorisation granted under section 13 in respect of the disposal of radioactive waste on or from premises situated on a nuclear site; and
  - (b) an application is made under this section for a transfer (in whole or in part) of that authorisation to another person (“the transferee”).
- (2) An application under this section is one which—
- (a) is made to the authorising authority jointly by the transferor and the transferee;
  - (b) is accompanied by the appropriate amount; and

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- (c) in the case of an application for a transfer relating to part only of the premises, identifies the part in question.
- (3) The appropriate amount for the purposes of subsection (2) is—
  - (a) if the application is made to the appropriate Agency, the amount of the charge (if any) that is prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995; and
  - (b) if it is made to the chief inspector, the prescribed fee.
- (4) The authorising authority must, on receipt of the application (but subject to directions under section 25 and to subsection (6)), send a copy of the application to every local authority in whose area radioactive waste may be disposed of under the authorisation to which the application relates.
- (5) Before granting the application, the authorising authority must (subject to subsection (6)) consult everyone whom it would have been required to consult under section 16(4A) and (5) if—
  - (a) the transferee had applied for the grant of the authorisation that he would hold were the application to be granted; and
  - (b) in the case of a partial transfer, the transferor had applied for the grant (in place of his existing authorisation) of the authorisation he would hold in those circumstances.
- (6) The authorising authority may proceed with the application without—
  - (a) sending a copy of the application to a local authority mentioned in subsection (4), or
  - (b) consulting an authority or body mentioned in section 16(5) about the proposed transfer,if it appears to the authorising authority that arrangements for the disposal of radioactive waste are unlikely to be changed, as a result of the transfer, in a way that would be of interest to that authority or body.
- (7) The authorising authority may grant the application if, and only if, it is satisfied—
  - (a) that the transferee has or will have operational control over the disposals to which the transferred authorisation will relate;
  - (b) that he is able and willing to ensure compliance with the limitations and conditions of the authorisation that he will hold if the application is granted; and
  - (c) that no other grounds exist on which it would be reasonable to refuse to grant the application.
- (8) Where the authorising authority grants the application, it must—
  - (a) fix the date from which the transfer applied for is to have effect;
  - (b) furnish the transferee with a certificate containing all material particulars of the authorisation he holds as a result of the transfer;
  - (c) in the case of a partial transfer, furnish the transferor with a similar certificate as respects the authorisation he holds as a result of the transfer; and
  - (d) subject to directions under section 25, send a copy of the certificate furnished to the transferee, and of any certificate furnished to the transferor—

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- (i) to every local authority in whose area radioactive waste may be disposed of under the authorisation to which the certificate relates; and
  - (ii) to every person consulted about the transfer under so much of subsection (5) as requires consultation in accordance with section 16(5).
- (9) The time fixed as the time from which the transfer is to have effect must be not less than twenty-eight days after the day (if any) on which the authorising authority, when it fixes that time, expects copies of the certificates mentioned in paragraph (d) of subsection (8) to be sent out in accordance with that paragraph.
- (10) Subsection (9) does not apply if, in the opinion of the authorising authority, it is necessary for the transfer to have immediate effect or otherwise to be expedited.
- (11) In this section “authorising authority”—
- (a) in relation to an authorisation having effect in Great Britain, means the appropriate Agency; and
  - (b) in relation to an authorisation having effect in Northern Ireland, means the chief inspector.”

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**Commencement Information**

**I52** S. 72 in force at 27.7.2004 by [S.I. 2004/1973](#), art. 2, [Sch.](#)

### 73 Applications for variation of authorisations

In section 17 of the 1993 Act (revocation and variation of authorisations), after subsection (2) insert—

“(2ZA) The powers of the appropriate Agency and of the chief inspector under this section are exercisable with or without the making of an application by the person holding the authorisation.

(2ZB) But where an application for the variation of an authorisation is made by that person, it must be accompanied—

- (a) in the case of an application made to the appropriate Agency, by the charge (if any) that is prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995; and
- (b) in the case of an application to the chief inspector, by the prescribed fee.”

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**Commencement Information**

**I53** S. 73 in force at 27.7.2004 by [S.I. 2004/1973](#), art. 2, [Sch.](#)

### 74 Periodic reviews of authorisations

After section 17 of the 1993 Act insert—



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### “17A Review of authorisations

- (1) The authorising authority—
  - (a) must carry out periodic reviews of the limitations and conditions attached to each authorisation under section 13 or 14; and
  - (b) may, at any other time, carry out any such additional review of the limitations and conditions attached to an authorisation under either of those sections as it thinks fit.
- (2) In this section—
  - “the authorising authority”—
    - (a) in relation to an authorisation having effect in Great Britain, means the appropriate Agency; and
    - (b) in relation to an authorisation having effect in Northern Ireland, means the chief inspector;
  - “periodic reviews”, in relation to an authorisation, means reviews at such regular intervals as the authorising authority thinks fit in the case of that authorisation.”

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#### Commencement Information

**I54** S. 74 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

## 75 Consequential amendments of the 1993 Act

Schedule 15 (which contains further amendments of the 1993 Act in connection with the provision made by sections 72 to 74) has effect.

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#### Commencement Information

**I55** S. 75 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

## CHAPTER 5

### MISCELLANEOUS PROVISIONS RELATING TO NUCLEAR INDUSTRY

## 76 Amendments for giving effect to international obligations

- (1) The Secretary of State may by order make the modifications of the enactments to which this section applies that he considers appropriate for the purpose—
  - (a) of facilitating the ratification by Her Majesty’s Government in the United Kingdom of an international Protocol (whether entered into before or after the passing of this Act) that relates to liability for nuclear damage; or
  - (b) of exercising an option under such a Protocol, or of facilitating the exercise of such an option.
- (2) The enactments to which this section applies are—
  - (a) the 1965 Act; and

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- (b) any other enactment having effect in relation to a matter to which such a Protocol relates.
- (3) The following are the only international Protocols which are to be taken for the purposes of this section to be Protocols relating to liability for nuclear damage—
  - (a) the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21st September 1988; and
  - (b) any Protocol amending the Paris Convention or the Brussels Supplementary Convention.
- (4) In this section—
  - “the Brussels Supplementary Convention” means the Supplementary Convention on Third Party Liability in the Field of Nuclear Energy of 31st January 1963; and
  - “the Paris Convention” means the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960.
- (5) The reference in subsection (1) to exercising an option under a Protocol is a reference to making provision the making of which, in connection with the matters to which the Protocol relates, is allowed by that Protocol.
- (6) The power under this section to modify enactments includes power to modify enactments conferring power to make subordinate legislation.
- (7) The power to make an order containing provision authorised by this section is subject to the affirmative resolution procedure.

**Commencement Information**

**I56** S. 76 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**77 Regulation of equipment, software and information**

- (1) Section 77 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (regulation of security of civil nuclear industry) is amended as follows.
- (2) In subsection (1) (matters about which security regulations may be made), after paragraph (c) insert—
  - “(ca) equipment or software in the United Kingdom which—
    - (i) is capable of being used in, or in connection with, the enrichment of uranium; and
    - (ii) is in the possession or control of a person involved in uranium enrichment activities;”.
- (3) For paragraph (d) of that subsection substitute—
  - “(d) sensitive nuclear information which is in the possession or control in the United Kingdom of—
    - (i) a person who is involved in activities on or in relation to a nuclear site or nuclear premises or who is proposing or likely to become so involved;
    - (ii) a person involved in uranium enrichment activities; or

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(iii) a person who is storing, transporting or transmitting the information for or on behalf of a person falling within subparagraph (i) or (ii);”.

(4) After subsection (6) insert—

“(6A) References in this section to a person involved in uranium enrichment activities are references to a person who is or is proposing to become involved in any of the following activities (whether in the United Kingdom or elsewhere)—

- (a) the enrichment of uranium;
- (b) activities carried on with a view to, or in connection with, the enrichment of uranium;
- (c) the production, storage, transport or transmission of equipment or software for or on behalf of persons involved in uranium enrichment activities; or
- (d) activities that make it reasonable to assume that he will become involved in something mentioned in paragraphs (a) to (c).”

(5) In subsection (7) (interpretation of section)—

(a) after “this section—” insert—

““enrichment of uranium” means a treatment of uranium that increases the proportion of isotope 235 contained in the uranium;

“equipment” includes equipment that has not been assembled and its components;”

(b) in paragraph (a) of the definition of “sensitive nuclear information”, for the words from “any treatment” to “contained in the” substitute “ the enrichment of”.

#### Commencement Information

**I57** S. 77 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 78 Application of the 1965 Act to Northern Ireland

(1) Sections 3(1A) and (6A), 4(3A) and 5(1A) of the 1965 Act (which require certain consultations in relation to nuclear site licences) shall extend to Northern Ireland.

(2) Section 27 of that Act (application of that Act to Northern Ireland) is amended as follows.

(3) For subsection (1) substitute—

“(1) In the application of this Act to Northern Ireland—

- (a) a reference to the Minister shall be construed as a reference to the Secretary of State;
- (b) sections 3(1A) and (6A), 4(3A) and 5(1A) shall have effect as if—
  - (i) for “appropriate Agency”, wherever occurring, there were substituted “ Department of the Environment in Northern Ireland ”;

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- (ii) for “Great Britain”, wherever occurring, there were substituted “ Northern Ireland ”;
- (iii) for “Health and Safety Executive”, wherever occurring, there were substituted “ Minister ”;
- (c) section 3(3) shall have effect as if for paragraphs (b) and (c) there were substituted—
  - “(ca) the Fisheries Conservancy Board for Northern Ireland; and.””
- (4) Subsections (2) and (3) shall cease to have effect.
- (5) In subsection (5), for paragraphs (a) to (c) substitute—
  - “(a) by the Minister; or
  - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.”
- (6) Subsection (6) shall cease to have effect.

**Commencement Information**

**I58** S. 78 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**79 Expenditure on nuclear related matters**

- (1) There may be paid, out of money provided by Parliament, any expenditure incurred by the Secretary of State, with the consent of the Treasury, under or as a result of—
  - (a) any option under which he or his nominee may acquire an undertaking or property from a British Energy company; or
  - (b) any agreement entered into for the purpose of giving effect to the provisions of such an option, or of continuing or modifying their effect.
- (2) In this section “British Energy company” has the same meaning as in section 1 of the Electricity (Miscellaneous Provisions) Act 2003 (c. 9).

**Commencement Information**

**I59** S. 79 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**80 Additional functions of UKAEA**

- (1) The functions of the UKAEA shall include—
  - (a) power to carry on such activities as they consider appropriate in connection with anything that the NDA has a responsibility for securing under this Part;
  - (b) power to enter into such arrangements with the NDA or any other person as they consider appropriate for that purpose; and
  - (c) power for that purpose to develop and commercially to exploit an expertise in relation to things in which the NDA requires an expertise for the purpose of carrying out its functions.

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- (2) In the case of responsibilities of the NDA in relation to an installation, site or facility it is immaterial for the purposes of subsection (1) that the UKAEA is not, for the purposes of Chapter 1 of this Part, the person with control of it.
- (3) The functions of the UKAEA shall also include —
  - (a) power to manage and commercially to exploit any land or other property of theirs that is no longer required by them for or in connection with the carrying out of their other functions; and
  - (b) power to carry on a business of providing services for the administration of—
    - (i) nuclear pension schemes; and
    - (ii) such public service pension schemes as may be approved by the Secretary of State for the purposes of this subsection.
- (4) The UKAEA has power, for the purpose of carrying out its functions (whether conferred by this section or otherwise) to do all such things as appear to them to be likely to facilitate the exercise or performance of their powers and duties, or to be incidental to doing so.
- (5) The ways in which the UKAEA may carry out those functions include (by virtue of subsection (4)) carrying them out through subsidiaries and carrying them out in association with, or through arrangements with, other persons.
- (6) Subsection (5) of section 7 (things in which the NDA requires an expertise) has effect for the purposes of this section as it has effect for the purposes of subsection (4) of that section.
- (7) In this section—

“nuclear pension scheme” means a scheme that is a nuclear pension scheme for the purposes of Schedule 8; and

“public service pension scheme” means a public service pension scheme within the meaning of the Pension Schemes Act 1993 (c. 48) (see section 1) or the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (see section 1).

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**Commencement Information**

**I60** S. 80 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**PART 2**

SUSTAINABILITY AND RENEWABLE ENERGY SOURCES

**CHAPTER 1**

SUSTAINABLE ENERGY

**81 Reports under section 1 of Sustainable Energy Act 2003**

- (1) Section 1 of the Sustainable Energy Act 2003 (c. 30) (annual reports on progress towards sustainable energy aims) is amended as follows.

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(2) After subsection (1) insert—

“(1A) The report must include, in particular, all such information as the Secretary of State considers appropriate about—

- (a) things done during the reporting period for the purposes of the development or the bringing into use of any of the energy sources or technologies mentioned in subsection (1B);
- (b) things done during that period for the purpose of ensuring the maintenance of the scientific and engineering expertise available in the United Kingdom that is necessary for the development of potential energy sources (including sources of nuclear energy); and
- (c) things done during that period for the purpose of achieving the energy efficiency aims designated under sections 2 and 3.

(1B) The energy sources and technologies referred to in subsection (1A)(a) are—

- (a) clean coal technology;
- (b) coal mine methane;
- (c) biomass;
- (d) biofuels;
- (e) fuel cells;
- (f) photovoltaics;
- (g) wave and tidal generation;
- (h) hydrogeneration;
- (i) microgeneration;
- (j) geothermal sources; and
- (k) other sources of energy, and technologies for the production of energy, the use of which would, in the opinion of the Secretary of State, cut the United Kingdom’s carbon emissions.

(1C) The references in subsection (1A) to things done during the reporting period include references to proposals of the Secretary of State published during that period.”

(3) In subsection (2) for “subsection (1)” substitute “ subsections (1) to (1C) ”.

#### **Commencement Information**

**I61** S. 81 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## **82 Microgeneration**

(1) The Secretary of State—

- (a) must prepare a strategy for the promotion of microgeneration in Great Britain; and
- (b) may from time to time revise it.

(2) The Secretary of State—

- (a) must publish the strategy within 18 months after the commencement of this section; and
- (b) if he revises it, must publish the revised strategy.

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- (3) In preparing or revising the strategy, the Secretary of State must consider the contribution that is capable of being made by microgeneration to—
- (a) cutting emissions of greenhouse gases in Great Britain;
  - (b) reducing the number of people living in fuel poverty in Great Britain;
  - (c) reducing the demands on transmission systems and distribution systems situated in Great Britain;
  - (d) reducing the need for those systems to be modified;
  - (e) enhancing the availability of electricity and heat for consumers in Great Britain.
- (4) Before preparing or revising the strategy, the Secretary of State must consult such persons appearing to him to represent the producers and suppliers of plant used for microgeneration, and such other persons, as he considers appropriate.
- (5) The Secretary of State must take reasonable steps to secure the implementation of the strategy in the form in which it has most recently been published.
- (6) For the purposes of this section “microgeneration” means the use for the generation of electricity or the production of heat of any plant—
- (a) which in generating electricity or (as the case may be) producing heat, relies wholly or mainly on a source of energy or a technology mentioned in subsection (7); and
  - (b) the capacity of which to generate electricity or (as the case may be) to produce heat does not exceed the capacity mentioned in subsection (8).
- (7) Those sources of energy and technologies are—
- (a) biomass;
  - (b) biofuels;
  - (c) fuel cells;
  - (d) photovoltaics;
  - (e) water (including waves and tides);
  - (f) wind;
  - (g) solar power;
  - (h) geothermal sources;
  - (i) combined heat and power systems;
  - (j) other sources of energy and technologies for the generation of electricity or the production of heat, the use of which would, in the opinion of the Secretary of State, cut emissions of greenhouse gases in Great Britain.
- (8) That capacity is—
- (a) in relation to the generation of electricity, 50 kilowatts;
  - (b) in relation to the production of heat, 45 kilowatts thermal.
- (9) In this section—
- “consumers” includes both existing and future consumers;
  - “distribution system” and “transmission system” have the same meanings as in Part 1 of the 1989 Act;
  - “fuel poverty” has the same meaning as in section 1 of the Sustainable Energy Act 2003 (c. 30);
  - “greenhouse gases” means—

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- (a) carbon dioxide;
  - (b) methane;
  - (c) nitrous oxide;
  - (d) hydrofluorocarbons;
  - (e) perfluorocarbons;
  - (f) sulphur hexafluoride;
- “plant” includes any equipment, apparatus or appliance.

**Commencement Information**

**I62** S. 82 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**83 Sustainable development**

In each of section 4AA of the Gas Act 1986 (c. 44) and section 3A of the 1989 Act (the principal objective and general duties of the Secretary of State and the Authority), in subsection (5)—

- (a) for the “and” at the end of paragraph (b) substitute—
  - “(ba) to contribute to the achievement of sustainable development; and”;
- (b) for “and shall” substitute “ and (so far as not otherwise required to do so by this subsection) shall ”.

**Commencement Information**

**I63** S. 83 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**CHAPTER 2**

OFFSHORE PRODUCTION OF ENERGY

*Renewable Energy Zones*

**84 Exploitation of areas outside the territorial sea for energy production**

- (1) The rights to which this section applies shall have effect as rights belonging to Her Majesty by virtue of this section.
- (2) This section applies to the rights under Part V of the Convention that are exercisable by the United Kingdom in areas outside the territorial sea—
  - (a) with respect to the exploitation of those areas for the production of energy from water or winds;
  - (b) with respect to the exploration of such areas in that connection; or
  - (c) for other purposes connected with such exploitation.
- (3) The other purposes so connected include, in particular, the transmission, distribution and supply of electricity generated in the course of such exploitation.



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- (4) Her Majesty may by Order in Council designate an area as an area within which the rights to which this section applies are exercisable (a “Renewable Energy Zone”).
- (5) The Secretary of State may by order designate the whole or a part of a Renewable Energy Zone as an area in relation to which the Scottish Ministers are to have functions.
- (6) Orders in Council under this section, and orders under subsection (5), are subject to the negative resolution procedure.
- (7) In this section—
  - “the Convention” means the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) and any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom;
  - “exploration” includes the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether the exploitation of an area is, in a particular case, practicable or commercially viable, or both.

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**Commencement Information**

**164** S. 84 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **85 Application of criminal law to renewable energy installations etc.**

- (1) Her Majesty may by Order in Council provide that acts and omissions which—
  - (a) fall within subsection (2), and
  - (b) would, if they took place in a part of the United Kingdom, constitute an offence under the law in force in that part,are to be treated for the purposes of that law as taking place in that part.
- (2) An act or omission falls within this subsection if it takes place on, under or above—
  - (a) a renewable energy installation situated in waters to which this section applies; or
  - (b) waters to which this section applies that are within a safety zone.
- (3) Her Majesty may by Order in Council provide that a constable is to have—
  - (a) on, under and above a renewable energy installation situated in waters to which this section applies, and
  - (b) on, under and above any waters to which this section applies that are within a safety zone,all the powers and privileges that he has in the area of the force of which he is a member.
- (4) Subsection (3) is in addition to any other enactment or any rule of law or subordinate legislation conferring a power or privilege on constables; and this section is to be disregarded in determining the extent of those other powers and privileges.
- (5) The waters to which this section applies are—

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- (a) tidal waters and parts of the sea in or adjacent to Great Britain up to the seaward limits of the territorial sea; and
  - (b) waters in a Renewable Energy Zone.
- (6) Proceedings for anything that is an offence by virtue only of an Order in Council under this section may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (7) In this section “subordinate legislation” includes an instrument made under an Act of the Scottish Parliament.

#### Commencement Information

**I65** S. 85 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 86 Prosecutions

- (1) Subject to subsection (2), this section applies to an offence alleged to have been committed on, under or above—
- (a) a renewable energy installation situated in waters to which section 85 applies; or
  - (b) waters to which section 85 applies that, at the time of the alleged offence, were within a safety zone.
- (2) This section does not apply to an offence created by or under—
- (a) the Health and Safety at Work etc. Act 1974 (c. 37);
  - (b) the Customs and Excise Acts 1979, or any enactment that has to be construed as one with those Acts or any of them;
  - (c) the Civil Aviation Act 1982 (c. 16) or any enactment that has to be construed as one with that Act;
  - (d) section 23 of the Petroleum Act 1987 (c. 12);
  - (e) the Pilotage Act 1987 (c. 21);
  - (f) section 4, 29, 35, 36, 37 or 59 of the 1989 Act, or paragraph 3 of Schedule 7 to that Act;
  - (g) the Value Added Tax Act 1994 (c. 23) or any enactment that has to be construed as one with that Act;
  - (h) the Merchant Shipping Act 1995 (c. 21);
  - (i) section 97 of this Act or Chapter 3 of this Part.
- (3) No proceedings for an offence to which this section applies shall be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions; or
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (4) Subsection (3) does not require the consent of the Director of Public Prosecutions, or of the Director of Public Prosecutions for Northern Ireland, where the proceedings in question are proceedings for which the consent of the Attorney General, or of the Advocate General for Northern Ireland, is required apart from this section.

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- (5) In relation to times before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), the reference in subsection (4) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland.
- (6) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecution of offences committed on the open sea by persons who are not British citizens) does not apply to proceedings for an offence to which this section applies.

#### Commencement Information

**I66** S. 86 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### 87 Application of civil law to renewable energy installations etc.

- (1) Her Majesty may by Order in Council provide that questions arising out of—
  - (a) acts or omissions taking place on, under or above a renewable energy installation situated in waters to which this section applies, or
  - (b) acts or omissions taking place on, under or above such waters in relation to a related line,are to be determined in accordance with the law in force in such part of the United Kingdom as may be specified in the Order.
- (2) An Order in Council under this section may also make provision for conferring jurisdiction in proceedings with respect to questions of the kind mentioned in subsection (1) on courts in one or more parts of the United Kingdom.
- (3) Jurisdiction conferred on a court by an Order in Council under this section is in addition to any jurisdiction exercisable apart from that Order by that or any other court; and this section is to be disregarded in determining the extent of any jurisdiction so exercisable.
- (4) The waters to which this section applies are—
  - (a) tidal waters and parts of the sea in or adjacent to Great Britain up to the seaward limits of the territorial sea; and
  - (b) waters in a Renewable Energy Zone.
- (5) In section 410(3) of the Communications Act 2003 (c. 21) (which enables Orders in Council under section 11 of the Petroleum Act 1998 (c. 17) to extend certain communications legislation to offshore installations), after “1998” insert “ or section 87 of the Energy Act 2004 ”.
- (6) In this section—

“court” includes any tribunal or regulatory authority;

“related line” means an electric line, or a part of an electric line, which—

  - (a) falls within subsection (7); but
  - (b) is not an electricity interconnector (within the meaning of Part 1 of the 1989 Act).
- (7) An electric line, or a part of an electric line, falls within this subsection if it—
  - (a) is used for the conveyance of electricity to or from a renewable energy installation;

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- (b) is in the course of construction at a place where it is to be so used; or
- (c) has ceased to be so used (whether or not it is being decommissioned) and since ceasing to be so used has not been used for any other purpose.

**Commencement Information**

**I67** S. 87 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**88 Orders in Council under ss. 85 and 87**

- (1) An Order in Council under section 85 or 87 that makes provision falling within subsection (3) is subject to annulment in pursuance of a resolution of the Scottish Parliament (but may by virtue of subsection (2) be subject also to the negative resolution procedure).
- (2) An Order in Council under section 85 or 87 that makes provision not falling within subsection (3) is subject to the negative resolution procedure.
- (3) Provision falls within this subsection so far as it is provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.

**Commencement Information**

**I68** S. 88 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Application of 1989 Act offshore*

VALID FROM 01/03/2005

**89 Activities offshore requiring 1989 Act licences**

- (1) In subsection (4) of section 4 of the 1989 Act (definitions for the purposes of Part 1), after the definition of “distribute” insert—
  - ““generate”, in relation to electricity, means generate at a relevant place;”.
- (2) After that subsection insert—
  - “(5) In this section—
    - “relevant place” means a place in Great Britain, in the territorial sea adjacent to Great Britain or in a Renewable Energy Zone; and
    - “system” means a system the whole or a part of which is at a relevant place; and references in this section to premises are references to premises situated at a relevant place, or at a place that is not in a Renewable Energy Zone but is in an area designated under section 1(7) of the Continental Shelf Act 1964.”
- (3) In section 6 of that Act (licences authorising supply etc.), after subsection (9) insert—

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“(10) In this section “premises” has the same meaning as in section 4.”

(4) In section 64(1) of that Act (interpretation of Part 1), after the definitions of “final order” and “provisional order” insert—

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

VALID FROM 19/06/2009

## 90 Modification of licence conditions for offshore transmission and distribution

- (1) If the Secretary of State considers it appropriate to do so for purposes connected with offshore transmission or offshore distribution, he may—
- modify the standard conditions of transmission licences or distribution licences;
  - modify, for purposes that in relation to modifications made under paragraph (a) are incidental, consequential or transitional purposes, the conditions of a particular transmission licence or a particular distribution licence;
  - modify a code maintained in accordance with the conditions of a transmission licence or a distribution licence; and
  - modify an agreement that gives effect to a code so maintained.
- (2) Before making a modification under this section, the Secretary of State must consult—
- the holder of any licence being modified; and
  - such other persons as he considers appropriate.
- (3) Subsection (2) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (4) The Secretary of State must publish every modification made by him under this section.
- (5) The publication must be in such manner as the Secretary of State considers appropriate.
- (6) Where the Secretary of State makes modifications under subsection (1)(a) of the standard conditions of licences of any type, GEMA must—
- make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - publish the modifications in such manner as it considers appropriate.
- (7) A modification under subsection (1)(b) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1989 Act.
- (8) The Secretary of State’s powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.

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(9) In this section—

“offshore distribution” means distribution within an area of offshore waters of electricity generated by a generating station in such an area;

“offshore transmission” means transmission within an area of offshore waters of electricity generated by a generating station in such an area; and

“offshore waters” means—

(a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and

(b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29).

(10) Expressions used in this section and in Part 1 of the 1989 Act have the same meanings in this section as in that Part.

VALID FROM 19/06/2009

## 91 Extension of transmission licences offshore

- (1) This section applies where, at the commencement of this section, a transmission licence is in force that authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system by means of which electricity is transmitted within Great Britain, or within an area of Great Britain (the “co-ordination licence”).
- (2) The Secretary of State may make such modifications of the co-ordination licence as he considers appropriate for the purpose of applying the authorisation and conditions of the licence in relation to the transmission of electricity within one or both of the following—
  - (a) an area of the territorial sea adjacent to Great Britain; and
  - (b) an area designated under section 1(7) of the Continental Shelf Act 1964.
- (3) The modifications that may be made by the Secretary of State under subsection (2) include such modifications of the co-ordination licence (including modifications of the conditions included in it) as the Secretary of State considers appropriate for incidental, consequential or transitional purposes.
- (4) Where the Secretary of State considers it appropriate to do so for purposes that in relation to modifications made under subsection (2) are incidental or consequential purposes, he may make—
  - (a) modifications of the conditions of a particular licence (other than the co-ordination licence);
  - (b) modifications of the standard conditions of licences of any type.
- (5) Before making a modification under this section, the Secretary of State must consult—
  - (a) the holder of any licence being modified; and
  - (b) such other persons as he considers appropriate.
- (6) Subsection (5) may be satisfied by consultation that took place wholly or partly before the commencement of this section.

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- (7) The Secretary of State must publish every modification made by him under this section.
- (8) The publication must be in such manner as the Secretary of State considers appropriate.
- (9) A modification under subsection (2) or (4)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1989 Act.
- (10) Where the Secretary of State makes modifications under subsection (4)(b) of the standard conditions of licences of any type, GEMA must—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.
- (11) The Secretary of State’s powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.
- (12) Expressions used in this section and in Part 1 of the 1989 Act have the same meanings in this section as in that Part.

VALID FROM 20/05/2009

## 92 Competitive tenders for offshore transmission licences

After section 6B of the 1989 Act (applications for transmission licences) insert—

### “6C Competitive tenders for offshore transmission licences

- (1) The Authority may by regulations make such provision as appears to it to be appropriate for facilitating the making, in prescribed cases, of a determination on a competitive basis of the person to whom an offshore transmission licence is to be granted.
- (2) That provision may include—
  - (a) provision, in prescribed cases, for the publication of a proposal to grant an offshore transmission licence;
  - (b) provision for the inclusion in such a proposal of an invitation to apply for such a licence;
  - (c) provision restricting the making of applications for offshore transmission licences and imposing requirements as to the period within which they must be made;
  - (d) provision for regulating the manner in which applications are considered and determined.
- (3) Regulations under this section—
  - (a) may make provision by reference to a determination by the Authority or to the opinion of the Authority as to any matter; and

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- (b) may dispense with or supplement provision made in relation to applications for transmission licences by or under section 6A or 6B above.
- (4) The approval of the Secretary of State is required for the making of regulations under this section.
- (5) In this section—
  - “offshore transmission licence” means a transmission licence authorising anything that forms part of a transmission system to be used for purposes connected with offshore transmission; and
  - “prescribed” means prescribed in or determined under regulations made by the Authority.
- (6) In subsection (5) “offshore transmission” means the transmission within an area of offshore waters of electricity generated by a generating station in such an area.
- (7) In subsection (6) “offshore waters” means—
  - (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
  - (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964.”

VALID FROM 01/03/2005

### 93 Consents for generating stations offshore

- (1) In section 36(1) of the 1989 Act (consent required for construction etc. of generating stations), after “constructed” insert “ at a relevant place (within the meaning of section 4), and a generating station at such a place shall not be ”.
- (2) Before paragraph 8 of Schedule 8 to that Act (procedure for consents under sections 36 and 37) insert—

#### “Generating stations not within areas of relevant planning authorities

- 7A (1) This paragraph applies to every case where an application for a consent under section 36 of this Act relates to—
  - (a) the construction or operation of a generating station the whole or a part of which is to be, or is, at a place that is not within the area of a relevant planning authority; or
  - (b) the extension of a generating station at or to a place the whole or a part of which is not within such an area.
- (2) This Schedule shall have effect in relation to cases to which this paragraph applies with the following modifications.
- (3) In paragraph 1(1), for the words from “land to which” onwards substitute “ place to which the application relates, that is, the place where it is proposed to construct the generating station, where the proposed



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- extension will be or where the station proposed to be operated is situated.”
- (4) Paragraph 2 does not apply where no part of the place to which the application relates is within the area of a relevant planning authority.
- (5) In paragraph 4—
- (a) in sub-paragraph (1)—
- (i) in paragraph (a), for “land” substitute “ place ”; and
- (ii) in paragraph (b), for “in the locality” substitute “ in the area specified in or determined in accordance with regulations made by the Secretary of State ”;
- (b) in sub-paragraph (2), for the words from “the locality” onwards substitute “ the area specified in or determined in accordance with regulations made by the Secretary of State. ”; and
- (c) in sub-paragraph (3), for “in the locality” substitute “ who are likely to be affected by the consent applied for if it is given ”.
- (6) Paragraph 5 does not apply; but sub-paragraphs (7) to (10) apply where—
- (a) a public inquiry is to be held in accordance with paragraph 2(2) or 3(2); and
- (b) the application for consent relates to a place a part of which is in the area of one or more relevant planning authorities.
- (7) Except in so far as the Secretary of State otherwise directs, an inquiry held in accordance with paragraph 2(2) must be confined to so much of the application as relates to land within the area of the authority by whom an objection has been made.
- (8) The Secretary of State must have regard to objections made otherwise than by the authority in question in determining whether to give a direction under sub-paragraph (7) and in determining (where he gives one) what direction to give.
- (9) The Secretary of State may direct that separate inquiries may be held in relation to any or each of the following—
- (a) so much of the application as relates to land within the area of a particular relevant planning authority;
- (b) so much of the application as relates to anywhere that is not within the area of a relevant planning authority.
- (10) For the purposes of sub-paragraph (7) a planning authority that has made an objection is to be treated as not having done so if the Secretary of State proposes to accede to the application subject to such modifications or conditions as meet that objection.”
- (3) In section 36(9) of that Act (definition of extension), after “land” insert “ or area of waters ”.
- (4) The functions conferred by virtue of this section on the Secretary of State are not to be exercisable by the Scottish Ministers, except in pursuance of an Order in Council made after the passing of this Act under section 63 of the Scotland Act 1998 (c. 46).

*Status: Point in time view as at 05/10/2004. This version of this Act contains provisions that are not valid for this point in time.*

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## 94 Application of regulations under 1989 Act offshore

- (1) In section 29 of the 1989 Act (regulations relating to supply and safety), after subsection (1) insert—

“(1A) Regulations under this section may include provision for securing the purposes mentioned in subsection (1) in relation to the territorial sea adjacent to Great Britain or any Renewable Energy Zone.”

- (2) In section 30 of that Act (electrical inspectors), after subsection (3) insert—

“(3A) The regulations that may be made under this section include regulations—

- (a) imposing duties on electrical inspectors in relation to anything in the territorial sea adjacent to Great Britain or a Renewable Energy Zone; or
- (b) making any other provision authorised by this section in relation to activities carried on there.”

### Commencement Information

**I69** S. 94 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

VALID FROM 01/10/2005

### *Safety zones for installations*

## 95 Safety zones around renewable energy installations

- (1) This section applies where—

- (a) there is a proposal to construct a renewable energy installation in waters subject to regulation under this section, or to extend or to decommission a renewable energy installation situated in such waters;
- (b) there is a proposal to operate a renewable energy installation on completion of its construction in such waters, or of any extension of it in such waters; or
- (c) a renewable energy installation is being constructed, extended, operated or decommissioned in such waters.

- (2) If the Secretary of State considers it appropriate to do so for the purpose of securing the safety of—

- (a) the renewable energy installation or its construction, extension or decommissioning,
- (b) other installations in the vicinity of the installation or the place where it is to be constructed or extended,
- (c) individuals in or on the installation or other installations in that vicinity, or
- (d) vessels in that vicinity or individuals on such vessels,

he may issue a notice declaring that such areas as are specified or described in the notice are to be safety zones for the purposes of this Chapter.

- (3) The power of the Secretary of State to issue a notice under this section shall be exercisable by him either—

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- (a) on an application made to him for the purpose by any person; or
  - (b) where no such application is made, on his own initiative.
- (4) Before issuing a notice under this section which relates, wholly or partly, to—
- (a) an area of Scottish waters, or
  - (b) an area of waters in a Scottish part of a Renewable Energy Zone,
- the Secretary of State must consult the Scottish Ministers.
- (5) An area may be declared to be a safety zone only if it is an area of waters around or adjacent to a place where a renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned; but a safety zone may extend to waters outside the waters subject to regulation under this section.
- (6) A notice under this section—
- (a) must identify the renewable energy installation, or proposed renewable energy installation, by reference to which it is issued;
  - (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 contain provision by virtue of which the area of a safety zone varies from time to time by reference to factors specified in, or determinations made in accordance with, the provisions of the notice;
  - (d) may contain provision imposing prohibitions on the carrying on in a safety zone of activities specified in, or determined in accordance with, the provisions of the notice, or for the imposition of such prohibitions;
  - (e) may contain provision granting permission for vessels to enter or remain in a safety zone or for persons to carry on prohibited activities, or for the grant of such permissions;
  - (f) may confer discretions, with respect to the making of determinations for the purposes of such a notice, on such persons as may be specified or described in the notice;
  - (g) may modify or revoke a previous notice; and
  - (h) may make different provision in relation to different cases.
- (7) Where a notice is issued under this section or a determination is made for the purposes of such a notice, the Secretary of State must either—
- (a) himself publish the notice or determination in such manner as he considers 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—
    - (i) by the applicant for the notice; or
    - (ii) in the case of a determination made by a person other than the Secretary of State, by the applicant for the notice or by the person who made the determination.
- (8) References in this section to a determination for the purposes of a notice include references to a determination made for those purposes in accordance with the notice, or with regulations under section 96—
- (a) to impose a prohibition;
  - (b) to grant a permission; or
  - (c) to impose conditions in relation to a permission.

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- (9) Schedule 16 (which makes provision about the procedure for the declaration of safety zones) has effect.
- (10) The waters subject to regulation under this section are—
- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
  - (b) waters within a Renewable Energy Zone.

## 96 Prohibited activities in safety zones

- (1) A vessel is not to enter or remain in a safety zone except where permission for it to do so is granted—
- (a) by or in accordance with provision contained in a notice under section 95; or
  - (b) by or in accordance with provision contained in regulations made by the Secretary of State.
- (2) A person must not carry on an activity wholly or partly in a safety zone if his doing so is prohibited by or in accordance with provision contained in a notice under section 95.
- (3) Subsection (2) does not apply to the extent that carrying on the activity is permitted—
- (a) by or in accordance with provision contained in such a notice; or
  - (b) by or in accordance with provision contained in regulations made by the Secretary of State.
- (4) The provision that may be made with respect to permissions for the purposes of this section includes—
- (a) provision for the permissions to apply in relation only to such times and such periods as may be specified or described in that provision; and
  - (b) provision for the permissions to apply only to such vessels, such persons and such purposes as may be specified or described in that provision.
- (5) The provision that may be made with respect to a permission for the purposes of this section includes provision imposing conditions in relation to a permission.
- (6) The conditions may include—
- (a) conditions imposing obligations in relation to a vessel, or individuals on it, that must be satisfied while the vessel is in the safety zone; and
  - (b) conditions imposing obligations as to the manner in which any activity to which the permission relates is to be carried on.
- (7) Regulations under this section may confer discretions, with respect to the granting or imposition in accordance with the regulations of permissions or conditions, on such persons as may be specified or described in the regulations.
- (8) Regulations under this section are subject to the negative resolution procedure.

## 97 Offences relating to safety zones

- (1) Where a vessel enters or remains in a safety zone in contravention of section 96(1), the vessel's owner and her master are each guilty of an offence.
- (2) Where—

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- (a) a vessel enters or remains in a safety zone with a permission granted for the purposes of section 96, and
  - (b) there is a contravention of a condition of that permission in relation to the vessel or individuals on the vessel,
- the vessel's owner and her master are each guilty of an offence.
- (3) A person who carries on an activity wholly or partly in a safety zone in contravention of section 96(2) is guilty of an offence.
- (4) Where—
- (a) a person carries on an activity wholly or partly in a safety zone with a permission granted for the purposes of section 96, and
  - (b) there is a contravention of a condition of that permission in relation to the carrying on of that activity,
- that person is guilty of an offence.
- (5) 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 imprisonment for a term not exceeding two years or to a fine, or to both.
- (6) In proceedings against a person as the owner of a vessel for an offence under subsection (1) or (2), it is a defence for him to show that the existence of the safety zone—
- (a) was not known to the master of the vessel in question at the time of the offence; and
  - (b) would not have become known to the master had he made reasonable inquiries before that time.
- (7) In any other proceedings against a person for an offence under this section, it is a defence for that person to show that the existence of the safety zone—
- (a) was not known to him at the time of the offence; and
  - (b) would not have become known to him had he made reasonable inquiries before that time.
- (8) It is also a defence in proceedings against a person for an offence under this section for that person to show that he took all reasonable steps to prevent the contravention in question.

## **98 Supplementary provisions relating to offences under s. 97**

- (1) Where the commission of an offence under section 97 is due—
- (a) in the case of an offence under subsection (1) or (2) of that section, to an act or omission of a person other than the owner or master of the vessel in question, or
  - (b) in the case of an offence under subsection (3) or (4) of that section, to an act or omission of a person other than the person carrying on the activity in question,
- that person is also guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.

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- (2) Where an offence under section 97 is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person who was purporting to act in any such capacity,
- he (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (3) Where an offence under section 97—
- (a) is committed by a Scottish firm, and
  - (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm,
- he (as well as the firm) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (4) Where an offence under section 97 is committed outside of the United Kingdom, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (5) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecution of offences committed on the open sea by persons who are not British citizens) does not apply to proceedings for an offence under section 97.
- (6) In this section “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

### *Navigation and civil aviation*

VALID FROM 01/03/2005

## **99 Navigation**

- (1) After section 36 of the 1989 Act insert—

### **“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—
- (a) 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
  - (b) 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.

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- (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—
  - (a) are extinguished;
  - (b) are suspended for the period that is specified in the declaration;
  - (c) are suspended until such time as may be determined in accordance with provision contained in the declaration; or
  - (d) 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—
  - (a) has effect, in relation to the rights specified or described in it, from the time at which it comes into force; and
  - (b) 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—
  - (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.

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### **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) 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.



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- (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.”
- (2) In paragraph 8 of Schedule 8 to that Act (supplementary provisions relating to applications under section 36 of that Act), after sub-paragraph (2) insert—
- “(3) Where an application for a declaration under section 36A of this Act is made with an application for a consent under section 36 of this Act, the application for the declaration shall be treated for the purposes of this Schedule as part of the application for the consent.”
- (3) In section 3D of that Act (principal objective and general duties not to apply to Secretary of State’s functions under section 36 or 37), for “section 36 or 37” substitute “sections 36 to 37”.
- (4) In subsection (1) of section 35 of the Coast Protection Act 1949 (c. 74) (operations not requiring consent under section 34), after paragraph (g) insert—
- “(ga) subject to subsection (3) of this section, any operations comprised in offshore generating activities carried out in accordance with a consent under section 36 of the Electricity Act 1989 granted after the commencement of section 99 of the Energy Act 2004;”.
- (5) After subsection (2) of that section insert—
- “(3) Operations in or as regards Scotland fall within paragraph (ga) of that subsection only if and to the extent that the Scottish Ministers by order made by statutory instrument so provide.
- (4) A statutory instrument containing an order under subsection (3) shall not be made unless a draft of the instrument has been laid before and approved by a resolution of the Scottish Parliament.

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(5) In that paragraph “offshore generating activities” has the same meaning as in section 36B of the Electricity Act 1989.”

VALID FROM 01/09/2005

## 100 Further provision relating to public rights of navigation

- (1) This section applies where a consent falling within subsection (2) has been granted by the Secretary of State or the Scottish Ministers (“the consenting authority”) under section 36 of the 1989 Act (consent required for construction etc. of generating stations) before the commencement of section 99.
- (2) A consent falls within this subsection if it relates to—
  - (a) the construction or operation of a generating station that comprises or is to comprise (in whole or in part) renewable energy installations situated in relevant waters; or
  - (b) an extension of a generating station that comprises or is to comprise (in whole or in part) renewable energy installations so situated or an extension of such an installation.
- (3) On an application made by the generator, the consenting authority may make a declaration under this section as respects rights of navigation—
  - (a) so far as they pass through the places where the renewable energy installations are situated or are to be situated; or
  - (b) so far as they pass through some of those places.
- (4) A declaration under this section is one declaring that the rights of navigation specified or described in it—
  - (a) are extinguished;
  - (b) are suspended for the period that is specified in the declaration;
  - (c) are suspended until such time as may be determined in accordance with provision contained in the declaration; or
  - (d) are to be exercisable subject to such restrictions or conditions, or both, as are set out in the declaration.
- (5) Subsections (4) to (6) of section 36A of the 1989 Act (declarations extinguishing etc. rights of navigation upon grant of consent under section 36 of that Act) shall apply in relation to declarations under this section as they apply in relation to declarations under that section, but with the omission of subsection (5)(c).
- (6) Before making a declaration under this section, the consenting authority must—
  - (a) publish details of the generator’s application in such manner as that authority considers appropriate;
  - (b) give notice of that application to such persons as that authority considers appropriate;
  - (c) consult the persons to whom notice has been given;
  - (d) make such arrangements as that authority considers appropriate for a copy of the application to be made available for inspection by members of the public; and

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- (e) give such opportunities to such persons as that authority considers appropriate to make representations to the authority about the application.
- (7) The consenting authority may satisfy the requirements of paragraphs (a) to (d) of subsection (6) by securing that the things that it is required to do under those paragraphs are done on its behalf by the generator.
- (8) In this section—
- “generator”, in relation to a consent under section 36 of the 1989 Act, means the person who is constructing or operating the station in question, or making the extension in question, or who is proposing to do so;
- “relevant waters” has the same meaning as in section 36A of the 1989 Act.

## 101 Application of civil aviation regulations to renewable energy installations

- (1) Schedule 13 to the Civil Aviation Act 1982 (c. 16) (subordinate instruments) is amended as follows.
- (2) In the Table in Part 2 (provisions applying to certain powers), in the entry for section 60, in column 4 (applicable paragraphs of Part 3 of the Schedule), for “and 6” substitute “, 6 and 7”.
- (3) In paragraph 6 of Part 3 (extra-territorial provisions), in sub-paragraph (4) for “sub-paragraph (5)” substitute “ sub-paragraphs (5) and (7) ”.
- (4) After sub-paragraph (6) of that paragraph insert—
- “(7) So far as relates to a provision of an Order in Council or regulation concerning aircraft on or in the neighbourhood of a renewable energy installation, this paragraph—
- (a) shall apply to all aircraft, and not only to aircraft registered in the United Kingdom; and
- (b) shall apply to the doing of anything in relation to an aircraft by any person, irrespective of nationality, or (in the case of a body corporate) of the law under which it was incorporated.
- (8) For the purposes of sub-paragraphs (5) and (7) the neighbourhood of an installation includes anywhere within 500 metres of that installation.
- (9) In this paragraph “renewable energy installation” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004.”
- (5) After that paragraph insert—
- “7
- (1) Without prejudice to paragraph 6 above, an Air Navigation Order may make provision in relation to renewable energy installations located within a Renewable Energy Zone as if those installations were located in a part of the United Kingdom.
- (2) Such provision may apply to any person irrespective of nationality or (in the case of a body corporate) of the law under which it was incorporated.

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- (3) In this paragraph “renewable energy installation” and “Renewable Energy Zone” have the same meanings as in Chapter 2 of Part 2 of the Energy Act 2004.”

**Commencement Information**

**I70** S. 101 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Supplementary provisions of Chapter 2 of Part 2*

**102 Amendments of 1989 Act consequential on Chapter 2 of Part 2**

- (1) The 1989 Act is amended as follows.
- (2) In section 61(2) (concurrent proceedings for compulsory purchase and in respect of consents under section 36 of that Act), at the end insert “ and with any related proceedings under Schedule 16 to the Energy Act 2004 ”.
- (3) In section 62(3) (power to combine inquiries)—
- (a) in paragraph (a), after “this Part” insert “ or Schedule 16 to the Energy Act 2004 ”; and
  - (b) in paragraph (b), after “this Part” insert “ , that Schedule ”.
- (4) In section 64(1) (interpretation of Part 1)—
- (a) after the definition of “authorised supplier” insert—
 

““construct” and “construction”, in relation to so much of a generating station as comprises or is to comprise renewable energy installations, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004;”;
  - (b) after the definitions of “relevant condition” and “relevant requirement” insert—
 

““renewable energy installation” and “Renewable Energy Zone” have the same meanings as in Chapter 2 of Part 2 of the Energy Act 2004;”.
- (5) After section 108 insert—

**“108A Extraterritorial operation of Act**

- (1) Where by virtue of this Act an act or omission taking place outside Great Britain constitutes an offence, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain.
- (2) Provision made by or under this Act in relation to places outside Great Britain—
  - (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
  - (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of a part of the United Kingdom.”

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### Commencement Information

**I71** S. 102(1)(4) in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 103 Other amendments consequential on Chapter 2 of Part 2

- (1) In section 8 of the Continental Shelf Act 1964 (c. 29) (application of Submarine Telegraph Act 1885 to pipelines and submarine cables)—
  - (a) in subsection (1), omit “high-voltage”; and
  - (b) in subsection (1A), for the words from “pipe-lines under the high seas” onwards substitute “ submarine cables and pipe-lines under the high seas includes a reference to submarine cables and pipe-lines under the territorial sea adjacent to the United Kingdom or under waters in an area designated under section 1(7) of this Act ”.
- (2) In section 23 of the Police and Criminal Evidence Act 1984 (c. 60) (meaning of premises)—
  - (a) in the definition of “premises”, for the “and” at the end of paragraph (b) substitute—

“(ba) any renewable energy installation;”;
  - (b) after the definition of “offshore installation” insert—

““renewable energy installation” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004.”
- (3) In section 10(10) of the Petroleum Act 1998 (c. 17) (section to apply to installations in transit), after “transit” insert “ but does not apply to an installation that is a renewable energy installation (within the meaning of Chapter 2 of Part 2 of the Energy Act 2004) ”.
- (4) After section 47 of that Act insert—

### “47A Factors for the Secretary of State to take into account

- (1) The matters to which the Secretary of State may have regard, in exercising or performing the powers and duties conferred or imposed on him by or under this Act, include, in particular—
  - (a) activities in relevant waters for or in connection with the generation of electricity;
  - (b) proposals made by a person to carry on such activities;
  - (c) the proposals that it appears to the Secretary of State may be made in the future for the carrying on of such activities; and
  - (d) the likelihood that activities will in due course be carried on in accordance with proposals falling within paragraph (b) or (c).
- (2) The reference in subsection (1) to activities in connection with the generation of electricity in relevant waters includes—
  - (a) the transmission, distribution and supply of the electricity generated; and
  - (b) the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether

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activities in relevant waters for or in connection with the generation of electricity are, in a particular case, practicable or commercially viable, or both.

(3) In this section—

“distribution”, “generate”, “supply” and “transmission”, and cognate expressions, have the same meanings as in Part 1 of the Electricity Act 1989; and

“relevant waters” means—

- (a) waters in or adjacent to the United Kingdom up to the seaward limits of the territorial sea; or
- (b) waters in a Renewable Energy Zone (within the meaning of Chapter 2 of Part 2 of the Energy Act 2004).”

#### Commencement Information

**I72** S. 103(2)(4) in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 104 Interpretation of Chapter 2 of Part 2

(1) In this Chapter—

“construct”, in relation to an installation or an electric line or in relation to a generating station so far as it is to comprise renewable energy installations, includes—

- (a) placing it in or upon the bed of any waters;
- (b) attaching it to the bed of any waters;
- (c) assembling it;
- (d) commissioning it; and
- (e) installing it;

and “construction” is to be construed accordingly;

“decommission”, in relation to an installation or an electric line, includes—

- (a) removing it from the bed of any waters;
- (b) demolishing it; and
- (c) dismantling it;

“distribution” and “electric line” have the same meanings as in Part 1 of the 1989 Act;

“extend” and “extension”—

- (a) in relation to a generating station, have the same meanings as in Part 1 of the 1989 Act; and
- (b) in relation to an installation, have the same meanings as in relation to a generating station;

“installation” includes artificial island, structure and device;

“master” includes—

- (a) in relation to a hovercraft, the captain;
- (b) in relation to any submersible apparatus, the person in charge of the apparatus; and
- (c) in relation to an installation in transit, the person in charge of the transit operation;

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“renewable energy installation” is to be construed in accordance with subsections (3) to (5);

“Renewable Energy Zone” has the meaning given by section 84(4);

“safety zone” means an area which is a safety zone for the purposes of this Chapter by virtue of section 95;

“Scottish part”, in relation to a Renewable Energy Zone, means so much of that Zone as is designated under section 84(5);

“Scottish waters” means—

- (a) the internal waters of the United Kingdom that are in or are adjacent to Scotland; or
- (b) so much of the territorial sea of the United Kingdom as is adjacent to Scotland;

“submersible apparatus” has the meaning given by section 88(4) of the Merchant Shipping Act 1995 (c. 21);

“supply”, in relation to electricity, has the same meaning as in Part 1 of the 1989 Act;

“transmission”, in relation to electricity, has the same meaning as in Part 1 of the 1989 Act;

“vessel” includes—

- (a) a hovercraft;
- (b) any submersible apparatus; and
- (c) an installation in transit.

(2) References in this Chapter to the production of energy from water include, in particular, references to its production from currents and tides.

(3) In this Chapter “renewable energy installation” means—

- (a) an offshore installation used for purposes connected with the production of energy from water or winds;
- (b) an installation in the course of construction at a place where it is to be used as an offshore installation within paragraph (a);
- (c) an installation that has ceased to be an installation within paragraph (a) while remaining an offshore installation (whether or not at the same place);
- (d) an installation that is being decommissioned at a place where it has been an installation within paragraph (a) or (c);
- (e) an installation in transit to or from a place where it is to be, or has been, used for purposes that would make it, or made it, an installation within paragraph (a);
- (f) an installation in transit to or from a place where it is to be, or was, an installation within paragraph (c).

(4) In subsection (3) “offshore installation” means an installation which is situated in waters where—

- (a) it permanently rests on, or is permanently attached to, the bed of the waters; and
- (b) it is not connected with dry land by a permanent structure providing access at all times for all purposes.

(5) The purposes referred to in subsection (3)(a) include, in particular—

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- (a) the transmission, distribution and supply of electricity generated using water or winds; and
  - (b) the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether the generation of electricity in that manner is, in a particular case, practicable or commercially viable, or both.
- (6) Provision made by or under this Chapter in relation to places outside the United Kingdom—
- (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
  - (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of a part of the United Kingdom.

#### Commencement Information

**I73** S. 104 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

VALID FROM 01/10/2005

## CHAPTER 3

### DECOMMISSIONING OF OFFSHORE INSTALLATIONS

#### *Decommissioning programmes*

#### **105 Requirement to prepare decommissioning programmes**

- (1) This section applies where—
- (a) there is a proposal by a person to construct a relevant object in waters regulated under this Chapter, or to extend a relevant object in such waters;
  - (b) there is a proposal by a person to operate or to use a relevant object in such waters on the completion of its construction, or of any extension of it in such waters; or
  - (c) a person is constructing, extending, operating or using a relevant object in such waters or has begun in such waters to decommission such an object.
- (2) The Secretary of State may by notice require that person to submit to him a programme for decommissioning the relevant object (a “decommissioning programme”).
- (3) The Secretary of State may require a person to submit a decommissioning programme in respect of proposals made by that person only if the Secretary of State is satisfied that at least one of the statutory consents required for enabling that person to give effect to those proposals—
- (a) has been given; or
  - (b) has been applied for and is likely to be given;



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but for this purpose it is immaterial that a statutory consent that has been or may be given will have no effect before a particular time or unless particular conditions are satisfied.

- (4) Where there is more than one person to whom a notice under this section may be given—
  - (a) it may be given to any one or more of them; and
  - (b) where it is given to more than one of them, the requirement to submit a programme must be satisfied by all those persons acting jointly.
- (5) Before giving a notice under this section in relation to a relevant object which is to be or is, wholly or partly—
  - (a) in an area of Scottish waters; or
  - (b) in an area of waters in a Scottish part of a Renewable Energy Zone, the Secretary of State must consult the Scottish Ministers.
- (6) A notice under this section must either—
  - (a) specify the date by which the decommissioning programme is to be submitted; or
  - (b) require it to be submitted on or before such date as the Secretary of State may direct.
- (7) A notice under this section may require the recipient of the notice to carry out the consultations specified in the notice before submitting the programme required of him.
- (8) A decommissioning programme—
  - (a) must set out measures to be taken for decommissioning the relevant object;
  - (b) must contain an estimate of the expenditure likely to be incurred in carrying out those measures;
  - (c) must make provision for the determination of the times at which, or the periods within which, those measures will have to be taken;
  - (d) if it proposes that the relevant object will be wholly or partly removed from a place in waters regulated under this Chapter, must include provision about restoring that place to the condition that it was in prior to the construction of the object; and
  - (e) if it proposes that the relevant object will be left in position at a place in waters regulated under this Chapter or will not be wholly removed from a place in such waters, must include provision about whatever continuing monitoring and maintenance of the object will be necessary.
- (9) A notice under this section may require the recipient of the notice to submit any of the following with the decommissioning programme—
  - (a) such information and documents relating to the place where the relevant object is or is to be situated as may be specified in the notice;
  - (b) such specifications relating to the relevant object as may be specified in the notice;
  - (c) such information and documents relating to the financial affairs of the recipient as may be specified in the notice; and
  - (d) details of the security (if any) that the recipient proposes to provide in relation to the carrying out of the decommissioning programme and for his compliance with any conditions of its approval.

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(10) In this Chapter—

“relevant object” means the whole or any part of—

- (a) a renewable energy installation; or
- (b) an electric line that is or has been a related line;

“waters regulated under this Chapter” means—

- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
- (b) waters in a Renewable Energy Zone.

(11) In this section—

“related line” means an electric line which is a line for the conveyance of electricity to or from a renewable energy installation but is not an electricity interconnector (within the meaning of Part 1 of the 1989 Act); and

“statutory consent” means a consent, licence or approval required by or under any enactment.

## **106 Approval of decommissioning programmes**

- (1) The Secretary of State may either approve or reject a programme submitted to him under section 105.
- (2) Before approving or rejecting a decommissioning programme relating to a relevant object which is to be or is, wholly or partly—
  - (a) in an area of Scottish waters, or
  - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,
 the Secretary of State must consult the Scottish Ministers.
- (3) If the Secretary of State approves a programme, he may do so—
  - (a) with or without modifications; and
  - (b) either subject to conditions or unconditionally.
- (4) His power to approve it subject to conditions includes, in particular, power to approve it subject to a condition that the person who submitted the programme—
  - (a) provides such security in relation to the carrying out of the programme, and for his compliance with the conditions (if any) of its approval, as may be specified by the Secretary of State; and
  - (b) provides that security at such time, and in accordance with such requirements, as may be specified by the Secretary of State.
- (5) Before approving a programme with modifications or subject to conditions, the Secretary of State must give the person who submitted it an opportunity of making representations about the proposed modifications or conditions.
- (6) The power of the Secretary of State to approve a programme subject to conditions includes power, where more than one person submitted it, to impose different conditions in relation to different persons.
- (7) If he rejects a programme, the Secretary of State—
  - (a) must inform the person who submitted it of his reasons for doing so; and
  - (b) may exercise his power under section 105 to require the submission of a new one.

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- (8) The Secretary of State must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.

#### **107 Failure to submit or rejection of decommissioning programmes**

- (1) Where—
- (a) a notice given under section 105 is not complied with, or
  - (b) the Secretary of State rejects a programme submitted to him,
- the Secretary of State may himself prepare a decommissioning programme in relation to the relevant object in question.
- (2) Before himself preparing a decommissioning programme relating to a relevant object which is to be or is, wholly or partly—
- (a) in an area of Scottish waters, or
  - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,
- the Secretary of State must consult the Scottish Ministers.
- (3) Where the Secretary of State prepares a decommissioning programme under this section—
- (a) he must give notice informing the recipient of the notice given under section 105 that he has done so; and
  - (b) this Chapter shall have effect subsequently as if the Secretary of State's programme were a programme submitted to him by the person informed and had been approved by the Secretary of State subject to the conditions specified by the Secretary of State.
- (4) Where the Secretary of State informs a person under subsection (3) that he has prepared his own decommissioning programme, he may by notice to that person require him—
- (a) to provide such security in relation to the carrying out of the programme, and for his compliance with its conditions (if any), as may be specified by the Secretary of State; and
  - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the Secretary of State;
- and a requirement under this subsection has effect as if it were a condition of the deemed approval of the programme.
- (5) The Secretary of State may by notice require the recipient of a notice under section 105 to provide him with such information and documents as he may require for the purpose of exercising his powers under subsections (1) and (4).
- (6) Information and documents required to be provided under subsection (5) must be provided within such period as may be specified in the notice under that subsection.
- (7) A person who fails, without reasonable excuse, to comply with a notice under subsection (5) is guilty of an offence.
- (8) The power of the Secretary of State to impose requirements under this section includes power, where there is more than one person on whom he may impose them, to impose different requirements in relation to different persons.
- (9) Where, having given a notice under section 105, the Secretary of State prepares his own decommissioning programme, he may recover expenditure incurred by him in,

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or in connection with, the exercise of his powers under this section from the recipient of the notice.

- (10) A person liable to pay a sum to the Secretary of State by virtue of subsection (9) must also pay interest on that sum for the period which—
- (a) begins with the day on which the Secretary of State notified him of the sum payable; and
  - (b) ends with the date of payment.
- (11) The rate of interest shall be a rate determined by the Secretary of State to be comparable with commercial rates.

### **108    Reviews and revisions of decommissioning programmes**

- (1) The Secretary of State must, from time to time, conduct such reviews of a decommissioning programme approved by him as he considers appropriate.
- (2) A proposal—
- (a) to modify a decommissioning programme approved by the Secretary of State, or
  - (b) to modify a condition to which such a programme is subject,
- may be made by the Secretary of State, or by the person who submitted the programme or (if there is more than one of them) by all of them acting jointly.
- (3) A proposal—
- (a) to relieve a person of his duty under section 109(1) in relation to a decommissioning programme approved by the Secretary of State, or
  - (b) as respects such a programme, to impose that duty upon a person not previously subject to it (whether in addition to or in substitution for another person),
- may be made by the Secretary of State or by the person for the time being subject to that duty or (if there is more than one person subject to that duty) by any one or more of them.
- (4) A proposal under subsection (2) or (3) may be made only by way of notice given—
- (a) if the proposal is the Secretary of State's, to every person whose duty under section 109(1) in relation to the programme would be affected or relieved under the proposal or who would become subject to such a duty; and
  - (b) in any other case, to the Secretary of State.
- (5) An opportunity of making representations to the Secretary of State about a proposal of his under this section must be given by him to every person to whom notice of the proposal is required to have been given.
- (6) It is to be for the Secretary of State, after considering any representations made to him, to determine whether or not effect should be given to a proposal of his, or of any other person, under this section.
- (7) Before making a determination under subsection (6) with respect to a proposal in relation to a decommissioning programme relating to a relevant object which is to be or is, wholly or partly—
- (a) in an area of Scottish waters, or
  - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,

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the Secretary of State must consult the Scottish Ministers.

- (8) Where the Secretary of State makes a determination under subsection (6), he must give notice of his determination, and of his reasons for it, to—
- (a) every person who, before the determination, had a duty under section 109(1) in relation to the programme; and
  - (b) every person who will become subject to such a duty as a result of the determination.
- (9) Where the Secretary of State gives notice under subsection (8) in respect of a proposal, this Chapter shall have effect after the giving of that notice—
- (a) in the case of a proposal under subsection (2), as if the programme in question had been approved subject to the modifications specified in the determination; and
  - (b) in the case of a proposal under subsection (3), as if that programme had been submitted to the Secretary of State by the person or persons so specified.
- (10) Where the Secretary of State gives notice under subsection (8) to a person that he is to become subject to a duty under section 109(1) in relation to a programme, the Secretary of State may by notice to that person require him—
- (a) to provide such security in relation to the carrying out of the programme, and for his compliance with any conditions of its approval, as may be specified by the Secretary of State; and
  - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the Secretary of State;
- and a requirement under this subsection has effect as if it were a condition of the approval of the programme.

#### *Implementation of decommissioning programmes*

### **109 Carrying out of decommissioning programmes**

- (1) Where a decommissioning programme is approved by the Secretary of State, it shall be the duty of the person who submitted the programme to secure—
- (a) that it is carried out in every respect; and
  - (b) that all the conditions to which the approval is subject are complied with.
- (2) Where a relevant object is subject to a decommissioning programme approved by the Secretary of State, it is an offence for a person to take any measures for decommissioning that object unless he does so—
- (a) in accordance with the programme; or
  - (b) with the agreement of the Secretary of State.

### **110 Default in carrying out decommissioning programmes**

- (1) Where—
- (a) a decommissioning programme approved by the Secretary of State is not carried out in a particular respect, or
  - (b) a condition to which the approval is subject is contravened,

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the Secretary of State may, by notice, require a person subject to the duty under section 109(1) in relation to the programme to take such remedial action as may be specified in the notice.

- (2) Remedial action required by a notice under this section must be taken within such period as may be specified in the notice.
- (3) A person who fails to comply with a notice given to him under this section is guilty of an offence.
- (4) In proceedings against a person for an offence under this section it is a defence for him to show that he exercised due diligence to avoid the contravention in question.
- (5) If a notice under this section is not complied with, the Secretary of State may—
  - (a) himself secure the carrying out of the remedial action required by the notice; and
  - (b) recover any expenditure incurred by him in doing so from the person to whom the notice was given.
- (6) A person liable to pay a sum to the Secretary of State by virtue of subsection (5) must also pay interest on that sum for the period which—
  - (a) begins with the day on which the Secretary of State notified him of the sum payable; and
  - (b) ends with the date of payment.
- (7) The rate of interest shall be a rate determined by the Secretary of State to be comparable with commercial rates.

### *Decommissioning regulations*

#### **111 Regulations about decommissioning**

- (1) The Secretary of State may make regulations relating to the decommissioning of relevant objects in waters regulated under this Chapter.
- (2) The provision that may be contained in regulations under this section includes, in particular—
  - (a) provision prescribing standards in respect of decommissioning;
  - (b) provision prescribing standards and safety requirements in respect of anything left in place where a relevant object is not wholly removed;
  - (c) provision about the security that a person may be required to provide under this Chapter;
  - (d) provision for the prevention of pollution;
  - (e) provision for inspections, including provision as to the payment of the costs of inspections.
- (3) Regulations under this section may include provision making it an offence to contravene provisions of the regulations.
- (4) Where the regulations under this section create an offence, they must make provision as to the mode of trial and punishment of offenders; but there is no power for regulations under this section—

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- (a) to impose a penalty of imprisonment on summary conviction, or to impose a maximum fine, on summary conviction, of more than the statutory maximum; or
  - (b) to impose a maximum term of imprisonment, on conviction on indictment, of more than two years.
- (5) Before making regulations under this section, the Secretary of State must consult—
- (a) organisations appearing to him to be representative of persons who will be affected by the regulations; and
  - (b) any other persons he considers appropriate.
- (6) Before making regulations under this section containing provision that relates to the decommissioning of relevant objects which are to be or are, wholly or partly—
- (a) in Scottish waters, or
  - (b) in waters in a Scottish part of a Renewable Energy Zone,
- the Secretary of State must consult the Scottish Ministers.
- (7) Regulations under this section are subject to the negative resolution procedure.

*Supplementary provisions of Chapter 3 of Part 2*

**112 Duty to inform Secretary of State**

- (1) A person who becomes responsible for a relevant object must notify the Secretary of State that he has become so responsible.
- (2) For the purposes of this section a person becomes responsible for a relevant object if—
- (a) he makes a proposal to construct the object in waters regulated under this Chapter;
  - (b) he makes a proposal for the extension or decommissioning in such waters of the object;
  - (c) he makes a proposal to operate or use the object on completion of its construction in such waters;
  - (d) he makes a proposal to operate or use the object on completion in such waters of any extension of it;
  - (e) he becomes a party to a proposal mentioned in paragraphs (a) to (d);
  - (f) he begins in such waters to construct, to extend, to operate or use or to decommission the object;
  - (g) he begins to participate in any of the following activities carried on in such waters, the construction, extension, operation or use or decommissioning of the object.
- (3) A person is not required to notify the Secretary of State that he has made a proposal, or become a party to a proposal, at any time before at least one of the statutory consents required for enabling effect to be given to the proposal has been given or applied for.
- (4) A person who notifies the Secretary of State under this section that he has made a proposal, or has become a party to a proposal—
- (a) must specify in the notification what statutory consents required for giving effect to the proposal have been given, and what applications for such consents have been made; and

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- (b) must notify him subsequently whenever such a consent or application is given or made.
- (5) A notification under this section must be given within such period after the obligation to give the notification arises as may be prescribed by regulations made by the Secretary of State.
- (6) A person who contravenes the requirements of this section is guilty of an offence.
- (7) Regulations under this section are subject to the negative resolution procedure.
- (8) A reference in this section to participation in activities does not include a reference—
  - (a) to participation on behalf of another person; or
  - (b) to participation by acting in pursuance of an agreement to provide a service or services to a person carrying on those activities.
- (9) In this section “statutory consent” has the same meaning as in section 105.

### **113 Offences relating to decommissioning programmes**

- (1) A person guilty of an offence under a provision of this Chapter is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (2) No proceedings for a decommissioning offence shall be instituted in England and Wales or Northern Ireland except—
  - (a) by the Secretary of State;
  - (b) by a person authorised in that behalf by the Secretary of State; or
  - (c) by or with the consent of the Director of Public Prosecutions or (as the case may be) the Director of Public Prosecutions for Northern Ireland.
- (3) Where a decommissioning offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person who was purporting to act in any such capacity,
 he (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (4) Where such an offence—
  - (a) is committed by a Scottish firm, and
  - (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm,
 he (as well as the firm) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (5) Where a decommissioning offence is committed outside the United Kingdom, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.



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(6) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecution of offences committed on the open sea by persons who are not British citizens) does not apply to proceedings for a decommissioning offence.

(7) In this section—

“decommissioning offence” means an offence under—

- (a) a provision of this Chapter; or
- (b) regulations made under section 111;

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

#### **114 Interpretation of Chapter 3 of Part 2**

(1) Expressions used in this Chapter and in Chapter 2 of this Part have the same meanings in this Chapter as in that Chapter.

(2) In this Chapter—

“decommissioning programme” has the meaning given by section 105(2);

“extend” and “extension”, in relation to an electric line, have the same meanings as they have in Chapter 2 of this Part and this Chapter in relation to a renewable energy installation;

“recipient”, in relation to a notice under section 105, means the person or any one or more of the persons to whom that notice was given;

“relevant object” has the meaning given by section 105(10);

“security” includes—

- (a) a charge over a bank account or any other asset;
- (b) a deposit of money;
- (c) a performance bond or guarantee;
- (d) a letter of credit; and
- (e) a letter of comfort;

“waters regulated under this Chapter” has the meaning given by section 105(10).

(3) References in this Chapter to providing a security include references—

- (a) to securing its maintenance or renewal; and
- (b) to ensuring that its value is adjusted from time to time to take account of changes to the likely costs of the matters in respect of which it is given.

(4) References in this Chapter to the person by whom a decommissioning programme was submitted are references, in the case of a programme submitted jointly by more than one person, to each of them.

(5) Provision made by or under this Chapter in relation to places outside the United Kingdom—

- (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
- (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of any part of the United Kingdom.

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## CHAPTER 4

### RENEWABLES OBLIGATIONS RELATING TO ELECTRICITY

#### 115 Discharge of renewables obligation in Great Britain by payment

- (1) In section 32(3) of the 1989 Act (renewables obligation), for the words from “must” to “produce” substitute “ must, by each specified day, have produced ”.
- (2) In section 32C of that Act (payment as an alternative to complying with a renewables obligation), in subsection (1) for the words from “that” onwards substitute—
  - “(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.”
- (3) In subsection (2) of that section (supplementary provisions of order providing for payments)—
  - (a) after paragraph (a) insert—
    - “(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) in paragraph (b), for “such sums” substitute “ sums or rates falling within paragraph (a) or (aa) ”;
  - (c) in paragraph (c), after “sums” insert “ or rates ”; and
  - (d) in paragraph (d), after “sum” insert “ or rate ”.
- (4) For subsection (3) of that section substitute—
 

“(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—

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- (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
  - (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.”
- (5) In that section, at the end insert—
  - “(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—

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“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.”

- (6) The requirements of section 32(7) of the 1989 Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

#### Commencement Information

**I74** S. 115 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 116 Issue of green certificates in Great Britain

- (1) Section 32B of the 1989 Act (green certificates) is amended as follows.
- (2) In subsection (1), for “or to an electricity supplier” substitute “, to an electricity supplier or to a Northern Ireland supplier ”.
- (3) After that subsection insert—
 

“(1A) A certificate is to certify either the matters within subsection (2) or the matters within subsection (2A).”
- (4) In subsection (2)—
  - (a) for “A certificate is to certify” substitute “ The matters within this subsection are ”;
  - (b) in paragraph (a), after “an electricity supplier” insert “ or to a Northern Ireland supplier ”.
- (5) After that subsection insert—
 

“(2A) The matters within this subsection are—

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- (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).”
- (6) In subsection (3), after “Authority” insert “ that certifies matters within subsection (2) ”.
- (7) After that subsection insert—
- “(4) 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 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.”
- (8) The requirements of section 32(7) of that Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

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**Commencement Information**

**I75** S. 116 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 117 Use of green certificates issued in Northern Ireland

- (1) After section 32B of the 1989 Act insert—

**“32BA Use of green certificates issued in Northern Ireland**

- (1) An order under section 32 may provide that—

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- (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).”
- (2) The requirements of section 32(7) of the 1989 Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.
- (3) In Article 56(1) of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (power to amend Part 7 of that Order to take account of amendments of corresponding Great Britain provisions), the reference to amendments made to sections 32 to 32C of the 1989 Act includes a reference to subsection (1) of this section.
- (4) Subsection (3) extends to Northern Ireland only.

**Commencement Information**

**I76** S. 117 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**118 Distributions to Northern Ireland suppliers**

- (1) In section 32C of the 1989 Act (payment of money to discharge renewables obligation and distribution of fund to electricity suppliers), after subsection (4) insert—
- “(5) The references in subsections (3) and (4) to electricity suppliers include references to persons who are Northern Ireland suppliers.”
- (2) The requirements of section 32(7) of the 1989 Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

**Commencement Information**

**I77** S. 118 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**119 Supplementary provision relating to renewables obligation in Great Britain**

- (1) In subsection (3) of section 32 of the 1989 Act (definition of renewables obligation), for “and 32C” substitute “ to 32C ”.
- (2) In subsection (7) of that section, for paragraph (d) substitute—

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- “(d) such generators of electricity from renewable sources as he considers appropriate; and”.
- (3) After subsection (8) of that section insert—
- “(8A) In this section and in sections 32A to 32C—
- “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.”
- (4) In section 32A of that Act (supplementary provision relating to orders under section 32), in subsection (3) for the words from “the differences” onwards substitute “no supplier would by virtue of the differences be unduly disadvantaged in competing with other suppliers”.
- (5) After that subsection insert—
- “(3A) In subsection (3) “supplier” means an electricity supplier or a Northern Ireland supplier.”
- (6) In subsection (7) of that section, for “obligation imposed” substitute “matters dealt with”.
- (7) The requirements of section 32(7) of that Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

#### Commencement Information

**I78** S. 119 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 120 Issue of green certificates in Northern Ireland

- (1) Article 54 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (which contains provision corresponding to provision contained in section 32B of the 1989 Act) is amended as follows.
- (2) After paragraph (2) insert—
- “(2A) In paragraphs (1) and (2) “Northern Ireland” does not include any part of the territorial sea of the United Kingdom.
- (2B) The provision that may be contained by virtue of this Article in an order under Article 52 includes—
- (a) provision for the person to whom a certificate is to be issued to be determined either before or after the supply of the electricity to which it relates; and

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- (b) provision for a determination as to the person to whom a certificate is to be issued to be made in accordance with such arrangements as may be specified in or determined under the order.
- (2C) In the case only of a certificate relating to electricity that has been acquired, or is required to be acquired, under a qualifying arrangement, the arrangements within paragraph (2B)(b) that may be specified in or determined under the order include arrangements—
- (a) requiring the determination of the person to whom the certificate is to be issued to be made by reference to financial bids made in respect of the certificate or in respect of both the certificate and the electricity to which it relates; and
  - (b) requiring that person to make a payment, in accordance with his bid, to such person as may be specified in or determined under the order.
- (2D) In the case only of a certificate relating to electricity that has been acquired, or is required to be acquired, under a qualifying arrangement, provision falling within paragraph (2B)(b) may require the relevant person—
- (a) to make and implement the arrangements that are specified in or determined under the order; and
  - (b) to comply with directions given to him by the Authority for that purpose.
- (2E) A person who receives a payment in accordance with provision made by virtue of paragraph (2C)(b) shall apply the money received in such manner as the Department may direct.
- (2F) A direction under paragraph (2E) may require that the money received or part of that money be paid to the Department.
- (2G) Part VI shall apply in relation to a requirement imposed by virtue of paragraph (2D) or (2E) on a person who is not an electricity licence holder as if he were an electricity licence holder.”
- (3) After paragraph (3) insert—
- “(4) An order under Article 52 may confer on the Authority functions in Northern Ireland in relation to the issue of Great Britain certificates.
  - (5) In this Article—
    - “Great Britain certificates” means certificates that are or may be issued by the Gas and Electricity Markets Authority in accordance with provision included, by virtue of section 32B of the Electricity Act 1989, in an order under section 32 of that Act;
    - “qualifying arrangement” means an arrangement made pursuant to an order under Article 35 of the Electricity Order (or such an arrangement as modified or replaced by virtue of an order under Article 57 of this Order);
    - “relevant person” means, in relation to electricity that is acquired, or is required to be acquired, under a qualifying arrangement, the person who acquired it, or who is required to acquire it.”
- (4) The requirements of Article 52(6) of that Order (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this



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section by consultation that took place wholly or partly before the commencement of this section.

(5) This section extends to Northern Ireland only.

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**Commencement Information**

**I79** S. 120 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **121 GEMA’s power to act on behalf of Northern Ireland regulator**

- (1) GEMA and the Northern Ireland Authority for Energy Regulation (“the Northern Ireland Authority”) shall be entitled—
- (a) to enter into arrangements for GEMA to act on behalf of the Northern Ireland Authority for, or in connection with, the carrying out of the 2003 renewables obligations functions; and
  - (b) to give effect to those arrangements.
- (2) In this section “the 2003 renewables obligations functions” means the functions conferred on the Northern Ireland Authority under or for the purposes of Articles 52 to 55 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (renewables obligations for Northern Ireland suppliers).

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**Commencement Information**

**I80** S. 121 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **122 Consultation in relation to Northern Ireland renewables orders**

- (1) This section applies where the Department of Enterprise, Trade and Investment in Northern Ireland amends the provisions of Part 7 of the 2003 Order (renewables obligations for Northern Ireland suppliers) by way of an amending order to take account of amendments of the 1989 Act made by this Chapter.
- (2) In the case of a renewables order containing provision made by virtue of the amending order, the requirements of Article 52(6) of the 2003 Order (consultation before making a renewables order) may be satisfied by consultation that took place wholly or partly before the amending order came into force (including consultation taking place before the commencement of this section).
- (3) In this section—
- “amending order” means an order under Article 56 of the 2003 Order;
  - “the 2003 Order” means the Energy (Northern Ireland) Order 2003;
  - “renewables order” means an order under Article 52 of the 2003 Order.
- (4) This section extends to Northern Ireland only.

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**Commencement Information**

**I81** S. 122 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## 123 Modification of conditions of Northern Ireland electricity licences

- (1) In Part 7 of the Energy (Northern Ireland) Order 2003 (renewable energy sources), after Article 58 insert—

### “58A Modifications of licences in connection with Energy Act 2004

- (1) Where the Department or the Authority considers it necessary or expedient to do so in connection with—
- (a) amendments of this Order made by section 120 of the Energy Act 2004, or
  - (b) provision made by an order under Article 56 to take account of amendments of the Electricity Act 1989 made by Chapter 4 of Part 2 of that Act of 2004,
- it may modify the conditions of an electricity licence.
- (2) The power to make modifications under this Article includes power to make incidental, consequential or transitional modifications.
- (3) Before making a modification of a licence condition under this Article the Department shall consult the Authority and the licence holder.
- (4) Before making a modification of a licence condition under this Article the Authority shall—
- (a) consult the licence holder; and
  - (b) obtain the consent of the Department to the modification.
- (5) Paragraphs (3) and (4)(a) may be satisfied by consultation—
- (a) that, in the case of a modification within paragraph (1)(b), took place wholly or partly before the order in question comes into force; and
  - (b) that, in any case, took place wholly or partly before the commencement of this Article.
- (6) Where the Department or the Authority makes any modifications under this Article it shall publish those modifications in such manner as it considers appropriate.
- (7) The power conferred by virtue of paragraph (1)(a) may not be exercised after the end of the period of two years beginning with the commencement of this Article.
- (8) The power conferred by virtue of paragraph (1)(b) may not be exercised in relation to an order under Article 56 after the end of the period of two years beginning with the day on which the order comes into force.”

- (2) This section extends to Northern Ireland only.

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#### Commencement Information

**182** S. 123 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## CHAPTER 5

### RENEWABLE TRANSPORT FUEL OBLIGATIONS

#### 124 Imposition of renewable transport fuel obligations

- (1) The Secretary of State may by order impose on each transport fuel supplier of a specified description the obligation mentioned in subsection (2) (a “renewable transport fuel obligation”).
- (2) That obligation is an obligation, for each specified period, for the supplier to produce to the Administrator, by the specified date, evidence which—
  - (a) is of the specified kind and in the specified form; and
  - (b) shows that during the specified period the specified amount of renewable transport fuel was supplied at or for delivery to places in the United Kingdom.
- (3) An order under subsection (1) is referred to in this Chapter as an “RTF order”.
- (4) Before making an RTF order the Secretary of State must consult such persons appearing to him to represent persons whose interests will be affected by the order, and such other persons, as he considers appropriate.
- (5) The power to make an RTF order is subject to the affirmative resolution procedure.

#### Commencement Information

**I83** S. 124 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### 125 The Administrator

- (1) An RTF order may, for the purposes of provision made by or under this Chapter, appoint a person as the Administrator.
- (2) Such an order may—
  - (a) confer or impose powers and duties on the Administrator for purposes connected with the implementation of provision made by or under this Chapter;
  - (b) confer discretions on the Administrator in relation to the making of determinations under such an order and otherwise in relation to his powers and duties; and
  - (c) impose duties on transport fuel suppliers for purposes connected with the Administrator’s powers and duties.
- (3) The powers that may be conferred on the Administrator by virtue of subsection (2) include, in particular—
  - (a) power to require a transport fuel supplier to provide him with such information as he may require for purposes connected with the carrying out of the Administrator’s functions;
  - (b) power to impose requirements as to the form in which such information must be provided and as to the period within which it must be provided;
  - (c) power to impose charges of specified amounts on transport fuel suppliers.

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- (4) Sums received by the Administrator by virtue of provision within subsection (3)(c) must be used by him for the purpose of meeting costs incurred by him in carrying out his functions as the Administrator.
- (5) The duties that may be imposed by virtue of subsection (2)(c) include, in particular, duties framed by reference to determinations made by the Administrator.
- (6) Only the following persons may be appointed as the Administrator—
  - (a) a body or other person established or appointed by or under any enactment to carry out other functions;
  - (b) a body established by virtue of subsection (8).
- (7) Where provision is made by an RTF order for the appointment of a body or other person within subsection (6)(a), such an order may make such modifications of any enactment relating to that body or person as the Secretary of State considers appropriate for the purpose of facilitating the carrying out of the functions of the Administrator.
- (8) An RTF order may—
  - (a) establish a body corporate to be appointed as the Administrator;
  - (b) make provision for the appointment of members of that body;
  - (c) make provision in relation to the staffing of that body;
  - (d) make provision in relation to the expenditure of that body;
  - (e) make provision regulating the procedure of that body;
  - (f) make any other provision that the Secretary of State considers appropriate for purposes connected with the establishment and maintenance of that body.
- (9) The provision that may be made by virtue of subsection (8) in relation to a body corporate includes, in particular, provision conferring discretions on—
  - (a) the Secretary of State;
  - (b) the body itself; or
  - (c) members or staff of the body.
- (10) The Secretary of State may make grants to the Administrator on such terms as the Secretary of State may determine.

#### **Commencement Information**

**184** S. 125 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **126 Determinations of amounts of transport fuel**

- (1) An RTF order may make provision about how amounts of transport fuel are to be counted or determined for the purposes of provision made by or under this Chapter.
- (2) The provision that may be made by virtue of this section includes, in particular—
  - (a) provision for amounts of renewable transport fuel to count towards discharging a renewable transport fuel obligation for a period only if the fuel is of a specified description;
  - (b) provision for amounts of renewable transport fuel of a specified description to count towards discharging such an obligation only up to a specified amount;

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- (c) provision for such an obligation not to be treated as discharged unless a specified minimum amount of renewable transport fuel of a specified description has been counted towards its discharge;
  - (d) provision for only such proportion of any renewable transport fuel of a specified description as is attributable to a specified substance, source of energy, method, process or other matter to count towards discharging such an obligation;
  - (e) provision as to how that proportion is to be determined;
  - (f) provision for an amount of renewable transport fuel of a specified description to count towards discharging such an obligation only if, or to the extent that, specified conditions are satisfied in relation to its supply, the person by or to whom it was supplied or the place at or for delivery to which it was supplied;
  - (g) provision for evidence produced by a supplier in relation to any fuel not to count for the purposes of his renewable transport fuel obligation for a period if evidence in relation to the same fuel has previously been produced (whether by him or by another supplier);
  - (h) provision for evidence produced by a supplier in relation to any fuel not to count for those purposes if, after the supply to which the evidence relates, the fuel is supplied by any person at or for delivery to a place outside the United Kingdom or a specified part of the United Kingdom;
  - (i) provision about the measurement of amounts of different descriptions of transport fuel;
  - (j) provision for units of transport fuel of a specified description to count for more or less than the same units of transport fuel of other descriptions;
  - (k) provision about how measurements in different units of different descriptions of transport fuel are to be aggregated;
  - (l) provision for the application of presumptions where specified matters are shown.
- (3) The provision that may be made by virtue of this section also includes, in particular, provision which—
- (a) is made having regard to one or more of the effects mentioned in subsection (4) (whether in the United Kingdom or elsewhere); or
  - (b) requires regard to be had to one or more such effects.
- (4) Those effects are the effects of the production, supply or use of fuel of a particular description on—
- (a) carbon emissions;
  - (b) agriculture;
  - (c) other economic activities;
  - (d) sustainable development; or
  - (e) the environment generally.

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**Commencement Information**

**185** S. 126 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Status: Point in time view as at 05/10/2004. This version of this Act contains provisions that are not valid for this point in time.*

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## 127 Renewable transport fuel certificates

- (1) An RTF order may make provision for the Administrator to issue certificates to transport fuel suppliers (“RTF certificates”).
- (2) An RTF certificate is to certify—
  - (a) that the supplier to whom it is issued has supplied the amount of renewable transport fuel stated in the certificate;
  - (b) that that amount of such fuel was supplied by him during the period stated in the certificate;
  - (c) that that amount of such fuel was supplied by him during that period at or for delivery to a place in the United Kingdom or in the part of the United Kingdom stated in the certificate; and
  - (d) the other specified facts.
- (3) Such a certificate may be issued to a supplier only if—
  - (a) he applies for it in the specified manner;
  - (b) his application includes evidence of the specified kind and in the specified form; and
  - (c) the other specified conditions are satisfied.
- (4) An RTF order may authorise transfers of RTF certificates (whether for a consideration or otherwise) between persons of specified descriptions.
- (5) Such an order may also provide that such a transfer is not to be effective unless—
  - (a) the specified details of it have been notified to the Administrator in the specified manner and within the specified time; and
  - (b) the other specified requirements have been complied with.
- (6) If a supplier produces an RTF certificate to the Administrator, it is to count for the purposes of section 124(2) as sufficient evidence of the facts certified.
- (7) An RTF order may provide that, in specified circumstances, evidence produced by virtue of subsection (6) may count to the specified extent towards the discharge of a renewable transport fuel obligation for a period even if it is produced after the time by which evidence had to be produced for the purposes of that obligation.
- (8) Such an order may also provide that, in specified circumstances, evidence produced by virtue of subsection (6) may count to the specified extent towards the discharge of a renewable transport fuel obligation for a period that is later than the period stated in the certificate in question in accordance with subsection (2)(b).

### Commencement Information

**186** S. 127 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 128 Discharge of obligation by payment

- (1) An RTF order may provide that a person who does not wholly discharge his renewable transport fuel obligation for a period by the production of evidence must pay the Administrator the specified sum within the specified period.

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- (2) The provision that may be made by virtue of subsection (1) includes, in particular, provision—
  - (a) for the specified sum to increase, in cases where that sum is not paid within a specified period, at the specified rate until it is paid or until the occurrence of a specified event;
  - (b) for specified amounts to be adjusted from time to time for inflation in the specified manner;
  - (c) for the repayment of sums in cases where provision made by virtue of section 127(7) applies in relation to a person;
  - (d) prohibiting the Administrator from taking steps to recover the specified sum or a part of that sum if specified conditions are satisfied.
- (3) Provision within subsection (2)(b) may refer, in particular, to a specified index or to other data, including any index or data as modified from time to time after the coming into force of the order.
- (4) An RTF order may provide that, in a case in which the amount of payments by virtue of subsection (1) which the Administrator has received by the specified time in respect of renewable transport fuel obligations for any period falls short of the amount due in respect of that period, the persons who—
  - (a) were subject to renewable transport fuel obligations for that period, and
  - (b) are of a specified description,must, within the specified period and in the specified circumstances, each make a payment (or further payment) to the Administrator of an amount calculated in the specified manner.
- (5) The provision that may be made by virtue of subsection (4) includes, in particular, provision for the making of adjustments and repayments after a requirement to make payments has already arisen.
- (6) An RTF order may require the Administrator to use, to the specified extent, the sums received by him by virtue of this section for the purpose of meeting costs incurred by him in carrying out his functions as the Administrator.
- (7) To the extent the Administrator does not so use the sums so received, they must be paid by him to transport fuel suppliers, or to transport fuel suppliers of a specified description, in accordance with the specified system of allocation.

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**Commencement Information**

**187** S. 128 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 129 Imposition of civil penalties

- (1) An RTF order may—
  - (a) designate a provision made by or under this Chapter for the purposes of this section; and
  - (b) provide that a person is to be liable to a civil penalty if—
    - (i) he contravenes that provision; and
    - (ii) any other specified conditions are satisfied.

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- (2) Where the Administrator is satisfied that a person (the “defaulter”) is so liable, he may give a notice to the defaulter in the specified manner (a “civil penalty notice”) imposing on the defaulter a penalty of such amount as the Administrator considers appropriate.
- (3) That penalty must not exceed the lesser of—
  - (a) the specified amount; and
  - (b) the amount equal to ten per cent of the turnover, as determined in the specified manner, of the specified business of the defaulter.
- (4) The civil penalty notice must—
  - (a) set out the Administrator’s reasons for deciding that the defaulter is liable to a penalty;
  - (b) state the amount of the penalty that is being imposed;
  - (c) set out a date before which the penalty must be paid to the Administrator;
  - (d) describe how payment may be made;
  - (e) explain the steps that the defaulter may take if he objects to the penalty; and
  - (f) set out and explain the powers of the Administrator to enforce the penalty.
- (5) The date for the payment of the penalty must not be less than 14 days after the giving of the civil penalty notice.
- (6) A penalty imposed by virtue of this section must be paid to the Administrator—
  - (a) by the date set out in the civil penalty notice by which it is imposed; and
  - (b) in a manner described in that notice.
- (7) Sums received by the Administrator by virtue of this section must be paid to the Secretary of State, who must pay them into the Consolidated Fund.

#### **Commencement Information**

**I88** S. 129 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### **130 Objections to civil penalties**

- (1) A person to whom a civil penalty notice is given may give notice to the Administrator that he objects to the penalty on one or both of the following grounds—
  - (a) that he is not liable to pay it;
  - (b) that the amount of the penalty is too high.
- (2) The notice of objection—
  - (a) must set out the grounds of the objection and the objector’s reasons for objecting on those grounds; and
  - (b) must be given to the Administrator in the specified manner and within the specified period after the giving of the civil penalty notice.
- (3) The Administrator must consider a notice of objection given in accordance with this section and may then—
  - (a) cancel the penalty;
  - (b) reduce it;
  - (c) increase it; or



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- (d) confirm it.
- (4) The Administrator must not enforce a penalty in respect of which he has received a notice of objection before he has notified the objector of the outcome of his consideration of the objection.
- (5) That notification of the outcome of his consideration must be given, in the specified manner—
  - (a) before the end of the specified period; or
  - (b) within such longer period as he may agree with the objector.
- (6) Where, on consideration of an objection, the Administrator increases the penalty, he must give the objector a new civil penalty notice; and, where he reduces it, the notification mentioned in subsection (5) must set out the reduced amount.

**Commencement Information**

**189** S. 130 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### **131 Appeals against civil penalties**

- (1) A person to whom a civil penalty notice is given may appeal to the court on one or both of the following grounds—
  - (a) that he is not liable to pay the penalty;
  - (b) that the amount of the penalty is too high.
- (2) An appeal under this section must be brought within such period after the giving of the civil penalty notice as may be set out in rules of court.
- (3) On an appeal under this section, the court may—
  - (a) allow the appeal and cancel the penalty;
  - (b) allow the appeal and reduce the penalty; or
  - (c) dismiss the appeal.
- (4) An appeal under this section is to be by way of a rehearing of the Administrator's decision to impose the penalty.
- (5) The matters to which the court may have regard when determining an appeal under this section include all matters that the court considers relevant, including—
  - (a) matters of which the Administrator was unaware when he made his decision; and
  - (b) matters which (apart from this subsection) the court would be prevented from having regard to by virtue of rules of court.
- (6) An appeal under this section may be brought in relation to a penalty irrespective of whether a notice of objection under section 130 has been given in respect of that penalty or whether there has been an increase or reduction under that section.
- (7) In this section “the court” means—
  - (a) in England and Wales or Northern Ireland, the High Court; and
  - (b) in Scotland, the Court of Session.

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### Commencement Information

**190** S. 131 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 132 Interpretation of Chapter 5 of Part 2

(1) In this Chapter—

“Administrator” means the person appointed by virtue of section 125 as the Administrator for the purposes of provision made by or under this Chapter;

“biofuel” means liquid or gaseous fuel that is produced wholly from biomass;

“blended biofuel” means liquid or gaseous fuel consisting of a blend of biofuel and fossil fuel;

“civil penalty notice” has the meaning given by section 129(2);

“renewable transport fuel” means—

- (a) biofuel;
- (b) blended biofuel;
- (c) any solid, liquid or gaseous fuel (other than fossil fuel or nuclear fuel) which is produced—
  - (i) wholly by energy from a renewable source; or
  - (ii) wholly by a process powered wholly by such energy; or
- (d) any solid, liquid or gaseous fuel which is of a description of fuel designated by an RTF order as renewable transport fuel;

“renewable transport fuel obligation” has the meaning given by section 124(1);

“RTF order” has the meaning given by section 124(3);

“specified” means specified in, or determined in accordance with, an RTF order;

“supply” means, in relation to fuel, the supply of that fuel to any person with a view to its being used (whether by that person or persons to whom it is subsequently supplied) wholly or primarily for transport purposes;

“transport fuel” means—

- (a) renewable transport fuel;
- (b) fossil fuel; or
- (c) any solid, liquid or gaseous fuel that is neither renewable transport fuel nor fossil fuel;

“transport fuel supplier” means a person who, in the course of any business of his, supplies transport fuel at or for delivery to places in the United Kingdom.

(2) For the purposes of this section a process powered by electricity that was generated by energy from a particular source is to be treated as being powered by energy from that source.

(3) For the purposes of this section fuel is used for transport purposes if—

- (a) it is used as fuel for one or more of the following, namely, vehicles, vessels, aircraft, trains or any other mode of transport; or
- (b) it is used for producing fuel that is intended to be so used.

(4) In this section—

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“biomass” means the biodegradable portion of a specified product, waste or residue;

“fossil fuel” has the same meaning as in section 32 of the 1989 Act;

“renewable source” means, in relation to energy, any of the following sources of energy—

- (a) wind;
- (b) solar heat;
- (c) water (including waves and tides);
- (d) geothermal sources; or
- (e) biomass.

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**Commencement Information**

**I91** S. 132 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**

**PART 3**

ENERGY REGULATION

**CHAPTER 1**

ELECTRICITY TRADING AND TRANSMISSION

**133 “New trading and transmission arrangements”**

- (1) References in this Chapter to the new trading and transmission arrangements are to new arrangements relating to the trading and transmission of electricity in Great Britain designed—
- (a) to promote the creation of a single competitive wholesale electricity trading market, and
  - (b) to introduce a single set of arrangements for access to and use of any transmission system in Great Britain.
- (2) Expressions used in subsection (1) have the same meaning as in Part 1 of the 1989 Act (electricity supply), as amended by section 135.

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**Commencement Information**

**I92** S. 133 in force at 24.8.2004 by [S.I. 2004/2184](#), art. 2(1), **Sch. 1**

**134 Power to modify licence conditions**

- (1) If the Secretary of State considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements (whether wholly or partly), he may modify—
- (a) the conditions of a particular licence under section 6 of the 1989 Act (licences authorising supply etc.), or

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- (b) the standard conditions of licences of any of the types of licence mentioned in subsection (1) of that section (generation, transmission, distribution or supply licences).
- (2) The power under subsection (1) includes—
  - (a) power to make modifications relating to the operation of distribution systems, and
  - (b) power to make incidental, 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) Subsection (3) may be satisfied by consultation before, as well as by consultation after, the commencement of this section.
- (5) The Secretary of State shall publish any modifications under subsection (1) in such manner as he considers appropriate.
- (6) Any modification under subsection (1)(a) 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 Part 1 of the 1989 Act.
- (7) Where the Secretary of State modifies the standard conditions of licences of any type under subsection (1)(b), GEMA shall—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modifications in such manner as it considers appropriate.
- (8) The power under subsection (1) may not be exercised after the end of the period of eighteen months beginning with the day on which that subsection comes into force.
- (9) In subsection (2)(a), the reference to distribution systems is to be construed in accordance with section 4(4) of the 1989 Act.

#### **Commencement Information**

**193** S. 134 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

### **135 Alteration of transmission activities requiring licence**

- (1) Section 4 of the 1989 Act (prohibition on unlicensed activities in connection with supply of electricity) is amended as follows.
- (2) In subsection (1) (which lists the activities prohibited), for paragraph (b) substitute—
  - “(b) participates in the transmission of electricity for that purpose;”.
- (3) After subsection (3) insert—
  - “(3A) In subsection (1)(b) above, the reference to a person who participates in the transmission of electricity is to a person who—

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- (a) co-ordinates, and directs, the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, or
- (b) makes available for use for the purposes of such a transmission system anything which forms part of it.

(3B) For the purposes of subsection (3A)(b), a person shall not be regarded as making something available just because he consents to its being made available by another.”

(4) In subsection (4) (definitions for the purposes of Part 1), for the definition of “transmit” substitute—

““transmission”, in relation to electricity, means transmission by means of a transmission system;

“transmission system” means a system which—

- (a) consists (wholly or mainly) of high voltage lines and electrical plant, and
- (b) is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another.”

#### Commencement Information

**I94** S. 135 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I95** S. 135 in force at 1.9.2004 in so far as not already in force by S.I. 2004/2184, art. 2(2), Sch. 2

### 136 Transmission licences

(1) In section 6 of the 1989 Act (licences authorising supply etc.), in subsection (1) (kinds of licence which may be granted), for paragraph (b) substitute—

“(b) a licence authorising a person to participate in the transmission of electricity for that purpose (“a transmission licence”);”.

(2) After subsection (6) of that section insert—

“(6A) A transmission licence may authorise the holder to participate in the transmission of electricity in any area, or only in an area specified in the licence.

(6B) The Authority may, with the consent of the holder of a transmission licence, modify terms included in the licence in pursuance of subsection (6A) above.”

(3) In section 7 (licence conditions: general), after subsection (2) insert—

“(2A) Without prejudice to the generality of paragraph (a) of subsection (1), conditions included in a transmission licence by virtue of that paragraph may—

- (a) require the licence holder not to carry on an activity which he would otherwise be authorised by the licence to carry on, or
- (b) restrict where he may carry on an activity which he is authorised by the licence to carry on.”

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#### Commencement Information

**196** S. 136 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

### 137 New standard conditions for transmission licences

- (1) If the Secretary of State considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements, he may determine new standard conditions in relation to transmission licences.
- (2) The Secretary of State shall publish any conditions determined under subsection (1) in such manner as he considers appropriate.
- (3) Conditions published in accordance with subsection (2) shall be standard conditions for the purposes of transmission licences, subject to any modifications of the standard conditions for the purposes of licences of that type made—
  - (a) under Part 1 of the 1989 Act, or
  - (b) under this Act,
 after the determination under subsection (1).
- (4) The standard conditions for the purposes of transmission licences may contain provision—
  - (a) for any standard condition included in a transmission licence not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in, or determined under, the standard conditions;
  - (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined;
  - (c) for any standard condition included in such a licence which is suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined.
- (5) In section 8A of the 1989 Act (standard conditions of licences), in subsection (1) (incorporation in future licences of conditions which are standard conditions by virtue of section 33(1) of the Utilities Act 2000 (c. 27)), for the words from “section 6(1)” to “supply licences” substitute “ section 6(1)(a), (c) or (d) (that is to say, generation licences, distribution licences or supply licences) ”.
- (6) In that section, after subsection (1) insert—
 

“(1A) Subject to subsection (2), each condition which by virtue of section 137(3) of the Energy Act 2004 is a standard condition for the purposes of transmission licences shall be incorporated by reference in each transmission licence granted on or after the day on which section 137(6) of that Act comes into force.”
- (7) The power under subsection (1) may not be exercised—
  - (a) after the end of the period of eighteen months beginning with the day on which that subsection comes into force, or
  - (b) on or after the day on which subsections (5) and (6) come into force.

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**Commencement Information**

- I97** S. 137(1)-(4)(7) in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), **Sch. 1**  
**I98** S. 137(5)(6) in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), **Sch. 2**

**138 Conversion of existing transmission licences**

Schedule 17 (which makes provision for a licensing scheme in relation to existing transmission licences) has effect.

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**Commencement Information**

- I99** S. 138 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), **Sch. 1**

PROSPECTIVE

**139 Grant of transmission licences**

- (1) If the Secretary of State considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements, he may by direction—
  - (a) require GEMA to grant a transmission licence to such person, and on such terms and subject to such conditions, as the direction may provide;
  - (b) require GEMA to refuse an application for a transmission licence.
- (2) The Secretary of State shall consult GEMA before issuing a direction under subsection (1).
- (3) Subsection (2) may be satisfied by consultation before, as well as by consultation after, the commencement of this section.
- (4) The powers under subsection (1) may not be exercised after the end of the period of eighteen months beginning with the day on which that subsection comes into force.
- (5) The power under subsection (1)(a) may only be exercised on one occasion and then only to require the grant of a single licence.
- (6) The power under subsection (1)(b) may not be exercised once the power under subsection (1)(a) has been exercised.

**140 Duties to provide information etc. to Secretary of State**

- (1) If GEMA receives an application for a transmission licence at a time when the power under section 139(1)(b) is exercisable, it shall as soon as practicable send a copy of the application to the Secretary of State.
- (2) GEMA shall provide the Secretary of State with all such information as he may require for the purposes of or in connection with the carrying-out of any of his functions under this Chapter.

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- (3) Each holder of a licence under section 6 of the 1989 Act shall provide the Secretary of State with all such information and other assistance as he may require for the purposes of or in connection with the carrying-out of any of his functions under this Chapter.
- (4) Section 105(1) of the Utilities Act 2000 (c. 27) (general restrictions on disclosure of information) does not apply to a disclosure made in pursuance of this section.

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**Commencement Information**

**I100** S. 140(2)-(4) in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

### 141 Property arrangements schemes

Schedule 18 (which makes provision about property arrangements schemes) has effect.

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**Commencement Information**

**I101** S. 141 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

### 142 Interpretation of Chapter 1 of Part 3

In this Chapter—

“transmission licence” means a licence under section 6(1)(b) of the 1989 Act;

and references to the new trading and transmission arrangements are to be construed in accordance with section 133.

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**Commencement Information**

**I102** S. 142 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

### 143 Amendments consequential on Chapter 1 of Part 3

(1) Schedule 19 (which makes amendments consequential on the provisions of this Chapter) has effect.

(2) Where the effect of—

- (a) a modification under section 134, or
- (b) a scheme under Schedule 17,

is to reduce in any respect the area in which the holder of a transmission licence may carry on activities, Schedule 4 to the 1989 Act shall have effect in relation to him 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.

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**Commencement Information**

**I103** S. 143 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2



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## 144 Transition

The Secretary of State may by order make in connection with the coming into force of any provision of this Chapter such transitional provision or saving as he considers necessary or expedient.

### Commencement Information

**I104** S. 144 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

VALID FROM 01/12/2004

## CHAPTER 2

### INTERCONNECTORS FOR ELECTRICITY AND GAS

#### *Electricity interconnectors*

### 145 Operators of electricity interconnectors to be licensed

- (1) The 1989 Act is amended as follows.
- (2) In subsection (1) of section 4 (licensable activities), at the end of paragraph (c) insert “or
  - (d) participates in the operation of an electricity interconnector.”.
- (3) Before subsection (4) of that section insert—
  - “(3C) A reference in this Part to participating in the operation of an electricity interconnector is a reference to—
    - (a) co-ordinating and directing the flow of electricity into or through an electricity interconnector; or
    - (b) making such an interconnector available for use for the conveyance of electricity;and a person is not to be regarded as participating in the transmission of electricity by reason only of activities constituting participation in the operation of an electricity interconnector.
  - (3D) For the purposes of subsection (3C)(b), a person shall not be regarded as making something available just because he consents to its being made available by another.
  - (3E) In this Part “electricity interconnector” means so much of an electric line or other electrical plant as—
    - (a) is situated at a place within the jurisdiction of Great Britain; and
    - (b) subsists wholly or primarily for the purposes of the conveyance of electricity (whether in both directions or in only one) between Great Britain and a place within the jurisdiction of another country or territory.

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(3F) For the purposes of this section—

- (a) a place is within the jurisdiction of Great Britain if it is in Great Britain, in the territorial sea adjacent to Great Britain or in an area designated under section 1(7) of the Continental Shelf Act 1964; and
  - (b) a place is within the jurisdiction of another country or territory if it is in that country or territory or in waters in relation to which authorities of that country or territory exercise jurisdiction.”
- (4) In section 5(1) (power of the Secretary of State to grant exemptions from licensing), for “or (c)” substitute “, (c) or (d)”.
- (5) In section 6 (power to grant licences), after subsection (1)(d) insert “or
- (e) a licence authorising a person to participate in the operation of an electricity interconnector (“an interconnector licence”).”
- (6) After subsection (2) of that section insert—
- “(2A) The same person may not be the holder of an interconnector licence and the holder of a licence falling within any of paragraphs (a) to (d) of subsection (1).”
- (7) Before subsection (7) of that section insert—
- “(6C) An interconnector licence authorising participation in the operation of an electricity interconnector—
- (a) must specify the interconnector or interconnectors in relation to which participation is authorised; and
  - (b) may limit the forms of participation in the operation of an interconnector which are authorised by the licence.”

#### **146 Standard conditions for electricity interconnectors**

- (1) The Secretary of State must, before the commencement of subsection (6), determine standard conditions for electricity interconnector licences.
- (2) Those standard conditions may contain provision—
  - (a) for a standard condition included in an electricity interconnector licence not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in or determined under the standard conditions;
  - (b) for the effect of a standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
  - (c) for a standard condition included in such a licence the effect of which is for the time being suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined.
- (3) The Secretary of State must publish the standard conditions determined by him under this section.
- (4) The publication must be in such manner as the Secretary of State considers appropriate.

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(5) The standard conditions determined by the Secretary of State have effect subject to any modifications made under Part 1 of the 1989 Act or under this Act.

(6) Before subsection (2) of section 8A of the 1989 Act (standard conditions) insert—

“(1B) Subject to subsection (2), each condition which by virtue of section 146 of the Energy Act 2004 is a standard condition for the purposes of interconnector licences shall be incorporated, by reference, in each interconnector licence granted on or after the commencement of subsection (6) of that section.”

(7) In this section “electricity interconnector licence” means an interconnector licence under section 6(1)(e) of the 1989 Act.

#### **147 Consequential amendments of the 1989 Act**

(1) The 1989 Act is amended as follows.

(2) In section 3A—

- (a) in subsection (1) (principal objective of GEMA in relation to electricity), at the end insert “ or the provision or use of electricity interconnectors ”; and
- (b) in subsection (5)(a) (duty as to carrying out of functions), after “electricity”, where first occurring, insert “ or to participate in the operation of electricity interconnectors ”.

(3) In section 29 (regulations)—

- (a) in subsection (1)(b), after “electricity”, where first occurring, insert “ from the use of electricity interconnectors, ”;
- (b) in subsection (2)(b), after “electricity” insert “ or in the use of electricity interconnectors ”;
- (c) in subsection (2)(c), after “electricity” insert “ or to participate in the operation of an electricity interconnector ”.

(4) In section 30(2)(a) (duty of inspector to inspect apparatus belonging to licence holders), after “electricity” insert “ or to participate in the operation of electricity interconnectors ”.

(5) In section 43 (concurrent functions of GEMA and the OFT under the Enterprise Act 2002), in each of subsections (2A) and (3), after “electricity” insert “ or the use of electricity interconnectors ”.

(6) In section 58(2) (information protected by directions), after “electricity” insert “ or to participate in the operation of electricity interconnectors ”.

(7) In section 64(1) (interpretation), after the definitions of “electricity distributor” and “electricity supplier” insert—

““electricity interconnector” has the meaning given by section 4(3E);”.

(8) In section 98(1) (statistical information)—

- (a) after “electricity”, where first occurring, insert “ or the use of electricity interconnectors ”; and
- (b) at the end insert “ or to participate in the operation of electricity interconnectors ”.

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### **148 Grant of electricity interconnector licences to existing operators**

- (1) This section applies where a person is participating in the operation of an electricity interconnector at the time when the power of GEMA to grant electricity interconnector licences comes into force.
- (2) The Secretary of State shall have power to grant such a licence to that person under section 6 of the 1989 Act.
- (3) Sections 6A(5), 7 and 8A of the 1989 Act (notice of licence and licence conditions) shall have effect in relation to the grant of licences by the Secretary of State by virtue of this section as if—
  - (a) references in those sections to GEMA included references to the Secretary of State; and
  - (b) in section 8A, the words “the Secretary of State and” in subsection (4)(b) and subsection (5) were omitted.
- (4) Before granting a licence to a person by virtue of this section, the Secretary of State must consult—
  - (a) that person;
  - (b) GEMA; and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) Subsection (4) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (6) In this section—
 

“electricity interconnector licence” means an interconnector licence under section 6(1)(e) of the 1989 Act; and

“participating in the operation of an electricity interconnector” has the same meaning as in Part 1 of the 1989 Act.

#### *Gas interconnectors*

### **149 Operators of gas interconnectors to be licensed**

- (1) The Gas Act 1986 (c. 44) is amended as follows.
- (2) In subsection (1) of section 5 (prohibition on unlicensed activities)—
  - (a) in paragraph (a), at the beginning insert “ otherwise than by means of a gas interconnector ”; and
  - (b) after that paragraph insert—
 

“(aa) participates in the operation of a gas interconnector;”.
- (3) After subsection (5) of that section insert—
 

“(6) A reference in this Part to participating in the operation of a gas interconnector is a reference to—

  - (a) co-ordinating and directing the conveyance of gas into or through a gas interconnector; or
  - (b) making such an interconnector available for use for the conveyance of gas.

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- (7) For the purposes of subsection (6)(b) a person shall not be regarded as making something available just because he consents to its being made available by another.
- (8) In this Part “gas interconnector” means so much of any pipeline system as—
- (a) is situated at a place within the jurisdiction of Great Britain; and
  - (b) subsists wholly or primarily for the purposes of the conveyance of gas (whether in both directions or in only one) between Great Britain and another country or territory.
- (9) For the purposes of this section a place is within the jurisdiction of Great Britain if it is in Great Britain, in the territorial sea adjacent to Great Britain or in an area designated under section 1(7) of the Continental Shelf Act 1964.
- (10) In this section “pipe-line system” includes the pipes and any associated apparatus comprised in that system.”
- (4) In section 6A(1) (power of the Secretary of State to grant exemptions from licensing), after “paragraph (a)” insert “, (aa) ”.
- (5) In section 7(3) (no licence may be issued to holder of licence under section 7A), after “under section” insert “ 7ZA or ”.
- (6) After section 7 insert—

**“7ZA Licences for operation of gas interconnectors**

- (1) Subject to subsection (2), the Authority may grant a licence authorising any person to participate in the operation of a gas interconnector.
- (2) A licence shall not be granted under this section to a person who is the holder of a licence under section 7 or 7A.
- (3) A licence under this section—
  - (a) must specify the interconnector or interconnectors in relation to which participation is authorised; and
  - (b) may limit the forms of participation in the operation of an interconnector which are authorised by the licence.”
- (7) In section 7A(3) (no licence may be issued to holder of licence under section 7), after “section 7” insert “ or 7ZA ”.
- (8) In—
  - (a) the definitions of “licence” in sections 4AA(8) and 48(1), and
  - (b) section 36(1) and (2)(d),after “section 7” insert “, 7ZA ”.
- (9) In section 24(1A)(a) (references to the Competition Commission for licence modifications), after sub-paragraph (i) insert—

“(ia) licences under section 7ZA above,”.
- (10) In section 41C(4) (addition of activities to prohibited activities), after paragraph (a) insert—

“(aa) participation in the operation of a gas interconnector;”.

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- (11) In section 48(1) (interpretation) after the definition of “gas fittings” insert—  
 ““gas interconnector” has the meaning given by section 5(8);”.

### **150 Standard conditions for gas interconnectors**

- (1) The Secretary of State must, before the commencement of subsection (6) of this section, determine standard conditions for licences under section 7ZA of the Gas Act 1986 (c. 44).
- (2) Those standard conditions may contain provision—
  - (a) for a standard condition included in a licence under section 7ZA of the Gas Act 1986 not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in or determined under the standard conditions;
  - (b) for the effect of a standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
  - (c) for a standard condition included in such a licence the effect of which is for the time being suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined.
- (3) The Secretary of State must publish the standard conditions determined by him under this section.
- (4) The publication must be in such manner as the Secretary of State considers appropriate.
- (5) The standard conditions determined by the Secretary of State have effect subject to any modifications made under Part 1 of the Gas Act 1986 (c. 44) or under this Act.
- (6) In subsection (1) of section 8 of that Act (standard conditions)—
  - (a) after “2000” insert “ or section 150 of the Energy Act 2004 ”; and
  - (b) after paragraph (a) insert—
    - “(aa) licences under section 7ZA above;”.
- (7) After subsection (6) of that section insert—
 

“(6A) The Authority shall not make any modifications under subsection (3) above of a condition of a licence under section 7ZA unless it is of the opinion that the modifications are such that—

  - (a) the licence holder would not be unduly disadvantaged in competing with one or more other holders of licences under that section; and
  - (b) no other holder of a licence under that section would be unduly disadvantaged in competing with the holder of the licence to be modified or with any one or more other holders of licences under that section.”
- (8) In sections 23(1)(b) and (2), 26(1A) and 27(1)(b) and (2) of that Act (which relate to the modification of standard conditions), after “licences under section 7 above” insert “ , licences under section 7ZA above ”.
- (9) In sections 23(11) and 26(5) of that Act (which require the publication of modifications of standard conditions), after “section 7” insert “ , 7ZA ”.

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- (10) In section 26A(9) of that Act (which also relates to the modification of such conditions), after “section 7” insert “ or section 7ZA ”.

VALID FROM 14/08/2006

## 151 Disapplication of existing regimes

- (1) In each of sections 9(1A) and 9A(1A) of the Pipe-lines Act 1962 (c. 58) (pipe-lines to which provision for construction of additional pipe-lines do not apply), for “neither upstream petroleum pipe-lines nor gas pipe-lines” substitute “ not an upstream petroleum pipe-line, a gas pipe-line or a gas interconnector ”.
- (2) In section 10(1)(b)(ii) of that Act (pipe-lines excluded from provisions for securing use of pipelines), for “is not” substitute “ is neither comprised in a gas interconnector nor ”.
- (3) The following provisions of that Act shall cease to have effect—
- (a) section 10B (cases to which section 10C applies);
  - (b) in section 10C(1) the words “to which this section applies (a “relevant gas pipe-line”)”; and
  - (c) in section 10C(2) to (11), the word “relevant” wherever occurring.
- (4) In section 66(1) of that Act (interpretation)—
- (a) for the definition of “gas pipe-line” substitute—
    - ““gas pipe-line” means a pipe-line used to convey gas to premises, or to a pipe-line system operated by a gas transporter (within the meaning of Part 1 of the Gas Act 1986), which—
    - (a) is a pipe-line in respect of which an exemption has been granted by or under that Act from the requirement for a gas transporter’s licence; and
    - (b) is not comprised in an upstream petroleum pipe-line;”
  - (b) after the definition of “gas” insert—
    - ““gas interconnector” has the same meaning as in Part 1 of the Gas Act 1986;”
  - (c) in the definition of “owner”, for “10B” substitute “ 10C ”.
- (5) In the Petroleum Act 1998 (c. 17)—
- (a) in section 17(1A) (exceptions to application of provisions for acquisition of rights to use pipelines), for the words from “and” onwards substitute “ or to a gas interconnector (within the meaning of Part 1 of the Gas Act 1986). ”; and
  - (b) sections 17A and 17B (special rules for interconnectors) shall cease to have effect.

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## 152 Grant of gas interconnector licences to existing operators

- (1) This section applies where a person is participating in the operation of a gas interconnector at the time when the power of GEMA to grant licences under section 7ZA of the Gas Act 1986 (c. 44) comes into force.
- (2) The Secretary of State shall have power to grant a licence to that person under section 7ZA of the Gas Act 1986.
- (3) Sections 7B and 8 of the Gas Act 1986 (general provisions relating to licences and licence conditions) shall have effect in relation to the grant of licences by the Secretary of State by virtue of this section as if—
  - (a) references in those sections to GEMA included references to the Secretary of State;
  - (b) sections 7B(1), (2) and (2A) were omitted; and
  - (c) in section 8, the words “the Secretary of State, to” in subsection (5)(b) and subsection (6) were omitted.
- (4) Before granting a licence to a person by virtue of this section, the Secretary of State must consult—
  - (a) that person;
  - (b) GEMA; and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) Subsection (4) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (6) In this section “participating in the operation of a gas interconnector” has the same meaning as in Part 1 of the Gas Act 1986.

VALID FROM 14/08/2006

## 153 Extraterritorial application of Gas Act 1986

After section 64 of the Gas Act 1986 (c. 44) insert—

### “64A Extraterritorial operation of Act

- (1) Where by virtue of this Act an act or omission taking place outside Great Britain constitutes an offence, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain.
- (2) Provision made by or under this Act in relation to places outside Great Britain—
  - (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
  - (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of a part of the United Kingdom.”



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## CHAPTER 3

### SPECIAL ADMINISTRATION REGIME FOR ENERGY LICENSEES

#### *Energy administration orders*

#### **154 Energy administration orders**

- (1) In this Chapter “energy administration order” means an order which—
  - (a) is made by the court in relation to a protected energy company; and
  - (b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the court.
- (2) The person appointed in relation to a company for the purposes of an energy administration order is referred to in this Chapter as the energy administrator of the company.
- (3) The energy administrator of a company must manage its affairs, business and property, and exercise and perform all his powers and duties as such, so as to achieve the objective set out in section 155.
- (4) In relation to an energy administration order applying to a non-GB company, references in this section to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain.
- (5) In this Chapter—
  - “protected energy company” means a company which is the holder of a relevant licence; and
  - “relevant licence” means—
    - (a) a licence granted under section 6(1)(b) or (c) of the 1989 Act (transmission and distribution licences for electricity); or
    - (b) a licence granted under section 7 of the Gas Act 1986 (licensing of gas transporters).

#### **Commencement Information**

**I105** S. 154 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### **155 Objective of an energy administration**

- (1) The objective of an energy administration is to secure—
  - (a) that the company’s system is and continues to be maintained and developed as an efficient and economical system; and
  - (b) that it becomes unnecessary, by one or both of the following means, for the energy administration order to remain in force for that purpose.
- (2) Those means are—
  - (a) the rescue as a going concern of the company subject to the energy administration order; and
  - (b) transfers falling within subsection (3).

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- (3) A transfer falls within this subsection if it is a transfer as a going concern—
- (a) to another company, or
  - (b) as respects different parts of the undertaking of the company subject to the energy administration order, to two or more different companies,
- of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the energy administration.
- (4) The means by which transfers falling within subsection (3) may be effected include, in particular—
- (a) a transfer of the undertaking of the company subject to the energy administration order, or of a part of its undertaking, to a wholly-owned subsidiary of that company; and
  - (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).
- (5) The objective of an energy administration may be achieved by transfers falling within subsection (3) to the extent only that—
- (a) the rescue as a going concern of the company subject to the energy administration order is not reasonably practicable or is not reasonably practicable without such transfers;
  - (b) the rescue of that company as a going concern will not achieve that objective or will not do so without such transfers;
  - (c) such transfers would produce a result for the company’s creditors as a whole that is better than the result that would be produced without them; or
  - (d) such transfers would, without prejudicing the interests of those creditors as a whole, produce a result for the company’s members as a whole that is better than the result that would be produced without them.
- (6) In this section “the company’s system”, in relation to an energy administration, means—
- (a) the system of electricity distribution or of electricity transmission, or
  - (b) the pipe-line system for the conveyance of gas,
- which the company subject to the energy administration order has been maintaining as the holder of a relevant licence.
- (7) In this section “efficient and economical”, in relation to a system for electricity distribution or electricity transmission, includes co-ordinated.

**Commencement Information**

**I106** S. 155 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**156 Applications for energy administration orders**

- (1) An application for an energy administration order in relation to a company may be made only—
- (a) by the Secretary of State; or
  - (b) with the consent of the Secretary of State, by GEMA.

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- (2) The applicant for an energy administration order in relation to a company must give notice of the application to—
  - (a) every person who has appointed an administrative receiver of the company;
  - (b) every person who is or may be entitled to appoint an administrative receiver of the company;
  - (c) every person who is or may be entitled to make an appointment in relation to the company under paragraph 14 of Schedule B1 to the 1986 Act (appointment of administrators by holders of floating charges); and
  - (d) such other persons as may be prescribed by energy administration rules.
- (3) The notice must be given as soon as reasonably practicable after the making of the application.
- (4) In this section “administrative receiver” means—
  - (a) an administrative receiver within the meaning given by section 251 of the 1986 Act for the purposes of Parts 1 to 7 of that Act; or
  - (b) a person whose functions in relation to a non-GB company—
    - (i) are equivalent to those of an administrative receiver; and
    - (ii) relate only to the affairs and business of the company so far as carried on in Great Britain and to its property in Great Britain.

#### Commencement Information

**I107** S. 156 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 157 Powers of court

- (1) On hearing an application for an energy administration order, the court has the following powers—
  - (a) it may make the order;
  - (b) it may dismiss the application;
  - (c) it may adjourn the hearing conditionally or unconditionally;
  - (d) it may make an interim order;
  - (e) it may treat the application as a winding-up petition and make any order the court could make under section 125 of the 1986 Act (power of court on hearing winding-up petition);
  - (f) it may make any other order which the court thinks appropriate.
- (2) The court may make an energy administration order in relation to a company only if it is satisfied—
  - (a) that the company is unable to pay its debts;
  - (b) that it is likely to be unable to pay its debts; or
  - (c) that, on a petition by the Secretary of State under section 124A of the 1986 Act (petition for winding up on grounds of public interest), it would be just and equitable (disregarding the objective of the energy administration) to wind up the company in the public interest.
- (3) The court must not make an energy administration order in relation to a company on the ground set out in subsection (2)(c) unless the Secretary of State has certified to the court that the case is one in which he considers (disregarding the objective

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of the energy administration) that it would be appropriate for him to petition under section 124A of the 1986 Act.

- (4) The court has no power to make an energy administration order in relation to a company which—
  - (a) is in administration under Schedule B1 to the 1986 Act; or
  - (b) has gone into liquidation (within the meaning of section 247(2) of that Act).
- (5) An energy administration order comes into force—
  - (a) at the time appointed by the court; or
  - (b) if no time is so appointed, when the order is made.
- (6) An interim order under subsection (1)(d) may, in particular—
  - (a) restrict the exercise of a power of the company or of its directors; or
  - (b) make provision conferring a discretion on a person qualified to act as an insolvency practitioner in relation to the company.
- (7) Where the company in relation to which an application is made is a non-GB company, the reference in subsection (6)(a) to restricting the exercise of a power of the company or of its directors is a reference only to restricting the exercise of such a power—
  - (a) within Great Britain; or
  - (b) in relation to the company’s affairs or business so far as carried on in Great Britain, or to its property in Great Britain.
- (8) For the purposes of this section a company is unable to pay its debts if—
  - (a) it is a company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or
  - (b) it is an unregistered company which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding-up of unregistered companies), or which would be so deemed if it were an unregistered company for the purposes of those sections.

#### **Commencement Information**

**I108** S. 157 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## **158 Energy administrators**

- (1) The energy administrator of a company—
  - (a) is an officer of the court; and
  - (b) in exercising and performing his powers and duties in relation to the company, is the company’s agent.
- (2) The management by the energy administrator of a company of any affairs, business or property of the company must be carried out for the purpose of achieving the objective of the energy administration as quickly and as efficiently as is reasonably practicable.
- (3) The energy administrator of a company must exercise and perform his powers and duties in the manner which, so far as it is consistent with the objective of the energy administration to do so, best protects—
  - (a) the interests of the creditors of the company as a whole; and

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- (b) subject to those interests, the interests of the members of the company as a whole.
- (4) A person is not to be the energy administrator of a company unless he is a person qualified to act as an insolvency practitioner in relation to the company.
- (5) Where the court makes an appointment in a case in which two or more persons will be the energy administrator of a company after the appointment, the appointment must set out—
  - (a) which (if any) of the powers and duties of an energy administrator are to be exercisable or performed only by those persons acting jointly;
  - (b) the circumstances (if any) in which powers and duties of an energy administrator are to be exercisable, or may be performed, by one of the persons appointed to be the energy administrator, or by particular appointees, acting alone; and
  - (c) the circumstances (if any) in which things done in relation to one of the persons appointed to be the energy administrator, or in relation to particular appointees, are to be treated as done in relation to all of them.

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**Commencement Information**

**I109** S. 158 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## **159 Conduct of administration, transfer schemes etc.**

- (1) Schedule 20 (which applies the provisions of Schedule B1 to the 1986 Act about ordinary administration orders and certain other enactments to energy administration orders) has effect.
- (2) Schedule 21 (which makes provision for transfer schemes to achieve the objective of an energy administration) has effect.
- (3) The power to make rules conferred by section 411 of the 1986 Act (company insolvency rules) shall apply for the purpose of giving effect to this Chapter as it applies for the purpose of giving effect to Parts 1 to 7 of that Act and, accordingly, as if references in that section to those Parts included references to this Chapter.

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**Commencement Information**

**I110** S. 159 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### *Restrictions on other insolvency procedures*

## **160 Restrictions on winding-up orders**

- (1) This section applies where a petition for the winding-up of a protected energy company is presented by a person other than the Secretary of State.
- (2) The court is not to exercise its powers on a winding-up petition unless—
  - (a) notice of the petition has been served both on the Secretary of State and on GEMA; and

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- (b) a period of at least fourteen days has elapsed since the service of the last of those notices to be served.
- (3) If an application for an energy administration order in relation to the company is made to the court in accordance with section 156(1) before a winding-up order is made on the petition, the court may exercise its powers under section 157, instead of exercising its powers on a winding-up petition.
- (4) References in this section to the court's powers on a winding-up petition are references to—
  - (a) its powers under section 125 of the 1986 Act (other than its power of adjournment); and
  - (b) its powers under section 135 of that Act.

#### Commencement Information

**I111** S. 160 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### 161 Restrictions on voluntary winding up

- (1) A protected energy company has no power to pass a resolution for voluntary winding up without the permission of the court.
- (2) Such permission may be granted only on an application made by the company.
- (3) The court is not to grant permission on such an application unless—
  - (a) notice of the application has been served both on the Secretary of State and on GEMA; and
  - (b) a period of at least fourteen days has elapsed since the service of the last of those notices to be served.
- (4) If an application for an energy administration order in relation to the company is made to the court in accordance with section 156(1) after an application for permission under this section has been made and before it is granted, the court may exercise its powers under section 157, instead of granting permission.
- (5) In this section “a resolution for voluntary winding up” has the same meaning as in the 1986 Act.

#### Commencement Information

**I112** S. 161 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### 162 Restrictions on making of ordinary administration orders

- (1) This section applies where an ordinary administration application is made in relation to a protected energy company by a person other than the Secretary of State.
- (2) The court must dismiss the application if—
  - (a) an energy administration order is in force in relation to the company; or
  - (b) an energy administration order has been made in relation to the company but is not yet in force.

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- (3) Where subsection (2) does not apply, the court, on hearing the application, must not exercise its powers under paragraph 13 of Schedule B1 to the 1986 Act (other than its power of adjournment) unless—
  - (a) notice of the application has been served both on the Secretary of State and on GEMA;
  - (b) a period of at least fourteen days has elapsed since the service of the last of those notices to be served; and
  - (c) there is no application for an energy administration order that is outstanding.
- (4) Paragraph 44 of Schedule B1 to the 1986 Act (interim moratorium) does not prevent, or require the permission of the court for, the making of an application for an energy administration order.
- (5) Upon the making of an energy administration order in relation to a protected energy company, the court must dismiss any ordinary administration application made in relation to that company which is outstanding.
- (6) In this section “ordinary administration application” means an application in accordance with paragraph 12 of Schedule B1 to the 1986 Act.

#### Commencement Information

**I113** S. 162 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### 163 Restrictions on administrator appointments by creditors etc.

- (1) No step is to be taken by any person to make an appointment in relation to a company under paragraph 14 or 22 of Schedule B1 to the 1986 Act (powers of holder of floating charge and of the company itself and of its directors to appoint administrators) if—
  - (a) an energy administration order is in force in relation to the company;
  - (b) an energy administration order has been made in relation to the company but is not yet in force; or
  - (c) an application for such an order is outstanding.
- (2) In the case of a protected energy company to which subsection (1) does not apply, an appointment in relation to that company under paragraph 14 or 22 of Schedule B1 to the 1986 Act takes effect only if each of the conditions mentioned in subsection (3) is met.
- (3) Those conditions are—
  - (a) that a copy of every document in relation to the appointment that is filed or lodged with the court in accordance with paragraph 18 or 29 of Schedule B1 to the 1986 Act (documents to be filed or lodged for appointment of administrator) has been served both on the Secretary of State and on GEMA;
  - (b) that a period of fourteen days has elapsed since the service of the last of those copies to be served;
  - (c) that there is no outstanding application to the court for an energy administration order in relation to the company in question; and
  - (d) that the making of an application for such an order has not resulted in the making of an energy administration order which is in force or is still to come into force.

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- (4) Paragraph 44 of Schedule B1 to the 1986 Act (interim moratorium) does not prevent, or require the permission of the court for, the making of an application for an energy administration order at any time before the appointment takes effect.

**Commencement Information**

**I114** S. 163 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**164 Restrictions on enforcement of security**

- (1) No step to enforce a security over property of a protected energy company is to be taken by any person, unless—
- (a) notice of his intention to do so has been served both on the Secretary of State and on GEMA; and
  - (b) a period of at least fourteen days has elapsed since the service of the last of those notices to be served.
- (2) In the case of a protected energy company which is a non-GB company, the reference in subsection (1) to the property of the company is a reference only to its property in Great Britain.

**Commencement Information**

**I115** S. 164 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Financial support for companies in administration*

**165 Grants and loans**

- (1) This section applies where an energy administration order has been made in relation to a company.
- (2) The Secretary of State may make grants or loans to the company of such amounts as it appears to him appropriate to pay or lend for achieving the objective of the energy administration.
- (3) A grant or loan under this section may be made in whatever manner, and on whatever terms, the Secretary of State considers appropriate.
- (4) The terms on which a grant may be made under this section include, in particular, terms requiring the whole or a part of the grant to be repaid to the Secretary of State if there is a contravention of the other terms on which the grant is made.
- (5) The terms on which a loan may be made under this section include, in particular, terms requiring—
- (a) the loan to be repaid at such times and by such methods, and
  - (b) interest to be paid on the loan at such rates and at such times, as the Secretary of State may from time to time direct.
- (6) The consent of the Treasury is required—
- (a) for the making of a grant or loan under this section; and



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- (b) for the giving by the Secretary of State of a direction under subsection (5).
- (7) The Secretary of State must pay sums received by him by virtue of this section into the Consolidated Fund.

#### Commencement Information

**I116** S. 165 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 166 Indemnities

- (1) This section applies where an energy administration order has been made in relation to a company.
- (2) The Secretary of State may agree to indemnify persons in respect of one or both of the following—
  - (a) liabilities incurred in connection with the exercise and performance by the energy administrator of his powers and duties; and
  - (b) loss or damage sustained in that connection.
- (3) The agreement may be made in whatever manner, and on whatever terms, the Secretary of State considers appropriate.
- (4) If sums are paid by the Secretary of State in consequence of an indemnity agreed to under this section, the company must pay him—
  - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
  - (b) interest, at such rates as he may direct, on amounts outstanding under this subsection.
- (5) Payments to the Secretary of State under subsection (4) must be made at such times and in such manner as he may determine.
- (6) Subsection (4) does not apply in the case of a sum paid by the Secretary of State for indemnifying a person in respect of a liability to the company in relation to which the energy administration order was made.
- (7) The consent of the Treasury is required—
  - (a) for the doing of anything by the Secretary of State under subsection (2);
  - (b) for the giving by him of any direction under subsection (4); and
  - (c) for the making of a determination under subsection (5).
- (8) The power of the Secretary of State to agree to indemnify persons—
  - (a) is confined to a power to agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as relevant persons; but
  - (b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.
- (9) A person is a relevant person for the purposes of this section if he is—
  - (a) the energy administrator;
  - (b) an employee of the energy administrator;

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- (c) a member or employee of a firm of which the energy administrator is a member;
  - (d) a member or employee of a firm of which the energy administrator is an employee;
  - (e) a member of a firm of which the energy administrator was an employee or member at a time when the order was in force;
  - (f) a body corporate which is the employer of the energy administrator;
  - (g) an officer, employee or member of such a body corporate.
- (10) For the purposes of subsection (9)—
- (a) the references to the energy administrator are to be construed, where two or more persons are appointed to act as the energy administrator, as references to any one or more of them; and
  - (b) the references to a firm of which a person was a member or employee at a particular time include references to a firm which holds itself out to be the successor of a firm of which he was a member or employee at that time.
- (11) The Secretary of State must pay sums received by him by virtue of subsection (4) into the Consolidated Fund.

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**Commencement Information**

**II17** S. 166 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**167 Guarantees where energy administration order is made**

- (1) This section applies where an energy administration order has been made in relation to a company.
- (2) The Secretary of State may guarantee—
  - (a) the repayment of any sum borrowed by the company while the energy administration order is in force;
  - (b) the payment of interest on such a sum; and
  - (c) the discharge of any other financial obligation of the company in connection with the borrowing of such a sum.
- (3) The Secretary of State may give a guarantee under this section in such manner, and on such terms, as he thinks fit.
- (4) As soon as practicable after giving a guarantee under this section, the Secretary of State must lay a statement of the guarantee before Parliament.
- (5) If sums are paid out by the Secretary of State under a guarantee given under this section, the company must pay him—
  - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
  - (b) interest, at such rates as he may direct, on amounts outstanding under this subsection.
- (6) Payments to the Secretary of State under subsection (5) must be made at such times, and in such manner, as he may from time to time direct.

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- (7) Where a sum has been paid out by the Secretary of State under a guarantee given under this section, he must lay a statement relating to that sum before Parliament—
  - (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
  - (b) as soon as practicable after the end of each subsequent relevant financial year.
- (8) In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for the purposes of subsection (7) unless—
  - (a) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under subsection (5); and
  - (b) the company in question is not at any time during that year subject to liability to pay interest on amounts that became due under that subsection in respect of that sum.
- (9) The consent of the Treasury is required—
  - (a) for the giving of a guarantee under this section; and
  - (b) for the giving by the Secretary of State of a direction under subsection (5) or (6).
- (10) The Secretary of State must pay sums received by him by virtue of subsection (5) into the Consolidated Fund.

**Commencement Information**

**I118** S. 167 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Licence modifications relating to energy administration*

**168 Modifications of particular or standard conditions**

- (1) Where the Secretary of State considers it appropriate to do so in connection with the provision made by this Chapter, he may make—
  - (a) modifications of the conditions of a gas or electricity licence held by a particular person;
  - (b) modifications of the standard conditions of such licences of any type.
- (2) The power to make modifications under this section includes power to make incidental, consequential or transitional modifications.
- (3) Before making a modification under this section, the Secretary of State must consult—
  - (a) the holder of any licence being modified; and
  - (b) such other persons as he considers appropriate.
- (4) Subsection (3) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (5) The Secretary of State must publish every modification made by him under this section.
- (6) The publication must be in such manner as the Secretary of State considers appropriate.

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- (7) A modification under subsection (1)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1989 Act or Part 1 of the Gas Act 1986 (c. 44).
- (8) Where the Secretary of State makes modifications under subsection (1)(b) of the standard conditions of licences of any type, GEMA must—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.
- (9) The Secretary of State’s powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.
- (10) In section 81(2) of the Utilities Act 2000 (c. 27) (standard conditions of licences under Part 1 of the Gas Act), for “such modifications of the conditions made under Part I of the 1986 Act” substitute “any modifications made under Part 1 of the 1986 Act or under the Energy Act 2004”.
- (11) In this section “gas or electricity licence” means a licence for the purposes of section 5 of the Gas Act 1986 (c. 44) or section 4 of the 1989 Act (prohibition on unlicensed activities).

#### Commencement Information

**I119** S. 168 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### 169 Licence conditions to secure funding of energy administration

- (1) The modifications that may be made under section 168 include, in particular, modifications imposing conditions requiring the holder of the licence—
  - (a) so to modify the charges imposed by him for anything done by him in the carrying on of the licensed activities as to raise such amounts as may be determined by or under the conditions; and
  - (b) to pay the amounts so raised to such persons as may be so determined for the purpose of—
    - (i) their applying those amounts in making good any shortfall in the property available for meeting the expenses of an energy administration; or
    - (ii) enabling those persons to secure that those amounts are so applied.
- (2) Those modifications may include modifications imposing on the licence holder an obligation to apply amounts paid to him in pursuance of conditions falling within subsection (1)(a) or (b) in making good any such shortfall.
- (3) For the purposes of this section—
  - (a) there is a shortfall in the property available for meeting the costs of an energy administration if, in a case where a company is or has been subject to an energy administration order, the property available (apart from conditions falling within subsection (1) or (2)) for meeting relevant debts is insufficient for meeting them; and

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- (b) amounts are applied in making good that shortfall if they are paid in or towards discharging so much of a relevant debt as cannot be met out of the property otherwise available for meeting relevant debts.
- (4) In this section “relevant debt”, in relation to a case in which a company is or has been subject to an energy administration order, means an obligation—
- (a) to make payments in respect of the expenses or remuneration of any person as the energy administrator of that company;
  - (b) to make a payment in discharge of a debt or liability of that company arising out of a contract entered into at a time when the order was in force by the person who at that time was the energy administrator of that company;
  - (c) to repay the whole or a part of a grant made to that company under section 165;
  - (d) to repay a loan made to the company under that section, or to pay interest on such a loan;
  - (e) to make a payment under section 166(4); or
  - (f) to make a payment under section 167(5).

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**Commencement Information**

**I120** S. 169 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Supplemental provision of Chapter 3 of Part 3*

**170 Modification of Chapter 3 of Part 3 under Enterprise Act 2002**

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 (c. 40) mentioned in subsection (2) includes power to make such consequential modifications of this Chapter as he considers appropriate in connection with any other provision made under that section.
- (2) Those sections are—
  - (a) sections 248 and 277 (amendments consequential on that Act); and
  - (b) section 254 (power to apply insolvency law to foreign companies).

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**Commencement Information**

**I121** S. 170 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**171 Interpretation of Chapter 3 of Part 3**

- (1) In this Chapter—
  - “the 1986 Act” means the Insolvency Act 1986 (c. 45);
  - “business”, “member”, “property” and “security” have the same meanings as in the 1986 Act;
  - “company” means—
    - (a) a company formed and registered under the Companies Act 1985 (c. 6);
    - (b) an existing company; or
    - (c) an unregistered company;

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“court”—

- (a) in relation to a company other than a Northern Irish joint stock company, means the court having jurisdiction to wind up the company; and
- (b) in relation to a Northern Irish joint stock company, means the court that would have jurisdiction to wind it up if it were an unregistered company within the meaning of Part 5 of the 1986 Act;

“energy administration order” has the meaning given by section 154(1);

“energy administration rules” means rules made under section 411 of the 1986 Act by virtue of section 159(3) of this Act;

“energy administrator” has the meaning given by section 154(2) and is to be construed in accordance with subsection (2) of this section;

“non-GB company” means an unregistered company incorporated outside Great Britain;

“objective of the energy administration” is to be construed in accordance with section 155;

“protected energy company” has the meaning given by section 154(5);

“relevant licence” has the meaning given by section 154(5);

“unregistered company” means—

- (a) an unregistered company within the meaning of Part 5 of the 1986 Act; or
- (b) a Northern Irish joint stock company.

(2) In this Chapter references to the energy administrator of a company—

- (a) include references to a person appointed under paragraph 91 or 103 of Schedule B1 to the 1986 Act, as applied by Part 1 of Schedule 20 to this Act, to be the energy administrator of that company; and
- (b) where two or more persons are appointed to be the energy administrator of that company, are to be construed in accordance with the provision made under section 158(5).

(3) References in this Chapter to a person qualified to act as an insolvency practitioner in relation to a company are to be construed in accordance with Part 13 of the 1986 Act (insolvency practitioners and their qualifications); but as if references in that Part to a company included references to a Northern Irish joint stock company.

(4) For the purposes of this Chapter an application made to the court is outstanding if it—

- (a) has not yet been granted or dismissed; and
- (b) has not been withdrawn.

(5) For the purposes of subsection (4) an application is not to be taken as having been dismissed if an appeal against the dismissal of the application, or a subsequent appeal, is pending.

(6) An appeal shall be treated as pending for the purposes of subsection (5) if—

- (a) such an appeal has been brought and has been neither determined nor withdrawn;
- (b) an application for permission to appeal has been made but has not been determined or withdrawn; or
- (c) no such appeal has been brought and the period for bringing an appeal is still running.

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- (7) References in this Chapter to Schedule B1 to the 1986 Act, or to a provision of that Schedule (except the references in subsection (2) of this section), are references to that Schedule or that provision without the modifications made by Part 1 of Schedule 20 to this Act.
- (8) In this section—
- “existing company” has the same meaning as in the Companies Act 1985 (c. 6) (see section 735(1) of that Act);
- “Northern Irish joint stock company” means a company registered in Northern Ireland under the Joint Stock Companies Acts (as defined in section 735(3) of the Companies Act 1985).

**Commencement Information**

**I122** S. 171 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**CHAPTER 4**

FURTHER PROVISIONS ABOUT REGULATION

*Security of supply*

**172 Annual report on security of energy supplies**

- (1) The Secretary of State must, in 2005 and in every subsequent calendar year—
- publish a report dealing, as regards both the short term and the long term, with the availability of electricity and gas for meeting the reasonable demands of consumers in Great Britain; and
  - lay that report before Parliament.
- (2) The report must include, in particular, overall assessments, as regards both the short term and the long term, of each of the following—
- generating capacity in Great Britain and its offshore waters so far as it will be utilised for generating electricity for introduction into transmission systems in Great Britain;
  - the availability of capacity in those systems and in distribution systems in Great Britain for transmitting and distributing electricity for supply to consumers in Great Britain;
  - the availability of capacity in infrastructure in Great Britain for use in connection with the introduction of gas into licensed pipe-line systems in Great Britain; and
  - the availability of capacity in those systems for conveying gas to consumers in Great Britain.
- (3) The report must be prepared jointly by the Secretary of State and GEMA.
- (4) In this section—
- “consumers” includes both existing and future consumers;

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“distributing”, “distribution system”, “transmission system” and “transmitting” have the same meanings as in Part 1 of the 1989 Act;

“gas” and “gas transporter” have the same meanings as in Part 1 of the Gas Act 1986 (c. 44);

“infrastructure” includes pipe-line systems, terminals and other facilities but does not include licensed pipe-line systems;

“licensed pipe-line system” means a pipe-line system that is operated by a gas transporter for the conveyance of gas to any premises or another pipe-line system as authorised by his licence under section 7 of that Act;

“offshore waters” means, in relation to Great Britain—

- (a) so much of the territorial sea of the United Kingdom as is adjacent to Great Britain; and
- (b) waters in a Renewable Energy Zone (within the meaning of Chapter 2 of Part 2 of this Act).

#### **Commencement Information**

**I123** S. 172 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### *Appeals from GEMA decisions*

#### **173 Appeals to the Competition Commission**

- (1) An appeal shall lie to the Competition Commission from a decision by GEMA to which this section applies.
- (2) This section applies to a decision by GEMA if—
  - (a) it is a decision relating to a document by reference to which provision is made by a condition of a gas or electricity licence;
  - (b) that document is designated for the purposes of this section by an order made by the Secretary of State;
  - (c) the decision consists in the giving or refusal of a consent by virtue of which the document has effect, or would have had effect, for the purposes of the licence with modifications or as reissued; and
  - (d) the decision is not of a description of decisions for the time being excluded from the right of appeal under this section by an order made by the Secretary of State.
- (3) An appeal against a decision may be brought under this section only by—
  - (a) a person whose interests are materially affected by it; or
  - (b) a body or association whose functions are or include representing persons in respect of interests of theirs that are so affected.
- (4) The permission of the Competition Commission is required for the bringing of an appeal under this section.
- (5) The Competition Commission may refuse permission only on one of the following grounds—
  - (a) that the appeal is brought for reasons that are trivial or vexatious;
  - (b) that the appeal has no reasonable prospect of success.



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- (6) Before making an order under this section, the Secretary of State must consult—
  - (a) GEMA; and
  - (b) such other persons as he considers appropriate.
- (7) An order excluding decisions from the right of appeal under this section may provide—
  - (a) for the exclusion to apply only in such cases as may be determined in accordance with the order; and
  - (b) for a determination in accordance with the order to be made by such persons, in accordance with such procedures, and by reference to such matters and the opinions of such persons (including GEMA), as may be provided for in the order.
- (8) An order made by the Secretary of State under this section is subject to the negative resolution procedure.
- (9) In this section—
  - “consent” includes an approval or direction;
  - “gas or electricity licence” means a licence for the purposes of section 5 of the Gas Act 1986 (c. 44) or section 4 of the 1989 Act (prohibition on unlicensed activities).

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**Commencement Information**

**I124** S. 173 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 174 Procedure on appeals

- (1) The functions of the Competition Commission with respect to appeals under section 173 of this Act are not to be regarded as comprised in its general functions for the purposes of Part 2 of Schedule 7 to the Competition Act 1998 (c. 41) (manner in which general functions are to be carried out).
- (2) Instead, Schedule 22 (procedure on appeals) has effect.

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**Commencement Information**

**I125** S. 174 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 175 Determination of appeals

- (1) This section applies to every appeal brought under section 173 of this Act.
- (2) In determining the appeal the Competition Commission must have regard, to the same extent as is required of GEMA, to the matters to which GEMA must have regard—
  - (a) in the carrying out of its principal objectives under section 4AA of the Gas Act 1986 (c. 44) and section 3A of the 1989 Act (principal objectives and general duties);
  - (b) in the performance of its duties under those sections; and

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- (c) in the performance of its duties under sections 4AB and 4A of that Act of 1986 and sections 3B and 3C of the 1989 Act (environmental and health and safety considerations).
- (3) In determining the appeal the Competition Commission—
- (a) may have regard to any matter to which GEMA was not able to have regard in the case of the decision appealed against; but
  - (b) must not, in the exercise of that power, have regard to any matter to which GEMA would not have been entitled to have regard in that case had it had the opportunity of doing so.
- (4) The Competition Commission may allow the appeal only if it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
- (a) that GEMA failed properly to have regard to the matters mentioned in subsection (2);
  - (b) that GEMA failed properly to have regard to the purposes for which the relevant condition has effect;
  - (c) that GEMA failed to give the appropriate weight to one or more of those matters or purposes;
  - (d) that the decision was based, wholly or partly, on an error of fact;
  - (e) that the decision was wrong in law.
- (5) Where the Competition Commission does not allow the appeal, it must confirm the decision appealed against.
- (6) Where it allows the appeal, it must do one or more of the following—
- (a) quash the decision appealed against;
  - (b) remit the matter to GEMA for reconsideration and determination in accordance with the directions given by the Competition Commission;
  - (c) where it quashes the refusal of a consent, give directions to GEMA, and to such other persons as it considers appropriate, for securing that the relevant condition has effect as if the consent had been given.
- (7) A person shall not be directed under subsection (6) to do anything that he would not have power to do apart from the direction.
- (8) A person to whom a direction is given under subsection (6) must comply with it; and such a direction given to a person other than GEMA shall be enforceable as if it were an order of the High Court or (in Scotland) of the Court of Session.
- (9) The decision of the Competition Commission on the appeal—
- (a) must be contained in an order made by the Commission;
  - (b) must set out the reasons for the decision;
  - (c) takes effect at the time specified in the order or determined in accordance with provision set out in that order;
  - (d) must be notified by the Commission to the persons who (within the meaning of Schedule 22) were parties to the appeal; and
  - (e) must be published by the Commission in such manner as it considers appropriate for bringing it to the attention of other persons likely to be affected by it.
- (10) The Competition Commission may exclude from what it publishes under subsection (9)(e) any information which it is satisfied is—

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- (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;
- (b) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interests.

(11) In this section—

“consent” includes an approval or direction; and  
“the relevant condition”, in relation to a decision, means the licence condition the provisions of which have effect by reference to the document to which the decision relates.

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**Commencement Information**

**I126** S. 175 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 176 Specialist members of Competition Commission

The Competition Commission’s functions with respect to appeals under section 173 of this Act shall be treated as included in—

- (a) the functions for the purposes of which members of the Competition Commission are appointed under subsection (1) of section 104 of the Utilities Act 2000 (c. 27) (specialist members); and
- (b) the functions for the purposes of which the members appointed under that subsection before the commencement of this section were appointed.

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**Commencement Information**

**I127** S. 176 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

VALID FROM 01/11/2005

*Funding of appeals and references*

## 177 Modifications of standard conditions for funding appeals and references

- (1) Where the Secretary of State considers it appropriate to do so—
- (a) in connection with the provision made by sections 173 to 175 and Schedule 22, or
  - (b) in relation to references to the Competition Commission under section 24 of the Gas Act 1986 (c. 44) or section 12 of the 1989 Act (modification references),
- he may make licence modifications falling within subsection (2).
- (2) Those licence modifications are—
- (a) modifications of so much of the standard conditions of gas or electricity licences of any type as relates to licence charges; and
  - (b) such incidental, consequential or transitional modifications in connection with modifications falling within paragraph (a) as he thinks fit.

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- (3) Where the standard conditions of gas or electricity licences contain provision authorising the imposition of licence charges in respect of costs incurred by the Competition Commission in connection with a reference mentioned in subsection (1) (b)—
  - (a) the Competition Commission shall have power, on such a reference, to give directions to GEMA about the manner in which the Competition Commission’s costs in connection with that reference are to be recovered by means of such charges; and
  - (b) GEMA must comply with any such directions.
- (4) Before making a modification under this section that applies to licences of any type, the Secretary of State must consult—
  - (a) the holders of the licences; and
  - (b) such other persons as he considers appropriate.
- (5) Subsection (4) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (6) The Secretary of State must publish every modification made by him under this section.
- (7) The publication must be in such manner as the Secretary of State considers appropriate.
- (8) Where the Secretary of State makes modifications under this section of the standard conditions of licences of any type, GEMA must—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.
- (9) The Secretary of State’s powers under this section are exercisable only during the three months beginning with the commencement of this section.
- (10) In this section—
 

“gas or electricity licence” has the same meaning as in section 173; and  
 “licence charges” means payments which—

  - (a) under the conditions of a gas or electricity licence, are required to be paid on the grant or during the currency of the licence by the licence holder; and
  - (b) are payments of amounts determined by or under the licence.

*Best practice*

**178 Duty to have regard to best regulatory practice**

In each of section 4AA of the Gas Act 1986 (c. 44) and section 3A of the 1989 Act (principal objective and general duties), after subsection (5) insert—

- “(5A) In carrying out their respective functions under this Part in accordance with the preceding provisions of this section the Secretary of State and the Authority must each have regard to—

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- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
- (b) any other principles appearing to him or, as the case may be, it to represent the best regulatory practice.”

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**Commencement Information**

**I128** S. 178 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

VALID FROM 01/04/2006

*Meaning of electricity supply and high voltage lines*

**179** **Meaning of electricity supply**

- (1) For the definition of “supply” in section 4(4) of the 1989 Act, substitute—
  - ““supply”, in relation to electricity, means its supply to premises in cases where—
    - (a) it is conveyed to the premises wholly or partly by means of a distribution system, or
    - (b) (without being so conveyed) it is supplied to the premises from a substation to which it has been conveyed by means of a transmission system,but does not include its supply to premises occupied by a licence holder for the purpose of carrying on activities which he is authorised by his licence to carry on;”.
- (2) In each of the provisions specified in subsection (3) (which all refer to electricity conveyed by distribution systems), after “distribution systems” insert “ or transmission systems ”.
- (3) Those provisions are—
  - (a) section 3A(1), (5)(a) and (7) of the 1989 Act (principal objectives and general duties applying to electricity regulation);
  - (b) section 46A(1) of that Act (investigations by the Consumer Council);
  - (c) section 48(1) of that Act (publication of information and advice);
  - (d) section 4AA(4)(a) of the Gas Act 1986 (principal objectives and general duties applying to gas regulation); and
  - (e) section 17(1) of the Utilities Act 2000 (c. 27) (functions of the Consumer Council).
- (4) An order under section 198 for bringing into force provisions of this section may contain any such transitional provision in connection with bringing those provisions into force as the Secretary of State thinks appropriate.
- (5) The transitional provision that may be included in an order under subsection (4) includes provision which has effect by reference to determinations made in accordance with that provision by a person specified in the order.

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VALID FROM 29/07/2010

### 180 Meaning of “high voltage line”

- (1) In subsection (1) of section 64 of the 1989 Act (interpretation of Part 1), for the definitions of “high voltage line” and “low voltage line” substitute—

““high voltage line” means an electric line which—

- (a) if it is in Scotland or is a relevant offshore line (as defined in subsection (1A)), is of a nominal voltage of 132 kilovolts or more; and
- (b) in any other case, is of a nominal voltage of more than 132 kilovolts,

and “low voltage line” shall be construed accordingly;”.

- (2) After that subsection insert—

“(1A) An electric line is a relevant offshore line for the purposes of the definition in subsection (1) of “high voltage line” if—

- (a) it is in an area of the territorial sea adjacent to the United Kingdom or an area designated under section 1(7) of the Continental Shelf Act 1964; and
- (b) it is used—
  - (i) to convey electricity to a place in Scotland; or
  - (ii) to convey, to any other place, electricity generated by a generating station that is situated in an area mentioned in paragraph (a).”

### *Metering*

### 181 Prepayment meters

- (1) In Schedule 2B to the Gas Act 1986 (c. 44) (which sets out the gas code), for paragraph 6A substitute—

“6A (1) A pre-payment meter installed by an authorised supplier through which a consumer takes his supply of gas shall not be used to recover a sum unless—

- (a) the sum is owed to an authorised supplier in respect of the supply of gas to the premises on which the meter is installed or in respect of the provision of the meter; or
- (b) the recovery of the sum in that manner is permitted by both—
  - (i) regulations made by the Authority; and
  - (ii) an agreement falling within sub-paragraph (2) below between the consumer and the person to whom the sum is owed.

- (2) An agreement falls within this sub-paragraph if—

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- (a) the person to whom the sum is owed is a person who is authorised by regulations made by the Authority to enter into agreements falling within this sub-paragraph;
    - (b) the agreement permits that person to use the meter in question to recover such sums as may be specified in or determined under the agreement; and
    - (c) the agreement complies with the requirements specified for the purposes of this sub-paragraph by regulations made by the Authority.
  - (3) The sums that regulations under this paragraph may permit the recovery of through a pre-payment meter include—
    - (a) sums owed to a person other than an authorised supplier;
    - (b) sums owed in respect of premises other than the premises on which the meter is installed;
    - (c) sums owed in respect of matters other than the supply of gas.
  - (4) Before making regulations under this paragraph the Authority must consult—
    - (a) the Council;
    - (b) all authorised suppliers;
    - (c) such other persons as the Authority considers appropriate.
  - (5) The approval of the Secretary of State is required for the making of regulations under this paragraph.”
- (2) In paragraph 12 of Schedule 7 to the 1989 Act (use of pre-payment meters), for sub-paragraph (2) substitute—
- “(2) A pre-payment meter installed by an authorised supplier through which a customer of such a supplier takes his supply of electricity shall not be used to recover a sum unless—
- (a) the sum is owed to an authorised supplier in respect of the supply of electricity to the premises on which the meter is installed or in respect of the provision of the meter; or
  - (b) the recovery of the sum in that manner is permitted by both—
    - (i) regulations; and
    - (ii) an agreement falling within sub-paragraph (3) below between the customer and the person to whom the sum is owed.
- (3) An agreement falls within this sub-paragraph if—
- (a) the person to whom the sum is owed is a person who is authorised by regulations to enter into agreements falling within this sub-paragraph;
  - (b) the agreement permits that person to use the meter in question to recover such sums as may be specified in or determined under the agreement; and
  - (c) the agreement complies with the requirements specified for the purposes of this sub-paragraph by regulations.

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- (4) The sums that regulations under this paragraph may permit the recovery of through a pre-payment meter include—
- (a) sums owed to a person other than an authorised supplier;
  - (b) sums owed in respect of premises other than the premises on which the meter is installed;
  - (c) sums owed in respect of matters other than the supply of electricity.
- (5) Before making regulations under this paragraph the Authority must consult—
- (a) the Council;
  - (b) all authorised suppliers;
  - (c) such other persons as the Authority considers appropriate.”

#### Commencement Information

**I129** S. 181 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

VALID FROM 06/04/2007

#### *Inquiries under ss. 36 and 37 of the 1989 Act*

#### **182 Additional inspectors**

- (1) In Schedule 8 to the 1989 Act (procedure for consents under sections 36 and 37 relating to the installation of generating stations and electric lines), after paragraph 5 insert—

##### “Additional inspectors

- 5A (1) This paragraph applies in the case of—
- (a) a public inquiry in England and Wales by virtue of paragraph 2(2) or 3(2); or
  - (b) a public inquiry in England and Wales which is a combination under section 62 of this Act into one inquiry—
    - (i) of two or more such inquiries; or
    - (ii) of one or more such inquiries and one or more other inquiries.
- (2) At any time after appointing a person to hold the inquiry (“the lead inspector”), the Secretary of State may direct him—
- (a) to consider such matters relating to the conduct of the inquiry as are specified in the direction; and
  - (b) to make recommendations to the Secretary of State about those matters.
- (3) After considering the recommendations of the lead inspector, the Secretary of State may—



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- (a) appoint for the purposes of the inquiry such number of additional inspectors as he thinks appropriate; and
  - (b) direct that each additional inspector must consider such of the matters to which the inquiry relates as are allocated to him by the lead inspector.
- (4) An additional inspector must—
- (a) comply with every direction as to procedural matters given to him by the lead inspector; and
  - (b) report to the lead inspector on every matter allocated to him.
- (5) It is to be for the lead inspector to report to the Secretary of State on the consideration of both—
- (a) the matters which he considered himself; and
  - (b) the matters the consideration of which was allocated to additional inspectors.
- (6) The power of the Secretary of State to give directions to the lead inspector may be exercised on one or more different occasions after the appointment of the lead inspector.
- (7) Accordingly—
- (a) the recommendations that may be made by the lead inspector following such a direction include, in particular, a recommendation for varying the number of additional inspectors; and
  - (b) the power of the Secretary of State to appoint an additional inspector includes power to revoke such an appointment.
- (8) A direction by any person under this paragraph may be varied or revoked by a subsequent direction by that person.”
- (2) This section does not extend to Scotland.

*Confidential information*

**183 Exclusion of confidential information from registers**

- (1) In section 36 of the Gas Act 1986 (c. 44) (register to be kept by GEMA), after subsection (2) insert—
- “(2A) The Authority may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as it considers it appropriate to exclude for the purpose of maintaining the confidentiality of—
- (a) matters relating to the affairs of an individual the publication of which would or might, in its opinion, seriously and prejudicially affect the interests of that individual; and
  - (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Authority’s opinion, seriously and prejudicially affect the interests of that body.”
- (2) In subsection (2) of that section, after “Subject to” insert “ subsection (2A) and to ”.

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- (3) For section 49(3) of 1989 Act (matters needing to be excluded so far as practicable from register to be kept by GEMA) substitute—

“(3) The Authority may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as it considers it appropriate to exclude for the purpose of maintaining the confidentiality of—

- (a) matters relating to the affairs of an individual the publication of which would or might, in its opinion, seriously and prejudicially affect the interests of that individual; and
- (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Authority’s opinion, seriously and prejudicially affect the interests of that body.”

**Commencement Information**

**I130** S. 183 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Areas with high distribution or transmission costs*

**184 Assistance for areas with high distribution costs**

- (1) If it appears to the Secretary of State—
- (a) that the costs of distributing electricity within a particular area of Great Britain are significantly higher (when calculated on a per customer basis) than in other areas of Great Britain, and
  - (b) that within that area there are at least 100,000 premises that are connected to the same distribution system,
- he may make an order under this section.
- (2) An order under this section is one that establishes a scheme which—
- (a) requires authorised transmitters to make a payment each year to relevant distributors distributing electricity in that area of Great Britain of such amount as may be determined in accordance with provision contained in the scheme;
  - (b) requires the charges imposed by the authorised transmitters on authorised suppliers to be adjusted in accordance with the scheme for the purpose of enabling the transmitters to make that payment; and
  - (c) requires relevant distributors in receipt of a payment under the order to secure, in accordance with the order, that the benefit of the payment is passed to the authorised suppliers supplying electricity in the area of Great Britain in question.
- (3) An order under this section establishing a scheme in relation to the distribution of electricity within a particular area must specify the area.
- (4) For the purpose of facilitating the implementation of a scheme for which an order under this section provides, such an order may make such modifications as the Secretary of State considers appropriate of the conditions of the licences of authorised suppliers, of authorised transmitters and of authorised distributors.

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- (5) For the purpose of carrying out the functions conferred on him by or under this section the Secretary of State may require—
- (a) an authorised supplier,
  - (b) an authorised distributor, or
  - (c) an authorised transmitter,
- to supply him, in a specified form and within a specified time, with information of a specified description.
- (6) No person may be required under this section to supply information he could not be compelled to give in evidence in civil proceedings in the High Court or the Court of Session.
- (7) Before making an order under this section, the Secretary of State must consult such persons as he considers appropriate.
- (8) Subsection (7) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (9) An order under this section is subject to the negative resolution procedure.
- (10) Where a scheme established under this section in relation to the distribution of electricity within a particular area is in force, no scheme shall be established under this section in relation to the distribution of electricity outside that area.
- (11) Where a scheme is established under this section, it shall be the duty of the Secretary of State to carry out a review of that scheme—
- (a) three years after its establishment; and
  - (b) thereafter at three yearly intervals.
- (12) Part 1 of the 1989 Act shall have effect as if every requirement or other duty imposed on a licence holder under this section were a relevant requirement within the meaning of that Part (see section 25(8) of that Act).
- (13) In this section—
- “authorised distributor” and “authorised supplier” have the same meanings as in Part 1 of the 1989 Act;
  - “authorised transmitter” means a person authorised by a licence under section 6(1)(b) of that Act to participate in the transmission of electricity;
  - “distributing”, “distribution” and “distribution system” have the same meanings as in Part 1 of that Act;
  - “licence” means a licence for the purposes of section 4 of that Act;
  - “licence holder” has the same meaning as in Part 1 of that Act;
  - “premises” has the same meaning as in Part 1 of that Act;
  - “relevant distributor” means an authorised distributor who distributes electricity by means of a distribution system to which at least 100,000 premises are connected.

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#### Commencement Information

**I131** S. 184 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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*Status: Point in time view as at 05/10/2004. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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)*

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## **185 Adjustment of transmission charges**

- (1) The Secretary of State may make an order under this section if it appears to him—
  - (a) that a particular area of Great Britain is suitable as a location for the generation of electricity from renewable sources;
  - (b) that, as a result, that area represents an area of high potential for the development of the generation of electricity from such sources; and
  - (c) that that development is likely to be deterred, or otherwise hindered in a material respect, by the level of charges that would (apart from the order) be imposed by authorised transmitters on persons generating electricity in that area from renewable sources.
- (2) An order under this section is one that establishes a scheme which—
  - (a) limits the amounts of charges that authorised transmitters may impose on persons so generating electricity in that area to amounts determined in accordance with provision contained in the scheme; and
  - (b) requires the charges imposed by the authorised transmitters on authorised suppliers to be adjusted in accordance with the scheme for the purpose of making good shortfalls resulting from that limitation.
- (3) An order under this section establishing a scheme in relation to the generation of electricity from renewable sources in a particular area must specify the area.
- (4) For the purpose of facilitating the implementation of a scheme an order under this section may make such modifications as the Secretary of State considers appropriate of the conditions of the licences of authorised transmitters and of authorised suppliers.
- (5) For the purpose of carrying out the functions conferred on him by or under this section the Secretary of State may require—
  - (a) an authorised supplier,
  - (b) an authorised distributor, or
  - (c) an authorised transmitter,
 to supply him, in a specified form and within a specified time, with information of a specified description.
- (6) No person may be required under subsection (5) to supply information he could not be compelled to give in evidence in civil proceedings in the High Court or the Court of Session.
- (7) Before making an order under this section the Secretary of State must—
  - (a) publish a draft of any scheme proposed to be established by the order;
  - (b) publish an assessment of the costs likely to be incurred by different persons in consequence of the order; and
  - (c) consult authorised suppliers and such other persons likely to be affected by the order as he considers appropriate.
- (8) An assessment published under subsection (7)(b) must set out, in particular, the Secretary of State’s assessment of the likely effect of the order on charges for electricity in Great Britain.
- (9) Subsection (7) may be satisfied by publications and consultation taking place wholly or partly before the commencement of this section.

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- (10) Where a scheme in relation to the generation of electricity from renewable sources within a particular area is in force, no scheme shall be established in relation to the generation of electricity from renewable sources outside that area.
- (11) A scheme shall not be applied in relation to a time more than ten years after the commencement of this section.
- (12) A scheme—
- (a) shall not be applied for a period of more than five years; but
  - (b) subject to subsection (11), may be renewed at any time by a further order under this section for a period of no more than five years from the coming into force of the further order.
- (13) Part 1 of the 1989 Act shall have effect as if every requirement or other duty imposed on a licence holder under this section were a relevant requirement within the meaning of that Part (see section 25(8) of that Act).
- (14) In this section—
- “authorised distributor” and “authorised supplier” have the same meanings as in Part 1 of the 1989 Act;
  - “authorised transmitter” means a person authorised by a licence under section 6(1)(b) of that Act to participate in the transmission of electricity;
  - “licence” means a licence for the purposes of section 4 of that Act;
  - “licence holder” has the same meaning as in Part 1 of that Act;
  - “renewable sources” means sources of energy in relation to which the following condition is satisfied, namely, that the production of evidence in respect of electricity generated from those sources is capable of satisfying a renewables obligation imposed by an order under section 32 of that Act (obligation in respect of electricity generated from renewable sources);
  - “scheme” means a scheme established by an order under this section.
- (15) The power to make an order containing provision authorised by this section is subject to the affirmative resolution procedure.

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**Commencement Information**

**I132** S. 185 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 186 Restrictions on disclosure of information

In section 105 of the Utilities Act 2000 (c. 27) (general restrictions on disclosure of information)—

- (a) in subsection (1)(a) for “or Part I of the 1989 Act” substitute “, Part 1 of the 1989 Act or section 184(5) or 185(5) of the Energy Act 2004 ”; and
- (b) in subsection (3)(a) after “1989 Act” insert “, section 184 or 185 of the Energy Act 2004 ”.

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**Commencement Information**

**I133** S. 186 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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### *Payments into Scottish Consolidated Fund*

#### **187 Payments of sums raised by fossil fuel levy**

- (1) If the Scottish Ministers so direct, the person prescribed under section 33(1)(b) of the 1989 Act (collection of fossil fuel levy) must pay an amount into the Scottish Consolidated Fund out of money that has been paid under section 33(5A) of that Act.
- (2) The Scottish Ministers shall, in making budget proposals to the Scottish Parliament, include provision that the required amount for the financial year to which the proposals relate be used for the purpose of promoting the use of energy from renewable sources.
- (3) In subsection (2)—
  - “budget proposals” means proposals made, in relation to each Bill for a Budget Act, for the use of resources;
  - “the required amount” means an amount of money equal to the total of the amounts paid into the Scottish Consolidated Fund under subsection (1) in the financial year in question; and
  - “renewable sources” means sources of energy other than fossil fuel or nuclear fuel.
- (4) In subsection (3), “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 Energy Act 1976 (c. 76)).
- (5) The Scottish Ministers' duty under subsection (2) is without prejudice to any power or duty of theirs apart from this section to spend money for the purpose mentioned in that subsection.
- (6) In this section references to section 33 of the 1989 Act are references to that section as it has effect in Scotland.

#### **Commencement Information**

**I134** S. 187 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **PART 4**

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Imposition of charges*

#### **188 Power to impose charges to fund energy functions**

- (1) The Secretary of State may by regulations make provision requiring the payment to him of charges in respect of any of the following—
  - (a) services or facilities provided or made available by him in the carrying out of his relevant energy functions;
  - (b) the consideration or supervision by him, for purposes connected with the carrying out of any of those functions, of any matter;

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- (c) the issue by him, in the carrying out of those functions, of a licence;
  - (d) the doing of anything else which is done by him—
    - (i) in the carrying out of any of those functions; or
    - (ii) for purposes which are incidental to, or otherwise connected with, the carrying out of any of those functions.
- (2) The matters in respect of which charges may be imposed under this section include—
- (a) the performance of a duty imposed on the Secretary of State; and
  - (b) things done in relation to, or to activities carried on in, the territorial sea adjacent to the United Kingdom or an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29).
- (3) The persons who may be made liable for charges imposed by regulations under this section are—
- (a) any of the persons to whom, or on whose application, the service or facility in question is provided or made available;
  - (b) any of the persons on whose application the matter in question is considered, or to whom that matter relates;
  - (c) any of the persons whose activities are supervised;
  - (d) any of the persons to whom, or on whose application, the licence in question is issued;
  - (e) any of the persons on whose application the other thing is done.
- (4) In exercising his powers under this section to fix the amount of the charge to be paid by a person of a particular description, the Secretary of State may fix any amount that appears to him to be appropriate having regard to the costs that the Secretary of State is likely to incur in the carrying out—
- (a) in relation to persons of that description, or
  - (b) in a manner that benefits persons of that description,
- of the relevant energy functions in respect of which the charge is imposed.
- (5) The provision that may be made by regulations under this section includes—
- (a) provision specifying the times at which charges imposed under such regulations become due;
  - (b) provision specifying the manner in which they are to be paid; and
  - (c) provision for charges that must be paid periodically in respect of any matter.
- (6) Regulations under this section are subject to the negative resolution procedure.
- (7) The references in this section to the Secretary of State's relevant energy functions are references to the powers and duties of the Secretary of State by or under any of the following—
- (a) the Pipe-lines Act 1962 (c. 58);
  - (b) so much of the Prevention of Oil Pollution Act 1971 (c. 60) as has effect in connection with anything specified in subsection (8);
  - (c) the Energy Act 1976 (c. 76);
  - (d) so much of Part 2 of the Food and Environment Protection Act 1985 (c. 48) as has effect in connection with anything specified in subsection (8);
  - (e) the Gas Act 1986 (c. 44);
  - (f) the 1989 Act;
  - (g) the Gas Act 1995 (c. 45);

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- (h) the Petroleum Act 1998 (c. 17);
  - (i) so much of the Pollution Prevention and Control Act 1999 (c. 24) as has effect in connection with anything specified in subsection (8);
  - (j) Chapters 2 and 3 of Part 2 of this Act;
  - (k) Chapters 2 to 4 of Part 3 of this Act;
  - (l) so much of any Community instrument as has effect in connection with anything specified in subsection (8).
- (8) The matters mentioned in subsection (7) are—
- (a) the carrying out of exploration for petroleum;
  - (b) the winning or production of petroleum;
  - (c) the generation, transmission, distribution or supply of electricity;
  - (d) the conveyance, supply, storage or processing of gas;
  - (e) pipelines for the conveyance of petroleum that are situated in Great Britain;
  - (f) offshore installations and submarine pipelines;
  - (g) Renewable Energy Zones and renewable energy installations;
  - (h) the protection of the environment from activities carried on in connection with anything mentioned in the preceding paragraphs.
- (9) In this section—
- “application” includes a requirement, and cognate expressions are to be construed accordingly;
  - “gas” has the same meaning as in the Gas Act 1986 (c. 44);
  - “issue”, in relation to a licence, includes grant and serve, and also refuse, modify, revoke and renew, and cognate expressions are to be construed accordingly;
  - “licence” includes an authorisation, consent, approval, exemption, certificate or notice;
  - “offshore installation” has the same meaning as in Part 4 of the Petroleum Act 1998 (c. 17);
  - “petroleum” has the same meaning as in Part 1 of that Act;
  - “pipeline” means a pipeline within the meaning of Part 3 of that Act or a pipe-line within the meaning of the Pipe-lines Act 1962 (c. 58);
  - “Renewable Energy Zone” and “renewable energy installation” have the same meanings as in Chapter 2 of Part 2 of this Act;
  - “supervision”, in relation to activities, includes the carrying out of an inspection of any premises or thing used or apparently used in connection with those activities.
- (10) The power to make regulations under this section—
- (a) is in addition to every other power to impose charges in connection with the carrying out by the Secretary of State of his relevant energy functions; and
  - (b) is to be disregarded in construing those other powers.
- (11) The Secretary of State must pay sums received by him by virtue of regulations under this section into the Consolidated Fund.



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#### Commencement Information

**I135** S. 188 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### *International agreements relating to pipelines and offshore installations*

#### **189 Power to modify Petroleum Act 1998**

- (1) Her Majesty may by Order in Council make any modifications of the Petroleum Act 1998 (c. 17) that Her Majesty considers appropriate for the purpose of securing that effect is given to an international agreement to which this section applies.
- (2) This section applies to an international agreement (whether entered into before or after the passing of this Act) which relates in whole or in part to the construction, operation, use, decommissioning or abandonment of a pipeline or offshore installation.
- (3) The power under this section to modify the Petroleum Act 1998 includes—
  - (a) power to provide for provision made by or under that Act to have effect (with or without modifications) in relation to a foreign area;
  - (b) power to provide for provisions of that Act having effect (with or without modifications) in relation to a foreign area, so far as they apply to individuals, to apply to them whether or not they are British citizens;
  - (c) power to provide for provisions of that Act having effect (with or without modifications) in relation to a foreign area, so far as they apply to bodies corporate, to apply to them whether or not they are incorporated under the law of a part of the United Kingdom; and
  - (d) power to provide for modifications of that Act to come into force before the coming into force of the international agreement to which they relate.
- (4) An Order in Council under this section may—
  - (a) modify powers under the Petroleum Act 1998 to make subordinate legislation;
  - (b) make provision for a reference in a modification made by the Order to a specified document to operate as a reference to that document as revised or re-issued from time to time; and
  - (c) provide for the delegation of powers exercisable by virtue of modifications made by the Order.
- (5) The power to make an Order in Council containing provision authorised by this section is subject to the affirmative resolution procedure.
- (6) In this section—
  - “construction” and “pipeline” have the same meanings as in Part 3 of the Petroleum Act 1998;
  - “foreign area” means an area which is not within any of the following—
    - (a) the United Kingdom;
    - (b) the territorial sea adjacent to the United Kingdom; or
    - (c) an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29);
  - “international agreement” means—

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- (a) any international treaty, convention or protocol to which the United Kingdom is a party; or
  - (b) any other agreement between the United Kingdom and another country or territory;
- “offshore installation” has the same meaning as in Part 4 of the Petroleum Act 1998 (c. 17).

#### Commencement Information

**I136** S. 189 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Supplementary provision relating to functions of Secretary of State and GEMA*

### 190 Application of general duties to Part 3 functions etc.

- (1) Sections 4AA to 4B of the Gas Act 1986 (c. 44) (principal objectives and general duties) apply to the carrying out as respects—
  - (a) activities required to be authorised by gas licences,
  - (b) such licences and the conditions of such licences, or
  - (c) companies holding such licences,
 of functions conferred on the Secretary of State or GEMA by or under Chapters 2 to 4 of Part 3 of this Act as they apply in relation to the carrying out of functions conferred on him, or on it, by or under Part 1 of that Act.
- (2) Sections 3A to 3D of the 1989 Act (principal objectives and general duties) apply to the carrying out as respects—
  - (a) activities required to be authorised by electricity licences,
  - (b) such licences and the conditions of such licences, or
  - (c) companies holding such licences,
 of functions conferred on the Secretary of State or GEMA by or under section 90 or 91 or Part 3 of this Act (other than section 179(4)) as they apply in relation to the carrying out of functions conferred on him, or on it, by or under Part 1 of that Act.
- (3) In section 3A(2)(b) of the 1989 Act (duty to have regard to ability of licence holders to finance obligations under Part 1 or the Utilities Act 2000), for “or the Utilities Act 2000” substitute “, the Utilities Act 2000 or Part 2 or 3 of the Energy Act 2004 ”.
- (4) In this section—
  - “electricity licence” means a licence for the purposes of section 4 of the 1989 Act (prohibition on unlicensed electricity activities); and
  - “gas licence” means a licence for the purposes of section 5 of the Gas Act 1986 (prohibition on unlicensed gas activities).

#### Commencement Information

**I137** S. 190 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I138** S. 190 in force at 5.10.2004 in so far as not already in force by S.I. 2004/2575, art. 2(1), Sch. 1

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## 191 Supplementary provision about licence condition powers

- (1) This section applies to—
- (a) the Secretary of State’s powers under Chapters 2 to 4 of Part 3 of this Act with respect to the conditions of gas licences; and
  - (b) his powers under sections 90 and 91 and Part 3 of this Act with respect to the conditions of electricity licences;
- and this section is to be disregarded in determining the generality of those or any other powers conferred on the Secretary of State by this Act or otherwise.
- (2) Conditions included in a gas licence, or in an electricity licence, by virtue of a power to which this section applies need not relate to the activities authorised by the licence.
- (3) Conditions included in a gas licence by virtue of a power to which this section applies may do any of the things authorised by section 7B(4A) or (5) of the Gas Act 1986 (which apply to GEMA’s power with respect to licence conditions under section 7B(4) (a)).
- (4) Conditions included in an electricity licence by virtue of a power to which this section applies may do any of the things authorised by section 7(2) to (4) of the 1989 Act (which apply to GEMA’s power with respect to licence conditions under section 7(1) (a)).
- (5) In this section—
- “electricity licence” means a licence for the purposes of section 4 of the 1989 Act (prohibition on unlicensed electricity activities); and
  - “gas licence” means a licence for the purposes of section 5 of the Gas Act 1986 (c. 44) (prohibition on unlicensed gas activities).

### Commencement Information

**I139** S. 191 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I140** S. 191 in force at 5.10.2004 in so far as not already in force by S.I. 2004/2575, art. 2(1), Sch. 1

### *Supplemental*

## 192 Powers exercisable by statutory instrument

- (1) Every power conferred by this Act on the Secretary of State or the Treasury to make an order or regulations is a power exercisable by statutory instrument.
- (2) Where—
- (a) this Act provides for an Order in Council, order or regulations to be subject to the negative resolution procedure, and
  - (b) a draft of the Order in Council, order or regulations has not been required, in accordance with subsection (3) or any other enactment, to be laid before Parliament and approved by a resolution of each House, or by a resolution of the House of Commons,

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

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

#### Commencement Information

**I141** S. 192 in force at 24.8.2004 for specified purposes by [S.I. 2004/2184](#), art. 2(1), [Sch. 1](#)

**I142** S. 192 in force at 5.10.2004 in so far as not already in force by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### 193 Service of notifications and other documents

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

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

#### Commencement Information

**1143** S. 193 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**1144** S. 193 in force at 5.10.2004 in so far as not already in force by S.I. 2004/2575, art. 2(1), Sch. 1

## 194 Notifications and documents in electronic form

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

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

#### Commencement Information

**I145** S. 194 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I146** S. 194 in force at 5.10.2004 in so far as not already in force by S.I. 2004/2575, art. 2(1), Sch. 1

## 195 Timing and location of things done electronically

- (1) The Secretary of State may, by order, make provision specifying, for the purposes of any enactment or subordinate legislation contained in or made under this Act, the manner of determining—
  - (a) the times at which things done under that enactment or subordinate legislation by means of electronic communications networks are done; and
  - (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.
- (2) The provision made by subsection (1) may include provision as to the country or territory in which an electronic address is to be treated as located.
- (3) An order made by the Secretary of State may also make provision about the manner of proving in any legal proceedings—

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- (a) that something done by means of an electronic communications network satisfies the requirements of an enactment or subordinate legislation contained in or made under this Act for the doing of that thing; and
  - (b) the matters mentioned in subsection (1)(a) and (b).
- (4) An order under this section may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate.
- (5) An order under this section is subject to the negative resolution procedure.

#### Commencement Information

**I147** S. 195 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I148** S. 195 in force at 5.10.2004 in so far as not already in force by S.I. 2004/2575, art. 2(1), Sch. 1

## 196 General interpretation

### (1) In this Act—

- “the 1965 Act” means the Nuclear Installations Act 1965 (c. 57);
- “the 1989 Act” means the Electricity Act 1989 (c. 29);
- “the 1993 Act” means the Radioactive Substances Act 1993 (c. 12);
- “affirmative resolution procedure” is to be construed in accordance with section 192(3);
- “BNFL” means the Nuclear Fuels Company (within the meaning of the Atomic Energy Authority Act 1971 (c. 11));
- “contravention” includes a failure to comply, and cognate expressions are to be construed accordingly;
- “documents” includes accounts, drawings, written representations and records of any description;
- “electronic communications network” has the same meaning as in the Communications Act 2003 (c. 21);
- “enactment” includes Acts of the Scottish Parliament and Northern Ireland legislation;
- “financial year” means a period of twelve months ending with 31st March;
- “GEMA” means the Gas and Electricity Markets Authority;
- “modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly;
- “the NDA” means the Nuclear Decommissioning Authority established by section 1;
- “negative resolution procedure” is to be construed in accordance with section 192(2);
- “nuclear site licence” has the same meaning as in the 1965 Act;
- “nuclear transfer scheme” means a scheme under section 38;
- “pensions, allowances or gratuities” is to be construed in accordance with subsection (2);
- “securities”, in relation to a body corporate, includes shares, debentures, debenture stock, bonds and other securities of the body corporate, whether or not constituting a charge on the assets of the body corporate;
- “shares” includes stock;

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

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

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

(2) In this Act—

- (a) references to pensions, allowances or gratuities include references to any similar benefits provided on death or retirement; and
- (b) references to the payment of pensions, allowances or gratuities to or in respect of a person include references to the making of payments towards the provision of the payment of pensions, allowances or gratuities to or in respect of that person.

**Commencement Information**

**1149** S. 196 in force at 24.8.2004 for specified purposes by [S.I. 2004/2184](#), art. 2(1), [Sch. 1](#)

**1150** S. 196 in force at 5.10.2004 in so far as not already in force by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**197 Repeals etc.**

- (1) In the Atomic Energy Authority Act 1971 (c. 11), the following provisions shall cease to have effect—
  - (a) section 4(1) (BNFL to make property etc. available to the UKAEA); and
  - (b) section 11(1) to (3) (provisions as to shares in BNFL and the Radiochemical Company).
- (2) In section 11(4) of that Act (subscription for shares by the Secretary of State), for “either of the companies” substitute “ the Nuclear Fuels Company ”.
- (3) In section 12(1) of that Act (loans to BNFL and the Radiochemical Company), for “either of the companies” and “the company to which the loan is made” substitute, respectively, “ the Nuclear Fuels Company ” and “ that Company ”.
- (4) In section 20 of that Act, subsection (4) (powers to exclude employees of BNFL and Amersham from the UKAEA pension scheme) shall cease to have effect.
- (5) In section 1(1) of the Nuclear Industry (Finance) Act 1977 (c. 7) (Government guarantees for BNFL and the Radiochemical Company), the words “or The Radiochemical Centre Limited (“T.R.C.L.”)” shall cease to have effect.
- (6) In subsection (1) of section 2 of that Act (financial limits)—
  - (a) for the words from “financial limits” to “B.N.F.L.,” substitute “ financial limit applicable to B.N.F.L. is ”;
  - (b) paragraph (b) and the word “and” immediately preceding it shall cease to have effect; and
  - (c) for “either company” substitute “ the company ”.
- (7) In subsection (2) of that section for “either of the two companies” substitute “ B.N.F.L. ”.



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- (8) In section 11A(10) of the 1989 Act, in paragraph (b) of the definition of “relevant licence holder”, the words “(by virtue of anything done under section 33(2) of the Utilities Act 2000)” shall cease to have effect.
- (9) The enactments in Part 1 of Schedule 23 (which include some that are spent) are repealed to the extent shown in the second column of that Part of that Schedule.
- (10) Those repeals have effect subject to the provisions set out in Part 2 of that Schedule.

#### Commencement Information

- I151** S. 197(1)-(7) in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)
- I152** S. 197(8) in force at 1.9.2004 by [S.I. 2004/2184](#), art. 2(2), [Sch. 2](#)
- I153** S. 197(9) in force at 1.9.2004 for specified purposes by [S.I. 2004/2184](#), art. 2(2), [Sch. 2](#)
- I154** S. 197(9)(10) in force at 5.10.2004 for specified purposes by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### 198 Short title, commencement and extent

- (1) This Act may be cited as the Energy Act 2004.
- (2) This Act (apart from this section) shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.
- (3) Subject to subsection (4) of this section, this Act extends to Northern Ireland.
- (4) The following provisions of this Act do not extend to Northern Ireland—
  - (a) Chapter 3 of Part 1 (with the exception of section 59 and paragraphs 1, 5, 6, 8, 10(1) and (2) and 11 of Schedule 14);
  - (b) so much of Part 2 as amends the 1989 Act;
  - (c) sections 82, 90, 91 and 100; and
  - (d) Part 3 (with the exception of section 151(5)).

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